

**INTERGOVERNMENTAL AGREEMENT**  
**Sweet Home Maintenance Station Artwork**  
**City of Sweet Home**

**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" or "ODOT;" and the CITY OF SWEET HOME, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government 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. Oregon Route 20 (Santiam Highway) and Oregon Route 228 (Halsey-Sweet Home Highway) are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC) and is routed through the corporate limits of Agency.
3. State owns and operates a maintenance yard on state property within the city limits of Agency. Sweet Home Maintenance Station has a mural painted on the side of the building facing Oregon Route 20 (OR 20). State and Agency previously entered into Intergovernmental Agreement No. 30533, approved May 7, 2015, where Agency requested to provide maintenance for the mural in accordance with Highway Division Directive No. HWY 01 *Placement of Artwork on State Highway Right of Way*.
4. State also owns and operates the adjacent wide grass planter landscape area at the intersection of OR 20, OR 228, and Long Street on state property within the city limits of Agency. The yard area has three separate sculptural artworks constructed within its limits:
  - i. Object A, City Logging Sculpture;
  - ii. Object B, Petrified Wood with Shelter; and
  - iii. Object C, Concrete Frame with Logo.

Agency has requested to provide maintenance for these three sculptural artworks, in addition to the mural artwork, identified in Recital 3, hereinafter referred to as "Artwork." State's condition of approval includes this Agreement to be signed by State and Agency in accordance with Highway Division Directive No. HWY 01 *Placement of Artwork on State Highway Right of Way*.

5. Agency has also requested to provide landscape maintenance for the wide grass planter landscape area at the intersection OR 20, OR 228, and Long Street. This Agreement will address responsibilities of each Party in regard to the maintenance

**Commented [HH1]:** This is really just background information about the previous agreement, so that we can bring it into the current agreement, but I have separated out the information in Recital 4 as you requested, so please let me know if it works for you

**Commented [HH2]:** I left the "Artwork" defined separately from the landscape maintenance in order to be able to identify it specifically within the Agency obligations.

City of Sweet Home/ODOT  
Agreement No. 34154

of the Artwork and the landscape maintenance of the wide grass planter area, hereinafter referred to as "Project."

**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 will permit Agency to perform maintenance work on:
  - a. the mural, previously identified in Agreement No. 30533,
  - b. the sculptural artworks, identified as
    - i. Object A, City Logging Sculpture,
    - ii. Object B, Petrified Wood with Shelter, and
    - iii. Object C, Concrete Frame with Logo, and
  - c. landscape maintenance of the wide grass planter landscape area,

hereinafter referred to as "Project." The location of the Project and description of artwork is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

2. The Artwork is considered temporary, and the above permission is granted only until such time as the State or Federal Highway Administration (FHWA) deems it necessary to terminate the services. Because use is temporary and no right is granted, Section 4(f) of the Department of Transportation Act of 1966 will not apply to future highway expansion projects.
3. The Parties shall each be responsible for their own costs related to their obligations defined herein.
3. This Agreement shall become effective 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 facilities constructed as part of the Project. The useful life is defined as five (5) calendar years.

### AGENCY OBLIGATIONS

1. Agency shall notify State's District 4 Office at least three (3) business days prior to onsite work at the Sweet Home Maintenance Station. No notice shall be required for work at the landscape area at the intersection of OR 20, OR 228 and Long Street.
2. Agency shall, at its own expense, perform routine maintenance and upkeep of the Artwork to keep them clean and in good repair, including, but not limited to:

**Commented [HH3]:** This is to be able to identify the maintenance of the murals and landscape maintenance as the "entire Project"

**Commented [HH4]:** I separated this out to make it clearer as well, but if you find it unnecessary, I can put it back to how it originally was.

It read as one paragraph like this:

Under such authority, State will permit Agency to perform maintenance work on the mural, previously identified in Agreement No. 30533, the sculptural artworks, identified as Object A, City Logging Sculpture, Object B, Petrified Wood with Shelter, and Object C, Concrete Frame with Logo, and landscape maintenance of the wide grass planter landscape area, hereinafter referred to as "Project." The location of the Project and description of artwork is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.

**Commented [MBT5]:** Does this mean the area cannot be listed as a park or future park?

**Commented [HH6R5]:** Yes, this means it cannot be listed as a park or future park

**Commented [MBT7]:** The landscape maintenance in this area needs to be maintained by the city. The exhibit should outline the area to maintain.

**Commented [HH8R7]:** I have added Agency Obligation 8 to address the landscape maintenance. Please let me know if you need more detail than this to address landscaping maintenance.

City of Sweet Home/ODOT  
Agreement No. 34154

- a. Any damage to the Artwork due to vehicle crashes, vandalism including graffiti, acts of nature, or regular wear or aging must be repaired or removed by Agency within fourteen (14) days of discovery.
- b. Offensive graffiti must be removed within forty-eight (48) hours of discovery.
3. Agency shall, at its own expense, perform routine maintenance and upkeep of the mural artwork to keep the mural clean and in good repair, including, but not limited to:
  - a. Touch-up paint
  - b. Apply protective clear coat
4. Agency shall replace, at its own expense, the two concrete walkways between the Artwork and adjacent sidewalks.
5. Upon completion of the concrete walkways, Agency shall, at its own expense, perform routine maintenance and upkeep of the concrete walkways to keep them in good repair, including, but not limited to:
  - a. Routine inspections to detect deterioration of, or defects in, the walkways and schedule necessary maintenance, repair, replacement, or improvement
  - b. Maintaining and repairing the walkways wherever the walkways have been damaged by any cause.
  - c. When the walkways are damaged so that pedestrian access would be dangerous, Agency is responsible for installing a temporary repair within three (3) business days of receiving notice of such damage. Agency is responsible for installing a permanent repair of damaged walkways within twenty-one (21) days of receiving notice of damage to the walkways.
6. All work must be conducted in a manner to minimize interference with highway traffic and to control said traffic according to *Oregon Temporary Traffic Control Handbook (OTTCH)* and the *Manual on Uniform Traffic Control Devices (MUTCD)*. No lane restrictions are permitted on the roadway without prior authorization from the District 4 Manager.
7. If Agency fails to maintain, repair, or remove Artwork if asked by State, the Artwork may be removed by State at Agency's expense without commitment for restoration, replacement or compensation by State.
8. Agency shall be responsible for the cost and responsibility of ongoing general landscape maintenance of the Project, including but not limited to all labor, equipment, materials, trash removal, plant control and replacement of dead or dying material, weeding and pest control, mowing, and repairs due to traffic accidents, vandalism, etc.

**Commented [HH9]:** The additional obligation that now addresses the landscape maintenance responsibilities

9. Agency shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from State.
10. Agency 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 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. 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.
11. 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.
12. 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
13. Agency 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 Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
14. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency'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 anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from

**Deleted:** <#> Agency shall obtain a miscellaneous permit to occupy State right of way through State's District 4 Office prior to the commencement of maintenance activities....¶

**Deleted:** <#> ¶

**Commented [BL11]:** We would like to replace this condition with a list of requirements for any subcontractor, such as insurance, etc. We anticipate that various volunteer and local business groups will be assisting us, under our supervision. Requiring written approval from ODOT first, for work that will not affect the actual ROW is overly burdensome.

City of Sweet Home/ODOT  
Agreement No. 34154

defending the State of Oregon, or that Agency'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 Agency's contractor if the State of Oregon elects to assume its own defense.

15. Agency acknowledges and agrees that State, 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 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 (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
16. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
17. Agency's Project Manager for this Project is Joe Graybill, Staff Engineer, City of Sweet Home Community and Economic Development Department, 3225 Main Street, Sweet Home, Oregon 97386; phone: (541) 818-8039 and (541) 936-2312; email: jgraybill@sweethomeor.gov, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **STATE OBLIGATIONS**

1. State grants Agency the authority to enter state right of way for the maintenance of the Artwork as provided for in miscellaneous permit to be issued by State's District 4 Office.
2. State reserves the right to remove the sculptural artwork if Agency fails to maintain, repair, or remove the Artwork as required. Such removal shall be conducted at Agency's expense without commitment for restoration, replacement, or compensation by State.
3. State reserves the right to remove the Artwork if Agency fails to maintain, repair, or remove the Artwork as required. Such removal shall be conducted at Agency's expense without commitment for restoration, replacement or compensation by State.
4. State's Project Manager for this Project is Brian Morey, District Manager, ODOT District 4, 3700 SW Philomath Boulevard, Corvallis, Oregon 97333; phone: (541) 757-4211; email: brian.t.morey@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

City of Sweet Home/ODOT  
Agreement No. 34154

## **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:
  - 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.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, 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 State 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 State or Agency 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 State is jointly liable with Agency (or would be if joined in the Third Party Claim), 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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such

