

RESOLUTION NO. 1363

**A RESOLUTION APPROVING AN AGREEMENT WITH CROOK COUNTY
REGARDING PLAZA LOCATED ON JOINT PROPERTY**

Whereas, the City of Prineville (“City”) owns property known as Parcel 3 of Partition Plat 2004-09, being the East 100 feet of the “Block” defined below; and

Whereas, Crook County (“County”) owns property known as Parcel 1 of Partition Plat 2004-09, being the West 80 feet of the “Block” defined below; and

Whereas, City and County jointly own property (“Joint Property”) known as Parcel 2 of Partition Plat 2004-09, being the 80-foot-wide parcel located between City’s Property and County’s Property on the “Block” defined below; and

Whereas, the “Block” shall be defined as the real property located within the City bounded by NE Court Street, NE Third Street, NE Dunham Street, and NE Fourth Street, upon which City’s Property, County’s Property, and the Joint Property are located. The Block includes the Plaza, an open area located on the Joint Property and on the western portion of City’s Property upon which is located lights, grass, landscaping, concrete, paver stones, and artwork; and

Whereas, the “Block” further contains vegetation, landscaping, lighting, underground irrigation systems, parking lots, and improvements that require annual maintenance; and

Whereas, the City staff and County staff have negotiated an Agreement regarding the maintenance of the “Block” and financial responsibilities thereof;

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 Agreement between the City and the County attached hereto is approved and the Mayor and City Manager are authorized and directed to sign the Agreement.

Passed by the City Council this ____ day of July, 2018

Betty J. Roppe, Mayor

ATTEST:

Lisa Morgan, City Recorder

AGREEMENT

THIS AGREEMENT made effective August 1, 2018, between **Crook County**, a political subdivision of the State of Oregon (hereafter "COUNTY") and the **City of Prineville**, an Oregon municipal corporation (hereafter "CITY"). COUNTY or CITY may be referred to collectively as the Parties or individually as a Party.

Recitals

A. DEFINITIONS. The following definitions shall be used in this Agreement:

1) *City's Property*: Parcel 3 of Partition Plat 2004-09, being the East 100 feet of the Block.

2) *County's Property*: Parcel 1 of Partition Plat 2004-09, being the West 80 feet of the Block.

3) *Joint Property*: Parcel 2 of Partition Plat 2004-09, being the 80-foot-wide parcel located between City's Property and County's Property on the Block.

4) *The Block*: The real property located within the City bounded by NE Court Street, NE Third Street, NE Dunham Street, and NE Fourth Street, upon which City's Property, County's Property, and the Joint Property are located.

5) *Plaza*: An open area located on the Joint Property and on the western portion of City's Property upon which is located lights, grass, landscaping, concrete, paver stones, and artwork.

B. The Block contains vegetation, landscaping, underground irrigation systems, parking lots, as well as the improvements on the Plaza.

C. City deposited \$10,000.00 (*Ten Thousand Dollars*) into a fund for the use in maintaining the Block for the 2017-18 Fiscal Year.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. The above Recitals are made a part of this Agreement.

2. a. Beginning with the fiscal year 2018-19, CITY and COUNTY shall each deposit the sum of \$10,000.00 (*ten thousand dollars*) into a dedicated fund for use in maintaining the Block. Such deposit shall be made prior to the first day of August of each fiscal year (July 1 to June 30) during the term of this Agreement. County shall deposit an additional \$10,000.00 (*ten thousand dollars*) on or before August 1, 2018.

b. Notwithstanding the above, neither party will be required to contribute to the dedicated fund when the balance of such fund is \$50,000.00 or more. In those fiscal years when the balance of the dedicated fund is greater than \$30,000.00, such that both parties' contribution would together bring the fund balance up to or over \$50,000.00, each party will only be required to contribute one half of the difference between \$50,000.00 and the then-current fund balance.

3. The proceeds of such fund shall be used exclusively to undertake the following activities on the Block:

Compensation for cost of providing irrigation water; compensation for cost of providing electrical power for lights located in the plaza; compensation for cost of removing snow and trash; compensation for the cost of painting or replacing flagpoles, ropes and flags on said poles; compensation for cost of maintaining the landscaping; compensation for cost of repair and replacement of masonry and concrete; compensation for the cost of maintaining the asphalt parking lots; compensation for cost of replacement of landscaping, irrigation system and streetscape furniture; compensation for the maintenance of the lighting of the Plaza; compensation for all other reasonable, usual and customary expenses associated with maintaining the Block and the exterior grounds of City Property and County Property. City and County shall each be responsible for the maintenance and repair of their respective buildings located on the Block.

4. For purposes of administering both the activities described herein and the funds provided for such activities pursuant to this Agreement, COUNTY and CITY agree that CITY shall be the Coordinating Entity.

5. Coordinating Entity may not charge against the fund balance for any administrative fee.

6. The duties of the Coordinating Entity shall be to make payments from the fund and to enter into contracts to be expended from said fund. The responsibility of the Coordinating Entity for providing funds to accomplish the objectives of this Agreement shall be limited to the expenditure of funds made available through this Agreement.

