



Location: City Hall – Council Chambers
Date: April 26, 2022
Time: 6:00 PM

City Council Meeting Agenda

Mayor Jason Beebe, Council Members Steve Uffelman, Janet Hutchison, Patricia Jungmann, Gail Merritt, Jeff Papke, Raymond Law and City Manager Steve Forrester
ATTEND TELEPHONICALLY BY CALLING 346-248-7799 Meeting ID: 947 5839 2608 Passcode: 123456

Call to Order

Flag Salute

Additions to Agenda

Consent Agenda

- [1.](#) Regular Meeting Brief 4-12-2022

Visitors, Appearances and Requests

Council Presentations

- [2.](#) EDCO Update - Kelsey Lucas / Mike Warren

Council Business

Staff Reports and Requests

- [3.](#) City Manager's Report - Steve Forrester

Committee Reports

Ordinances

Resolutions

- [4.](#) Resolution No. 1517 - Establishing Policy Governing Charitable Donations Made by City Council - Councilor Papke
- [5.](#) Resolution No. 1519 - Approving the Strategic Investment Program Agreement with Crook County and EdgeConneX Inc. **(JOINT MEETING WITH CROOK COUNTY)** - Eric Klann
- [6.](#) Resolution No. 1520 - Approving an Intergovernmental Agreement for Administration of a Strategic Investment Program Project **(JOINT MEETING WITH CROOK COUNTY)** - Eric Klann



7. Resolution No. 1521 - Approving an Intergovernmental Agreement with Hospital Facility Authority of Deschutes County and the City of Madras (**PUBLIC HEARING**)- Jered Reid / Gregory Blonds

Visitors, Appearances and Requests

Adjourn

8. Executive Session Pursuant to ORS 192.660 (2) (g) - To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

Agenda items maybe added or removed as necessary after publication deadline



CITY OF PRINEVILLE
Regular Meeting Brief
387 NE Third Street – Prineville, OR 97754
541.447.5627 ph 541-447-5628 fax

Full Meeting Recordings Available at:
<http://cityofprineville.com/meetings/>

City Council Meeting Brief
April 12, 2022

Council Members Present:

Patricia Jungmann
Steve Uffelman
Jason Beebe
Gail Merritt

Jeff Papke
Janet Hutchison

Council Members Absent

Ray Law

Crook County Judge Seth Crawford, Commissioner Jerry Brummer and Commissioner Brian Barney were also present for a portion of the meeting.

Additions to the Agenda

Resolution No. 1517 will be postponed to the next meeting and Crook County Cowgirls Basketball Team is added to Council Presentations.

Consent Agenda

1. Regular Meeting Brief 3-8-2022
2. Special Meeting Brief 3-17-2022
3. PD Property Conversion

Councilor Merritt made a motion to approve consent agenda as presented. Motion seconded. No discussion on motion. Motion carried.

Visitors, Appearances and Requests:

Jack Rabenberg, a Prineville resident wanted to add some clarity to the “Don’t Bend Prineville” campaign and talked about what their group and mission is about. The project they are currently focused on is the Ochocos and Lemon Gulch trails.

Seth Crawford, Crook County Judge opened the Crook County Court portion of the meeting.

Ray Sessler has been in the community since 1983 and has two grazing permits in Lemon Gulch. He doesn't want to see our forests to turn out like the ones in Bend. He never heard about the proposal. He stated that an environmental analysis hasn't been done and they are proposing 50 miles of trails.

No one else came forward.

Council Presentations

4. Legislative Update – Representative Vikki Breese-Iverson

Steve Forrester, City Manager introduced Representative Breese-Iverson and thanked her for all that she has done for our community.

Representative Breese-Iverson provided an update stating that the short session just ended and the State spent a lot of money. Looking back, the short session was started for checks and balances and for simple fixes, not big items. Now there are big programs coming to the short sessions.

Representative Breese-Iverson continued with bills that passed that were a win or are concerning. Conversations for the agriculture workers' pay started during the long session, didn't make it and then came back at the short session. The drought will have a critical effect on everyone and drought packages are currently being worked on. The E-Board will meet in June and the packages will have to run through some of the agencies. It is a band aid approach, but it will help.

Representative Breese-Iverson closed with talking about a Timber Industry MOA which let to an agreement that came from all sides; all of the dollars coming to the community and the projects it will help and Crook County Fairgrounds getting \$2M too.

5. Crook County High School Basketball Team – Coach Bob Boback

Emma Bales, Grace Brooks and Lori Papke provided Council with an update on how their team did by coming in 6th in the state and being presented with the Sportsman Award and Les Schwab Award.

The girls thanked Council for their contribution and how they couldn't have done it without them.

Councilor Papke was able to attend all of the sessions and witness the team, Pep Band and Cheerleaders all coming together and you could really see the community pride.

Council Business

6. Strategic Investment Program (SIP) – Eric Klann

Judge Seth Crawford opened the County portion of the public hearing.

Mayor Beebe opened the public hearing portion of the meeting.

Eric Klann, City Engineer presented the staff report and went through a power point that highlighted this projects building size compared to other data centers, it will be air-cooled rather than water cooled and explained the differences between a SIP and Long Term Rural Enterprise Zone (LTREZ) and what that means in dollars.

No one came forward and no written comments were received by either the city or the county.

Mayor Beebe closed the public hearing portion of the meeting.

Judge Crawford closed the County portion of the public hearing and adjourned the County portion of the meeting at 6:39 PM.

7. Intent to Award Empire Sewer Line Project – Mike Kasberger

Mike Kasberger, Asst. City Engineer presented the staff report.

There were no questions.

Councilor Papke made motion to approve the Intent to Award Empire Sewer Line Project to SMAF Construction in the amount of \$58,527.75. Motion seconded. No discussion on motion. All in favor, motion carried.

8. Intent to Award Sewer Line Interceptor – Mike Kasberger

Jered Reid, City Attorney explained that the motion would be worded differently than what is in the packet and also that the City and County has signed a Memorandum of Understanding (MOU) for the County to pay the overage. The County has already paid the City for the difference.

Mr. Kasberger presented the staff report.

There were no questions.

Councilor Hutchison made motion approve the Intent to Award the contract for the sewer interceptor at the new justice center in the amount of \$65,752.50. Motion seconded. No discussion on motion. All in favor, motion carried.

Staff Reports and Requests:

9. City Manager’s Report– Steve Forrester

Mr. Forrester went through his City Manager report that covered highlights from each department and that we are working on a drought campaign.

There were no questions or comments.

Zach Lampert, Meadow Lakes Golf Pro introduced Tyler Misap who rose to the top in the interviews for the Golf Course Superintendent position.

Mr. Milsap came forward and said he is excited about the opportunity and is looking forward to meeting everyone.

10. Drought Update – Mike Kasberger

Mr. Kasberger presented the staff report explaining that this is just an update and no action is requested from Council. It is required to come to Council as part of the declaration and there is a public relations plan in operation.

11. Quarterly Financial Report – Lori Hooper

Lori Hooper, Finance Manager pointed out a typo on page 44 of the packet and went through a power point that provided a summary of each fund and each department for the second quarter.

Ms. Hooper went through expected budget adjustments on the horizon and went through the adjustments that were not already discussed before.

There were no questions.

Committee Reports

Councilor Uffelman talked about the ODOT Ruff Tuff Committee ensuring that they have a modern transportation system plan that is sufficient and what are alternative funding methods.

Councilor Uffelman explained that the Environmental Policy Committee he serves on is working on policy and will have a regional strategies meeting

Councilor Uffelman said that the CREA committee had a session last Friday. The committee discussed solar projects in the Fort Rock area. There is a group trying to get a hydrogen power plant and would like Mr. Brown to come to a meeting with Mr. Forrester and himself. With these potential hydrogen projects, Prineville could become the southern terminal on that pipeline.

There were no other committee reports.

Ordinances:

12. Ordinance No. 1272 – Adopting Changes to Prineville Code Chapter 32 (SECOND PRESENTATION) – Josh Smith

Josh Smith, Planning Director explained that nothing has changed since the first presentation.

Councilor Uffelmann explained he still has a problem with the word “should” rather than “shall”.

Councilor Hutchison made motion to approve the second presentation of Ordinance No. 1272. No discussion on motion. Motion carried.

Resolutions:

**13. Resolution No. 1515 – Approving an Easement Agreement with Crook County –
Mike Kasberger**

Mr. Kasberger presented the staff report explaining that this easement is for three (3) production wells and reserves space for one (1) additional well that hasn’t been drilled yet.

There were no questions.

Councilor Jungmann made a motion to approve Resolution No. 1515. Motion seconded. No discussion on motion. All in favor, motion carried.

**14. Resolution No. 1516 – Approving an Easement Agreement with Crook County
Parks and Recreation – Mike Kasberger**

Mr. Kasberger explained this is identical to the last resolution, but just for the other side of the street.

There were no questions.

Councilor Jungmann made a motion to approve Resolution No. 1516. Motion seconded. No discussion on motion. All in favor, motion carried.

**15. Resolution No. 1517 – Establishing a Policy Governing Charitable Donations Made
by the City Council – POSTPONED TO NEXT MEETING**

**16. Resolution No. 1518 – Approving a Development Agreement Between the City &
Vitesse – Eric Klann**

Mr. Klann referred to his staff report and explained that Vitesse will pay for all of the project and not just a portion and the linear feet under the second paragraph of the resolution should be 7,000 LF.

Discussions continued regarding if this would come back to council, time frame to complete, if it is too much of a burden on the city, who will be maintaining, is there enough staff to do this, and the inspector being out there all the time. Will there be trouble with ODOT permitting across the highway.

Mr. Klann explained that the intent to award would come back to Council, it will not be a burden on the city because they are paying us for the project management, upgrades and handing it over to the city, the inspector will be out there a lot of the time not all the time.

Councilor Papke made a motion to approve Resolution No. 1518 as amended. Motion seconded. No discussion on motion. All in favor, motion carried.

Visitors, Appearances and Requests:

Jack Rabenberg invited everyone to attend the community meeting next Wednesday regarding Lemon Gulch.

Adjourn

Councilor Hutchison made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.

Meeting adjourned at 7:27 P.M.

Motions and Outcomes:

Motion:	Outcome	Beebe	Hutchison	Jungmann	Law	Merritt	Papke	Uffelman
Consent Agenda	PASSED	Y	Y	Y	-	Y	Y	Y
Motion to approve the Intent to Award Empire Sewer Line Project to SMAF Construction in the amount of \$58,527.75.	PASSED	Y	Y	Y	-	Y	Y	Y
Motion approve the Intent to Award the contract for the sewer interceptor at the new justice center in the amount of \$65,752.50.	PASSED	Y	Y	Y	-	Y	Y	Y
Ordinance No. 1272 – Adopting Changes to Prineville Code Chapter 32 (SECOND PRESENTATION)	PASSED	Y	Y	Y	-	Y	Y	N
Resolution No. 1515 – Approving an Easement Agreement with Crook County	PASSED	Y	Y	Y	-	Y	Y	Y
Resolution No. 1516 – Approving an Easement Agreement with Crook County Parks and Recreation	PASSED	Y	Y	Y	-	Y	Y	Y
Resolution No. 1517 – Establishing a Policy Governing Charitable Donations Made by the City Council	POSTPONED	-	-	-	-	-	-	-
Resolution No. 1518 – Approving a Development Agreement Between the City & Vitesse	PASSED	Y	Y	Y	-	Y	Y	Y
Adjourn Meeting	PASSED	Y	Y	Y	-	Y	Y	Y

Public Records Disclosure

Under the Oregon public records law, all meeting information, agenda packets, ordinances, resolutions, audio and meeting briefs are available at the following URL:

<https://www.cityofprineville.com/meetings> .

2022
2022
2022

THANK

YOU



Kelsey Lucas,
Prineville/Crook County Director



541.213.3169



kelsey@edcoinfo.com



edcoinfo.com

PVL
PVL
PVL

2022
2022
2022

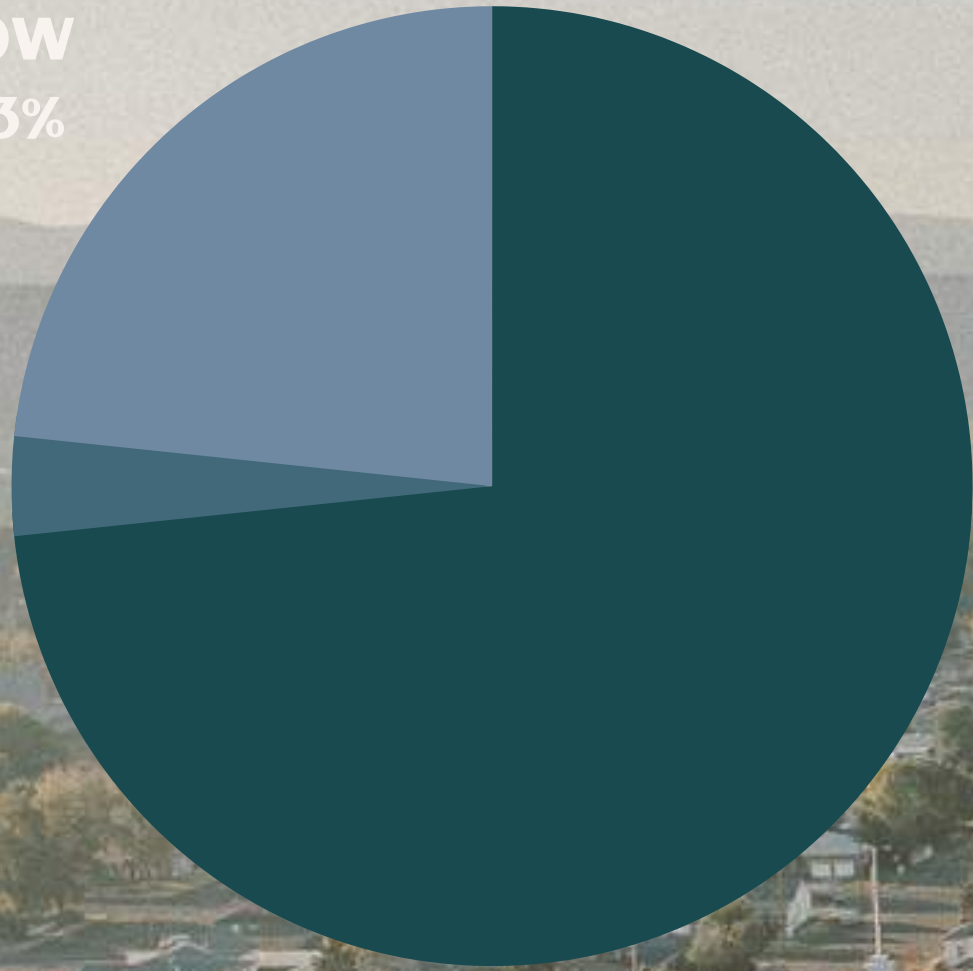
PRINEVILLE / CROOK COUNTY

ECONOMIC DEVELOPMENT

PVL
PVL
PVL

GROW
23.3%

START
3.3%



MOVE
73.3%



ADVANCED MANUFACTURING
BUILDING PRODUCTS
HIGH-TECHNOLOGY
AVIATION/AEROSPACE
RENEWABLE ENERGY
AGRICULTURE

ENTERPRISE ZONE

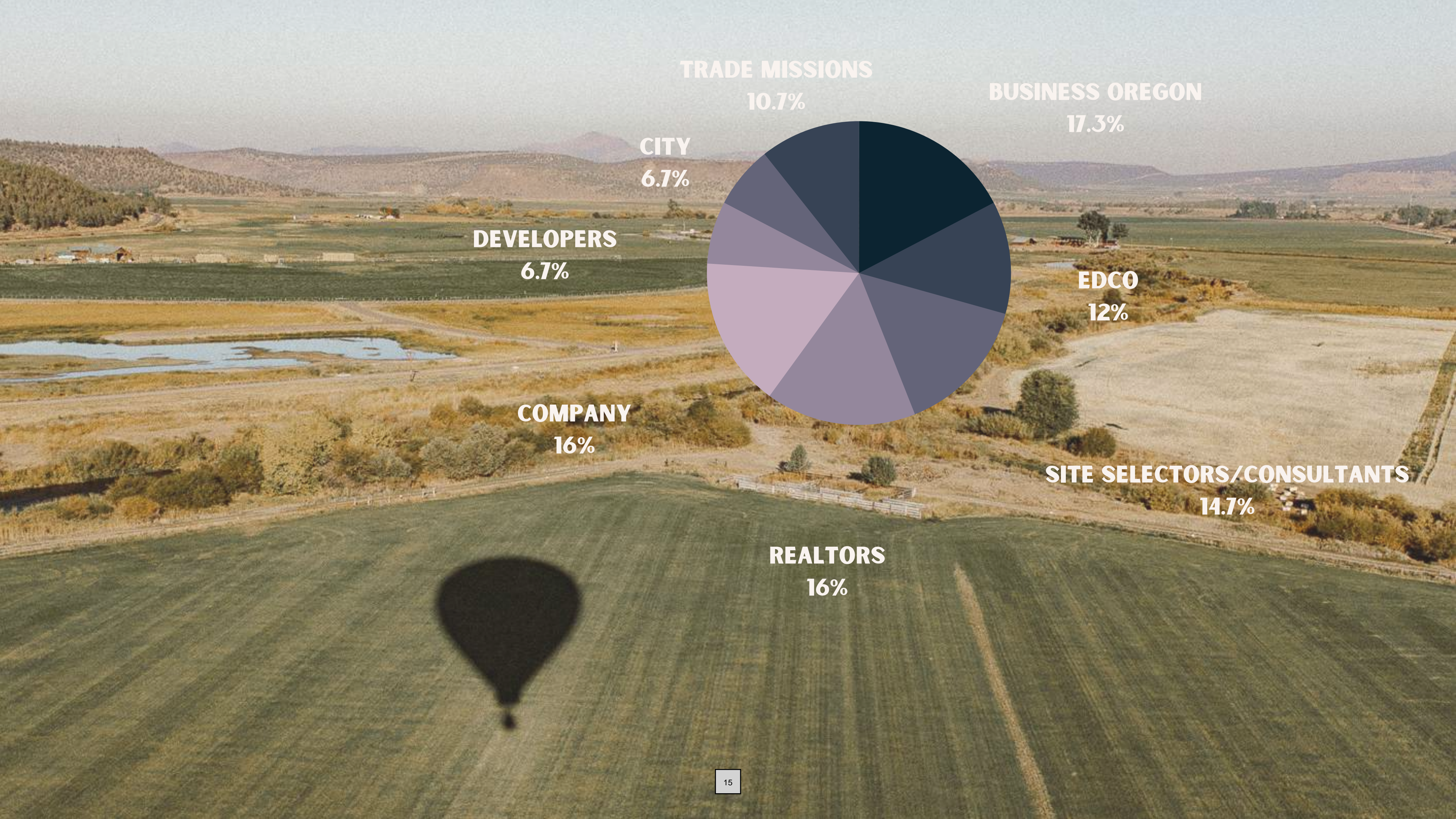
- 14 ACTIVE AGREEMENTS FOR 2022
- DOUBLED SINCE 2019
- INVESTMENT - \$6,477,118,168
- JOB CREATION - 630 + HIRING

