

STAFF REPORT

RE: Intergovernmental Agreement with Oregon Department of Transportation Regarding the Crooked River Wetland Mitigation Bank Stewardship Agreement

In 2007 the Oregon Department of Transportation (ODOT), U.S. Army Corp of Engineers, the Oregon Department of State Lands, the U.S. Environmental Protection Agency, the U.S. Fish & Wildlife Service, the Oregon Department of Environmental Quality, and the Oregon Department of Fish & Wildlife entered into a Memorandum of Agreement to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Crooked River Wetland Mitigation Bank ("Bank"). The Bank was to be used for compensatory mitigation for unavoidable impacts to waters of the United States, including wetlands, that result from activities under certain federal and state laws, rules, and regulations. The Bank is to be used for smaller ODOT projects and City of Prineville projects that impact wetland areas below 4,900 foot elevation. Under the terms of the Memorandum of Agreement up to ten acres of City property (which comprises the Bank) will be used as emergent wetlands along a portion of the Crooked River. The City received .67 Bank credits in consideration for transferring City land to be used for the Bank. The City also benefited from improvement of the wetland area and generating goodwill with state and federal agencies. When an ODOT project impacts areas designated as wetlands ODOT will pay money into a revolving fund to establish future banks and will be given one credit in the Crooked River Wetland Mitigation Bank for each half acre of wetland that was destroyed. The City's .67 Bank credits will allow the City to destroy one acre of designated wetlands for a City project. After the City's credits are used, the City will not, under current rules, be allowed to purchase any more credits in the Crooked River Wetland Mitigation Bank. All future credits will be used by ODOT pursuant to current rules. When all the credits are used the Bank will close.

Pursuant to the terms of the Memorandum of Agreement, until the Bank closes, ODOT is required to monitor, manage, and maintain the Bank. Even though the Bank is not yet closed (there are 4.31 credits remaining unless additional credits are authorized), ODOT desires that the City agree to take on the responsibility of long term management of the Bank after it closes. Initially, City staff was reluctant to agree to be responsible for tasks that would be performed on the Bank in the future without knowing what the condition of the closed Bank would be. The first draft of the Intergovernmental Agreement between the City and ODOT would have left the City responsible even if the City found it financially or otherwise difficult to manage the Bank. When these concerns were conveyed to ODOT the Intergovernmental Agreement was modified so the City can terminate the Agreement on 60 days prior notice and after the Agreement is terminated the City would have no further obligations under the Intergovernmental Agreement.

The City was concerned about the financial obligations of the City regarding management of the Bank. ODOT has agreed to provide approximately \$145,000 to the City, which the City must place with an endowment management organization. The City can use the interest from the endowment to pay for work associated with the Bank. The advantage to signing the Agreement now is the endowment amount will be paid now and since the City will have no work obligation on the Bank the interest on the endowment will be added to the amount of the endowment which will increase the amount of interest payable from the endowment.

City staff believes that with the modifications to the Intergovernmental Agreement the City is sufficiently protected and recommends the City Council pass Resolution No. 1223.

RESOLUTION NO. 1223

A RESOLUTION AUTHORIZING ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT CONCERNING THE CROOKED RIVER WETLAND MITIGATION BANK STEWARDSHIP AGREEMENT

WHEREAS, the State of Oregon, acting by and through its Department of Transportation (hereafter "ODOT") has established the Crooked River Wetland Mitigation Bank (hereafter "Bank") along the Crooked River; and

WHEREAS, all land, equipment, and structures within the bank boundaries are the property of the City of Prineville (hereafter the "City"); and

WHEREAS, ODOT is required to establish an endowment fund to pay for the long term management of the Bank consistent with the Bank long term management plan (hereafter the "Plan"); and

WHEREAS, ODOT as sponsor of the Bank will monitor, manage, and maintain the Bank until the Bank closure and ODOT desires to retain the services of City to perform after the Bank closes the work of the Bank steward as defined in the Plan; and

WHEREAS, ODOT will fund an endowment from which the estimated costs of the work to be performed by City after Bank closing is paid; and

WHEREAS, ODOT has prepared Intergovernmental Agreement No. 28322 regarding the Crooked River Wetland Mitigation Bank Stewardship Agreement between City and ODOT; and

WHEREAS, City staff believes it is in the best interests of the City to enter into the Intergovernmental Agreement;

NOW, THEREFORE, it is hereby resolved that the City of Prineville agrees to enter into Intergovernmental Agreement No. 28322 with ODOT and authorizes the Mayor and City Manager to sign such Intergovernmental Agreement on behalf of the City of Prineville and to take necessary steps to carry out the terms of such Agreement.

Passed by the City Council this _____ day of October, 2013.

Betty J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder