

RESOLUTION NO. 1290

A RESOLUTION APPROVING A FREQUENCY ACCESS INTERGOVERNMENTAL AGREEMENT ("IGA") BETWEEN THE CITY OF PRINEVILLE ("CITY") AND THE STATE OF OREGON ACTING BY AND THROUGH ITS DEPARTMENT OF TRANSPORTATION ("ODOT")

WHEREAS, City operates Crook County 911 Dispatch Center ("Center"), which manages communications for City and Crook County law enforcement personnel (collectively "Crook County Responders") and receives calls and dispatches Crook County Responders; and

WHEREAS, the Center, Crook County Responders, and the Oregon State Police ("OSP") currently share a radio frequency which allows OSP and Crook County Responders to talk directly to one another via radio; and

WHEREAS, OSP is changing radio frequencies which will eliminate Center's and Crook County Responders' ability to talk directly with OSP via radio; and

WHEREAS, ODOT, which oversees wireless communications for OSP, has agreed to access certain of Center's radio frequencies to allow direct radio communication between OSP, Center, and Crook County Responders by establishing base station locations for such radio frequencies; and

WHEREAS, City is required to license ODOT's fixed base locations for the agreed upon radio frequencies; and

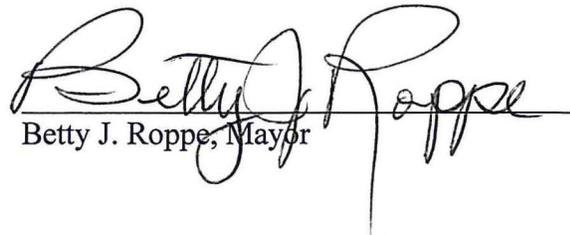
WHEREAS, City and ODOT have negotiated the attached IGA to allow City to license ODOT's fixed base locations in order to continue direct radio contact between OSP, Center and Crook County Responders; and

WHEREAS, City staff recommends approval of the IGA.

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

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

Dated this 10th day of May, 2016.


Betty J. Roppe, Mayor

ATTEST:


Lisa Morgan, City Recorder

Site Name: Powell Butte
County: Crook
Site Number: F70705

FREQUENCY ACCESS INTERGOVERNMENTAL AGREEMENT

This Frequency Access Agreement ("Agreement") is between the STATE OF OREGON, acting by and through its Department of Transportation ("Agency") and City of Prineville as owner and operate of the Prineville/Crook County 9-1-1 ("Local Government") each a "Party" and, together, the "Parties."

SECTION 1: RECITALS

- A. This Agreement is authorized by ORS [190.110](#).
- B. Agency and Local Government desire to provide mutual support to protect and safeguard lives.
- C. Agency desires to connect to Local Government frequencies through the use of a base station owned and controlled by Agency in a fixed location that will allow radio connectivity between State and Local Government for mutual aid purposes.

NOW THEREFORE, the Parties agree as follows:

SECTION 2: EFFECTIVE DATE, DURATION AND RENEWALS

- 2.1 This Agreement is effective on the date of the last signature and terminates on June 30, 2021 ("Initial Term") unless renewed in accordance with the renewal option below or unless terminated earlier in accordance with Section 6.
- 2.2 The Initial Term may be renewed for three (3) additional five (5) year terms ("Renewal Term") on the expiration of the preceding Initial Term upon notification from Agency to Local Government of its desire to renew on or before sixty (60) days prior to the expiration of the Initial Term. Except pursuant to Section 11 the Renewal Term shall be on the same terms and conditions as the Initial Term. The Initial Term and the Renewal Term are collectively referred to as the Term.

SECTION 3: AUTHORIZED REPRESENTATIVES

- 3.1 Agency's Authorized Representative is:
ODOT Wireless Communications Section Manager, or Designee
455 Airport Rd. SE, Building C
Salem, OR 97301
Office Phone: 503-986-2911
Fax: 503-986-2899
Email: WirelessWorkOrderDesk@ODOT.state.or.us
- 3.2 Local Government's Authorized Representative is:
City of Prineville/Crook County 9-1-1
387 NE 3rd
Prineville, OR 97754
Office Phone: 541-447-2374
Fax: 541-447-5628
Email: jwilson@cityofprineville.com

SECTION 4: RESPONSIBILITIES OF EACH PARTY

- 4.1 Local Government Responsibilities:
 - 4.1.1 Local Government authorizes Agency to access the frequencies and channels on Exhibit A FREQUENCY ACCESS AUTHORIZATION, attached hereto and by this reference made part hereof ("Authorized Frequency Access"). The Parties may modify Exhibit A without amendment to this Agreement by written notice to the other Party and written acknowledgement from the other Party. This authorization to access certain radio frequencies is subject to the FCC license covering the use of the frequencies. Local Government shall notify

Agency immediately if the license becomes invalid. Such notification shall be in writing and shall become effective thirty days from the date of mailing the notification.