NEW LEADS 2020 & 2021

- 99 TOTAL
- 14 FROM BUSINESS OREGON AT THE STATE LEVEL
- MUCH LESS INTERNATIONAL ACTIVITY WITH COVID
- 21 CONVERTED TO PENDING PROJECTS IN THE PIPELINE

DONE DEALS 2020 & 2021

- 8 TOTAL
- 3 LOCAL EXPANSIONS
 - FAB, HIGH-TECH & SOLAR
- 3 MANUFACTURING START-UPS
- 2 NEW BUSINESSES RECRUITED
 - AVIATION AND SOLAR



TRADE MISSIONS
10.7%

BUSINESS OREGON
17.3%

CITY
6.7%

DEVELOPERS
6.7%

EDCO
12%

COMPANY
16%

SITE SELECTORS/CONSULTANTS
14.7%

REALTORS
16%

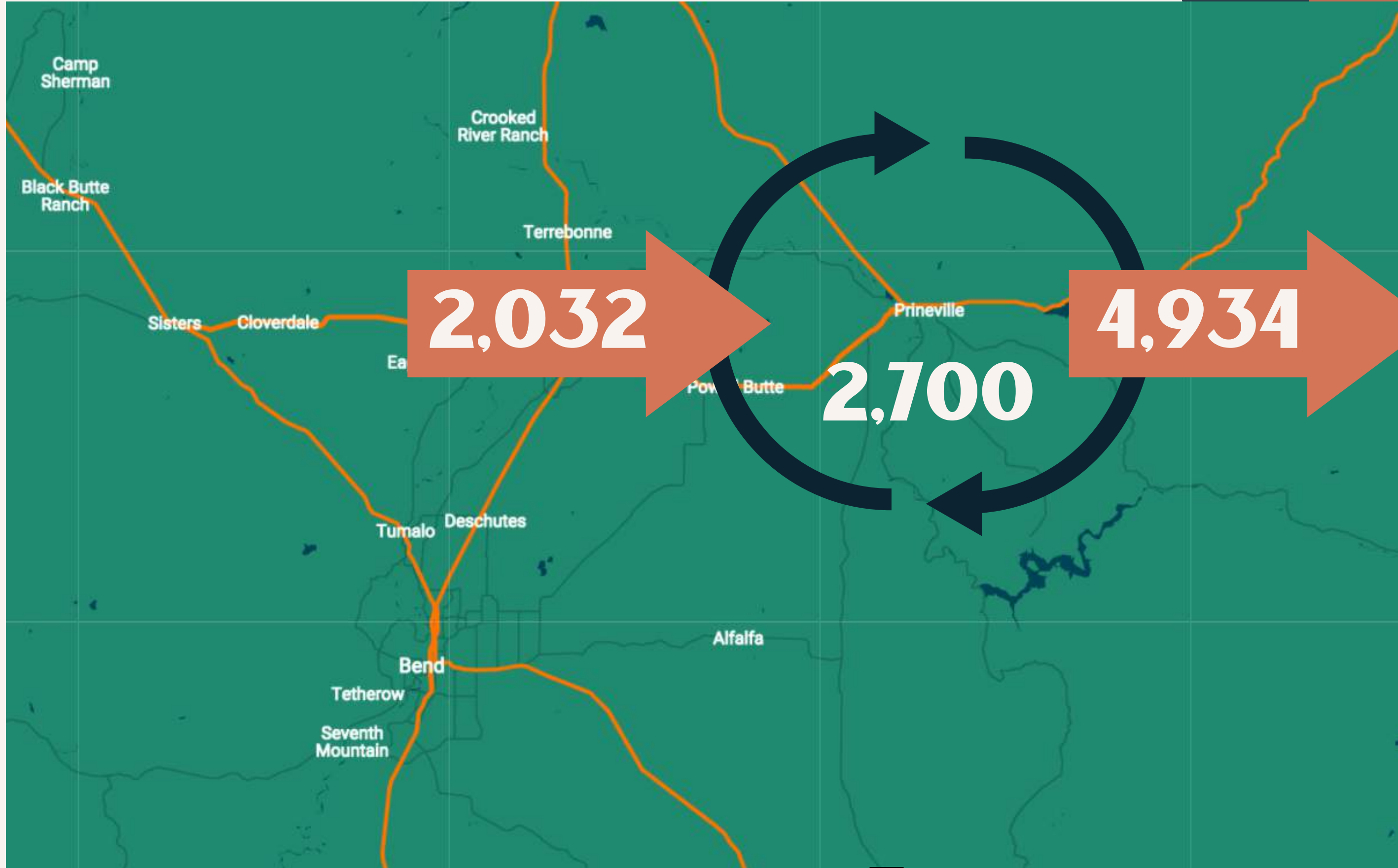


LEAD GENERATION
EDCO HIRING UPDATES
STRATEGIC PLANNING
TOP EMPLOYERS
LEGISLATION

STAY TUNED
**MADE IN CROOK
COUNTY TOUR**

CROOK COUNTY TOP EMPLOYERS

- LES SCHWAB PRINEVILLE OPERATIONS
- ROSENDIN
- CROOK COUNTY SCHOOL DISTRICT
- FACEBOOK DATA CENTER
- BRASADA RANCH
- CROOK COUNTY
- OCHOCO NATIONAL FOREST
- ST. CHARLES PRINEVILLE
- ENDURA PRODUCTS
- WESTERN HEAVY HAUL & SMAF
- BUREAU OF LAND MANAGEMENT (BLM)



JAN VS MARCH
MEDIAN SALE PRICE
\$440K VS \$380K


How hot is the Prineville housing market? 


78 Very Competitive
Redfin Compete Score™ 

JANUARY



0 100

How hot is the Prineville housing market? 

51 Somewhat Competitive
Redfin Compete Score™ 

MARCH



0 100

EDCO PVL BUDGET CURRENT

- \$41,000 - COUNTY
- \$35,000 - CITY
- \$16,500 - PRIVATE

TOTAL = \$92,500

EDCO PVL BUDGET 2022-2023 FY GOAL

- \$45,000 - COUNTY
- \$45,000 - CITY
- \$20,000 - PRIVATE

TOTAL = \$110,000

City Manager Update to Council

Council Meeting April 26, 2022

Public Safety / Dispatch

Recruitment efforts are still underway with some good possibilities. The Annual Law Enforcement Memorial Banquet was able to return this year and is next month. Invitations were sent to Council and staff and hopefully you were able to RSVP to support our Public Safety team.

Public Works

Public Works remains busy with numerous projects while working on ways to fund future projects such as water expansion on the east side, Combs Flat road extension, and recreational and community related development of the Barnes Butte Recreation area.

Rail Road

Interest in the railroad continues and they remain busy. The Railroad Advisory Committee will be looking for another person to fill a member position with the retirement of Jerry Evans. Many thanks to Jerry for his years of service on the committee.

Meadow Lakes Golf

Tyler, our new Superintendent is really doing well and the transition has been great so far. Tyler is planning to seed the #12 hole which was delayed a week due to the cold weather. The seeding is the final phase for the irrigation project. Ron's Easter Brunch was a success with around 300 people served and they intend to have a Mother's Day brunch too.

Airport

There are possibly four hangars that are expected to start construction at the airport in the next couple of months. Erickson Air continues to run their helicopters which really helps with fuel revenue. We expect even more activity as new interest continues to be very strong for our airport.

Planning

The Planning Commission did approve the close to 300 multi-family units on Madras Highway. We expect this project to start pretty quickly and will continue to build out in conjunction with the market. Development is beginning on the east side of town with a large new Wilco Farm store and clearing of the land has already started. There have been 60 residential home permits so far this year which is considerably more than prior years.

Human Resources

Union negotiations continue for Public Works and the Railroad with hopes to wrap these up soon.

Information Technology – No Update

Finance

The Finance Department is busy updating year end estimates and mid-year audit with both going well.

City Recorder/Risk Management – No update

City Legal – No Update

EDCO –

There have been a couple of recent inquiries for commercial/industrial development in Prineville and one is a manufacturing company.

Public Relations

The water conservation tips and recommendations campaign continues. Our City Facebook page has over 14,000 followers. Our Barnes Butte Recreation Area Facebook page is up and has been live since the beginning of March with over 100 followers already.

Mayor/Council

The Crook County Foundation and The Chamber is looking for a council member to serve on their boards. Unfortunately work commitments conflicts with being able to attend the board meetings. Please consider stepping up to represent the city on one or both of these boards.

Also, we wanted to check to make sure we will have a quorum for the May 10th Council meeting either in person or virtually, as we have learned of some councilors being on vacation.

**RESOLUTION NO. 1517
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION ESTABLISHING A POLICY GOVERNING CHARITABLE
DONATIONS MADE BY THE CITY COUNCIL**

Whereas, the City Council wishes to establish policies and procedures for community non-profit groups to request and receive public funds from the City of Prineville (“City”).

Whereas, the City Council recognizes the potential for misuse of public funds with insufficient oversight and policies.

Whereas, the City Council Governance Committee has made recommendations regarding guidelines and procedures for Council Contribution/Donations.

Whereas, the City Council desires to create a policy that avoids the appearance of impropriety and minimizes the opportunity for misuse of public funds.

Whereas, the charitable donation policy provided for herein provides for proper public purposes, a neutral, non-political process, and transparency.

Whereas, the City Council hereby establish the following Comprehensive Policy for City Council Governing Charitable Donations.

