



# City of Prineville

387 NE THIRD STREET ♦ PRINEVILLE, OREGON 97754

## COMMUNITY DEVELOPMENT

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**Date:** February 12, 2019  
**To:** Prineville City Council  
**From:** Josh Smith, Planning Director

**Staff Report: Agreement with NeighborImpact to expend SEP funds for Air Quality.**

**Overview:**

The City was contacted by a business in the region that was fined by DEQ for violations. Due to the City's participation in the Air Quality Committee we are eligible to receive funds through the Supplemental Environmental Projects (SEP) program. This program allows the business or individual being fined by DEQ to direct that fine to a specific community for a specific purpose.

The Air Quality Committee does various individual projects with other grant money from DEQ; however, we do not have an established program that could use these funds efficiently and target the people with the most need. NeighborImpact has a Weatherization Assistance Program already active in our community with a proven track record and established criteria for whom may receive funds. Rather than spend the time and effort to create our own program I felt it was more efficient to use their program and pass through the money to be used in our community based on criteria listed under "NeighborImpact Obligations" in the agreement.

While these types of funds are rare and the money is given directly to the City, I could see the Air Quality Committee directing funds to this program from other DEQ grants in the future.

**Staff Recommendation:**

Staff recommends Council approve Resolution 1385, to allow the Mayor to sign the agreement negotiated between NeighborImpact and the City of Prineville.

**RESOLUTION NO. 1385  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING AN AGREEMENT WITH NEIGHBORIMPACT**

**Whereas**, City of Prineville (“City”) has received funds from the Oregon Department of Environmental Quality (“DEQ”) intended to address health and safety of wood stoves, including replacement or other weatherization measures to improve air quality for the community of Prineville.

**Whereas**, NeighborImpact operates the Weatherization Assistance Program (hereinafter “Program”), which receives federal and state funding to provide energy efficient measures on households whose income is below 200% of the Federal Poverty Level. NeighborImpact provides this program in Crook, Deschutes and Jefferson Counties, in addition to the Confederated Tribes of Warm Springs, and serves approximately 100 households per year.

**Whereas**, City is willing to fund the Program from the funds received from DEQ with financial obligations not to exceed \$19,320.00.

**Whereas**, City and NeighborImpact have negotiated an Agreement and City Staff believe it is in the best interest of the City to approve and execute the Agreement.

**Now, Therefore**, the City of Prineville resolves that the Agreement attached hereto is hereby approved and that the Mayor is authorized to sign such Agreement on behalf of the City.

Approved by the City Council this \_\_\_\_ day of February, 2019.

\_\_\_\_\_  
Steve Uffelman, Mayor

ATTEST:

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

## AGREEMENT

THIS AGREEMENT is made and entered into by and between the **City of Prineville**, an Oregon municipal corporation ("City") and **NeighborImpact**, an Oregon nonprofit Corporation ("NeighborImpact"), both herein referred to individually or collectively as "Party" or "Parties."

### Recitals

A. City has received funding from the Oregon Department of Environmental Quality ("DEQ") intended to address health and safety of wood stoves, including replacement or other weatherization measures to improve air quality for the community of Prineville.

B. NeighborImpact operates the Weatherization Assistance Program (hereinafter "Program"), which receives federal and state funding to provide energy efficient measures on households whose income is below 200% of the Federal Poverty Level. NeighborImpact provides this program in Crook, Deschutes and Jefferson Counties, in addition to the Confederated Tribes of Warm Springs, and serves approximately 100 households per year.

Now, Therefore, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

### Terms of Agreement

1. This Agreement provides NeighborImpact with funding to address health and safety of wood stoves, including replacement or other weatherization measure to improve air quality within the city limits of the Prineville.
2. The total financial obligation for City will not exceed \$19,320.00 during the term of this Agreement.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect until December 31, 2019.
4. This Agreement may be modified by mutual consent of both Parties and upon execution of amendments to this Agreement stating said modifications.

### City Obligations

1. City agrees to reimburse NeighborImpact up to \$19,320.00 for costs incurred for mitigation of safety issues in homes with old, unsafe or non-certified wood stoves within the city limits of Prineville, Oregon.
2. In consideration for the services performed, City agrees to pay NeighborImpact within thirty (30) days of receipt by City of an invoice for service, a maximum amount of \$19,320.00. Said maximum amount shall include reimbursement for all expenses. Travel expenses shall not be reimbursed.

3. City certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within City's current appropriation or limitation of the current budget.