City of Sweet Home/ODOT  
Agreement No. 34154

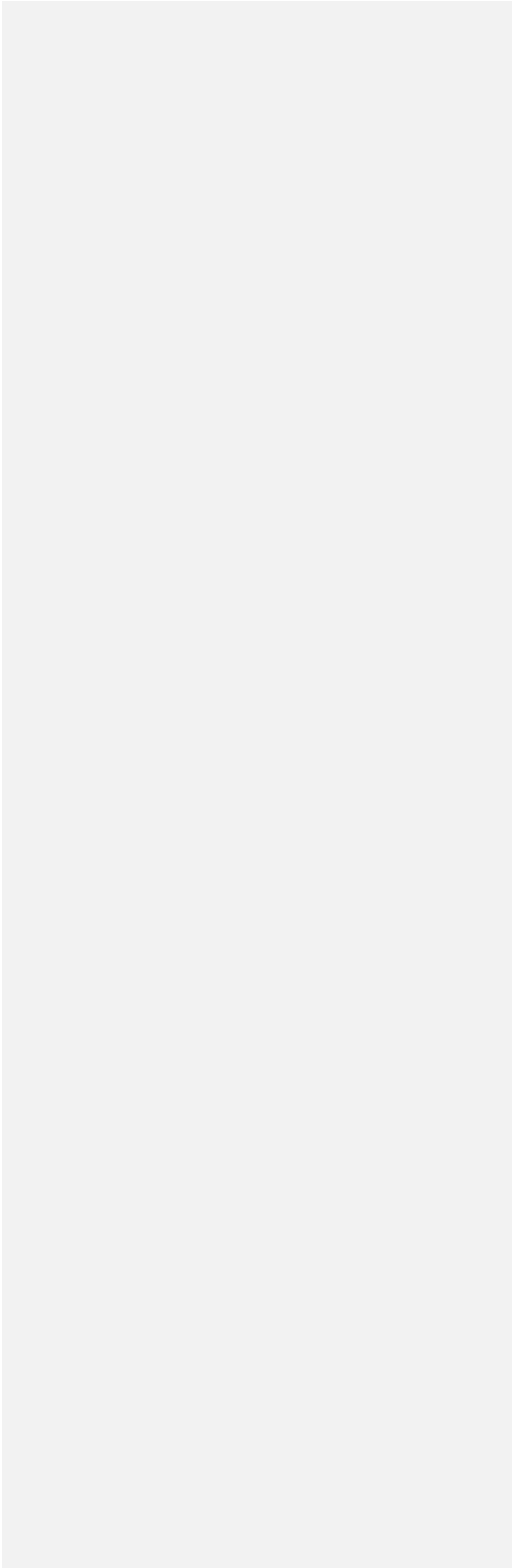
expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State'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 State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of 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 Agency on the one hand and of 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. Agency'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. 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.
9. 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.

**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.

City of Sweet Home/ODOT  
Agreement No. 34154

**Signature Page to Follow**





City of Sweet Home/ODOT  
Agreement No. 34154

**CITY OF SWEET HOME**, by and through its  
elected officials

By \_\_\_\_\_  
City Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**LEGAL REVIEW APPROVAL (If required  
in Agency's process)**

By \_\_\_\_\_  
City's Legal Counsel

Date \_\_\_\_\_

**Agency Contact:**

Joe Graybill, Staff Engineer  
Community & Economic Development Dept.  
City of Sweet Home  
3225 Main Street  
Sweet Home, Oregon 97386  
(541) 818-8039  
jgraybill@sweethomeor.gov

**State Contact:**

Brian Morey  
District Manager  
ODOT District 4  
3700 SW Philomath Boulevard  
Corvallis, Oregon 97333  
(541) 757-4211  
brian.t.morey@odot.state.or.us

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

By \_\_\_\_\_  
Region 2 Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 2 Maintenance and Operations  
Manager