Now, Therefore, the City of Prineville resolves as follows:

1. The aforementioned recitals are true and correct.
2. **Applicability of Policy.** In order to establish a fair and transparent process for distribution of charitable donations, the City of Prineville hereby establishes this Comprehensive Policy for the City Council Governing Charitable Donations. This policy shall apply to any group, organization, or person requesting public funds.
3. **Public Purpose.** The donation of any public funds by the City of Prineville shall promote a valid public purpose that directly benefits City of Prineville residents and property owners.
4. **Comprehensive Policy Governing Charitable Donations by City Council.** Charitable donations shall be subject to the below guidelines. The eligibility requirements for the donation of any public funds are:
 - a. The solicitation request shall be for a public purpose as provided for in Section 3.
 - b. The solicitation request must be accompanied by a completed application and all required documentation.

c. Upon final approval of a solicitation request, the group/organization will be required to attend a City Council within sixty (60) days to present to City Council regarding the use of the funds.

d. All charitable donation requests shall be submitted on the application form available with the City Recorder.

e. Completed application forms for donations with supporting documentations shall be submitted to the City Clerk and forwarded to City Council for sponsorship. Upon a City Council Member's sponsorship, the application shall be presented at the next Regular City Council Meeting for City Council Consideration.

f. The applications, support documentation, and City Council determination shall be placed on the City's website.

5. **Funding Awards.** In preparing the annual budget, City staff will budget a discretionary fund for awards which are approved by City Council pursuant to this Resolution. Any funds appropriated for donations and not spent for such purpose during the then current fiscal year shall revert to the General Revenue Fund at the end of the fiscal year.

6. **Authorization.** The City Council hereby approves, in substantially, the attached form (attached hereto as Exhibit A), the applications the documents with the stated criteria, acknowledgements, and required documentations.

7. **Exclusivity.** The matters set forth in this Resolution shall serve as the City's Comprehensive Policy Governing Charitable Donations for the City Council, and it shall be posted on the City's website.

Approved by the City Council this ____ day of April, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

**RESOLUTION NO. 1519
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING THE STRATEGIC INVESTMENT PROGRAM AGREEMENT
BETWEEN THE CITY OF PRINEVILLE AND CROOK COUNTY (CO-SPONSORS) WITH
EDGECONNEX, INC.**

Whereas, The Oregon Legislature declared a significant purpose of the Strategic Investment Program (“SIP”) is to promote industrial competition and improve employment in areas where projects are to be located by encouraging business engaged in such projects to hire local employees. ORS 285C.600-285C.620.

Whereas, The SIP encourages local governments to enter agreements with key industries to attract and retain long term investment and employment.

Whereas, EdgeConneX, Inc., a Delaware corporation, (“Company”) proposes to build and operate a data center project within the city limits of Prineville to support Company’s data center operations.

Whereas, a public hearing was held April 12, 2022, at the Prineville City Council Meeting to allow an opportunity for any interested person to appear and present comment and public input regarding the project and agreement.

Whereas, the City of Prineville (“City”), a municipal corporation of the State of Oregon, and Crook County, a political subdivision of the State of Oregon, and the Company have negotiated the terms of a mutually agreeable SIP Agreement (“SIP Agreement”), attached to this Resolution and incorporated herein.

Whereas, City staff recommends that the attached SIP Agreement be approved by City Council.

Now, Therefore, the City of Prineville resolves as follows:

1. The attached SIP Agreement is approved.
2. The Mayor is authorized and instructed to execute the SIP Agreement on behalf of the City.

Approved by the City Council this ____ day of April, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT

THIS OREGON STRATEGIC INVESTMENT PROGRAM AGREEMENT (“Agreement”) effective as of the date last written below, is by and between the City of Prineville, a municipal corporation of the State of Oregon (“City”), Crook County, a political subdivision of the State of Oregon (the “County”), EdgeConneX, Inc., a Delaware (“Company”). City, County, and Company shall each be referred to as “Party,” and collectively “Parties.”

RECITALS

- A. The Company or an Affiliate of the Company proposes to build and operate data center projects within the City that will support the Company’s data center operations.
- B. The Oregon Legislature has established the Strategic Investment Program (“SIP”) to promote industrial competitiveness and to improve employment in the areas where projects are to be located by encouraging businesses engaged in projects to hire local employees. The SIP provides a mechanism for local governments to enter into agreements with companies in key industries to attract and retain long-term investment and employment.
- C. The City, the County, and the Company acknowledge that the Site (as defined below) is located in a “rural area” as defined in ORS 285C.600(6).
- D. The City, the County, and the Company intend that this Agreement will satisfy the requirements described in ORS 285C.609(4) and that the Project (as defined below) will qualify for the property tax incentives described in ORS 307.123.
- E. The City, the County, and the Company have provided and/or will provide public information and an opportunity for public input regarding the Projects and this Agreement at formal public hearings.
- F. The Company will enter into a First Source Hiring Agreement consistent with the Strategic Investment Program application requirements described in OAR 123-623-1500.

NOW, THEREFORE, in consideration of the consideration, and the mutual covenants and agreements contained herein, including the Recitals which are incorporated herein by reference, which are relied upon by the Parties, and which constitute part and parcel of this Agreement; and other good and valuable consideration the receipt and sufficiency of which are expressly acknowledged by the Parties, City, County and Company hereby agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

“Affiliate” means the Company and any other entity that directly or indirectly through one or more intermediaries, is controlled by, or is under common control with EdgeConneX, Inc.

“Agreement” has the meaning set forth in the Preamble.

“CIP Exemption” means the exemption for commercial facilities under construction under ORS 307.330.

“CIP Period” means the Tax Year or Tax Years during which the Project is exempt from taxation pursuant to ORS 307.330.

“City” has the meaning set forth in the Preamble.

“Community Service Fee” has the meaning set forth in Section 3.2.

“Company” has the meaning set forth in the Preamble.

“County” has the meaning set forth in the Preamble.

“Data Center” means a building primarily intended to house a group of networked server computers for the purpose of centralizing the storage, management and dissemination of data and information pertaining to one or more businesses. For the avoidance of doubt, a Data Center does not include a warehouse, an office building, or any other equipment or buildings used for electrical and mechanical utility services or any other use that support the Data Center.

“Effective Date” means the last date on the signature page.

“Exemption Period” means, with respect to the Project and subject to ORS 307.123, the fifteen (15) consecutive Tax Years beginning the first Tax Year after the earlier to occur of the following dates: (i) the date Company has received a temporary or final certificate of occupancy for its intended purpose regarding any portion of the Project; or (ii) the expiration of the CIP Exemption for the Project.

“Exempt Property” means the property in the Project described in ORS 307.123(2)(c).

“Non-Exempt Property” means the property in each Project described in ORS 307.123(2)(b).

“OAR” means the Oregon Administrative Rules.

“OBDC” means the Oregon Business Development Commission.

“ORS” means the Oregon Revised Statutes.

“Payment Date” means, for any Tax Year, December 31 of that Tax Year.

“Project” means all property located at the Project Site (including the Project Site itself) during the term of this Agreement, including during the construction or operation of the property and including all land, buildings, substations, real property, machinery and equipment, and personal property of any kind as specified in ORS 307.123(2)(b). Project must include exactly and only one Data Center, which is currently anticipated to be up to 150,000 square feet in size. The City, the County, and the Company may amend the definition of “Project” by mutual written agreement of the Parties.

“Project Site” means the portion of the Site designated by the Company as the “Project Site” as more fully described in Exhibit A.

“Property Tax Payment” has the meaning set forth in Section 3.1.

“SIP” has the meaning set forth in the Preamble.

“SIP Applications” means the applications for the exemption pursuant to ORS 285C.600 *et seq.* and ORS 307.123 for the Project, which shall be filed by Company on or before the deadline imposed by OAR 123-623-1400.

“SIP Payments” means the Community Service Fees, the Property Tax Payments, and additional payments pursuant to Section 3.3.

“Site” means the real property specified in Exhibit B.

“Tax Year” means the property tax year beginning July 1 and ending June 30.

ARTICLE II EXEMPTION

2.1 **Exemption.** Pursuant to ORS 307.123(2)(c), and subject to Section 5.1, the Exempt Property in the Project shall be exempt from property tax during the Exemption Period for the Project.

ARTICLE III PAYMENTS

3.1 **Property Tax.** Pursuant to ORS 307.123(2) the Company shall pay property tax with respect to the Non-Exempt Property for each Project during the Exemption Period for the Project (the “Property Tax Payment”).

3.2 **Community Service Fee.** Pursuant to ORS 285C.609(4)(b) and (c), on or before the Payment Date for each Tax Year during the Exemption Period for each Project, the Company shall pay to the County an amount equal to twenty-five percent (25%) of the property taxes that would, but for the exemption pursuant to ORS 307.123(2)(c), be due with respect to the Project for the Tax Year, except that such amount shall not exceed \$2,500,000.00 for that Project for any Tax Year (the “Community Service Fee”).

3.3 **Additional Fees.** Contemporaneously with any Community Service Fee payment, the Company shall pay to the County \$7,500.00 each year in administrative fees for the terms of this Agreement.

3.4 **Underpayments.** If the Company fails to pay any portion of the SIP Payments for a Tax Year by the Payment Date for that Tax Year, interest shall be charged on the past due balance in the same amount as is provided by Oregon law for late payment of ad valorem property taxes.

