

**RESOLUTION NO. 1362  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH  
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY REGARDING  
WOODSMOKE REDUCTION PROGRAM**

**Whereas**, the State of Oregon, acting by and through its Department of Environmental Quality (hereinafter “DEQ”) has funding available from the general funding budget passed by the Oregon State Legislature to conduct an air quality program necessary to reduce wood smoke or particular matter emissions to meet or maintain the National Ambient Air Quality Standards; and

**Whereas**, DEQ has agreed to compensate the City an amount not to exceed \$10,450.00 for the period of September 1, 2018 through June 30, 2019; and

**Whereas**, DEQ has prepared an Intergovernmental Agreement (“Agreement”) labeled DEQ Agreement No, 005-19; and

**Whereas**, City has agreed to the Statement of Work, which is attached as Exhibit A of the Agreement, which includes the implementation of a public awareness plan;

**Whereas**, City staff believes it is in the best interest of the City to approve and execute the Agreement;

**Now, Therefore**, the City of Prineville resolves that the Intergovernmental Agreement attached to this Resolution between the City and DEQ is hereby approved and that the City Manager is authorized and instructed to sign such Agreement on behalf of the City.

Approved by the City Council this \_\_\_\_ day of July, 2018.

\_\_\_\_\_  
Betty J. Roppe, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder

**INTERGOVERNMENTAL AGREEMENT  
Woodsmoke Reduction Program**

This Agreement is between the State of Oregon, acting by and through its Department of Environmental Quality (DEQ) and the City of Prineville.

CITY OF PRINEVILLE DATA	DEQ DATA
Agreement Administrator: Josh Smith  Organization: City of Prineville Address: 387 NE Third St Prineville, OR 97754  Phone: 541-447-2367      Email: <a href="mailto:jsmith@cityofprineville.com">jsmith@cityofprineville.com</a>  Taxpayer ID # 93002239  DUNS # 086613296	Agreement Administrator: Rachel Sakata Dept. of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232  Phone: 503-229-5659      Email: <a href="mailto:sakata.rachel@deq.state.or.us">sakata.rachel@deq.state.or.us</a>

**1. Background** This Agreement provides City of Prineville with funding to conduct an air quality program necessary to reduce wood smoke or particulate matter (PM) emissions to meet or maintain the National Ambient Air Quality Standards.

DEQ funding for this Agreement is available from the general funding budget passed by the Oregon State Legislature. DEQ anticipates receiving this funding each year during the term of this Agreement. DEQ will amend this Agreement each year as additional funding becomes available.

**2. Authority** DEQ has authority under Oregon Revised Statute (ORS) 468A.005 and 468A.085 to restore and maintain the quality of the air resources in a condition as free from air pollution as practicable, to provide for a coordinated statewide approach, and to facilitate cooperation among local units of government. DEQ has authority under ORS 190.110 to cooperate for any lawful purpose with a unit of local government

**3. Effective Date and Duration** This Agreement is effective on the date that every party has signed this Agreement and, when required, approved by the Department of Justice. Unless earlier terminated or extended, this Agreement expires June 30, 2021.

**4. Agreement Documents** This Agreement consists of this document and the attached Exhibit A (Statement of Work).

**5. Statement of Work** The statement of work (Work), including the delivery schedule is contained in attached Exhibit A. City of Prineville agrees to perform the Work in accordance with the terms and conditions of this Agreement.

**6. Consideration** The maximum, not-to-exceed compensation payable to City of Prineville under this Agreement, which includes any allowable expenses, is:

**\$10,450 for the period 9-1-2018 through 6-30-2019.**

Additional funds may be added by written amendment if DEQ receives funding. If the maximum compensation is increased by amendment of this Agreement, the amendment must be fully effective before City of Prineville performs Work subject to the amendment. Interim payments to City of Prineville will be made only in accordance with the schedule and requirements described in Section 7 below.

