



City of Prineville

387 NE THIRD STREET • PRINEVILLE, OREGON 97754

DEPARTMENT OF PUBLIC WORKS ENGINEERING DEPARTMENT

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EMAIL: eklann@cityofprineville.com Website: www.cityofprineville.com

Date: October 24, 2017

To: Prineville City Council

From: Scott Smith - Street Superintendent

Staff Report: Cooperative Improvement Agreement # 32401
(Crooked River Wetland Mitigation Bank)

Overview:

A 180 foot section of the berm adjacent to Phase I of the Crooked River Wetland must to be removed in order to improve the quality of the wetland. The wetland bank site is located approximately one mile northwest of Prineville and is adjacent to the Crooked River. In connection with the streambed improvements performed during the City wetland project this improvement will eliminate the erosion that took place during last spring's high water event. This agreement follows past practices used during the construction of the ODOT wetland. The City Street Department will rent the necessary equipment, provide diesel fuel and labor to not exceed the agreed amount of \$28,000. Once the project is complete, the City will present the appropriate invoices and documentation for reimbursement from ODOT.

Staff would like to add that the city's participation with the mitigation bank has provided the city with one acre of mitigation credits for use in future projects that may impact a designated wetland area, such as the Peters Rd. extension.

The start date for this project shall be determined once the agreement has been approved by both parties and an available time is determined by the Street Department. The improvements must be completed by December 31, 2017.

Staff Recommendation:

Staff recommends Council approval of this Cooperative Agreement # 32401

**RESOLUTION NO. 1328
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE
STATE OF OREGON DEPARTMENT OF TRANSPORTATION (“ODOT”) REGARDING
REMOVAL OF A SECTION OF A BERM ADJACENT TO THE CROOKED RIVER
WETLAND**

WHEREAS, The City of Prineville (“City”) has identified a section of a berm adjacent to Phase I of the Crooked River Wetland that needs to be removed in order to improve the quality of the Wetland and has requested funds from ODOT for such removal; and

WHEREAS, The City and ODOT have negotiated Misc. Contracts and Agreements #32401 (“Agreement”), under the terms of which ODOT shall provide City \$28,000.00 to remove a 180 foot section of berm; and

WHEREAS, City staff believes \$28,000.00 is sufficient to pay for removal of the 180 foot section of the berm; and

WHEREAS, City staff believes it is in the best interest of the City to enter into the Agreement and to accept the \$28,000.00 from ODOT;

NOW, THEREFORE, the City of Prineville resolves as follows:

1. That the City shall enter into the Agreement and accept the \$28,000.00 to remove the 180 foot section of the berm; and
2. The mayor is authorized and instructed to execute the Agreement on behalf of the City.

Approved by the City Council this _____ day of October, 2017.

Betty J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder

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COOPERATIVE IMPROVEMENT AGREEMENT

Crooked River Wetland Mitigation Bank
Partial Berm Removal
City of Prineville

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" and the CITY OF PRINEVILLE, acting by and through its elected officials, hereinafter referred to as "City" both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. A 180 foot section of the berm adjacent to Phase I of the Crooked River Wetland must to be removed in order to improve the quality of the Wetland. The Wetland bank site is located approximately one mile northwest of Prineville and is adjacent to the Crooked River.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, Parties agree to City removing an approximately 180 foot section of of berm, hereinafter referred to as "Project". The Project shall consist of performing excavation and hauling at the Project site. Excavation shall take place over the duration of approximately 8 days. The rate for the equipment necessary to perform this work is estimated to be \$2812 per day for an excavator and two off-road dump haul trucks. Fuel costs are expected to be \$5000. City will contribute the cost of three employees as part of the berm removal. The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be financed at an estimated cost of \$28,000 in ODOT funds. The estimate for the total Project cost is subject to change. City shall be responsible for any Project costs beyond the estimate.
3. ODOT and City agree to work collaboratively to insure that the berm removal complies with Section 7 of the Endangered Species Act, Section 404 of the Clean Water Act, and the Oregon Removal-Fill Law. ODOT shall update City on

consultation process and will not make agreements concerning this Project, or subject property with regulating agencies, without the concurrence of City.

4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of Project and final payment or December 31, 2017, whichever occurs first.

CITY OBLIGATIONS

1. City shall perform the work as described in TERMS OF AGREEMENT Paragraph 1 above.
2. City agrees that the excavation work shall be completed by December 31, 2017.
3. City grants ODOT the right to enter onto City right of way for the performance of duties as set forth in this Agreement.
4. City shall keep accurate cost accounting records. City shall prepare and submit monthly itemized, progress invoices for construction directly to ODOT's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall ODOT's obligations exceed \$28,000.00 including all expenses.
5. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall ensure that each of its contractors complies with these requirements.
6. City shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
7. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of City which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
8. City shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold

harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of City's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the ODOT, be indemnified by the contractor and subcontractor from and against any and all Claims.

