

RESOLUTION NO. 1196

A RESOLUTION APPROVING SPONSORSHIP BY THE STATE OF OREGON AND OTHER DOCUMENTS RELATED TO AIRPORT RUNWAY, TAXIWAY, AND APRON REHABILITATION

WHEREAS, THE City of Prineville (hereafter "City") is managing the Prineville/Crook County Airport ("Airport") pursuant to an Intergovernmental Agreement with Crook County; and

WHEREAS, City has submitted an application to the Federal Aviation Administration (hereafter "FAA") to rehabilitate the Airport's apron, taxiway, and runway pavement, including crack sealing, patching, and sealing; and

WHEREAS, in order to receive funds for the above described project the City is required to consent to sponsorship of the project by the State of Oregon; and

WHEREAS, the City is also required to provide assurances and certifications regarding the project application submitted to the FAA;

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

1. The State Sponsorship Agreement and other attached documents are approved.
2. City hereby consents to sponsorship by the State of Oregon of the above-described project.
3. The City Manager and/or Mayor are authorized to execute the State Sponsorship Agreement attached to this Resolution and the Airport Manager is authorized to sign the attached Certifications and other documents related to the project when appropriate.

Passed by the City Council this _____ day of July, 2012.

Stephen P. Uffleman, Council President

ATTEST:

Lisa Morgan, City Recorder

INTERGOVERNMENTAL AGREEMENT
Prineville Airport
2012 Statewide Airport Pavement Maintenance Program
Using Non-Primary Entitlement Funds for Local Match

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, on behalf of the Oregon Department of Aviation, hereinafter referred to as "State," and the City of Prineville, acting by and through its elected officials, hereinafter referred to as "Airport Sponsor," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Pursuant to Oregon Laws 2011, Chapter 630, Section 29, the Oregon State Legislature authorized the Oregon Department of Transportation (ODOT) to provide central business operating services for the Oregon Department of Aviation (ODA), including purchasing, leasing and contracting services.
3. By the authority granted in Interagency Partnership – Program Administration Agreement No. 28067, between ODA and ODOT, incorporated herein and by this reference made a part hereof, ODOT may enter into this Agreement for the performance of work on Projects.
4. Prineville Airport is a public use airport owned and operated by Airport Sponsor.
5. ORS 836.072 provides State the authority to establish and fund a program to maintain and preserve the pavements used for runways, taxiways, and aircraft parking areas at public use airports in this state.
6. The Statewide Airport Pavement Maintenance Program (PMP) is a state-funded program to assist airports in undertaking pavement maintenance needed for the following reasons:
 - a. To address stop gap maintenance projects for safety reasons.
 - b. There is limited or no funding available at many smaller airports to address pavement maintenance.
 - c. Pavement preventive maintenance is the most cost-effective means to helping preserve the system's airports pavements.
7. The PMP protects Oregon's airport investments by preserving airport pavement consistent with the goals of the 2007 Oregon Aviation Plan and funds non-Federal

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Aviation Administration (FAA) eligible pavement preventive maintenance projects, including crack sealing, patching and fog seals.

8. Prineville Airport is identified by the 2007 Oregon Aviation Plan as a Category IV airport. This airport supports local transportation needs and special use aviation activities.
9. Airport Sponsor or its controlling jurisdiction has established airport overlay zoning as required per Oregon Administrative Rule (OAR) Chapter 660, Division 013, Airport Planning. If OAR 660-013 has not yet been implemented, Airport Sponsor or its controlling jurisdiction must provide an action plan to establish compliance within the next three (3) years to remain eligible for the PMP.

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. Under such authority, State and Airport Sponsor agree that State or its contractor shall perform pavement maintenance work at the Prineville Airport, described in Exhibit A, hereinafter referred to as "Project." Project description and budget are further described in Exhibit A.
2. Project cost is estimated at \$114,310.42 in state PMP and FAA entitlement funds, which is subject to change. The state PMP funds are estimated at \$102,879.38. Airport Sponsor shall contribute ten percent (10%) in FAA entitlement funds, estimated at \$11,431.04 toward the total Project cost.
3. For this Project, the Airport Sponsor's contribution of matching funds is provided by an FAA Non-Primary Airport Entitlement grant and Airport Sponsor hereby authorizes State to draw down those funds as provided in State Obligations, Paragraph 5 of this Agreement. Airport Sponsor and State agree that the FAA grant funds will be sufficient to fund the entire matching obligation and no local Airport Sponsor funds need to be contributed.
4. This term of this Agreement is effective on the date all required signatures are obtained and shall terminate upon completion of the Project and State receiving Airport Sponsor's required matching funds from the FAA, or two (2) calendar years following the date all required signatures are obtained, whichever occurs sooner.

AIRPORT SPONSOR OBLIGATIONS

1. Airport Sponsor has established and shall maintain a documented pavement maintenance program on a three (3) year inspection cycle in accordance with the State pavement inspection cycle.
2. In consideration for receipt of program funds, Airport Sponsor agrees to keep the airport open for public use for a minimum of twenty (20) years from the date of this

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Agreement. If this condition is not met, Airport Sponsor shall immediately reimburse all State funds used on Project to State. The amount reimbursed shall be the total amount of State funds divided by twenty (20), times the difference between twenty (20) and the number of years that the Airport remained open to the public after the funds were distributed.