Date \_\_\_\_\_

By \_\_\_\_\_  
District 4 Manager

Date \_\_\_\_\_

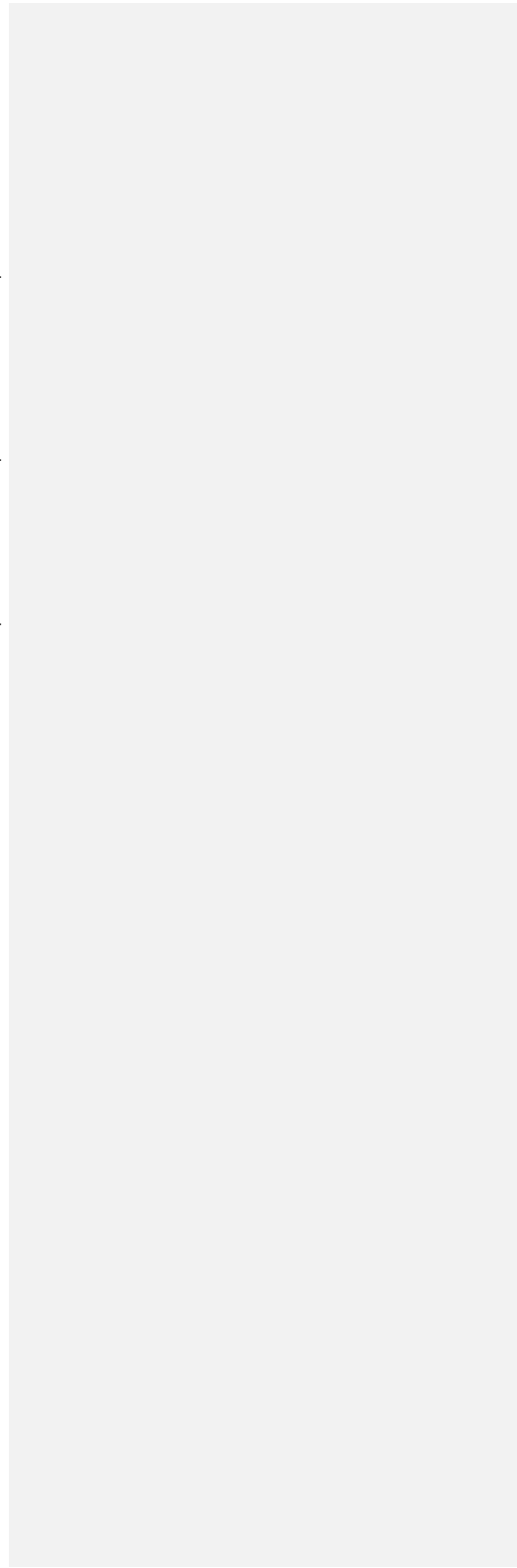


EXHIBIT A

**Narrative:**  
This project scope entails placement and permitting of Art in the ODOT Right-of-Way. The location is the wide grass planter landscape area at the intersection of Main St. (US 26), Holley Road (CR 226) and Long St. The area was formed from the intersection realignment conducted in 1974 and 1975. These items are located in the original roadway of Holley Road, now a grass yard area.

The placement of these items were performed by community volunteers at different times over the past 40-50 years. Placement of Object "A" was in the Summer of 2018. Using historic aerial photos, Object "B" was placed in the early 1950s, and Object "C" was placed sometime between 1974 and 1980. The Trellis Arbor at location "A" was placed at the same time in the 1970s.

Oregon Department of Transportation requires the City to be the owner of the art, and to have an Intergovernmental Agreement describing the Objects, authorization for placement (ODOT), and the responsibilities for maintenance (City). Object "A" was the original application driver, with consultation with ODOT, the other two items of Art are included in the agreement for conformance with current standards.

**City & Council:**  
 Greg Sawyer  
 City Manager  
 Greg Springman  
 Public Works Director  
 Council Members:  
 Lisa Gourley  
 Susan Coleman  
 James Goble  
 Dave Trank  
 Courtney Nash  
 Dianne Genson

**Project Vicinity**  
 Horizontal Scale 1" = 400'

**Object "A", "B", "C" Description:**  
**Art Object "A":**  
 The logging sculpture of item "A" is the largest of the art items. It is of two men standing on Spring Boards saw-cutting a tree trunk. The tree itself was acquired locally and was a fund raising promotion by the local Boys & Girls Club of the Greater Santiam. It is located within the existing post frame of a former Trellis Arbor. The sculpture is bolted to the Arbor's concrete pad. Two narrow concrete walkways connect the Arbor with the adjacent sidewalk. These walkways are in poor condition and will be replaced in the summer of 2020. The sidewalk that parallels the original right-of-way, between Long Street and Main Street is within the property of the East Linn Museum.  
**Art Object "B":**  
 This item is a monument style split-face concrete block pedestal installed by the East Linn Museum. It is 10 feet wide, 7 feet high at the center, and has a 4 foot circular concrete stage on the front depicting a mountain landscape. The object was originally intended, but no intent to do so now. Museum personnel informed the City that there had been an ODOT permit for placement at the time, but not a formal O&M IGA evident.  
**Art Object "C":**  
 This item is a large Petrified Wood segment from a local firm site near Holley (an area known for an ancient forest). The rock is about 2 feet in diameter and stands 4 feet high. There is a small wood gable style roof with two posts that act as a weather cover.

**Project Overview**  
 Horizontal Scale 1" = 20'

| NO. | DESCRIPTION  | DATE       |
|-----|--|------------|
| 1   | Revision 1: Modification of the other items to the Right of Way to the Proposed IGA. | 11-17-2020 |

ODOT: \_\_\_\_\_  
 City: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_

**FY 2019-20 City Logging Sculpture**  
 Art in the ODOT Right of Way  
 City of Sweet Home, Corner of Long St, Holley Rd, & Main St.

1