9. Any such indemnification shall also provide that neither the City's contractor and subcontractor nor any attorney engaged by City's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election assume its own defense and settlement in the event that it determines that City's contractor is prohibited from defending the State of Oregon, or that City's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against City's contractor if the State of Oregon elects to assume its own defense.
10. City shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, City expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. City shall construct the Project in accordance with the requirements of ORS 276.071 including the public contracting laws within ORS Chapters 279A, 279B and 279C.
12. If City chooses to assign its contracting responsibilities to a consultant or contractor, City shall inform the consultant or contractor of the requirements of ORS 276.071, to ensure that the public contracting laws within ORS Chapters 279A, 279B and 279C are followed.
13. City's Project Manager for this Project is Scott Smith – Street Supervisor, 1233 NW Lamonta Road, Prineville, OR 97754, (541) 447-7844, ssmith@cityofprineville.com, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement

ODOT OBLIGATIONS

1. ODOT agrees to obtain all necessary federal, state, and local permits on behalf of City required to carry out the berm excavation.
2. In consideration for the services performed, ODOT agrees to pay City within forty-five (45) days of receipt by ODOT of the Project invoice a maximum amount of \$28,000. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
3. ODOT shall consult with regulating agencies, as appropriate, in order to fully comply with Section 7 of the Endangered Species Act, Section 404 of the Clean Water Act, and the Oregon Removal-Fill Law. ODOT shall update City on consultation process and will not make agreements concerning this Project, or subject property with regulating agencies, without the concurrence of City.
4. ODOT's Project Manager for this Project is Allison Cowie, ODOT Region 4 Wetland Specialist, 63055 N. Highway 97, Building M, Bend OR 97703 (541)-388-6021, Allison.cowie@odot.state.or.us. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If City fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or City with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which ODOT is jointly liable with City (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by City in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of City on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
6. With respect to a Third Party Claim for which City is jointly liable with ODOT (or would be if joined in the Third Party Claim), City shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of City on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of City on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. City's contribution amount in any instance is capped to the

same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. If City fails to maintain facilities in accordance with the terms of this Agreement, ODOT, at its option, may maintain the facility and bill City, seek an injunction to enforce the duties and obligations of this Agreement or take any other action allowed by law.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE FOLLOWS

City of Prineville/ODOT
Agreement No. 32401

CITY OF PRINEVILLE, by and through its
elected officials

By _____
Mayor

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Counsel

Date _____

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 4 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 4 Planning/Environmental
Manager

Date _____

City Contact:

Scott Smith – Street Supervisor
1233 NW Lamonta Road
Prineville, OR 97754
(541) 447-7844
ssmith@cityofprineville.com

ODOT Contact:

Allison Cowie - Wetland Specialist
63055 N. Highway 97, Building M
Bend OR 97703
(541)-388-6021
Allison.cowie@odot.state.or.us

