

**RESOLUTION NO. 1537  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING SUBGRANT AGREEMENT WITH CROOK COUNTY  
FOR CORONAVIRUS STATE FISCAL RECOVERY FUND GRANT AGREEMENT  
NO. PO-73000-00006939**

**Whereas**, Crook County (“Crook”) intends to execute Grant Agreement No. PO073000-00006939 with the Oregon Department of Transportation for Coronavirus State Fiscal Recovery Fund monies; and

**Whereas**, the City of Prineville (“City”) has developed the Combs Flat Road Extension Project that will extend NE Combs Flat Road north to NE Peters Road which will act as a bypass route to address capacity, access, and safety issues facing the City (“Project”); and

**Whereas**, Coronavirus State Fiscal Recovery Fund monies must be distributed to an Oregon County rather than a municipality; and


**Whereas**, the City of Prineville (“City”) is willing and prepared to undertake the work necessary to complete the portion of the Grant Agreement in connection with the Project:

**Whereas**, Crook has prepared a Sub-Grant Agreement, attached hereto and incorporated herein, which provides the City a grant of \$9,400,000.00 for the Combs Flat Road Extension Project; and

**Whereas**, City staff believes it is in the best interest of the City to approve and execute the Sub-Grant Agreement.

NOW, THEREFORE, the City of Prineville resolves that the Grant Agreement is hereby approved and that the Mayor is authorized to sign such Sub-Agreement on behalf of the City.

Approved by the City Council this 13<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_  
Rodney J. Beebe, Mayor

ATTEST:

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

SUB-GRANT AGREEMENT  
for  
Coronavirus State Fiscal Recovery Fund

Grant Agreement No. PO-73000-00006939  
**(Combs Flat Road)**

This Sub-Grant Agreement (hereinafter “Sub-Grant”) is made by and between Crook County, a political subdivision of the State of Oregon (hereinafter “the County,”) and the City of Prineville, an Oregon municipal corporation (hereinafter “the City.”) County and City may be collectively referred to as the Parties, or individually as a Party.

RECITALS

- A. WHEREAS, since at least April, 2022, the City has been working with the Oregon Department of Transportation on a grant of funds for improvements to Combs Flat Road in Prineville; and
- B. WHEREAS, on August 11, 2022, the Oregon Department of Transportation announced that it will not grant the funds to the City of Prineville directly, but would only consider a grant to an Oregon county. ODOT stated that it would not object if the recipient county thereafter entered into a subgrant with the City, so long as all of the grant requirements were passed along as well; and
- C. WHEREAS, without either Party expressing any opinion on the veracity of the State of Oregon’s opinion on how it may legally allocate grant funds, County is willing to accept the grant funds and sub-grant those funds to the City, and City is willing to accept the grant funds and grant requirements, on the terms described herein.

AGREEMENT

*Now, therefore,* in consideration of the mutual covenants contained herein, the sufficiency of which is acknowledged, the Parties agree as follows:

1. Incorporation of Recitals: The above Recitals are incorporated into and made a part hereof, as terms of contract and not mere recitals.
2. Effective Date: This Sub-Grant becomes effective upon the occurrence of all of the following:
  - a. The execution of Grant Agreement No. PO-73000-00006939 between the County and the State of Oregon;
  - b. The execution of this Sub-Grant by the Parties; and
  - c. The payment by the State of Oregon to the County, in accordance with Section 3 “Disbursements” of Grant Agreement No. PO-73000-00006939.

3. Duration and Deadlines:

- a. Unless terminated sooner according to its terms, this Sub-Grant will continue in full force and effect until April 30, 2027.
- b. Notwithstanding the foregoing, all expenditures of grant funds must be obligated by City no later than December 31, 2024 (the "Obligation Deadline"); and all expenditures under this Sub-Grant must be completed no later than December 31, 2026 (the "Expenditure Deadline"), in accordance with the provisions of the Grant Agreement.
- c. If there are any unobligated funds after December 31, 2024, City will remit those funds to County no later than March 15, 2025.
- d. If there are any unexpended funds after December 31, 2026, City will remit those funds to County no later than March 15, 2027.