- 4.1.2 Local Government shall license the Agency fixed base station for the frequencies and base station location identified on Exhibit A. ("Base Station Licensing") and invoice Agency for the actual cost of the Base Station Licensing. The current estimate of cost to Agency for the licensing required by this Subsection is \$210.00 (or less) per channel.
- 4.1.3 Local Government authorizes Agency to use the frequencies as part of a trunked land mobile radio talkgroup for the purposes of mutual aid between State and Local Government.
- 4.1.4 Local Government will notify Agency of any change to the Authorized Frequencies.

4.2 Agency Responsibilities:

- 4.2.1 Agency shall reimburse Local Government for the Base Station Licensing fees identified in Subsection 4.1.2 within forty-five (45) days from receipt of invoice from Local Government.
- 4.2.2 Agency shall be responsible for any agreements required for the installation of Agency equipment at the fixed base station location.
- 4.2.3 Agency agrees that the Authorized Frequency Access does not constitute an assignment or transfer of Local Government's frequency licenses.
- 4.2.4 Agency shall be responsible for any programming of its radios for use of Authorized Frequencies.
- 4.2.5 Agency will cooperate with Local Government to troubleshoot issues relating to the use of Authorized Frequencies.

SECTION 5: ADDITIONAL RESPONSIBILITIES OF THE PARTIES

- 5.1 Neither this authorization nor any expenditure of money or any other act shall provide any vested interest in the use of any frequency by Agency.
- 5.2 When using shared frequencies under this authorization, radio operations will be conducted under the control and supervision of Local Government.
- 5.3 In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local laws, regulations, administrative rules, and ordinances.
- 5.4 Repeated violations of either operational or technical FCC rules shall be cause for revocation of this authorization.
- 5.5 Agency retains the right to disconnect equipment providing the connectivity if the connection degrades performance of its land mobile radio system or in the event of an emergency. Agency will notify Local Government as soon as possible following a disconnect.
- 5.6 Each Party agrees to work cooperatively at its own expense to diagnose and repair its own equipment as it relates to the cause of any issue that leads to degradation of Agency's radio system. Once the issue is resolved to the mutual satisfaction of both Parties, Agency will restore the connection. If the Parties are unable to resolve the issue this Agreement may be terminated as provided in Section 6.

SECTION 6: TERMINATION

- 6.1 Parties may terminate this Agreement by mutual written consent at any time.
- 6.2 Either Party may terminate this Agreement with a 30-day written notice to the other Party.
- 6.3 Agency may terminate this Agreement effective upon delivery of written notice to Local Government, or at such later date as may be established by ODOT, under any of the following conditions:
 - 6.3.1 If Local Government fails to comply with any of the Local Government Obligations of this Agreement, and after receipt of written notice from Agency fails to correct such failures within ten (10) days or such longer period as Agency may authorize.

- 6.3.2 If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the frequency access authorized under this Agreement is prohibited.

SECTION 7: AVAILABLE FUNDS

The State of Oregon's obligations under this Agreement are conditioned upon ODOT receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Agency represents

SECTION 8: MUTUAL INDEMNIFICATION

- 8.1 To the extent permitted by Article XI, Section 7 and Section 10 of the Oregon Constitution and by the Oregon Tort Claims Act, each Party shall indemnify, within the limits of the Tort Claims Act, the other Party against liability for damage to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify the other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.
- 8.2 Notwithstanding the foregoing defense obligations, under the paragraph above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party. Each Party may, at any time at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

SECTION 9: CONTRIBUTION

- 9.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section 9 with respect to the Third Party Claim.
- 9.2 With respect to a Third Party Claim for which Agency is jointly liable with Local Government (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Local Government in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of Local Government on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of Local Government on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's

contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

9.3 With respect to a Third Party Claim for which Local Government is jointly liable with Agency (or would be if joined in the Third Party Claim), Local Government shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of Local Government on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Local Government on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Local Government's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 10: LIMITATION OF LIABILITY

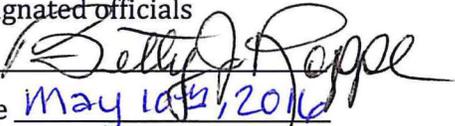
EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 9, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 11: AMENDMENT

No amendment of this Agreement is valid unless it is in writing, signed by the Parties

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

CITY OF PRINEVILLE, by and through its designated officials

By 
Date May 10th, 2016

Local Government Contact:

City of Prineville
James Wilson
387 NE 3rd
Prineville, OR 97754
Office Phone: 541-447-2374
Cell: 541-480-4532
Fax: 541-447-5628
Email: jwilson@cityofprineville.com

STATE OF OREGON, by and through its Department of Transportation

By _____
Maintenance & Operations Engineer
Date _____

APPROVAL RECOMMENDED

By _____
Date _____

Legal Sufficiency: NA

ODOT Contact:

ODOT Wireless Communications Section
455 Airport Road, Building C
Salem, Oregon 97301
WirelessWorkorderDesk@ODOT.state.or.us
24-hour Contact: 503-986-2911