

**INTERGOVERNMENTAL AGREEMENT
CREATING CROOK COUNTY ROAD AGENCY**

This Intergovernmental Agreement creating Crook County Road Agency (this “Agreement”) effective February 1, 2023 (the “Effective Date”), and is entered into between Crook County (“County”), a political subdivision of the State of Oregon, whose address is 300 NE 3rd St. Prineville, OR 97754, and City of Prineville (“City”), an Oregon municipal corporation, whose address is 387 NE 3rd St. Prineville, OR 97754. Each of the parties hereto is referred to herein individually as a “Party” and collectively “Parties.”

RECITALS:

A. The Parties desire to form an intergovernmental entity to be named the Crook County Road Agency (the “Agency”). Agency will be formed to receive and distribute certain road funds.

B. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

C. The Parties are authorized to enter into this Agreement creating an intergovernmental entity pursuant to their respective principal acts and ORS 190.003 to 190.265.

AGREEMENT:

NOW, THEREFORE, in consideration of the Parties’ respective obligations under this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Agency.

1.1 Creation. Pursuant to this Agreement, the Agency is hereby created as an intergovernmental entity pursuant to ORS Chapter 190.

1.2 Purpose. Agency’s purposes include receiving and distributing U.S. Forest Service Secure Rural Schools (“SRS”) funds for road construction in Crook County, Oregon, and all other necessary or appropriate functions related thereto.

1.3 Responsibilities and General Powers.

1.3.1 Agency will have responsibility and authority to receive and distribute County's apportionment of SRS road funds for road construction, including functions related thereto, within the boundaries of County, and subject to the terms of this Agreement and/or ORS chapter 190, perform such other functions as may be assigned by the Parties from time to time.

1.3.2 Agency shall have the power to adopt, through action of its Board of Directors (the "Board"), such bylaws, rules, regulations, and policies necessary to further the purposes of Agency and/or this Agreement.

1.3.3 Agency shall have the power to enter into agreements with other public or private entities and to exercise all powers pursuant to the Laws (as defined below), including, without limitation, the principal acts of the Parties and ORS chapter 190. For purposes of this Agreement, the term "Law(s)" means all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting Agency, this Agreement, and/or Agency's purposes, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

1.4 Offices. The offices of Agency shall be located at the Crook County Administration Building, 203 NE Court St. Prineville, OR 97754.

1.5 Governing Body. The Board, unless otherwise provided herein, shall be the governing body and shall exercise authority over all matters of Agency concern. The Board will serve as the Local Contracts Review Board for the Agency.

Section 2. Board of Directors.

2.1 Membership. Agency shall be governed by the Board consisting of the judge and commissioners serving on the Crook County Court.

2.2 Authority.

2.2.1 The Board shall have authority to do the following:

- a. Adopt bylaws for Agency, which shall set forth the rules by which the Agency shall be run. The bylaws may be amended from time to time by the Board.
- b. Oversee and to have full responsibility for all matters pertaining to the development and operations of Agency.
- c. Enter into contracts for goods and services for Agency's development and operations.
- d. Review and approve the Agency's budget pursuant to Oregon Local Budget Law, when applicable.
- e. Appoint advisory boards to consider any issue before it, if it so desires.
- f. Establish the Agency mission and goals.

g. Recommend and monitor expenditures consistent with the manner and restrictions of ORS 368.705-368.722.

2.2.2 The Board shall not have authority to do the following:

- a. Commit the taxing authority or general funds of any Party.
- b. Expend funds in excess of the SRS funding received by the Agency.

2.3 Meetings. Regular meetings of the Board shall be held on at least a quarterly basis at such time and place as determined by the Board. Special meetings may be called by the chairperson as needed or desired. All motions presented for approval shall require an affirmative vote of a majority of the whole membership of the voting members of the Board. Half plus one of the members of Board shall constitute a quorum. Members appearing by telephone or other electronic means are considered present.

