

**INTERGOVERNMENTAL AGREEMENT**  
**Ashland Creek Bridge, Rogue Valley Highway (Northbound)**  
**Bridge Walkway Mural Artwork Maintenance**

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 "State"; and the City of Ashland, acting by and through its elected officials, hereinafter referred to as "Agency", collectively referred to as the "Parties."

**RECITALS**

1. By the authority granted in ORS [190.110](#) and [283.110](#), state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Agency's Planning Commission approved a Governmental Sign Conditional Use Permit (Planning Action 2008-00813) for the installation of artwork on the underside of Ashland Creek Bridge, Rogue Valley Highway (Northbound), hereinafter referred to as "bridge walkway mural artwork". Agency's conditions of approval include this Agreement to be signed by State and Agency for the maintenance of the bridge walkway mural artwork.

**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, State wishes to retain the services of Agency to perform maintenance of the bridge walkway mural artwork attached to the underside of Ashland Creek Bridge, Rogue Valley Highway (Northbound).
2. The term of this Agreement shall begin on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the bridge walkway mural artwork. The useful life is defined as twenty (20) calendar years.

**AGENCY OBLIGATIONS**

1. Agency shall perform routine maintenance and upkeep for the bridge walkway mural artwork.

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2. Upon thirty (30) day notice from State, Agency shall remove bridge walkway mural artwork for State's routine inspection and maintenance of the Ashland Creek Bridge, Rogue Valley Highway (Northbound). Upon completion of State's inspection, Agency will be notified that the bridge walkway mural artwork can be reinstalled. Agency understands the routine inspection occurs every two years, but could be more frequently, depending on the condition of the Ashland Creek Bridge, Rogue Valley Highway (Northbound).
3. Agency shall conduct all maintenance for the bridge walkway mural artwork according to industry standards.
4. Agency agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. Without limiting the generality of the foregoing, Agency 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.
5. Agency 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.
6. All employers, including Agency, 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](#). Agency shall ensure that each of its subcontractors complies with these requirements.
7. Agency shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation, its officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project. The Agency shall assume full responsibility for any and all damage to the murals from water leakage through the bridge deck and any other damage sustained in the execution of maintenance or inspection work on the bridge by State forces.
8. Notwithstanding the foregoing defense obligations under the paragraph above, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to

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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 anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency 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 any claims it may have against Agency if the State of Oregon elects to assume its own defense.

9. Agency's Project Manager is the Permit Center Manager, City of Ashland, 51 Winburn Way, Ashland, OR 97520; or assigned designee upon individual's absence.

### **STATE OBLIGATIONS**

1. State grants Agency the authority to enter State right of way for the maintenance of the bridge walkway mural artwork as provided for in miscellaneous permit to be issued by State District 8 Office.
2. State shall, at least thirty (30) days prior to State's scheduled inspection of the Ashland Creek Bridge, notify Agency to remove bridge walkway mural artwork for State's routine inspection and maintenance. State shall notify Agency when bridge walkway mural artwork can be reinstalled.
3. State's Project manager is District 8 Manager, ODOT Region 3, Rogue Valley Area Office, 100 Antelope Road, White City, OR 97503, or assigned designee upon individual's absence.
4. State reserves the right to remove the bridge walkway mural artwork, if in the judgement of the State, a condition exists in the bridge deck that endangers or potentially endangers the public, including either traffic on the deck or pedestrians under the bridge. State shall notify Agency after removal; Agency will then assume responsibility for the artwork and its re-installation after repairs are made to the bridge.

### **GENERAL PROVISIONS**

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

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- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
3. Agency acknowledges and agrees that State, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency 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. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
  4. 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.
  5. 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**IN WITNESS WHEREOF**, the Parties hereto have set their hands as of the day and year hereinafter written.

On June 18, 2003, the Oregon Transportation Commission approved Delegation Order No. 4 which delegates to the Director, Deputy Director, Highways, Deputy Director, Central Services and Chief of Staff the authority to approve and execute agreements up to \$75,000 not included in the Statewide Transportation Improvement Program or not included in a line item in the biennial budget approved by the Commission.

On August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign

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intergovernmental agreements up to \$75,000 not included in the Statewide Transportation Improvement Program (STIP) or not included in a line item in the biennial budget approved by the Commission, provided that engineering sufficiency is recommended by the Technical Services Manager/Chief Engineer.