3.5 **Overpayments.** If the Company pays an amount in excess of amounts owed under this Agreement for any Tax Year, the City and the County shall either refund the excess or return the incorrect payment and request that the Company reissue payment in the correct amount. Notwithstanding the previous sentence, if the Company successfully challenges the real market value, maximum assessed value, or other value of any Project for any Tax Year, and such challenge results in a reduction in value that in turn results in a reduction in the amount of SIP Payments owed for the Tax Year, the City and the County may either credit the reduced SIP Payments against future amounts owed by the Company under this Agreement or refund any excess to the Company (but, to the extent no further amounts are owed by the Company under this Agreement, the City and the County shall refund any such excess to the Company). In any event of returned payment, the Assessor shall establish a schedule for payment that provides payment without undue delay and pursuant to Oregon Revised Statutes.

3.6 **Disposition of Payments.** As between (a) the City and the County and (b) the Company, the City and the County shall be solely responsible for the disposition of the SIP Payments. The Company shall have no liability or obligation to any person other than the City and the County with respect to the SIP Payments. Except as expressly exempted by this Agreement, and notwithstanding anything in the prior sentence to the contrary, nothing contained herein is intended to excuse the Company from any tax, fee, payment of general applicability or payment otherwise required by law, local ordinance or pursuant to this Agreement, including payments related to the SIP for the Project. The Company shall also be responsible for the payment of any taxes, fees, or other payments imposed for land use approvals, permits or other governmental approvals necessary for the construction or operation of the Project during the Exemption Period,

ARTICLE IV SIP NOTICES

4.1 **Property Tax Filings.** During the CIP Period and the Exemption Period, the Company shall file with the County Assessor or the Oregon Department of Revenue, as applicable, such information, and reports as are required by law and shall promptly provide copies of such information to the County Assessor. Company shall collaborate with the County Assessor and Oregon Department of Revenue in fulfilling all statutory duties of Company.

4.2 **Duty to Make Payments.** Company's obligations to make payments under this Agreement and applicable law is not conditioned upon the issuance or receipt of a notice or demand for payment by any Party or any applicable governmental authority.

4.3. **County Notices.** Notwithstanding the provisions of Section 4.2, and without waiving any obligation to make payments on the timeframes as required by this Agreement and applicable law, the County shall provide the Company for each Tax Year in the Exemption Period with a notice of payment by December 1 of that Tax Year that specifies the SIP Payments due, if any, for the Tax Year, describes the calculations of such amounts due, provides documentation supporting such calculations, and specifies the Payment Date (the “Payment Notice”).

4.4 **Termination Notice.** If the Project has not achieved commercial operation by the fifth tax year after the Effective Date, or the OBDC has not determined that the property in the Projects shall receive the tax exemption in ORS 307.123, the Company may terminate this Agreement by providing written notice to the County and City to that effect. Notwithstanding the previous sentence, 8.18, 8.19, and Article 7 shall survive such termination.

ARTICLE V FAILURES TO MAKE PAYMENTS

5.1 **Loss of Exemption.** If the Company does not timely pay any portion of the SIP Payments for a Project for any Tax Year, or does not pay any such outstanding amount and any applicable interest pursuant to Section 3.5 by the end of such Tax Year, the Exempt Property for such Project (i) shall not be exempt from taxation pursuant to ORS 307.123 for the Tax Year(s) for which no payments have been made and any subsequent Tax Year in which the Company has not paid such amount and any applicable interest pursuant to Section 3.4 by the Payment Date for that Tax Year and (ii) shall be assessed and taxed as other similar property is assessed and taxed.

5.2 **Payments Upon Lost Exemption.** Notwithstanding anything in this Agreement to the contrary, if pursuant to Section 5.1 or otherwise the Exempt Property in any Project is not exempt from taxation pursuant to ORS 307.123 for any Tax Year during the Exemption Period for such Project, the Company shall not be required to pay the SIP Payments (other than the Property Tax Payment) for that Project for that Tax Year.

ARTICLE VI ASSIGNMENTS

6.1 **Assignments.** The Company may sell, transfer, assign, pledge, mortgage, hypothecate, or otherwise dispose of and encumber all or any of its rights, title, and interests in, to, and under this Agreement with respect to the Project to any lender (or other financing party) as security for the performance of its obligations under any loan agreement with such lender (or financing agreement with such financing party), to any Affiliate or other entity formed for the purpose of developing, constructing, owning, or operating such Project, and to any lessee or third party purchaser of such Project, without the consent of the City or the County, as long as

- (i) unless all payments due under this Agreement as of the time of the assignment or delegation have been paid;
- (ii) such successor owner assumes and agrees to be bound by this Agreement; and

(iii) provided that Company remain bound by all of the terms of this Agreement unless the County and City consent in writing to release Company, which consent may not be unreasonably withheld.

In such an event, the Company or the Company's assignee, as the case may be, will provide written notice to the other party of such assignment or pledge as promptly as practicable. The City and the County shall execute and deliver and furnish such consents, documents, certificates, and other instruments and information which any lender or financing party may reasonably request as a condition to the financing or refinancing of such Project, provided that such items are not inconsistent with applicable law or the provisions of this Agreement. Except as set forth in this Article 6, neither this Agreement nor any rights under this Agreement, in whole or in part, shall be assignable or otherwise transferable by any party without the express written consent of the other Parties, and any attempt by any Party to assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Parties, shall be null and void.

6.2 Change in Law. The Parties acknowledge that, due to the length of the Agreement's term, state laws and regulations, including the statutes and administrative rules relating to SIP and ad valorem property taxation, may be enacted, repealed, amended or substantially affected by court cases, and that such legal changes may materially alter the authority, rights or responsibilities of the Parties or the benefits anticipated under this Agreement, prior to its expiration. In the event that a change occurs that invalidates or substantially impacts this Agreement, the Parties agree to take such action as reasonably necessary, including, but limited to amending this Agreement or entering into a separate agreement, to preserve and retain the substantive arrangement and relative and analogous rights, duties, responsibilities and obligations of the Parties reflected in this Agreement. If the Parties are unable to come to terms within ninety (90) days, the Parties will select a professional mediator and in good faith participate in negotiations for not less than ninety (90) days. The Parties will equally split mediator expenses. If the Parties remain unable to come to terms on a successor agreement, the Parties will in good faith and with the assistance of the mediator negotiate and effectuate a winding down and termination of this Agreement.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Company. The Company represents and warrants to the City and the County as follows:

7.1.1 Organization. The Company is a Corporation, duly organized, validly existing, and in good standing under the laws of the State of Delaware.

7.1.2 Authority. The Company has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

7.1.3 Binding Obligation. This Agreement is the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as

enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

7.1.4 **No Conflicts.** The execution and delivery of this Agreement by the Company and the performance by the Company of its obligations under this Agreement will not: (a) conflict with the Company's organizational documents; (b) breach any agreement to which the Company is a party, or give any person the right to accelerate any obligation of the Company; (c) violate any law, judgment, or order to which the Company is subject; or (d) require the consent, authorization, or approval of any person, including, but not limited to, any governmental body.

7.2 **Representations and Warranties of the City.** The City represents and warrants to the Company as follows:

7.2.1 **Organization.** The City is a municipal corporation of the State of Oregon duly organized and validly existing under the laws of the State of Oregon.

7.2.2 **Authority.** The City has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. True and correct copies of the resolutions of the City authorizing the City to enter into this Agreement are attached hereto as Exhibit C.

7.2.3 **Binding Obligation.** This Agreement is the legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

7.2.4 **No Conflicts.** The execution and delivery of this Agreement by the City and the performance by the City of its obligations under this Agreement will not: (a) conflict with the City's charter or any other organizational documents; (b) breach any agreement to which the City is a party, or give any person the right to accelerate any obligation to the City; (c) violate any law, judgment, or order to which the City is subject; or (d) require the consent, authorization, or approval of any person, including, but not limited to, any governmental body (other than the City or County).

7.2.5 **Ethics Laws.** This Agreement is in accordance with all relevant government ethics laws. The City is aware and acknowledges that the Company may be a vendor and/or lobbyist employer, and Company employees may be registered lobbyists. This Agreement shall not prevent the Company from supplying products or services to the City under any future request for proposal or contract.

7.3 **Representations and Warranties of the County.** The County represents and warrants to the Company as follows:

7.3.1 **Organization.** The County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon.

7.3.2 **Authority.** The County has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. True and correct copies of the resolutions of the County authorizing the County to enter into this Agreement are attached hereto as Exhibit D.

7.3.3 **Binding Obligation.** This Agreement is the legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, or other similar laws of general application or by general principles of equity.

7.3.4 **No Conflicts.** The execution and delivery of this Agreement by the County and the performance by the County of its obligations under this Agreement will not: (a) conflict with the County's organizational documents; (b) breach any agreement to which the County is a party, or give any person the right to accelerate any obligation to the County; (c) violate any law, judgment, or order to which the County is subject; or (d) require the consent, authorization, or approval of any person, including, but not limited to, any governmental body (other than the City or County).

7.5 **Ethics Laws.** This Agreement is in accordance with all relevant government ethics laws. The County is aware and acknowledges that the Company may be a vendor and/or lobbyist employer, and Company employees may be registered lobbyists. This Agreement shall not prevent the Company from supplying products or services to the County under any future request for proposal or contract.

ARTICLE VIII MISCELLANEOUS

8.1 **Notices.** Each notice or other communication provided under this Agreement (i) must be in writing, (ii) must be delivered to the recipient in person, by courier or certified mail, return receipt requested, or by facsimile or other electronic transmission at the addresses set forth below, and (iii) is effective upon receipt by the Party receiving it.

