

# Council Business Meeting

June 20, 2017

**Title:** Oregon Department of Aviation Intergovernmental Agreement for Ashland Municipal Airport Pavement Maintenance Program  
**From:** Scott A. Fleury Engineering Services Manager  
[Scott.fleury@ashland.or.us](mailto:Scott.fleury@ashland.or.us)

## **Summary:**

Council is asked to approve an intergovernmental agreement (IGA) with the Oregon Department of Aviation (ODA) for the 2017 pavement maintenance program (PMP) associated with the Ashland Municipal Airport. The Oregon Department of Aviation assists general aviation airports through a PMP to meet federal requirements for onsite maintenance of pavement systems.

## **Actions, Options, or Potential Motions:**

Move to approve IGA number 32147 for the 2017 Statewide Airport Pavement Maintenance Program.

## **Staff Recommendation:**

Staff recommends Council approve the IGA for the 2017 statewide pavement maintenance program. Staff also recommends the Council allow the City Administrator approval to sign future IGA's with ODA for pavement maintenance at the Ashland Municipal Airport so long as they are consistent with the current IGA's requirements and require no City expenditures via the airport fund.

## **Resource Requirements:**

Project cost is estimated at \$200,051.58 in state PMP and Federal Aviation Administration (FAA) entitlement funds. The state PMP funds are estimated at \$180,046.42. For this project the Airport Sponsor (City) has **no local match contribution**. The current FAA entitlement funds shall contribute ten percent (10%) towards the match requirement, estimated at \$20,005.16. A budget summary for the project is provided in Exhibit A of the IGA.

## **Policies, Plans and Goals Supported:**

1) Strengthen the Ashland municipal airport as an enterprise

## **Background and Additional Information:**

Ashland Municipal Airport is part of a national infrastructure of airports that is supported through federal and state sponsored monies. ODA manages a program in which they contract for design and construction of pavement related improvements or repairs for participating Oregon Airports. The PMP program is on a three year cycle for participating airports with the last cycle for Ashland occurring in 2014. The statewide airport PMP is a state funded program to assist airports in undertaking pavement maintenance such as crack sealing, patching and slurry sealing. This program will protect Oregon's investments by preserving airport pavement consistent with the goals of the 2007 Oregon Aviation Plan.

ODA contacts each airport sponsor to determine if they will opt in or out for the current project season. ODA, PMP projects for the City of Ashland Airport typically requires 10% in matching funds. This match is taken directly by ODA from the Federal Aviation Administration (FAA) allocation of the City's non-primary entitlement monies. Annually Ashland Municipal Airport receives \$150,000 in non-primary entitlement money to use towards approved airport projects, including pavement maintenance projects. This year the FAA is contributing the match directly and the City will not be required to supply any matching funds.

With the City's approval, ODA develops (through engineering consultants) all required engineering and construction related documentation for each airports maintenance projects. In addition, ODA performs the necessary construction inspection and manages all funds associated with the project. This year the PMP recommends crack sealing, slurry seal, asphalt patching and pavement marking of pavement at the airport.

**Attachments:**

IGA 32147

**INTERGOVERNMENTAL AGREEMENT**  
**Ashland Municipal Airport**  
**2017 Statewide Airport Pavement Maintenance Program**  
**No Local Match – PMP ODA ORV FAA Entitlement Funds Only**

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Aviation, hereinafter referred to as “State,” and City of Ashland 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. Ashland Municipal Airport is a public use airport owned and operated by City of Ashland.
3. 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.
4. 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.
5. The PMP protects Oregon’s airport investments by preserving airport pavement consistent with the goals of the 2007 Oregon Aviation Plan and funds pavement preventive maintenance projects, including crack sealing, patching and fog seals.
6. Ashland Municipal Airport is identified by the 2007 Oregon Aviation Plan as a Category III airport. These airports support a wide range of general aviation users for large service areas in outlying areas of Oregon. Many also accommodate seasonal regional fire response activities.
7. 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 Ashland Municipal 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 \$200,051.58 in state PMP and FAA entitlement funds, which is subject to change. The state PMP funds are estimated at \$180,046.42. For this specific project the Airport Sponsor has no local match contribution. The current ODA ORV FAA entitlement funds shall contribute ten percent (10%) in FAA entitlement funds for this project, estimated at \$20,005.16 toward the total Project cost.
3. For this Project, the required contribution of matching funds is provided by an FAA Non-Primary Airport Entitlement grant and ODA hereby agrees to draw down those funds in lieu of an entitlement transfer directly from the participating sponsor, as provided in State Obligations, Paragraph 6 of this Agreement, ODA ORV entitlement funds will be used. The State confirms that the current FAA grant funds in the ORV entitlement balance 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.

