

GRANT AGREEMENT
CRITICAL OREGON AIRPORT RELIEF PROGRAM
INSERT AIRPORT NAME
Project Name: INSERT PROJECT NAME

THIS AGREEMENT is made and entered into by and between the **State of Oregon**, acting by and through its Department of Aviation, (“ODA”), and **INSERT RECIPIENT NAME** (Oregon business registry no. ____), a public [private] entity acting by and through its elected officials, (“Recipient”), (ODA and Recipient, collectively the “Parties”).

BACKGROUND

A. The State of Oregon has established the Aviation System Action Program (the “Program”) pursuant to 2015 Ore. Laws Ch. 700 (H.B. 2075).

B. Among the purposes of the Program are:

- i. Assisting airports in Oregon with match requirements for Federal Aviation Administration Airport Improvement Grants;
- ii. Making grants for emergency preparedness and infrastructure projects in accordance with the Oregon Resilience Plan or the Oregon Aviation Plan; and
- iii. Making grants for services critical or essential to aviation; aviation-related business development; and airport development for local economic development.

C. Recipient applied for a grant through the Program to undertake the project described in Exhibit A, attached and incorporated by this reference (the “Project”). The Project will benefit the **INSERT AIRPORT NAME** (the “Airport”).

D. ODA approved a grant in the maximum amount of **\$INSERT MAX GRANT AMOUNT** and is willing to provide the grant to Recipient for the Project on the terms and conditions of this Agreement.

TERMS OF AGREEMENT

1. Effective Date. This Agreement shall become effective on the date that it is fully executed and approved as required by applicable law (the “Effective Date”). Unless otherwise terminated or extended, Grant Funds (as defined in Section 3.b. below) shall be available for Eligible Costs (as defined in Section 5.b. below) incurred on or after **INSERT BOARD APPROVAL DATE** (the “Board Approval Date”) through the date that is two years after the Effective Date (the “Availability Termination Date”). No Grant Funds are available for any expenditure before the Board Approval Date or after the Availability Termination Date.

2. Agreement Documents. This Agreement consists of this document and the following documents:

- a. Exhibit A: **Project Description, Milestones, Schedule and Budget**
- b. Exhibit B: **Application and documents provided by Recipient to ODA prior to the execution of this Agreement**
- c. Exhibit C: **Insurance Requirements**

Exhibits A, B, and C are incorporated by reference into this Agreement and are attached hereto. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: This Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. Project Cost; Grant Funds; Match; Reimbursement Rate.

- a. **Project Cost.** The total Project Cost is estimated at **\$INSERT PROJECT COSTS**.
- b. **Grant Funds; Match.** In accordance with the terms and conditions of this Agreement, ODA shall provide Recipient grant funds in an amount not to exceed **\$INSERT MAX GRANT AMOUNT** or 90% of the total Project Cost, whichever is less (the “Grant Funds”). As its required match, Recipient shall pay all other Eligible Costs as calculated in Exhibit A, Table 2 (Funding Breakdown).
- c. **Reimbursement Rate.** ODA shall reimburse Recipient for 90% of the amount of Eligible Costs, provided that in no event will the total amount reimbursed exceed the sum of **\$ INSERT MAX GRANT AMOUNT**. ODA will withhold five percent (5%) from each disbursement as provided in Section 9.c.

4. Project Implementation and Completion. Recipient shall implement and complete the project in accordance with the plans and specifications and all documents or plans included in Exhibit A, incorporated herein, as they may be revised or modified with the approval of ODA. In accordance with the provisions of Section 6, Recipient shall notify ODA in writing of all changes in the project activities prior to performing any changes and shall not perform any changes without written prior approval from ODA.

5. Grant Funds.

- a. **Use of Grant Funds; Grant Award; No Exclusive Right.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODA approves such changes pursuant to the Project Change Procedures in Section 6 or pursuant to the Amendment provisions of Section 15.d.
 - i. Recipient agrees to substantially initiate the Project within six (6) months of the Effective Date.
 - ii. In accepting the Grant Funds, the Recipient, its contractors, lessees, and their successors and assigns covenant not to sell, transfer, or convey any exclusive right to use the Airport, its improvements or its services at any time during the 20 year-period

following the Effective Date.