If to the County, to:

Crook County
ATTN: County Judge
300 NE Third Street
Prineville, Oregon 97754

If to the City, to:

City of Prineville
ATTN: City Manager
387 NE Third Street
Prineville, OR 97754

If to the Company, to:
2201 Cooperative Way, Suite 400
Hendon, Virginia 20171
Attn: Legal Department

8.2 **Headings.** Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

8.3 **Waivers.** No waiver made by any Party with respect to the performance, or manner or time thereof, of any obligation of a Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by any Party of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

8.4 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

8.5 **Entire Agreement.** This Agreement is the entire agreement between the City, the County, and the Company with respect to the subject matter of this Agreement. There is no other oral or written agreement between the City, the County, and the Company with respect to the subject matter of this Agreement. There are no representations or warranties made by either the City, the County, or the Company, implied or express, other than those contained in this Agreement.

8.6 **Attorneys' Fees.** In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, each Party shall bear its own attorney fees, expenses, costs, and disbursements for said suit, action, arbitration, or other proceeding. This provision shall cover costs and attorneys' fees related to or with respect to proceeding in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

8.7 **Time of the Essence.** Time is of the essence of this Agreement.

8.8 **Severability.** If any clause, sentence, or other portion of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

8.9 **Amendments.** This Agreement may not be amended unless such amendment is in writing and executed by the City, the County, and the Company.

8.10 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

8.11 **Calculation of Time.** All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on a Saturday, Sunday, or legal holiday in the State of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such a holiday.

8.12 **Construction.** In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

8.13 **Further Assurances.** At any time from and after the date of this Agreement, at any Party's request and without further consideration, the Party receiving the request shall take all such further actions, and shall execute and deliver all such further instruments or documents, as the requesting Party may reasonably request to carry out and fulfill the transactions contemplated by this Agreement, provided that such requested action may not be inconsistent with applicable law or the provisions of this Agreement. Without limiting the foregoing, within two weeks after the Effective Date, the County and City shall request that the OBDC determine whether the property in the Project qualifies for receipt of the tax exemption in ORS 307.123.

8.14 **Place of Enforcement.** Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Crook County, or the United States District Court for the District of Oregon division which includes the Project Site.

8.15 **Good Faith and Reasonableness.** The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given "sole discretion" or being allowed to make a decision in its "sole judgment."

8.16 **No Third-Party Beneficiaries.** City, County, and Company and their successors and assigns are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

8.17 **Right to Contest Assessments.** Nothing in this Agreement shall limit or restrict the Company from challenging the real market value, maximum assessed value, or other value of any property, or the amount that is or would, but for any exemption, be due for property taxes in the same manner as any other taxpayer pursuant to Oregon law.

8.18 **Confidentiality.** The Parties will to the maximum extent permitted by law: (a) consider the content and nature of discussions culminating in this Agreement, and documentation and information prepared or provided to verify compliance with the terms of this Agreement and the property tax exemption (including but not limited to the notices, reports, information, and

documentation required pursuant to ORS 285C.615), as containing confidential commercial and financial information of Company; (b) keep the content and nature of discussions culminating in this Agreement, and documentation and information prepared or provided to verify compliance with the terms of this Agreement and the property tax exemption (including but not limited to the notices, reports, information, and documentation required pursuant to ORS 285C.615), confidential and will not, without the prior written consent of the other Parties or as may be required by law, disclose or use any information obtained in the course of this transaction other than in connection with the transaction; and (c) transmit such information only to such of its representatives who need to know the information for the sole purpose of assisting that Party in evaluating this Agreement and who agree to be bound by these terms as if a Party.

8.19 Dispute Resolution. Prior to any Party to this Agreement instituting any legal action, arbitration, or other proceeding of any nature regarding matters related to this Agreement against any other Party to this Agreement, the complaining Party will request the other Parties' participation in non-binding mediation, and the Parties agree to work in good faith to attempt to resolve the dispute in the course of such non-binding mediation. Requests for such non-binding mediation may be made by written notice in the manner provided for in Section 8.1. The expenses of non-binding mediation, including, without limitation of generality, costs of notice thereof, fees of the mediator and of witnesses, and the cost of taking and transcribing testimony shall be shared equally by the Parties undergoing mediation. Notwithstanding the foregoing, any Party may withdraw from such non-binding mediation at any point and, further, may decline to participate in or abstain from requesting such non-binding mediation if, in its sole discretion, doing so will adversely affect the Party's interests. If non-binding mediation fails to resolve the dispute, a Party withdraws from non-binding mediation, or a Party abstains from requesting non-binding mediation pursuant to the foregoing, then each Party may pursue any and all legal and equitable remedies available under and according to the laws of the State of Oregon and the provisions of this Agreement. In such proceeding, and in any non-binding mediation, the Parties agree to bear their own attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith.

8.20 Duration. This Agreement commences on the Effective Date and, unless sooner terminated as described herein, will expire on the sixtieth (60th) day after the expiration or termination of the SIP Exemption Period, with the exception of that remedies for enforcement will continue until all enforcement actions are completed.

8.21 Termination. This Agreement may be terminated by any Party as follows:

- a. Upon sixty (60) days' prior written notice if OBDC does not approve Company's application for participation in the Strategic Investment Program.
- b. Upon sixty (60) days' prior written notice in the event of a material default of this Agreement.
- c. As permitted by Section 4.4 above.

There is no right to terminate if Company fails to maintain eligibility in the Strategic Investment Program, and the loss of such eligibility does not alter Company's obligations under this Agreement. Any termination of this Agreement will not prejudice any right or obligation which accrued prior to the effective date of the termination.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below:

City:

City of Prineville, Oregon
an Oregon municipal corporation

By: _____

Name: Rodney J. Beebe
Its Mayor

Date: _____

County

Crook County, Oregon
an Oregon subdivision

By: _____

Name: Seth Crawford
Its: County Judge

Date: _____

By: _____

Name: Jerry Brummer
Its: County Commissioner

Date: _____

By: _____

Name: Brian Barney
Its: County Commissioner

Date: _____

Company

Name

EdgeConneX, Inc.

By: _____

Name: Edmund Wilson

Its: Chief Operating Officer

Date: _____

Exhibit B
Real Estate Description

Located in Crook County, Oregon:

TRACT I

Parcel 3 of Partition Plat No. 1996-03 Recorded January 29, 1996 in Partitions Microfilm No. 125405, Records of Crook County, Oregon, Located in the Northwest quarter of Section 12, Township 15 South, Range 15 East of the Willamette Meridian, Crook County, Oregon.

TOGETHER WITH that portion of vacated SW Social Loop adjoining that inured thereto by Ordinance No. 1235, Recorded in the Crook County Deed Records, as Instrument No. 2018-289253.

EXCEPTING therefrom all that portion lying within Baldwin Road Industrial Park Subdivision recorded April 25, 1996, as Microfilm No. 127020.

ALSO save and except that portion conveyed to the City of Prineville by Deed recorded December 9, 2011, as Instrument No. 2011-249853, Records of Crook County, Oregon.

ALSO save and except that portion conveyed to the State of Oregon, by and through its Department of Transportation, by Deed recorded August 10, 2017, as Instrument No. 2017-282079, Records of Crook County, Oregon.

TRACT II

A tract of land lying in Section 12, Township 15 South, Range 15 East of the Willamette Meridian, Crook County, Oregon, described as follows; Beginning at a point 949 feet South and 335 feet East of the section corner common to Sections 1, 2, 11 and 12, Township 15 South, Range 15 East of the Willamette Meridian, Crook County, Oregon; thence South 200 feet; thence South 45° East 378 feet; thence East 119 feet; thence North 317 feet; thence North 45° West 212 feet; thence West 236 feet more or less, to the place of beginning.

**RESOLUTION NO. 1520
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR
THE ADMINISTRATION OF A STRATEGIC INVESTMENT PROGRAM PROJECT**

Whereas, the City of Prineville (“City”) and Crook County (“County”) have entered into an Agreement with EdgeConneX, Inc. (“Company”) pursuant to the Strategic Investment Program (“SIP”) Agreement as set forth in ORS Chapter 285C.

Whereas, City, County, and Crook County Fire and Rescue (“CCFR”) constitute at least seventy-five percent (75%) of the non-educational property tax receipts for *ad volorm* property taxes assessed against the project site.

Whereas, after approval of the SIP Agreement by the Oregon Business Development Commission, Company will remit a Community Service Fee (“CSF”) according to the provisions of the SIP Agreement and ORS 285C.609.

Whereas, City, County, and CCFR have negotiated the terms of a mutually agreeable Intergovernmental Agreement (“IGA”), attached to this Resolution, and incorporated herein, regarding the administration of the SIP and distribution of the CSF.

Whereas, City staff recommends that the attached IGA be approved by City Council.

Now, Therefore, the City of Prineville resolves as follows:

1. The IGA Agreement is approved.
2. The Mayor is authorized and instructed to execute the IGA on behalf of the City.

Approved by the City Council this ____ day of April, 2022.

Rodney J. Beebe, Mayor

ATTEST:

Lisa Morgan, City Recorder

INTERGOVERNMENTAL AGREEMENT
For the Administration of an ORS Chapter 285C
Strategic Investment Program Project

This Intergovernmental Agreement (hereinafter “the IGA”) is made by and between the City of Prineville, an Oregon municipal corporation (hereinafter “City”); Crook County, a political subdivision of the State of Oregon (hereinafter “County”); and Crook County Fire and Rescue, an Oregon special district (hereinafter “CCFR”). Collectively, City, County, and CCFR may be referred to as the Parties, or individually as a Party.

