



City of Prineville
DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
CITY HALL
387 N.E. THIRD STREET
PRINEVILLE, OR 97754
(541) 447-5627

November 22, 2016

To: City Council

From: Phil Stenbeck, CFM, Planning Director

Re: DSP Committee parking lot agreement with the Elks Lodge.

As you may recall, the DSP Committee has identified a goal of providing off street parking for downtown business employees. This off street parking effort supports downtown businesses by freeing up on street parking directly in front of the downtown businesses thereby providing convenient parking for downtown business patrons.

The Downtown Strategic Plan (DSP) Committee has been working with the Prineville Elks Lodge in developing an agreement which outlines opportunities for downtown business employee parking in the Elks Lodge parking lot. The agreement attached as Exhibit A, outlines the how the Elks Lodge parking lot can be used by downtown businesses employees in trade for installation of several solar powered lights in the parking lot. The DSP Committee requested and the City Council authorized funding for installation of the solar lights in the City budget.

At this time, staff is asking for approval of the joint City of Prineville/Elks Lodge agreement.

Exhibit A

PARKING LOT USE AGREEMENT

Section 1 This Parking Lot Use Agreement (the "Agreement") by and between the Prineville Lodge No. 1814, Benevolent and Protective Order of Elks of the United States of America (the "Elks") and the City of Prineville, a municipal corporation (the "City") is entered into as of November _____, 2016.

Section 2

WITNESSETH:

Whereas, the City has identified a shortage of parking for business employees in the City's downtown, and whereby the City has identified the Elks parking lot as a partial remedy to the parking shortage; and whereby the City's parking consultant and downtown business owners have recommended the City obtain additional off street parking; said parking lot acquisition is necessary to expand the capacity of the downtown business client opportunities; and

Whereas, Elks has additional parking capacity in the Elks parking lot in the City and the City Council believes it is in the best interest of downtown businesses and the City to enter into an agreement to use the Elks parking lot to alleviate a portion of the downtown parking shortage;

Now, therefore, in accordance with the foregoing and in consideration of promises made in good faith contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 3

Recitals. The recitals are hereby incorporated as if set forth fully herein.

Section 4

Definitions. As used in this Agreement, the following terms have the following meanings:

4.1 "Parking Lot" shall mean the parking lot on real property owned by the Elks located at 151 N. Main Street, Prineville, Oregon 97754.

"PLLs" shall mean up to 4 solar powered outdoor parking lot lights as further described on Exhibit A attached hereto.

Section 5

Construction and financing.

5.1 The Elks and City shall agree on whether the PLLs shall be attached to existing poles or the Elks Lodge building as determined by night time parking lot lighting needs.

5.2 The City via the Downtown Strategic Plan Committee shall proceed expeditiously in receiving and installing the PLLs in accordance with Building Code requirements.

Exhibit A

- 5.3 The City shall pay all costs associated with installation of the PLLs.
- 5.4 After installation of the PLLs and during the term of this Agreement, the City shall inspect and maintain the PLLs at no cost to the Elks.

Section 6 City use and responsibility.

- 6.1 Upon installation of the PLLs, the City shall be allowed to designate the Elks parking lot as a downtown business employee off street parking area in the following manner:
 - 1) Off street parking for downtown business employees is on a first come, first serve basis, and is allowed at all times from 6 a.m. until 5 p.m. except during:
 - (A) The Elks Lodge Tuesday Taco dinner (5:00pm to 8:00pm);
 - (B) The Thursday morning Band of Brother's breakfast (6:00am to 10:00am).
- 6.2 During the term of this Agreement, the City shall indemnify, defend and hold the Elks harmless against liability resulting either directly or indirectly from use of the Elks parking lot by downtown business employees, for off-street parking. The City will be responsible at its cost, to provide liability insurance that covers any liability associated with downtown business employee use of the Elks parking lot. However, the City shall not be responsible to indemnify, defend, or hold the Elks harmless or provide liability insurance for liability arising out of the negligence of the Elks including their officers, employees, agents, members, or invitees.
 - 1) The City shall be responsible for all costs associated with the liability insurance and shall maintain the insurance until the Agreement terminates.
- 6.3 The City shall be responsible to promulgate rules and regulations for use of the Elks' parking lot by the downtown business employees. The City will provide a system whereby the Elks will be advised as to whose car will be parked under this agreement. The Elks shall have no responsibility to determine whether or not a vehicle is entitled to park in the Elks' parking lot.

Section 7 The life of the agreement and the right to terminate agreement.

Exhibit A

7.1 This Agreement shall terminate on January 1, 2020 unless previously terminated by Section 7.2 hereof.

7.2 City may terminate this Agreement, by City giving a (30) day written notice to the Elks at the address listed below:

Prineville Elks Lodge #1814
PO Box 538
Prineville, Oregon 97754

7.3 Upon termination of the Agreement, the Elks shall be responsible for maintenance and removal of the PLLs.

Section 8 Assignment. The agreement reached between the City and Elks be binding on the parties' respective successors and assigns, and shall be a covenant running with the land. The Elks shall have the absolute right to assign this Agreement to a corporate parent, a wholly-owned subsidiary or to an affiliate under the same or similar ownership or control. Any other assignment of this Agreement by the Elks shall require the written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. (In determining whether to grant consent, the City may consider, among other criteria, the development experience and creditworthiness of the potential assignee.)

Section 9 Representations and Warranties. The City hereby represents and warrants (i) that it has taken all steps necessary to authorize this Agreement and all actions to be taken pursuant to this Agreement; and (ii) that none of the terms hereof violate any applicable laws, regulations or ordinances, including without limitation, the laws, regulations and ordinances of the State of Oregon or the City of Prineville.

Section 10 Miscellaneous.

10.1 Waiver. In order for a claimed waiver of a term or provision of this Agreement to be an enforceable waiver, the waiver shall be in writing and be signed by the party to be bound by the waiver. A waiver for one event shall be a waiver for that event only and not a general waiver of a term or provision of this Agreement.

10.2 Notices. All notices required, permitted, or otherwise given pursuant to this Agreement shall be given by hand delivery or by certified mail, addressed to a party at its address set forth below. A notice shall be effective, if given by hand delivery, upon delivery to a party's address shown below. A notice shall be effective, if given by certified mail, on the third day following the day when the notice, properly addressed and postage prepaid, was deposited in the U.S. mails.

Exhibit A

If to City: 387 NE Third Street
Prineville, OR 97754
Attn: City Manager

If to Elks:
Prineville Elks Lodge # 1814
PO Box 538
Prineville, Oregon 97754

- 10.3 Entire Agreement. This Agreement contains the entire agreement between the parties pertaining to the subject matters of this Agreement. All prior written and oral agreements between the parties or their representatives pertaining to the matters described herein are null and void and of no further force or effect.
- 10.4 Governing Law. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Oregon.
- 10.5 Captions. All captions used are intended solely for convenience of reference and shall in no way define, limit, extend or restrict the rights and obligations of the parties or the terms of this Agreement.
- 10.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute a single instrument.
- 10.7 Sovereign Immunity. This Agreement shall be enforceable according to its terms, and shall not be void or voidable by the City on the grounds that the City is immune or protected from liability or responsibility by sovereign immunity or similar safeguards.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Prineville Lodge No. 1814, Benevolent and
Protective Order of Elks of the United States
of America

City of Prineville,
an Oregon municipal corporation

By: _____

By: _____
Steve Forrester, City Manager

c: Exhibit A – Information on PLLs