EXHIBIT A – Project Location Map

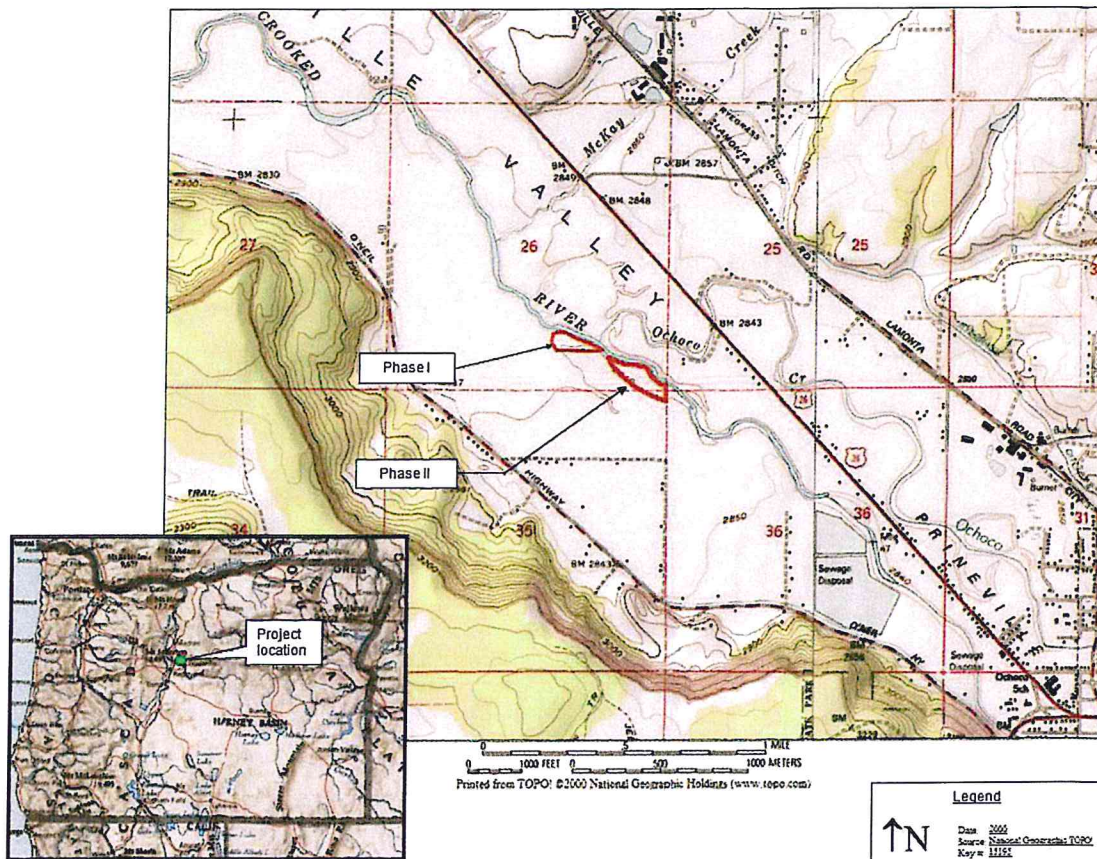
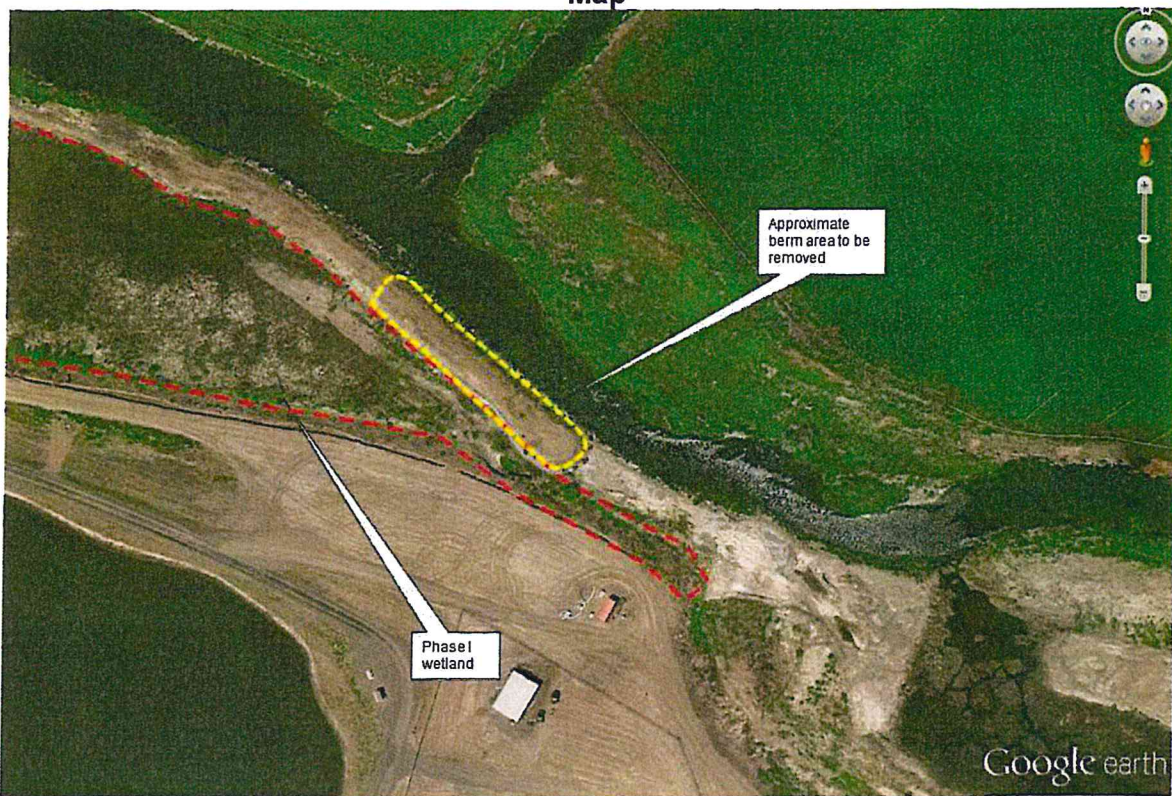


EXHIBIT A – Project Location Map



Legend
Date: 1/24/2017
Key: 11552