b. Eligible Costs. The Grant Funds may only be used for Recipient's actual costs to develop the Project to the extent those costs are (a) reasonable, necessary and directly used for the Project; (b) permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by ODA, to be capitalized to an asset that is part of the Project; and (c) eligible or permitted uses of the Grant Funds under State of Oregon law and this Agreement ("Eligible Costs"). Any payment of principal due under any interim financing agreement associated with or executed for the Project will be deemed an Eligible Cost only if ODA (i) specifically determines the costs are reasonable, necessary and directly used for the Project as provided by this subsection; and (ii) provides the Agency's prior written consent before any claim of reimbursement is submitted.

c. Ineligible Costs. The Grant Funds may not be used for any operating or working capital expenditures that Recipient charges to the Project; or for any maintenance costs of the Project; or for any payments made to related parties (as described in Section 13.b. or as prohibited under Section 13.c.) or for any loans or grants to be made to third parties, except as provided in Section 5.b.

d. Request for Reimbursements. ODA will disburse Grant Funds to the Recipient on an expense reimbursement or cost-incurred basis. To obtain reimbursement for Eligible Costs, Recipient shall submit to ODA's Program Coordinators no more frequently than monthly a Request for Reimbursement (Form 109-007), the form of which is incorporated by reference, together with (i) the Milestone Progress Report for that month as required by Section 8.a. and (ii) invoices and other supporting documentation that ODA may request in its reasonable discretion. In no case will ODA reimburse a Request for Reimbursement that is not accompanied with the Milestone Progress Report required by Section 8.a.

6. Project Change Procedures.

a. If Recipient either seeks a change in Project scope or anticipates that a Project milestone will be delayed by more than ninety (90) days from the milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 109-009) to ODA's Project Coordinators as soon as Recipient becomes aware of any possible change in Project scope or delay. The Request for Change Order must be submitted prior to the milestone completion date shown in Table 1 of Exhibit A.

b. Recipient shall not proceed with any changes to Project scope or delivery schedule prior to the execution of an amendment to this Agreement executed in response to ODA's approval of a Request for Change Order. A Request for Change Order may be rejected at the discretion of ODA. ODA may choose to request review by the State Aviation Board.

7. Inspection. ODA may inspect the Project on a periodic basis and at Project completion. ODA may conduct any or all of its Project inspections by an onsite walkthrough inspection or, in lieu of a walkthrough inspection, by reviewing date-stamped photographs or video or by using other means satisfactory to ODA in its sole discretion.

8. Reporting.

- a. Milestone Progress Reports.** On or before the 15th of every month until the Project completion date or the Availability Termination Date, whichever is earlier, Recipient shall submit to ODA's Program Coordinators a completed Milestone Progress Report (Form 109-008), the form of which is incorporated by reference, that reports the Project's progress for the preceding month.
- b. Final Report.** Within ninety (90) days from the Project completion date, Recipient shall submit a written report (the "Final Report") to ODA's Program Coordinators that includes the following information at the minimum:
- i. The number of jobs created or retained both during construction and after Project completion as a direct result of the Project;
 - ii. The number of jobs projected in the Recipient's Project application;
 - iii. Data on the methodology that measures the Project's success as described in the grant application.

Recipient's obligation to provide this report survives expiration of this Agreement. Recipient shall use Final Report form, which Recipient must also sign.

9. Disbursement and Recovery of Grant.

- a. Disbursement Generally.** ODA shall reimburse Eligible Costs that Recipient incurs, subject to Section 5, up to the maximum amount of Grant Funds provided in Section 3. Reimbursements shall be made by ODA within forty-five (45) days of ODA's approval of a Request for Reimbursement from Recipient.
- b. Conditions Precedent to Disbursement.** ODA's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i. ODA has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODA, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement, including without limitation completion of all prerequisites for reimbursement.
 - iii. Recipient has provided to ODA a Request for Reimbursement, together with a Milestone Progress Report, in accordance with Section 5. Recipient must submit its final Request for Reimbursement following completion of the Project and no later than ninety (90) days after the earlier of completion of the Project or the Availability Termination Date. Failure to submit the final Request for Reimbursement within

ninety (90) days after the completion of the Project or the Availability Termination Date could result in non-payment.

- iv. Recipient agrees to submit an IRS form W-9 form, and any other required documentation requested by ODA in order to input Recipient into ODA's financial system for the disbursement of Grant Funds.

c. Retainage. ODA will withhold five percent (5%) from each disbursement for the duration of the Project schedule (the "Retainage"). ODA will release the cumulative Retainage to Recipient only after ODA certifies the Project as complete.

d. General Right to withhold Payments. ODA reserves the right to withhold payment of funds if there are unresolved audit findings, or inadequate information concerning Recipient's Project activities. ODA reserves the right to reallocate any portion of the Grant Funds that ODA estimates the Recipient will use.

e. Recovery of Grant Funds. Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of the Availability Termination Date or termination of this Agreement must be returned to ODA. Recipient shall return all Misexpended Funds to ODA promptly after ODA's written demand and no later than fifteen (15) days after ODA's written demand. Recipient shall return all unexpended Grant Funds to ODA within fourteen (14) days after the earlier of the Availability Termination Date or termination of this Agreement.