RECITALS

- A. *Whereas*, Oregon Revised Statutes sections 285C.600 to 285C.620 creates a Strategic Investment Program (hereinafter “SIP,”) whereby qualifying businesses may be eligible for an exemption on certain ad valorem real and personal property taxes; and
- B. *Whereas*, under the operative laws governing the SIP, local governments may enter into agreements with companies in key industries to attract and retain long-term investment and employment;
- C. *Whereas*, a business enterprise designated “Project Neo” is interested in pursuing qualification for the SIP for Tax Lot 1515 12B 00 2800; and
- D. *Whereas*, City, County, and CCFR constitute at least 75% of the non-educational property tax recipients for ad valorem property taxes assessed against Tax Lot 1515 12B 00 2800; and
- E. *Whereas*, if Project Neo is approved by the Oregon Business Development Commission (hereinafter “OBDC”) for participation in the SIP, Project Neo will remit a Community Service Fee (hereinafter “CSF”) according to the provisions of ORS 285C.609 and an agreement with County and City; and
- F. *Whereas*, the Parties wish to memorialize their mutual commitments to advance the local SIP, to process the Project Neo application, and to distribute the CSF.

AGREEMENT

Now, therefore, in consideration of the mutual covenants contained herein, the Parties agree as follows.

1. **Adoption of Recitals:** The above Recitals are incorporated into this IGA, as terms of contract and not mere recitals.

2. **Effective Date:** This IGA becomes effective on the date when signed by all three Parties.

3. **Duration:** Unless sooner terminated as described herein, this IGA will remain in full force until the first of the month following twelve months after the expiration or termination of the Project Neo Strategic Investment Program Agreement (hereinafter “Project Neo SIP Agreement.”)

4. **Cooperation in SIP Application:** The Parties will reasonably cooperate with each other in advancing a Project Neo application to OBDC for participation in the SIP; provided, however, that such reasonable cooperation does not require any of the following:

- a) Adopting, amending, or altering any codes, regulations, ordinances, laws, or policies of any Party.
- b) Except as otherwise provided by law, approving any application for other governmental approval, including but not limited to land use applications; applications for building, fire safety, or structural code permits; applications for addresses or street names; or alteration in the assessments of applicable property taxes.
- c) The waiver of any fees otherwise applicable to the governmental function being performed.

5. **Disclaimer of Partnership:** No Party is, by virtue of participation in this IGA, a partner or joint venturer with any other Party.

6. **Distribution of CSF:** County will be responsible for distributing the CSF among the parties and any other qualifying public entity, special district, or other recipient. Distribution shall be according to the following schedule: (a) forty-five percent (45%) to be paid to the County; (b) forty-five percent (45%) to be paid to CCFR; and (c) ten percent (10%) to be paid to the City. County will provide such documentation as a Party may reasonably request to verify the calculation of CSF.

7. **Assignment:** Neither this IGA nor any of the rights granted by this IGA may be assigned or transferred by any Party.

8. **Binding Effect:** The terms of this IGA shall be binding upon and inure to the benefit of each of the Parties and each of their respective administrators, agents, representatives, successors, and assigns.

9. **Agency and Partnership:** None of the Parties are, by virtue of this IGA, an agent, a partner, or a joint venturer with any other Party and no Party shall have any obligation with respect to any other Party’s debts or liabilities of whatever kind or nature.

10. **Non-Discrimination:** Each Party agrees that no person shall, on the grounds of race, color, creed, national origin, sex, marital status, age, or sexual orientation, suffer discrimination in the performance of this IGA when employed by either Party. Each Party agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Section V of the Rehabilitation Act of 1973 as amended, and all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Additionally, each Party shall comply with the Americans with Disabilities Act of 1990 as amended, ORS 659.425, and all regulations and administrative rules established pursuant to those laws.

11. **Notice:** All notices and other communications required or permitted under this SIP Agreement shall be in writing and shall be either hand delivered in person, sent by facsimile or other electronic transmission, sent by certified or registered first-class mail, postage pre-paid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by facsimile or other electronic transmission, three days after mailing if sent by mail, and one day after dispatch if sent by express courier, to the following addresses, or such other addresses as any party may notify the other parties in accordance with this section.

To City:
City of Prineville
Attn: City manager
387 NE Third Street
Prineville, OR 97754

To County:
Crook County
Attn: Strategic Invest-
ment program
300 NE Third Street
Prineville, OR 97754

To CCFR:
Crook County Fire and
Rescue
ATTN: Fire Chief
500 NE Belknap St.
Prineville, OR 97754

12. **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 IGA, each Party shall bear its own attorney fees, expenses, costs, and disbursements for said action, lawsuit, proceeding, or appeal.

13. **No Waiver of Claims:** The failure of any Party to enforce any provision of this IGA shall not constitute a waiver by that Party of that provision or of any other provision of this IGA.

14. **Severability:** Should any provision or provisions of this IGA be construed by a court of competent jurisdiction to be void, invalid, or unenforceable, such construction shall affect only the provision or provisions so construed, and shall not affect, impair, or invalidate any of the other provisions of this IGA which shall remain in full force and effect.

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15. **Termination:**

- a) *By One Party:* Any Party may terminate its participation in this IGA by providing the other Parties with not less than sixty (60) days' prior written notice. Such termination will be only as to that Party's participation, and the IGA will continue in full force and effect so long as there are at least two Parties. No termination will prejudice any right or obligation which accrued prior to the effective date of the termination.
- b) *Termination of the IGA:* In the event that OBDC does not approve any application for Project Neo's participation in the SIP within twelve (12) months of the Effective Date, or OBDC rejects an application by Project Neo, this IGA may be terminated by any Party upon thirty (30) days' written notice to the other Parties. Such written notice will specify the cause of the termination.

16. **Applicable Law / Venue:** This IGA shall be governed by and interpreted in accordance with the laws of the State of Oregon, with venue reserved for the Circuit Court of Crook County.

17. **Entire Agreement:** This IGA constitutes the entire agreement between the Parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements or understandings between the Parties, if any, whether written or oral, concerning the subject matter of this IGA which are not fully expressed herein. This IGA may not be modified or amended except by a writing signed by both Parties.

18. **Counterparts:** This IGA may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one and the same original. 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 hereto have executed this Intergovernmental Agreement on the Effective Date defined above.

CITY OF PRINEVILLE
("City")

CROOK COUNTY
("County")

CROOK COUNTY FIRE
AND RESCUE
("CCFR")

Signature /date

Signature /date

Signature /date

Print Name & Title

Print Name & Title

Print Name & Title

Intergovernmental Agreement
For SIP Project
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RESOLUTION NO. 1521

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PRINEVILLE, OREGON, APPROVING ISSUANCE OF REVENUE REFUNDING BONDS, SERIES 2022 (ST. CHARLES HEALTH SYSTEM) BY THE HOSPITAL FACILITY AUTHORITY OF DESCHUTES COUNTY, OREGON, AND APPROVING THE EXECUTION AND DELIVERY OF AN INTERGOVERNMENTAL AGREEMENT

WHEREAS, the City Council of the City of Prineville, Oregon (“City”) acknowledges that The Hospital Facility Authority of Deschutes County, Oregon (“Authority”) has received a request from St. Charles Health System, Inc., a nonprofit corporation organized and existing under the laws of the State of Oregon (“Borrower”) to issue Revenue Refunding Bonds, Series 2022 (St. Charles Health System), in one or more series (the “2022 Bonds”), in an aggregate principal amount not to exceed \$80,000,000; and

WHEREAS, the proceeds of the 2022 Bonds are expected to be used for the purpose of refunding all or a portion of the Authority’s Revenue Bonds, Series 2014 (the “2014 Bonds”) which were previously issued to finance, in part, the costs of capital construction, acquisition, development, improvements, renovations, and equipping of the Borrower’s healthcare facilities located within the boundaries of the City at St. Charles Prineville (the “Prineville Project”), with the remaining proceeds of the 2014 Bonds used to finance assets located elsewhere in the State of Oregon, to reimburse the Borrower for costs incurred related to the project and to pay certain costs of issuance of the 2014 Bonds; and

WHEREAS, the principal of and interest on the 2022 Bonds will not constitute a debt of the City nor shall the 2022 Bonds be payable from a tax of any nature levied upon any property within the City nor any other political subdivision of the State of Oregon. The 2022 Bonds will be payable only from the revenues and resources provided by the Borrower; and

WHEREAS, the Internal Revenue Code of 1986 (the “Code”) authorizes the issuance of revenue bonds for a “qualified 501(c)(3) entity,” such as the Borrower; and

WHEREAS, Section 147(f) of the Code requires that qualified 501(c)(3) bonds be approved by the applicable elected representatives of the governmental unit having jurisdiction over the area in which the projects are located and the City Council of the City are the applicable elected representatives of the governmental unit having jurisdiction over the portion of the Prineville Project being refinanced with the proceeds of the 2022 Bonds; and

WHEREAS, on the date of this Resolution, the City Council conducted a public hearing, adequate notice of this hearing having been published pursuant to Section 147(f) of the Code, to provide a reasonable opportunity for members of the public to express their views regarding the issuance of the 2022 Bonds and the uses and purposes of the proceeds of the 2022 Bonds; and

WHEREAS, the Authority is expected to conduct a public hearing regarding the issuance of the 2022 Bonds and consider a Resolution authorizing the execution and delivery of an Intergovernmental Agreement (“Intergovernmental Agreement”), in substantially the form attached

hereto as Exhibit “A,” between the Authority, the City, and the City of Madras, Oregon, pursuant to ORS 190.010 which designates the Authority as the issuer of the 2022 Bonds. Such Intergovernmental Agreement will help provide cost savings to the nonprofit healthcare facilities of the Borrower; and

WHEREAS, the Common Council of the City of Madras, Oregon, as the governmental unit having jurisdiction over the area in which a portion of the projects to be refinanced with the proceeds of the 2022 Bonds is located, is expected to conduct a public hearing and adopt a Resolution approving the issuance of the 2022 Bonds by the Authority for projects located in its jurisdiction and authorizing the execution and delivery of the Intergovernmental Agreement; and

WHEREAS, the Board of County Commissioners of Deschutes County, as the governmental unit having jurisdiction over the Authority and having jurisdiction over the area in which a portion of the projects to be refinanced with the proceeds of the 2022 Bonds are located, is expected to adopt a Resolution approving the issuance of the 2022 Bonds by the Authority; and

WHEREAS the City finds that it would be in the best interest of the City to approve of the issuance of the 2022 Bonds by the Authority pursuant to the requirements of Section 147(f) of the Code;

NOW, THEREFORE, the City of Prineville resolves as follows:

1. As the applicable elected representatives of the governmental unit having jurisdiction over the area in which the Prineville Project is located, and having concluded that a public hearing was validly held to provide a reasonable opportunity for members of the public to express their views regarding the issuance of the 2022 Bonds and the uses and purposes of the proceeds of the 2022 Bonds, the City Council approves of the issuance of the 2022 Bonds by the Authority.