The rules of parliamentary practice comprised in the Robert's Rules of Order (11th Edition) shall be used as a guide to address procedural questions to the extent not inconsistent with Agency's policy and procedures.

Section 3. Budget; Funding; Costs; Revenue.

3.1 Budget. Agency, through County, shall prepare the annual operating budget of the Agency. The Board shall adopt a final budget, in accordance with ORS 294.900 to 294.930, no later than May of each preceding year. The budget period shall be on a fiscal year basis beginning on the first of July each year. The Board shall consider and adopt the budget on behalf of the Agency. If there are any program changes any supplemental budget shall go through the budget stages set forth herein and comply with all applicable budget policies and Oregon Local Budget Law.

3.2 Funding. The Agency will receive funds under ORS 293.560 apportioned to the County road fund. County will request that the Oregon Department of Administrative Services credit the moneys described in ORS 294.060(1) to the Agency pursuant to ORS 294.060(8).

3.3 Expenses. County will be responsible for providing all funds necessary to pay for Agency's costs, expenses, obligations, and/or liabilities. Notwithstanding anything contained in this Agreement to the contrary, City will not be responsible for (and will not pay) any funds for Agency's costs, expenses, obligations, and/or liabilities.

3.4 Revenue. Revenue or fees derived from the functions or activities of the Agency will be apportioned to County.

Section 4. Term, Termination and Amendment.

4.1 Term. This Agreement shall commence on the Effective Date and will remain in full force and effect until terminated by either Party.”

4.2 Termination. Notwithstanding anything contained in this Agreement to the contrary, (a) the Parties may terminate this Agreement and dissolve the Agency by the Parties’ unanimous written agreement, (b) either Party may terminate this Agreement by providing the other Party no less than one hundred eighty (180) days’ prior written notice (provided, however, termination under this Section 4.2(b) will not take effect between February 1 and June 30 of any fiscal year), and (c) either Party may terminate this Agreement immediately upon written notice to the other Party if the other Party breaches and/or otherwise fails to perform the other Party’s obligations under this Agreement.

Section 5. Additional Parties. Subject to the Laws, including, without limitation, ORS chapter 190, additional governmental entities may be allowed to join the Agency subject to approval by the governing bodies of all Parties.

Section 6. Insurance; Liability; Indemnification; Relationship.

6.1 Insurance. Agency will obtain and maintain adequate insurance to cover Agency’s operations. Without otherwise limiting the generality of the immediately preceding sentence, Agency will obtain and maintain, in addition to all other insurance required under this Agreement, the following minimum levels of insurance: (a) general liability insurance for all losses or claims arising out of or related to Agency’s operations (including, without limitation, damages as a result of death or injury to any person or destruction or damage to any property) with limits of no less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (b) employer liability insurance with limits of no less than \$500,000.00 per occurrence and in the aggregate; and (c) workers’ compensation insurance in form and amount sufficient to satisfy the requirements of applicable Oregon law (the workers’ compensation insurance policy will contain a waiver of subrogation in favor of each Party). Each liability insurance policy required under this Agreement will be in form and content satisfactory to the Parties, will list each Party (and each Party’s Representatives (as defined below)) as additional insured(s), and will contain a severability of interest clause. Notwithstanding anything in this Agreement to the contrary, the Parties may increase the minimum levels of insurance Agency is required to carry under this Agreement so that Agency’s insurance at least equals the applicable limits of liability identified under the Oregon Tort Claims Act (ORS 30.260 – ORS 30.300). For purposes of this Agreement, the term “Representative(s)” means the identified Party’s officers, employees, contractors, agents, and volunteers.

6.2 Liability. Except as otherwise provided under Section 6.3, there shall be no joint and several liability of the Parties either in contract or tort, and all obligations of Agency or the Parties shall be several only. Without limiting the foregoing, no Party to this Agreement shall be liable for damages, debts or claims caused solely by the negligent act, omission or other

wrongful act by Agency or other Parties hereto. The Party causing damages by its sole negligent act, omission, or wrongful act shall be individually liable.