10. General Representations and Warranties of Recipient. Recipient represents and warrants to ODA as follows:

a. Organization and Authority. Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Solicitation. Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

d. No Debarment. Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODA immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

e. Compliance with Oregon Taxes, Fees and Assessments. Recipient is, to the best of the undersigned's knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

11. Special Warranty of Recipient To Maintain and Operate the Airport and Segregate Income.

a. Recipient warrants that it shall maintain and operate the Airport as an airport in a usable, safe, and orderly manner at all times for a period of at least 20 years from the Effective Date. If this condition is not met, Recipient shall immediately reimburse to ODA all Grant Funds in an amount equal to the total amount of Grant Funds provided for the Project, divided by twenty (20), multiplied by the difference between twenty (20) and the number of years that the Airport remained open after the Effective Date. By way of example only, if \$100,000 in Grant Funds are distributed and Recipient closes the Airport after only seven years of the required 20-year operating period, then Recipient must reimburse ODA \$65,000 of Grant Funds ($\$100,000/20 \text{ years} = \$5,000$; $\$5,000 \times 13 \text{ years} = \$65,000$).

b. Recipient also warrants and agrees that all income derived from the Airport shall be deposited into a segregated account for a period of at least 20 years from the Effective Date, and these funds shall be used only for the operation, maintenance or capital improvement of the Airport.

12. Records Maintenance and Access; Audit.

a. Records, Access to Records and Facilities. Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODA, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits

and examinations. In addition, ODA, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODA, and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient. Nothing herein is meant to be or will be interpreted to be a waiver of any protection against disclosure of records or communication otherwise provided by law, including protection provided by attorney-client privilege or the attorney work product doctrine.

b. Retention of Records. Recipient shall retain and keep accessible all books, documents, papers, and records, that are directly related to this Agreement, the funds or the Project until the date that is six (6) years following the Availability Termination Date.

c. Expenditure Records. Recipient shall document the expenditure of all Grant Funds disbursed by ODA under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODA to verify how the Grant moneys were expended.

This Section 12 shall survive any expiration or termination of this Agreement.

13. Recipient Subagreements and Procurements.

a. Subagreements generally. Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, “subagreements”) for performance of the Project.

- i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
- ii. Recipient shall require all of its contractors performing work under this Agreement to name ODA as a third party beneficiary of Recipient’s subagreement with the Contractor and to name ODA as an additional obligee on contractors’ bonds.
- iii. Upon ODA’s request, Recipient shall provide ODA with a copy of any signed subagreement, as well as identify all owners of the sub-recipient, contractor, or subcontractor with whom Recipient entered into the subagreement. Recipient must report to ODA any substantial breach of a term or condition of a subagreement relating to this Agreement within ten (10) days of Recipient discovering the breach.

b. Conflicts of Interest; Private Recipients. If Recipient is not a public body, as defined in ORS 174.109, Recipient shall not award, enter into, or otherwise participate in any subagreement if a conflict of interest, real or apparent, would arise. Such a conflict arises when any of the following would be a party to the subagreement:

- i. An employee, officer, or agent of the Recipient (“Recipient Person”);
 - ii. A Recipient Person’s spouse, domestic partner, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law;
 - iii. The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse or domestic partner of a Recipient Person;
 - iv. Any individual for whom a Recipient Person has a legal support obligation; or
 - v. An organization in which any of the individuals identified in (i) through (iv) is a partner, member, or employee or from which the individual otherwise receives a financial benefit.
- c. Conflicts of Interest; Public Recipients.** If Recipient is a public body, as defined in ORS 174.109, Recipient’s public officials shall comply with Oregon’s government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.
- d. Subagreement indemnity; insurance.**
- i. *Recipient shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in Oregon Revised Statute (ORS) 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, the Oregon Aviation Board and its members, the Oregon Department of Aviation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys’ fees, arising from a tort, as now or hereafter defined in ORS 30.260 (“Claims”), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Recipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that ODA shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of ODA, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.*
 - ii. Any such indemnification shall also provide that neither Recipient’s contractor or subcontractor, nor any attorney engaged by Recipient’s contractor or subcontractor, shall defend any claim in the name the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient’s contractor is prohibited from defending the State of Oregon, or that Recipient’s contractor is not adequately defending the State of Oregon’s interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Recipient’s contractor if the State of Oregon elects to assume its own defense.

iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

e. Procurements for Public Recipients. If Recipient is a public body, as defined in ORS 174.109, Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, ensuring that:

- i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
- ii. all procurement transactions are conducted in a manner providing full and open competition; and
- iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements).

f. Procurements for Private Recipients. If Recipient is not a public body, as defined in ORS 174.109:

- i. For procurements over \$25,000, Recipient must solicit quotes or bids from at least three sources. If three quotes or bids are not reasonably available, fewer will suffice. In either case, Recipient shall retain, and provide upon ODA's request, documentation of the bidding and selection process for all procurements over \$25,000, including Recipient's efforts to obtain the quotes or bids.
- ii. Recipient may not artificially divide or fragment a procurement so as to reduce the procurement amount below the \$25,000 threshold designated by this section.

14. Termination and ODA Rights Upon Termination.

a. Mutual Termination. This Agreement may be terminated by mutual written consent of the Parties.

b. Termination by ODA. ODA may terminate this Agreement effective upon delivery of written notice to Recipient, or at such later date as may be established by ODA, under any of the following circumstances:

- i. If Recipient fails to pay its share of the Eligible Costs;
- ii. If Recipient fails to provide services or funds called for by this Agreement within the time specified herein;

iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODA delivers Recipient written notice specifying such failure. The ODA may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;

iv. If any false or misleading representation is made by or on behalf of Recipient in this Agreement or in any document provided by Recipient related to this Agreement or the Project;

v. If ODA fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODA, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;

vi. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that the Project work under this Agreement is prohibited or if ODA is prohibited from paying for such Project work from the planned funding source; or

vii. If, in the sole opinion of ODA, the Project would not produce results that are commensurate with the further expenditure of funds.

c. ODA's Rights upon Termination. Upon termination under Section 14(a) or Section 14(b) above, ODA may:

i. Terminate ODA's commitment and obligation to make any further disbursements of Grant Funds;

ii. Require Recipient to immediately repay ODA all disbursed Grant Funds; and

iii. For termination on any of the grounds set forth in Section 14(b)(i)-(iv), bar Recipient from applying to ODA for future assistance.

ODA's remedies are cumulative and are in addition to any other rights or remedies available at law or in equity.

15. GENERAL PROVISIONS

a. Contribution.

i. 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 ODA or Recipient 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.
- ii. With respect to a Third Party Claim for which ODA is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODA 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 Recipient in such proportion as is appropriate to reflect the relative fault of ODA on the one hand and of the Recipient 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 ODA on the one hand and of Recipient 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. ODA'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 ODA had sole liability in the proceeding.
 - iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODA (or would be if joined in the Third Party Claim), Recipient 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 ODA in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODA 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 Recipient on the one hand and of ODA 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. Recipient'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.
- b. Indemnification and Hold Harmless.** Recipient shall, to the full extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify and hold ODA harmless from all liability of whatsoever nature, and for any costs, fees or expenses that ODA may incur from Recipient's performance of this Agreement.
 - c. Dispute Resolution.** 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.
 - d. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

- e. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. No Third Party Beneficiaries.** ODA and Recipient 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, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- g. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Recipient Contact or ODA Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODA, such facsimile transmission must be confirmed by telephone notice to ODA Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODA (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of Circuit Court of Marion County in the State of Oregon, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. Compliance with Law.** Recipient shall comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the Project including, but not limited to, the provisions of ORS 319.020 and OAR 738 Divisions 124 and 125 where applicable by this Agreement, incorporated herein by reference and made a part of this Agreement. In addition, without limiting the generality of the foregoing,

Recipient 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.

j. Insurance; Workers' Compensation.

- i. Recipient shall obtain and maintain insurance covering ODA of the same types and in the same amounts provided in Exhibit C to this Agreement.
- ii. Recipient is 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 withholding. In addition, Recipient's subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 and shall provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- iii. Recipient shall deliver to ODA Certificate(s) of Insurance for all insurance required by Exhibit C before any construction (labor and material) costs being considered eligible for reimbursement or reimbursed from Grant Funds.

k. Independent Contractor. Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODA. Recipient has no right or authority to incur or create any obligation for or legally bind ODA in any way. ODA cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODA, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

l. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be 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 this Agreement did not contain the particular term or provision held to be invalid.

m. Counterparts. 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.