7. To the maximum extent permitted by law, each of the Parties to this Agreement agrees to hold the other, their officers, employees, and agents, harmless from and against all claims, and to indemnify the other in relation to, any claim or claims, for any loss, personal injury, death or damages that may arise in conjunction with or resulting from, the act or failure to act of one or more employees or officials of the indemnifying Party.

8. The fund shall be held by the Coordinating Entity and expended by the Coordinating Entity for the purposes allowed under this Agreement. Coordinating Entity shall provide to the other Party (the Party not designated as Coordinating Entity) an invitation to the Coordinating Entity's quarterly budget hearings, plus the hearing material which shows the cost breakdown for Plaza expenses.

9. The Coordinating Entity may subcontract any of its duties for administration of this Agreement to a third Party. If the Coordinating Entity enters into such agreement, it shall not charge an administrative fee in addition to making a payment to such third Party.

10. Should the amount of available funding be inadequate to serve the purposes of this Agreement, COUNTY and CITY may agree to increase the amount of annual contribution to the fund, but any such increase shall be in a like amount contributed by both parties. Likewise, should the amount of available funding exceed the costs described in this Agreement, COUNTY and CITY may agree to decrease the amount of the annual contribution to the fund, but any such decrease shall be shared equally by both Parties.

11. Should COUNTY or CITY desire to alter the scope of service eligible for reimbursement under this Agreement, any such expansion shall be in the form of a written addendum signed by both Parties.

12. Should COUNTY or CITY desire to redesignate the Coordinating Entity for this Agreement, such agreement shall be done by written addendum signed by both Parties.

13. In the event of termination, the unused portion of the fund balance at termination shall be divided equally between the Parties.

14. Both COUNTY and CITY shall enjoy free use of the plaza for CITY-sponsored or COUNTY-sponsored events. The Coordinating Entity or its designee shall keep the calendar for scheduled use of the plaza, but shall give priority to CITY and/or COUNTY-sponsored functions, provided notice of intent to use the plaza is provided at least 10 business days in advance of any scheduled use. In the event the Coordinating Entity requires a permit for use of the plaza to accommodate an event, the Coordinating Entity shall be responsible for administering such permit, but Coordinating Entity shall not deny such a permit to the COUNTY for a COUNTY-sponsored event, nor shall Coordinating Entity charge a fee to either CITY or COUNTY to obtain and process such a permit.

15. The maintenance of flags on the plaza shall be a priority for CITY and COUNTY. Flags shall be replaced semi-annually on the Friday before Memorial Day and the Friday before Veterans Day. The raising and lowering of flags on the plaza shall be the responsibility of the Coordinating Entity.

16. The snow-removal contract entered into by the Coordinating Entity for the plaza (including if the contract is with CITY or COUNTY) shall also include the costs of removing snow from all parking lots and sidewalks on the Block. Any such contract shall include a requirement that snow be removed by 7:30 a.m., on any business day prior to the opening of COUNTY and CITY buildings or by 10 a.m. on any weekend or holiday.

17. Parking lots and sidewalks on the Block shall be maintained in good condition using the proceeds of this fund. A portion of the fund may be retained by the Coordinating Entity as a sinking fund toward the repair of parking lots and sidewalks on a reasonable schedule. Neither CITY nor COUNTY shall cut or otherwise damage the sidewalks or parking lots without first consulting in good faith with the other Party to this Agreement about the potential maintenance cost associated with such cut or damage. In the event that mutual consultation leads to the conclusion that such cut or other damage will reduce the reasonable life of the sidewalk or parking lot, the entity proposing to make such cut or to inflict other damage shall make an additional and proportionate contribution to the fund. In the event that a requirement for such contribution becomes necessary, the Party not proposing the cut or infliction of other damage shall not be required to make a like contribution.

18. Any signage on the plaza shall give equal credit to COUNTY and CITY as developers and owners of the plaza.

19. Any construction within the plaza shall be undertaken only by mutual consent of CITY and COUNTY and shall be administered in accordance with designs approved by both.

20. This Agreement shall not be construed to limit the ability of the COUNTY to undertake construction on County's Property or CITY to undertake construction on City's Property (except that part of City's Property upon which a portion of the Plaza is located).

21. This Agreement shall be effective upon signing by both Parties.

22. Except as provided herein, this Agreement shall continue in force until terminated. Either Party may terminate the agreement with at least 60 days advance written notice to the other.

23. In the event that the funds set aside by this Agreement shall be depleted completely and no agreement is reached between CITY and COUNTY within 60 days of the Coordinating Entity notifying the other Party of the depleted status of the fund and the need for additional contribution, this Agreement shall automatically terminate. In the interim, Coordinating Entity shall maintain facilities as contemplated by this Agreement at its own expense, but Coordinating Entity shall be entitled to reimbursement of expenses upon agreement by the Parties to further contribute to the fund.

24. This Agreement signed by both Parties is the final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the Parties, their agents and representatives.

25. If any part of this Agreement shall be held unenforceable, the rest of this agreement will remain in full force and effect.

ACCEPTED
FOR CROOK COUNTY

ACCEPTED
FOR CITY OF PRINEVILLE

Judge Seth Crawford

Mayor Betty J. Roppe

Commissioner Jerry Brummer

City Manager Steve Forrester

Commissioner Brian Barney

DATE: _____

DATE: _____

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