**City of Ashland**, by and through its elected officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**

Adam Hanks  
Permit Center Manager  
City of Ashland  
Dept. of Community Development  
51 Winburn Way  
Ashland, OR 97520

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Region Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
District 8 Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
State Bridge Engineer

Date \_\_\_\_\_

**REVIEWED FOR STATE BY**

By \_\_\_\_\_  
Assistant Attorney General

Date: \_\_\_\_\_

March 18, 2008  
Recommendation to the City Council  
from the  
Public Art Commission  
Donation of Public Art

The Public Art Commission recommends the City Council accept the gift of eight panels of public art offered by local resident Lloyd Haines based on the following criteria and conditions of acceptance.

Since the PAC was not involved in developing the overall artistic concept or in the artist selection, the commission is unable to use established criteria to evaluate the art itself and therefore is unable to comment on the strength of the design concept, artistic excellence and innovation, artist experience in exterior works of art, appropriateness of the art, ease of maintenance etc.

The commission evaluated the art based on the following limited criteria.

- 1) Aesthetics: The art enhances the aesthetics of the area under the overpass and complements improvements previously completed in that area. Installation of the art provides decoration and lighting.
- 2) Taste: The PAC does not find the work offensive.
- 3) Feasibility: The installation is technically feasible based on input from ODOT and City of Ashland building division.
- 4) Costs: The permit process, installation, electrical and maintenance are of no cost to the City of Ashland.

Conditions for acceptance

- 1) Full installation costs for the art, the lighting and necessary permits are borne by the donor.
- 2) The donor will supply all required information necessary to complete the permit applications.
- 3) Annual maintenance and insurance is borne by the donor. The donor will provide City with copies of insurance and annual maintenance schedule.
- 4) No signs explaining the art or artists are permitted other than a simple plaque identifying the name of the art, the artist and the donor as has been done with other public art installations.

Permit Manager, Adam Hanks prepared the following information which details the installation requirements. In the opinion of Mr. Hanks, the staff time associated for processing the required permits falls within the normal staff duties associated with Type 1 planning actions for conditional use permits. A Type 1 planning fee is \$882.

A City electric meter currently exists near the site and supplies power for irrigation and ground lighting for the area under the overpass. Staff recommends the electrical lighting for the art be connected to that meter.

Process for Lloyd Haines art installation:

- 1) City applies for a permit from ODOT allowing the art and electrical lighting to be attached to the underside of the bridge. This will require staff time to prepare necessary permit documents. (approximate staff time of 8 hours)
  - Mr. Haines provides the City with detailed engineering plans for the installation of both the art panels, the lighting and traffic control plan, which will be subject to ODOT approval. The electrical plans must indicate city power source.
  - ODOT will require completed bonding and insurance forms provided by the City as well as an agreement between the City and ODOT for maintenance and protection of the facility.
  - Approximate timeline: 2 months
- 2) Once the permits have been secured, the City must submit a request for a conditional use permit (CUP) to the City of Ashland. (Governmental agencies may apply for a CUP to place a sign that does not conform to the sign code AMC18.96 when the sign furthers the agency's public purpose.). The process involves review of the request by Planning Staff, with Planning Commission review and potentially a public hearing in front of the Planning Commission if requested by anyone in the community within the "call up" timeframe.
  - This will require staff time to coordinate information with the Public Arts Commission and prepare the necessary documents for the CUP and background material for the Planning Commission. (approximate staff time 6 – 8 hours)
  - Approximate timeline: 2 to 3 months
- 3) Once the CUP is secured, the electrical contractor for Mr. Haines needs to secure an electrical permit from the City.
- 4) At that point the art and electrical can be installed and must be inspected by a City Building Inspector before the site may be illuminated.
- 5) Mr. Haines will provide a contract detailing the transfer of ownership, liability insurance and maintenance schedule.

**ASHLAND PLANNING COMMISSION**

**FINDINGS & ORDERS**

**PLANNING ACTION:** 2008-00813

**SUBJECT PROPERTY:** Water Street Bridge/Overpass.

**APPLICANT:** City of Ashland

**DESCRIPTION:** Request for a Governmental Sign Conditional Use Permit for the installation of artwork on the underside of the Oregon Dept of Transportation bridge/overpass located within the right of way between the properties addressed as 51 Water St and 96 North Main St.