6.3 Agency and County Indemnification. To the fullest extent permitted under applicable law, Agency and County each jointly and severally release and will defend, indemnify, and hold City and City's Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of Agency's formation and operations and/or County's breach and/or failure to perform County's representations, warranties, covenants, and/or obligations under this Agreement.

6.4 Relationship. Each Party is an independent contractor of the other Parties. This Agreement does not create a joint venture and/or agency relationship between the Parties. No Party has the authority to bind the other Party or represent to any person that a Party is an agent of the other Party. No Party will provide any benefits to any other Party; each Party will be solely responsible for obtaining the Party's own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans. Notwithstanding anything contained in this Agreement to the contrary, Agency (and/or the Board) will not have the authority to bind and/or encumber a Party in any manner except as agreed in writing by the Party.

Section 7. Withdrawal. Any Party may elect to terminate its participation in this Agreement (and the Agency) (i.e., withdrawal) by providing no less than one hundred twenty (120) days' prior written notice to the Board chairperson and the governing body of the other Party. Withdrawal will be effective at 11:59 PM of the April 30 that is no less than one hundred twenty (120) days after the date of such notice.

Section 8. Dissolution. Upon dissolution of Agency, County shall remain solely liable for any Agency obligation that has been specifically incurred in accordance with the terms of this Agreement, or by other resolutions, or by separate agreement of the parties. Upon dissolution, the assets of Agency will be distributed to Crook County.

Section 9. General Provisions.

9.1 Coordination; Assignment; Binding Effect. The Parties will maintain adequate levels of communication to ensure maximum cooperation and coordination between the Parties. No Party may assign any of the Party's rights and/or obligations under this Agreement to any person without the prior written consent of all other Parties. Subject to the immediately preceding sentence, this Agreement will be binding on the Parties and their respective administrators, successors, and permitted assigns and will inure to their benefit. The Parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to carry out the intent of this Agreement. All exhibits, schedules, instruments, and other documents referenced in this Agreement are part of this Agreement.

9.2 Notices; Severability; Remedies. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable Party to the address shown in the preamble of this Agreement (or any other address that a Party may designate by notice to the other parties), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. Subject to the terms and conditions contained in this Agreement, each Party will pay all wages and benefits due the Party's personnel, including, without limitation, overtime, workers' compensation, and death benefits. If a Party breaches and/or otherwise fails to perform any of the Party's representations, warranties, covenants, and/or obligations under this Agreement, the non-defaulting Parties may, in addition to any other remedy provided to the non-defaulting Parties under this Agreement, pursue all remedies available to the non-defaulting Parties at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

9.3 Waiver; Entire Agreement; Amendment; Counterparts. Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the Parties. No waiver by a Party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between Parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements. No addition, modification, amendment, or alteration to this Agreement will be effective against the Parties unless specifically agreed upon in writing and signed by the Parties. This Agreement may be signed in one or more counterparts.

9.4 Applicable Law; Venue; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Crook County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Crook County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, each party is responsible for its own attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

9.5 Debts, Liabilities and Obligations. All debts, liabilities and obligations of any of the Parties shall be and shall remain debts, liabilities and obligations of that or those Parties and shall not become debts liabilities and obligations of the other parties or of the Agency. All debts, liabilities and obligations incurred by or on behalf of the Agency shall remain debts, liabilities and obligations of the Agency.

9.6 Person, Interpretation, Signatures. For purposes of this Agreement, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be binding and effective for all purposes as of the Effective Date.

COUNTY:
Crook County Board of Commissioners

CITY:
City of Prineville

Seth Crawford, Judge

Steve Forrester, City Manager

Jerry Brummer, Commissioner

Brian Barney, Commissioner