4. Incorporation of Required Terms: The City agrees to adhere to the requirements of Grant Agreement No. PO-73000-00006939 as if an original party thereof, and to conform to its restrictions and obligations. Without limiting the foregoing, the City agrees to the following:

- a. The City will only use the grant funds to cover actual, reasonable and necessary project costs in accordance with applicable law, incurred within the timelines described in Section 4 of the Grant Agreement.
- b. The City will provide such financial records as the County or the State of Oregon, or their agents and representatives, may request, including reasonable opportunities to inspect and made copies of such.
- c. The City will notify the County and State of Oregon any adverse change in the activities, prospects or condition (financial or otherwise) of the City related to the ability of the City to perform all obligations required by this Sub-Grant.
- d. If the City engages in any public contracting, City will comply with the requirements of ORS Chapters 279A, 279B, and 279C as they may be applicable. Without limiting the foregoing, as between County and City, City will be responsible for complying with any prevailing wage requirements as may be triggered by City's engagement with contractors.
- e. City will comply with all applicable Oregon government ethics laws (ORS 244.010 *et seq.*) as those laws may be subsequently amended.

5. Distribution of Funds: Subject to the limitations of Section 3 of the Grant Agreement, within ten (10) business days of the County's receipt of funds from the State of Oregon under the Grant Agreement, the County will remit to the City 100% of the funds it received. If the State of Oregon disburses to County less than \$9,400,000.00 (the sum described in Section 1 of the Grant Agreement), County will notify City as soon as is reasonably possible.

6. Use of Funds:

a. The City will use such funds as may be provided under this Sub-Grant only in accordance with applicable law, including but not limited to Oregon prevailing wage laws, the American Rescue Plan Act (42 USC § 802 et seq.), the state and federal administrative rules adopted thereunder, and the employee whistleblower protection statute (41 USC § 4712).

b. The City will use the funds as may be provided under this Sub-Grant for the following activities:

*“The project will extend NE Combs Flat Road north to NE Peters Road which will act as a bypass route to address capacity, access, and safety issues facing the City of Prineville. This will provide alternative traffic routing to the new Barnes Butte Elementary School and St. Charles hospital while helping to relieve traffic congestion at key intersections, thereby improving public safety for pedestrians, bikes, and vehicles. It will also connect bike and walking paths, creating safer routes to school.”*

c. The City will track its administrative costs incurred pursuant to this Sub-Grant and the work thereunder, and will cooperate with the County in compiling such information for transmission to the State of Oregon on the schedule described in Exhibit A of the Grant Agreement, including but not limited to the information as the State of Oregon requires on their report forms.

7. Cooperation in Reporting Requirements: The Parties will cooperate with each other in the drafting and transmission of a Project Performance Plan, Quarterly Reports, and Annual Reports, in accordance with the requirements of Grant Agreement No. PO-73000-00006939.

8. Required Insurance and Indemnity: The City will require all first-tier subcontractors as it may engage to obtain the insurance described in Exhibit B of Grant Agreement No. PO-73000-00006939 and maintain such insurance in full force and effect for the duration of this Sub-Grant. This includes but is not limited to the requirements regarding naming the State of Oregon an additional insured, and waiver of subrogation, as described therein.

9. Termination: This Sub-Grant may be terminated by any of the following:

a. If Grant Agreement No. PO-73000-00006939 is terminated by any party thereto, this Sub-Grant may be immediately terminated upon receipt of a written termination notice to the City. Such notice will specify the reason for the immediate termination. Upon receipt of the written notice, the City will immediately cease all activities to be paid for through use of the funds provided by this Sub-Grant.