### **AIRPORT SPONSOR OBLIGATIONS**

1. 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 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.
2. The Project shall not provide pavement maintenance for any areas of the Airport that are private or exclusive use areas.
3. Airport Sponsor shall communicate through State with State's contractor regarding contract administration and scope of the Project.

4. 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.
5. 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.
6. 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.
7. 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 completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. 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.
9. Airport Sponsor's Project Manager for this Project is Scott Fleury, City of Ashland, 20 E Main St., Ashland, OR 97520 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 ODA ORV FAA Non-Primary Account to obtain Airport Sponsor's local matching funds based on initial and final construction and engineering costs. State PMP Program 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 25<sup>th</sup> Street SE, Salem, OR 97302, 503-378-3168, heather.peck@aviation.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 State fails to receive state and/or FAA 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.
  - b. 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. State and Airport Sponsor hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
8. 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.

9. 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.
  
10. 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.

State/Airport Sponsor  
Agreement No. 32147

**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 or his designee is authorized to act on behalf of State in approving and executing this Agreement.

**City of Ashland** by and through its elected officials

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**Airport Sponsor Contact:**

Scott Fleury  
City of Ashland  
20 E Main St.  
Ashland, OR 97520  
(541)-552-2416  
fleury@ashland.or.us

**STATE OF OREGON**, by and through its Oregon Department of Aviation

By \_\_\_\_\_  
Director of Aviation

Date \_\_\_\_\_

**State Contact:**

Heather Peck, Aviation Program Manager  
Oregon Department of Aviation  
3040 25<sup>th</sup> Street SE  
Salem, OR 97302  
503-378-3168  
heather.peck@aviation.state.or.us

**APPROVED AS TO LEGAL SUFFICIENCY**

By Lucinda Jackson via Email  
Department of Justice

Date 5/31/17

State/Airport Sponsor  
 Agreement No. 32147

Exhibit A

Pavement Maintenance Program - 2017  
 Oregon Department of Aviation

**Eastern Airports - Schedule A: Ashland Municipal**

Program Eligible Work (ODA funded with Local Match)

No.	Bid Item	Quantity	Unit	Unit Price	Extended Price
A1	Mobilization	1	LS	\$ 5,000.00	\$ 5,000.00
A2	Crack Sealing	2,831	LF	\$ 1.25	\$ 3,538.75
A3	Joint Repair	47	LF	\$ 25.00	\$ 1,175.00
A4	AC Patching	1,582	SF	\$ 20.00	\$ 31,640.00
A5	Remove Existing Markings	6,121	SF	\$ 1.25	\$ 7,651.25
A6	Pavement Marking	7,261	SF	\$ 1.00	\$ 7,261.00
A7	Surface Preparation	1	LS	\$ 2,500.00	\$ 2,500.00
A8	Slurry Seal, Type 1	30,468	SY	\$ 2.50	\$ 76,170.00
<b>Subtotal</b>					<b>\$ 134,936.00</b>
	Contingency - allow 10%	1	LS	\$ 13,493.60	\$ 13,493.60
	Engineering	1	LS	\$ 51,621.98	\$ 51,621.98
<b>Total</b>					<b>\$ 200,051.58</b>

Airport Sponsor Funded Work (100% Local Funds) 10% Match \$ 20,005.16

No.	Bid Item	Quantity	Unit	Unit Price	Extended Price
	--No Sponsor Funded Work Elected--				
<b>Subtotal</b>					<b>\$ -</b>
	Contingency - allow 10%	1	LS	\$ -	\$ -
	Engineering	1	LS	\$ -	\$ -
<b>Total</b>					<b>\$ -</b>

100% Match \$

Project Summary of Sponsor Costs

Type of Work	Total Cost
Program Eligible Work	\$ 20,005.16
Airport Sponsor Funded Work	\$ -
<b>Total Sponsor Costs</b>	<b>\$ 20,005.16</b>

Qualifier: 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.