**COMPREHENSIVE PLAN DESIGNATION:** Commercial **ZONING:** C-1; **ASSESSOR'S MAP #:**

**TAX LOT:** N/A – Located within ODOT Public right of way

<b>SUBMITTAL DATE:</b>	May 21, 2008
<b>DEEMED COMPLETE DATE:</b>	May 21, 2008
<b>STAFF APPROVAL DATE:</b>	May 21, 2008
<b>DEADLINE TO REQUEST A HEARING DATE:</b>	June 2, 2008
<b>FINAL DECISION DATE:</b>	June 11, 2008
<b>APPROVAL EXPIRATION DATE:</b>	June 11, 2009

**DECISION**

Following direction from the Ashland City Council, the City of Ashland Public Arts Commission has made an application for a Conditional Use Permit to install framed artwork on the underside of the Water Street bridge overpass. The artwork was donated to the City of Ashland by an adjacent property owner. The donation of the art was approved, with conditions, by the Ashland City Council.

The artwork meets the definition of a sign but does not conform to the Sign Code for placement of signs. With a Conditional Use Permit, a sign, which does not conform, to the Sign Code may be permitted when it is determined that the sign furthers the purposes of the Governmental agency applying for the Conditional Use Permit. *(18.96.150 - Governmental agencies may apply for a Conditional Use to place a sign that does not conform to this Code when the Commission determines that, in addition to the criteria for a conditional use, the sign is necessary to further that agency's public purpose. (Ord. 2557, 1985; Ord. 2440, 1988))*

As recognized by the City of Ashland, the intent of the Public Arts Commission is to encourage artists capable of creating works of art in public places and enhance Ashland's standing as a regional leader in the arts. A stated goal of the Public Arts Commission is "The encouragement of human interaction with public places, areas which provide for public ownership and accessibility, via the placement of works of art." The area under the Water Street bridge overpass is State of Oregon Right-of-Way property but the landscaping and grounds maintenance is performed by the City of Ashland Parks and Recreation Department, making the area a sort of functional access from North Main Street to the nearby Bluebird Park.

Based on the information provided in the application Staff feels the installation of the artwork on the under side of the Water Street bridge overpass meets the requirements for a Conditional Use Permit and furthers the goals of the City of Ashland Public Arts Commission and the City of Ashland as a whole.

**The criteria for a Conditional Use Permit are described in AMC Chapter 18.104.050, as follows:**

- A. *That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with relevant Comprehensive plan policies that are not implemented by any City, State, or Federal law or program.*
- B. *That adequate capacity of City facilities for water, sewer, paved access to and through the development, electricity, urban storm drainage, and adequate transportation can and will be provided to and through the subject property.*
- C. *That the conditional use will have no greater adverse material effect on the livability of the impact area when compared to the development of the subject lot with the target use of the zone. When evaluating the effect of the proposed use on the impact area, the following factors of livability of the impact area shall be considered in relation to the target use of the zone:*
  - 1. *Similarity in scale, bulk, and coverage.*
  - 2. *Generation of traffic and effects on surrounding streets. Increases in pedestrian, bicycle, and mass transit use are considered beneficial regardless of capacity of facilities.*
  - 3. *Architectural compatibility with the impact area.*
  - 4. *Air quality, including the generation of dust, odors, or other environmental pollutants.*
  - 5. *Generation of noise, light, and glare.*
  - 6. *The development of adjacent properties as envisioned in the Comprehensive Plan.*
  - 7. *Other factors found to be relevant by the Hearing Authority for review of the proposed use.*
- D. *The variance requested is the minimum variance which would alleviate the difficulty.*

The application with the attached conditions complies with all applicable City ordinances.

Planning Action 2008-00813 is approved with the following conditions. Further, if any one or more of the following conditions are found to be invalid for any reason whatsoever, then Planning Action 2008-00813 is denied. The following are the conditions and they are attached to the approval:

- 1) That all proposals of the applicant shall be conditions of approval unless otherwise modified here.
- 2) That all electrical permits as required by the City of Ashland shall be obtained prior to the installation of the artwork or any lighting shown on the submitted plans.
- 3) That all engineering for the lighting and artwork installation shall be submitted and approved by the Oregon Department of Transportation.
- 4) That all permits as required by the Oregon Department of Transportation shall be obtained and evidence of such permits shall be provided to the City of Ashland prior to the artwork installation.
- 5) That the Intergovernmental Agreement for the maintenance of the artwork shall be approved, recorded and on file with the City of Ashland and the Oregon Department of Transportation prior to the installation of the artwork.

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Bill Molnar, Director  
Department of Community Development

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Date