- b. **For Cause:** With reasonable cause, either Party may terminate this Sub-Grant after giving the other Party ten (10) days' prior written notice of termination for cause. Reasonable cause shall include material violation of this Sub-Grant or any act exposing the other Party to liability to others.
  - c. **Change in Operative Law:** In the event that any applicable law should be changed, whether through legislation, adoption of administrative rules, or judgment of a court of competent jurisdiction, the effect of which change is that the provisions of this Sub-Grant can no longer be applied as the Parties have agreed, then the Parties will meet to discuss, in good faith, whether and how this Sub-Grant may be amended to conform to such changes in the law. If, after reasonable efforts under the circumstances, the Parties are unable to come to terms, either Party may terminate this Sub-Grant after giving the other Party ten (10) days' prior written notice of termination; provided, however, that if applicable law requires it, a shorter period of written notice may be provided instead.
  - d. No termination or expiration of this Sub-Grant will prejudice any right which accrued prior to such termination or expiration.
10. **Submittal of W-9 Before Payment:** The City must provide County with a fully completed W-9 form upon execution of the Sub-Grant and prior to beginning services. The City will not be paid until a fully completed W-9 form is submitted.
11. **Entire Agreement:** This Sub-Grant 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.
12. **Amendments:** The terms of this Sub-Grant shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of County. No modification of this Sub-Grant shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a court of competent jurisdiction.
13. **Successors in Interest:** The provisions of this Sub-Grant shall be binding upon and shall inure to the benefit of the Parties to this Sub-Grant and their respective successors and assigns.
14. **No Authority to Bind the Other Party:** Neither Party has authority to enter into contracts on behalf of the other Party. This Sub-Grant does not create a partnership between the Parties.
15. **Notices:** Any notice given in connection with this Agreement must be in writing and be delivered either by hand to the party or by certified mail, return receipt requested, to the party at the party's address as stated below:



*For the County:*  
Crook County  
Attn: County Counsel's Office  
300 NE 3<sup>rd</sup> Street  
Prineville, OR 97754

*For the City:*  
City of Prineville  
Attn: City Manager  
387 NE Third Street  
Prineville

16. Governing Law and Venue: Any dispute under this Sub-Grant will be governed by Oregon law with venue being located in Crook County, Oregon; provided, however, that if the State of Oregon is or becomes a party to such dispute(s), the venue will be as described in Section 10(b) of Grant Agreement No. PO-73000-00006939.

17. Severability: If any provision of this Sub-Grant is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if the Sub-Grant did not contain the particular provision held to be invalid.

18. Attorney Fees: In the event an action, lawsuit, or proceeding, including appeal therefrom, is brought for failure to observe any of the terms of this Sub-Grant, each Party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

19. Waiver: The failure of either party at any time or from time to time to enforce any of the terms of this Sub-Grant shall not be construed to be a waiver of such term or of such party's right to thereafter enforce each and every provision of the Sub-Grant.

20. Indemnification and Hold-Harmless:

- a. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall defend, save, hold harmless, and indemnify the County and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of the City or its officers, employees, contractors, or agents under this Sub-Grant.
- b. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the County shall defend, save, hold harmless, and indemnify the City and its officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature resulting from or arising out of, or relating to the activities of the County or its officers, employees, contractors, or agents under this Sub-Grant.
- c. Neither party shall be liable to the other for any incidental or consequential damages arising out of or related to this Sub-Grant. Neither Party shall be liable for any damages of any sort arising solely from the termination of this Sub-Grant or any part hereof in accordance with its terms.

21. In accordance with the requirement of the Grant Agreement, Section 6(H)(1)(ii), the Oregon Department of Transportation is named as a third-party beneficiary of this Sub-Grant, and is named an additional or "dual" obligee on any payment or performance bonds received by either Party of this Sub-Grant from contractors engaged in furtherance hereof.

22. Counterparts: This Sub-Grant may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective the date first set forth above.

**For City of Prineville**

**For Crook County**

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CROOK COUNTY COURT

By:

Rodney J. Beebe

Seth Crawford

Seth Crawford, County Judge

9.13.2022

Date: 9/7/22

Rodney J. Beebe

Title: Mayor

Jerry Brummer

Jerry Brummer, County Commissioner

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

Date: 9/7/22

Brian Barney

Brian Barney, County Commissioner

Date: 9/7/22