**7. Invoicing/Payments**

- A. City of Prineville will not submit invoices for, and DEQ will not pay, any amount in excess of the maximum not-to-exceed compensation amount identified in this Agreement. If this maximum compensation amount is increased by amendment of this Agreement, the amendment must be fully effective before City of Prineville performs work subject to the amendment.
- B. City of Prineville will submit annual invoices no later than June 30<sup>th</sup> of each year for work completed. The invoices will itemize and explain all expenses for which reimbursement is claimed. Invoices must reflect actual expenses in the Budget categories described below in Section 7(C). Invoices must be sent to [DEQEXP@deq.state.or.us](mailto:DEQEXP@deq.state.or.us). Invoices are subject to the review and approval of the DEQ Agreement Administrator. **Invoice payments will be sent to City of Prineville, 387 NE Third St, Prineville, OR 97754.**
- C. Budget and Delivery Schedule: Invoices and payments will be based on the actual costs of City of Prineville performing the work described in this Agreement up to the limits described below. Shifts between task category budgets may be allowed with prior written approval from the DEQ Agreement Administrator.

Task Categories	Budget
Public Awareness	\$7,000

Planning and Implementation Measures	\$2700
Written Evaluation	\$750

- 8. Travel and Travel Related Expenses** It is the policy of the State that all travel be allowed only when the travel is essential to the normal discharge of this Agreement. All travel will be conducted in the most efficient and cost-effective manner resulting in the best value to the State. Personal expenses will not be authorized at any time. All expenses are included in the total maximum Agreement amount. City of Prineville understands and agrees that travel expenses will be reimbursed at rates not to exceed those rates approved by the Oregon Department of Administrative Services for State employees and in effect at the time the expense was incurred. **Receipts for lodging, car rental and airfare expenses must be provided to be eligible for reimbursement.** City of Prineville understands and agrees that the rates are subject to change and, in such event, the changed rates will immediately become part of this Agreement and govern reimbursement of any travel expenses incurred after the date of the change.
- 9. Amendments** The terms of this Agreement will not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.
- 10. Termination** This Agreement may be terminated by mutual consent of both parties or by either party upon 30 days written notice. This notice may be transmitted in person, by mail, facsimile or by Email. If this Agreement is terminated under this Section 10, DEQ will pay for approved unpaid invoices and services performed within any limits set forth in this Agreement.
- 8. Funds Available and Authorized** City of Prineville shall not be compensated for Work performed under this Agreement by any other agency or department of the State of Oregon. DEQ certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the DEQ's current biennial appropriation or limitation. City of Prineville understands and agrees that DEQ's payment of amounts under this Agreement is contingent on DEQ receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow DEQ, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
- 11. Captions** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.
- 10. Access to Records** City of Prineville will maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City of Prineville will maintain any other records pertinent to this Agreement in such a manner as to clearly document City of Prineville's performance. The Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of City of Prineville that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. City of Prineville will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- 11. Compliance with Applicable Law** City of Prineville will comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work performed under this Agreement. Without limiting the generality of the foregoing, City of Prineville expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (xi) ORS 279A, ORS 279B, ORS 279C as applicable to City of Prineville. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.
- 12. Recycled Products** City of Prineville shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).
- 13. Contribution** 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 a party (the "Notified Party") with respect to which the other party ("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. Either 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

the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the City of Prineville (or would be if joined in the Third Party Claim), the State 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 the City of Prineville in such proportion as is appropriate to reflect the relative fault of the State, on the one hand, and of the City of Prineville, 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 the State, on the one hand, and of the City of Prineville, 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding. With respect to a Third Party Claim for which the City of Prineville is jointly liable with the State (or would be if joined in the Third Party Claim), the City of Prineville 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 the State in such proportion as is appropriate to reflect the relative fault of the City of Prineville, on the one hand, and of the State, 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 the City of Prineville, on the one hand, and of the State, 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. The City of Prineville's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

- 14. Indemnification by Subcontractors** City of Prineville is shall take all reasonable steps to cause its contractor(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 and its officers, employees and agents ("Indemnitee") 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 of Prineville'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 Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
- 15. Subcontractor Insurance Requirements** City of Prineville shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified in Exhibit B (Subcontractor Insurance Requirements) meeting the requirements described in Exhibit B under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between City of Prineville and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. City of Prineville shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, City of Prineville shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. City of Prineville shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall City of Prineville permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the City of Prineville directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.
- 16. Federal Fund Requirements** Any recipient of federal grant funds, pursuant to this agreement with the State, shall assume sole liability for that recipient's breach of the conditions of the Grant, and shall, upon recipient's breach of grant conditions that requires the state to return funds to the federal grantor, hold harmless and indemnify the state for an amount equal to the funds received under this agreement; or if legal limitations apply to the indemnification ability of the recipient of grant funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- 17. Alternative Dispute Resolution** The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.
- 18. Merger Clause** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. City of Prineville, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY

ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**19. Counterparts.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

**THE PERSONS SIGNING THIS AGREEMENT REPRESENT AND WARRANT THAT THEY HAVE THE POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT.**

Approved by City of Prineville:

\_\_\_\_\_  
Steve Forrester, City Manager Date

Approved by DEQ:

\_\_\_\_\_  
Ali Mirzakhilili, Air Quality Division Administrator Date

\_\_\_\_\_  
Index/PCA/Project Mark A. Brown, Financial Services Manager Date

**EXHIBIT A****INTERGOVERNMENTAL AGREEMENT  
Woodsmoke Reduction Program****STATEMENT OF WORK**

Funding is being provided to Prineville in support of their local Smoke Reduction – Air Quality program efforts. These program elements shall include but not be limited to the following tasks:

**1) Public Awareness – The City will:**

- a) Implement a public awareness program. The City shall implement a smoke reduction program designed in consultation with the Prineville Air Quality Committee. The program shall include, at a minimum, a daily “burn” – “no-burn” advisory to support its open burning ordinances and a voluntary woodstove emission reduction program; and a public education program.
  - i) Determine and disseminate the daily “burn” – “no-burn” advisory and other air quality information using City employees, local media and other appropriate means.
  - ii) As part of the “burn” – “no-burn” advisory, consult with National Weather Service (website) and as needed use DEQ excel program in winter months (Nov 1 through Feb 28) prior to making the advisory call.
  - iii) Train appropriate City employees on outdoor burning and wood smoke issues, daily advisory call and other related issues.
  - iv) Develop and implement public information activities related to the “burn” – “no-burn” advisory, voluntary woodstove emission reduction program and other related issues.
- b) The City may add the following activities to the program:
  - i) Advertise a weatherization and heating installation and wood stove removal program
  - ii) Conduct additional public information efforts year around. Daily advertising could be through messaging in local articles in the paper, radio advertising, reader-board and other methods of informing the public.
  - iii) Make air quality presentations to service organizations as needed.
  - iv) Send air quality information out to residents in water bills.
  - v) Coordinate with appropriate groups to conduct a recycling/composting program
  - vi) Co-sponsor a workshop concerning the proper way of heating with woodstoves.

**2) Planning and Implementation Measures**

City of Prineville and Crook County and the Air Quality Committee will meet periodically to implement the city and county approved action plan. Implementation of the plan includes:

- a) Convene the Air Quality Committee to consider new ideas to improve air quality
- b) Educate committee members about the current air quality and contributors to poor air quality
- c) Brainstorm ideas to improve air quality over and above what is currently done
- d) Analyze the brainstormed ideas to develop a strategy to reducing air pollution
- e) Determine specific methods to implement each strategy and assign each strategy to an individual or group.
- f) Conduct enforcement and/or public awareness of ordinances
- g) Where appropriate, prepare and execute public awareness campaign as needed during critical periods of the year.
- h) Where appropriate, conduct public surveys to determine the effectiveness of the smoke reduction program.
- i) Where appropriate, gather technical data or information to determine effectiveness and proper strategy development.

**3) Written Evaluation: Assessment of Program Effectiveness**

Prineville shall prepare and submit to the DEQ, by not later than June 30th of each year, an evaluation of the effectiveness of the Smoke Reduction Program (Evaluation). The Evaluation is a seasonal report for the open burning periods and winter wood-heating season. The Evaluation shall include a comprehensive discussion on:

- a) Public awareness efforts;
- b) Community compliance assessment;
- c) Measures taken to improve air quality and coordination;
- d) The dates and air quality advisory determination made (burn – no burn) during the wood heating season

- e) Program difficulties;
- f) Recommendations for improvements;
- g) Public acceptance of program elements;
- h) Total amount of local funds expended on each element in the statement of work for the smoke reduction program.