- n. Integration and Waiver.** This Agreement, and attached exhibits 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 ODA to enforce any provision of this Agreement shall not constitute a waiver by ODA of that or any other provision.
- o. Questions; Program Coordinators.** Questions regarding this Agreement may be directed to:

Oregon Department of Aviation
Attn: Program Coordinators: Nohemi Ramos, or Matt Lawyer, or each of their successors
3040 25th Street SE
Salem, OR 97302

Nohemi Ramos, Program Coordinator
nohemi.ramos@aviation.state.or.us
503-378-4881

Matt Lawyer, Program Coordinator
matthew.a.lawyer@aviation.state.or.us
503-378-4888

Heather Peck, Program Manager
heather.peck@aviation.state.or.us
503-378-3168

In the absence of any of the above-named individuals during the term of this Agreement, ODA shall notify the Recipient in writing of a substitute contact.

The signatures of the Parties follow on the next page.

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.

The State Aviation Board approved the COAR funding request and delegated authority to the Director of the Oregon Department of Aviation to enter into Agreement.

RECIPIENT, by and through its elected officials

STATE OF OREGON, by and through its Department of Aviation

By _____
(Legally designated representative)

By _____
Director

Name _____
(printed)

Name _____
(printed)

Date _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required in local process)

APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)

By _____
Recipient's Legal Counsel

By _____
Department of Justice

Date _____

Date _____

Recipient Contact:
INSERT RECIPIENT
CONTACT INFORMATION

ODA Contacts:
Nohemi Ramos, Program Coordinator

3040 25th Street SE
Salem, OR 97302
(503) 378-4881
nohemi.ramos@aviation.state.or.us

Matt Lawyer, Program Coordinator
3040 25th Street SE
Salem, OR 97302
(503) 378-4888
matthew.a.lawyer@aviation.state.or.us

SAMPLE



**EXHIBIT A
 PROJECT DESCRIPTION, MILESTONES, SCHEDULE AND BUDGET**

**Application Number: INSERT NO.
 Project Name: INSERT NAME**

A. PROJECT DESCRIPTION

INSERT PROJECT DESCRIPTION

B. PROJECT MILESTONES, SCHEDULE AND BUDGET

Milestones are used for evaluating performance on the Project as described in the Agreement. Milestones cannot be changed without an amendment to the Agreement.

If Recipient anticipates that Project milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 6 of the Agreement, to the ODA Project Coordinators as soon as Recipient becomes aware of any possible delay. The Request for Change order must be submitted before the Milestone completion date shown in Table 1 below.

The anticipated start date of the Project is **INSERT START DATE**.

The anticipated completion date of the Project is **INSERT COMPLETION DATE**.

Table 1: Milestones

Milestone	Description	Estimated Start Date	Due Date
1			
2			
3			

Table 2: Funding Breakdown

1	Grant Award Amount	\$
2	Recipient Match (minimum ___% of Total Project Cost and any portion of the Project which is not covered by Grant Funds.)	\$
3	TOTAL PROJECT COST	\$

SAMPLE

EXHIBIT C

Insurance Requirements

GENERAL.

Recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Recipient. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS.

1. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.
2. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to ODA. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by ODA:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). Annual aggregate limit shall not be less than \$4,000,000.

3. **AUTOMOBILE LIABILITY INSURANCE: AUTOMOBILE LIABILITY.** Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance

(with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by ODA:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

4. **ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include the State of Oregon, ODA, its officers, employees and agents as Additional Insureds, but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
5. **“TAIL” COVERAGE.** If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor’s completion and Sponsor’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODA may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If ODA approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.
6. **NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide thirty (30) days’ written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.
7. **CERTIFICATE(S) OF INSURANCE.** Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees) and ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage. Required insurance coverages shall be obtained from insurance companies acceptable to ODA and the contractor shall pay for all deductibles, self-insured retention or self-insurance.

8. **INSURANCE REQUIREMENT REVIEW.** Recipient agrees to periodic review of insurance requirements by ODA under this Agreement and to provide updated requirements as mutually agreed upon by ODA and Recipient.
9. **ODA ACCEPTANCE.** All insurance providers are subject to ODA acceptance. If requested by ODA, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to ODA's representatives responsible for verification of the insurance coverages required under this Exhibit C.

The Recipient shall immediately notify ODA of any change in insurance coverage.

SAMPLE