2. The City authorizes the execution and delivery of the Intergovernmental Agreement and any other action necessary in connection with the 2022 Bonds. The Intergovernmental Agreement shall be executed by the Mayor, the City Manager, or their designee, for and on behalf of the City.

3. This resolution is effective immediately upon passage.

Passed by the City Council this 26th day of April 2022.

Mayor

ATTEST:

City Recorder

St. Charles Health System, Inc. (“SCHS”) has made a request of The Hospital Facility Authority of Deschutes County, Oregon (the “Authority”) to issue Bonds (the “2022 Bonds”) in an aggregate principal amount not to exceed \$80,000,000. The proceeds of the Bonds are expected to be used for the purpose of refunding all of the Authority’s previously issued Revenue Bonds, Series 2014 (the “2014 Bonds”), which financed, in part, construction of SCHS’s hospital facilities in the City of Prineville. Additional capital improvement and construction projects were completed in the cities of Bend, Redmond and Madras. The form of 2022 Bonds will be a private bank placement. The issuance is intended to be on a tax-exempt basis through the Authority, as conduit issuer. The issuance will be treated as hospital revenue bonds and repayment is solely the obligation of SCHS.

For purposes of complying with the provisions of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), all tax-exempt revenue bonds issued by the Authority must be approved by the legislative body having jurisdiction over the area where projects being financed will be located, in this case the City Council of the City of Prineville (the “City Council”). Similar public hearings will be held in Madras and Deschutes County with respect to the 2022 Bonds. The 2022 Bonds will also be approved by the Madras City Council and the Board of County Commissioners of Deschutes County. Similar approvals were obtained in 2014 in connection with the 2014 Bonds. In connection with the approval of the 2022 Bonds by the City Council, the City Council must conduct a public hearing, providing a reasonable opportunity for members of the public to express their views regarding the issuance of the 2022 Bonds and the uses and purposes of the proceeds of such 2022 Bonds. A Notice of Public Hearing was published in the *The Central Oregonian* on April 19, 2022, per the requirements of the Code. A similar public hearing was held by the City Council in connection with the 2014 Bonds.

As with the 2014 Bonds, the City of Prineville, the Authority, Deschutes County and the City of Madras will have no financial obligations related to this financing. All of the debt issuance costs and the debt obligations are the sole responsibility of SCHS and are reported in their entirety on the books and records of SCHS.

STAFF ANALYSIS:

In connection with the issuance of the 2022 Bonds by the Authority, for the benefit of SCHS, it is recommended that the City Council conduct a public hearing to comply with the provisions of Section 147(f) of the Code and consider a Resolution approving the issuance of the 2022 Bonds by the Authority.

In addition, it is recommended that the City Council approve the negotiation, execution and delivery of an intergovernmental agreement, between the Authority, the City of Prineville and the City of Madras, to allow the proceeds of the 2022 Bonds to be used outside of Deschutes County.

SUMMARY:

A. Fiscal Impact

There is no fiscal impact or liability to the City of Prineville, and there will be no effect on the City’s financial ratings. The repayment obligations on the 2022 Bonds will be the sole responsibility of SCHS.

B. Supporting Documentation

The Resolution to be considered by the City Council, including a form of the Intergovernmental Agreement is attached.

RECOMMENDATION:

Approve the negotiation, execution and delivery of an intergovernmental agreement between the Authority, the City of Prineville and the City of Madras, to all the proceeds of the 2022 Bonds to be used outside of Deschutes County.

INTERGOVERNMENTAL COOPERATION AGREEMENT

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT IS BETWEEN THE HOSPITAL FACILITY AUTHORITY OF DESCHUTES COUNTY, OREGON, THE CITY OF MADRAS, OREGON, AND THE CITY OF PRINEVILLE, OREGON, RELATING TO THE ISSUANCE BY THE HOSPITAL FACILITY AUTHORITY OF DESCHUTES COUNTY, OREGON OF REVENUE REFUNDING BONDS, IN ONE OR MORE SERIES.

This Intergovernmental Cooperation Agreement, dated as of May 1, 2022 (the “Agreement”) is made and entered into between The Hospital Facility Authority of Deschutes County, Oregon (the “Authority”), the City of Madras, Oregon (“Madras”), and the City of Prineville, Oregon (“Prineville”) (Madras and Prineville are together referred to as the “Cities”), for the benefit of healthcare facilities located in Deschutes County, Oregon, Madras, and Prineville that are owned and operated by St. Charles Health System, Inc., a private, nonprofit corporation organized and existing under the laws of the State of Oregon (the “Borrower”). The Authority proposes the issuance of revenue refunding bonds, in one or more series, in an aggregate principal amount not to exceed \$80,000,000 (the “Bonds”) to refinance certain previous capital construction, acquisition, development, improvement, renovation and equipping at the borrower’s healthcare facilities as follows (collectively, the “Projects”): (i) previous construction of a new hospital facility in Prineville, approximately 60,000 square feet in size, with inpatient beds and outpatient services, including without limitation, primary care, lab, radiology and imaging, emergency and physical therapy, as well as renovations and improvements at existing hospital and outpatient clinic facilities owned by the Borrower in Prineville; (ii) previous capital additions and improvements to existing hospital and outpatient clinic facilities owned by the Borrower in Madras; (iii) previous capital additions and improvements to the existing hospital, including without limitation, a new integrated Cancer Center building, patient tower remodel, and outpatient clinic facilities owned by the Borrower in the City of Bend, Oregon; and (iv) previous capital additions and improvements to the existing hospital and outpatient facilities owned by the Borrower in the City of Redmond, Oregon. Proceeds of the Bonds will also be used to reimburse the Borrower for costs incurred related to the Projects and to pay financing and legal costs relating to the Bonds, including funding one or more debt service reserve funds, if necessary.

RECITALS

A. The Authority and the Cities desire to enter into this Agreement to provide economies of scale and cost savings to the nonprofit health facilities in their respective communities and hereby agree that the Authority shall act as the issuer of the Bonds for the refinancing of the Projects.

B. The Authority and the Cities acknowledge that they have authority to execute and deliver this Agreement pursuant to ORS 190.010 and ORS 441.575.

C. Projects refinanced with proceeds from the Bonds are primarily located at the following addresses:

St. Charles Prineville
384 SE Combs Flat Road
Prineville, OR 97754

St. Charles Madras
470 NE A St.
Madras, OR 97741

St. Charles Bend
2500 NE Neff Road
Bend, OR 97701

St. Charles Redmond
1253 NW Canal Blvd.
Redmond, OR 97756

NOW, THEREFORE, it is agreed by and between the Authority and the Cities, as follows:

1. Issuance by Authority. Pursuant to ORS 441.550(6) and 441.555 which provide that an authority may issue revenue bonds to accomplish its purposes and ORS 190.010 which provides that units of local government (including any authority, city or county) may enter into intergovernmental agreements and may agree to designate one of the parties to an intergovernmental agreement to perform any or all functions and activities that a party to the agreement has the authority to perform, the Authority and the Cities agree that the Authority will be the issuer of the Bonds for the Projects.

2. Further Authority. This Agreement is executed by the parties hereto to clearly identify the Authority as the issuer of the Bonds for the refinancing of the Projects and to further supplement the existing authority of the Authority to issue the Bonds for the Projects pursuant to ORS 441.550(8) which provides that an Authority has the power to loan money for the construction of and improvements to healthcare facilities and ORS 441.550(2) which provides that an Authority has the power to improve and equip healthcare facilities within or without the corporate limits of the municipality by which it was created.

3. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.

4. No Liability on the Bonds. The Cities and the Authority (collectively, the “parties”) to this Agreement shall not incur any liability with respect to the Bonds or any related documents or transactions by reason of executing this Agreement, adopting an order, or any other action taken in conjunction with this transaction. The Bonds are special nonrecourse obligations of the Authority payable solely from revenues or resources provided by Borrower or its affiliates and the Authority hereby agrees to cause the Borrower to indemnify the parties to this Agreement against any legal actions and to provide a copy of such indemnification to the Cities.

5. Counterparts. This Agreement may be executed in one or more counterparts each of which shall constitute an original.

6. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon.

IN WITNESS WHEREOF, the parties hereby execute and deliver this Intergovernmental Agreement effective as of the day and year first written above.

**THE HOSPITAL FACILITY AUTHORITY
OF DESCHUTES COUNTY, OREGON**

By:

Authorized Representative

Signed as of: May ____, 2022

[SIGNATURE PAGES OF THE CITIES FOLLOW]

THE CITY OF MADRAS, OREGON

By:

Signed as of: May ____, 2022

[SIGNATURE PAGE OF THE CITY OF PRINEVILLE FOLLOWS]

THE CITY OF PRINEVILLE, OREGON

By:

Signed as of: May ____, 2022