3. The Project shall not provide pavement maintenance for any areas of Airport that are private or exclusive use areas.
4. Airport Sponsor shall communicate through State with State's contractor regarding contract administration and scope of the Project.
5. Airport Sponsor agrees that, if problems with State's contractor arise during construction, it shall communicate these concerns to State, which shall be responsible for resolving these concerns.
6. Airport Sponsor shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Airport Sponsor expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. Airport Sponsor shall not enter into any subcontracts for any of the work to be performed by Airport Sponsor under this Agreement without obtaining prior written approval from State.
8. Airport Sponsor 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.
9. All employers, including Airport Sponsor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the 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. Airport Sponsor shall ensure that each of its subcontractors complies with these requirements.
10. Airport Sponsor representative shall be available on arrival of State's contractor work crews to meet with Project inspector to review work to be completed and to ensure

appropriate NOTAMs (Notice to Airmen) have been issued prior to commencement of work.

11. Airport Sponsor acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Airport Sponsor 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 (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
12. Airport Sponsor certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Airport Sponsor, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Airport Sponsor.
13. Airport Sponsor's Project Manager for this Project is Prineville Airport Manager, Kelly Coffelt, City of Prineville, 4585 SW Airport Road, Prineville, OR 97754, 541-416-0805, kcoffelt@cityofprineville.com, or assigned designee upon individual's absence. Airport Sponsor shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall develop all contract specifications and bid documents for the Project.
2. State shall negotiate with a selected engineer for a contract with State that includes the required price and services necessary to complete the Project.
3. State shall advertise for construction bids and intends to award a construction contract with State based on the lowest responsible bid received.
4. State or its contractor shall design and construct the Project in accordance with applicable FAA and State design standards and regulations.
5. State's contracted engineer shall inspect Project to ensure conformity with specifications and to verify quantities for contract payments.
6. State shall draw down from Airport Sponsor's FAA (Federal Aviation Administration) Non-Primary Account to obtain Airport Sponsor's local matching funds based on initial and final construction and engineering costs. State shall pay the remainder of the construction and engineering costs required under the contract.
7. State's Project Manager for this Project is Heather Peck, Aviation Program Manager, ODA - 3040 25th Street SE, Salem, OR 97302, 503-378-3168, Heather.Peck@state.or.us, or assigned designee upon individual's absence. State

shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. State may terminate this Agreement effective upon delivery of written notice to Airport Sponsor, or at such later date as may be established by State under any of the following conditions:
 - a. If Airport Sponsor fails to provide payment of its share of the cost of the Project.
 - b. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - c. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. 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 ("Third Party Claim") against State or Airport Sponsor with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. 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 a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Airport Sponsor (or would be if joined in the Third Party Claim), State 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 Airport Sponsor in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Airport Sponsor on the other hand in connection with the events

which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Airport Sponsor 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

6. With respect to a Third Party Claim for which Airport Sponsor is jointly liable with State (or would be if joined in the Third Party Claim), Airport Sponsor 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 State in such proportion as is appropriate to reflect the relative fault of Airport Sponsor on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Airport Sponsor on the one hand and of State 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. Airport Sponsor's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
7. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
8. This Agreement, and attached exhibit constitute the entire Agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

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

The Director of the Department of Aviation is authorized to act on behalf of State in approving and executing this Agreement.

The City of Prineville, by and through its elected officials

By _____

Title _____

By _____

Title _____

Date _____

Airport Sponsor Contact:
Prineville Airport Manager
Kelly Coffelt
City of Prineville
4585 SW Airport Road
Prineville, Oregon 97754
541-416-0805
kcoffelt@cityofprineville.com

STATE OF OREGON, by and through its Department of Transportation, on behalf of the Oregon Department of Aviation

By _____
Director of Aviation

Date _____

State Contact:
Heather Peck, Aviation Program Manager
ODA
3040 25th Street SE
Salem, OR 97302
503-378-3168
Heather.Peck@state.or.us

**EXHIBIT A
 PRINEVILLE AIRPORT**

Technical Specifications of Project:

No.	Bid Item	Quantity	Unit	Unit Price	Extended Price
C1	Mobilization	1	LS	\$ 5,000.00	\$ 5,000.00
C2	Crack Sealing	22,726	LF	\$ 0.75	\$ 17,044.50
C3	A.C. Patching -Joint Repair	4,338	LF	\$ 10.00	\$ 43,380.00
C4	Reseal Wide Crack Repair	405	LF	\$ 1.00	\$ 405.00
C5	A.C. Patching	257	SF	\$ 15.00	\$ 3,855.00
C6	Pavement Marking	2,774	SF	\$ 0.75	\$ 2,080.50
	Subtotal				\$ 71,765.00
	Contingency -allow 10%	1	LS	\$ 7,176.50	\$ 7,176.50
	Engineering	1	LS	\$ 35,368.92	\$ 35,368.92
	Total				\$ 114,310.42

10% Match \$11,431.04

This Exhibit is the Engineer's opinion of probable cost for the subject Project at completion of Final Design. It will be updated at the following milestones: Bid Results (post bid) and Contract completion (post-construction). Until contract completion, it is only an estimate.