4. City's contact for this Agreement is Josh Smith, Prineville City Planner, 387 NE Third Street, Prineville, OR 97754, 541.447.2367, jsmith@cityofprineville.com, or assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

### NeighborImpact Obligations

1. Identify income-qualified households with wood stoves within the city limits of Prineville, including the urban growth boundary.

2. Provide wood stove repairs, maintenance, and/or replacement of uncertified wood stoves and home weatherization assistance for Prineville residents in compliance with US Department of Energy home weatherization standards, and consistent with the rules, requirements, and limitations of the Oregon DEQ funding program.

3. NeighborImpact shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement.

4. NeighborImpact shall keep accurate cost accounting records. NeighborImpact shall prepare and submit itemized invoices for project costs directly to City's contact for review and approval. Such invoices will be in a form identifying the work, the agreement, the invoice number or the account number or both, and will itemize all expense for which reimbursement is claimed. Under no conditions shall City's obligations exceed \$19,320.00, including all expenses. Travel expenses shall not be reimbursed. Invoices shall be submitted to: City of Prineville, 387 NE Third Street, Prineville, OR 97754.

5. Provide to City, an interim report no later than six (6) months from the date of the effective date, detailing the types of projects concluded or under contract. This report should include a summary of the costs for the various types of projects conducted (e.g., wood stove change outs; home weatherization projects, etc.).

6. At the conclusion of the Agreement, provide to City a brief description of the various projects and summary table showing the amount of wood stoves changed out, the replacement devices (and types), home weatherization projects, and any other category of projects.

7. NeighborImpact shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.

8. All employers, including NeighborImpact, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. NeighborImpact shall ensure that each of its contractors complies with these requirements.

9. NeighborImpact shall indemnify, defend, save and hold harmless the City of Prineville, and its officers, employees, and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorney's fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of NeighborImpact or any of its officers, agents, employees or subcontractors ("Claims") It is the specific intention of the Parties that City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by NeighborImpact from and against any and all claims.

10. Any such indemnification shall also provide that neither NeighborImpact nor any attorney engaged by NeighborImpact shall defend any claim in the name of the City of Prineville, nor purport to act as legal representative of the City of Prineville, without the prior written consent of the City of Prineville Attorney. The City of Prineville may, at any time at its election assume its own defense and settlement in the event that it determines that NeighborImpact is prohibited from defending the City of Prineville, or that NeighborImpact is not adequately defending the City of Prineville's interests, or that an important governmental principal is at issue or that it is in the best interests of the City of Prineville to do so. The City of Prineville reserves all rights to pursue claims it may have against NeighborImpact if the City of Prineville elects to assume its own defense.

11. NeighborImpact acknowledges and agrees that City, and its duly authorized representatives, shall have access to the books, documents, papers, and records of NeighborImpact's which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by City.

12. NeighborImpact certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of NeighborImpact, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind NeighborImpact.

13. NeighborImpact's contact for this Project is Christina Zamora, 20310 Empire Avenue, #A100, Bend, Oregon 97701, 541.548.2380, christinaz@neighborimpact.org or assigned designee upon individual's absence. NeighborImpact shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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## General Provisions

1. Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.
2. 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.
3. Severability. If any clause, sentence or any other portion of the terms and conditions 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.
4. 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.
5. No Third-Party Beneficiaries. City and NeighborImpact 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.
6. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.
7. Entire Agreement. This Agreement represents the entire agreement between the parties relating to the subject matter hereof. This Agreement alone fully and completely expresses the agreement of the parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations or warranties, written or oral, except as set forth herein.
8. Attorneys. The parties agree and acknowledge that the Law Office of Jered Reid, LLC, has served as legal counsel to City in preparation of this Agreement, and does not represent any other party in connection with this Agreement. NeighborImpact agrees and acknowledges that NeighborImpact has consulted with NeighborImpact's own legal counsel or has knowingly waived NeighborImpact's right to do so. The rule of construction that a written instrument is construed against the party preparing or drafting such agreement will specifically not be applicable in the interpretation of this Agreement.
9. Interpretation. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the

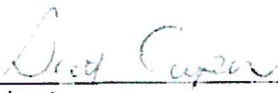
parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting.

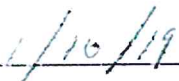
10. Counterparts. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed and effective as of the date first written below.

\_\_\_\_\_  
City of Prineville  
By: Steven P. Uffelman, It's Mayor

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
NeighborImpact  
By: Scott Cooper, It's Executive Director

  
\_\_\_\_\_  
Date