

GRANT AGREEMENT
GRANT PROGRAM NAME
Airport Name
Project Name:

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 "ODA" or as the "State", and **Recipient**, acting by and through its elected officials, herein referred to as "Recipient," both herein referred to individually or collectively as "Party" or "Parties".

I. TERMS OF AGREEMENT:

1. Effective Date. This Agreement shall become effective on the date all required signatures are obtained. This Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before two years after the Effective Date (the "Availability Termination Date"). No Grant Funds are available for any expenditure before the Effective 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**

Exhibits A and B 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.

3. Project Cost; Grant Funds; Match. The maximum obligation of the State payable under this grant shall be **\$XX**. The total Project Cost is estimated at **\$XX**. In accordance with the terms and conditions of this Agreement, ODA shall provide Recipient Grant Funds in an amount not to exceed **\$XX** or XX% of the total Project Cost, whichever is less, of Project Costs described in Section 5.b hereof. Recipient shall provide matching funds in an amount of **\$XX** or XX% of the total Project Cost as described in Exhibit A. ODA will withhold five percent (5%) of the Grant Funds to be distributed 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 17.

- i. Recipient agrees to spend the Grant Funds within 2 years of the Effective Date, after which time ODA may withdraw the grant award at its sole discretion.
- ii. In accepting Grant Funds, the Recipient, its contractors, and lessees or any successor thereto shall not convey any exclusive right for the use of the airport, of the improvements or services at the airport for a period of not less than 20 years.

b. Eligible Project Costs. The Grant Funds may only be used for Recipient's actual Project Costs 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 the State, to be capitalized to an asset that is part of the Project; and (c) eligible or permitted uses of the Grant Funds under State law and this Agreement. Any payment of principal due under any interim financing agreement associated with or executed for the Project will be deemed an Eligible Project Cost only if such 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 Project 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 or for any loans or grants to be made to third parties, except as provided in Section 5.b.

d. Request for Reimbursements and Milestone Progress Reports. ODA will not disburse Grant Funds to the Recipient for the Project until expenses have been incurred. Recipient shall submit to Program Coordinators on a monthly basis a Request for Reimbursement (Form 109-007) along with a Milestone Progress Report (Form 109-008) the forms of which are hereby incorporated by reference.

6. Project Change Procedures. Project change orders are only for changes to the schedule. Recipient shall submit a Request for Change Order (Form 109-009), the form of which is hereby incorporated by reference to ODA's Program Coordinators:

- a. If Recipient anticipates Project milestones 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), the form which is hereby incorporated by reference, to ODA's Project Coordinators as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the milestone completion date shown in 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. A Request for Change Order may be rejected at the discretion of ODA. ODA may choose to request review by the State Aviation Board. Changes will not include additional costs or reimbursement requests in excess of the original Agreement.

7. Inspection Schedule and Reporting System. Projects receiving both State and Federal Aid will be required to submit to ODA copies of progress reports submitted to the Federal Aviation Administration. Projects not receiving Federal Aid will be required to submit monthly progress reports to ODA. The Inspection Schedule will be placed on a quarterly basis. On projects taking less than three (3) months, the Recipient must make reports and be inspected the following schedule:

- a. Recipient report project commencement date.
- b. Recipient report project completion date and request final inspection.
- c. ODA will make final inspection and sign off project as completed.
- d. ODA will require Recipient to submit verification of all expenditures to substantiate final payment.

8. Final Report. Recipient shall submit a written report to ODA's Program Coordinators that identifies the number of jobs created or retained both during construction and after a Project completion, as a direct result of this Project. This report must also include the number of jobs projected in the application. This report must also include data on the methodology that measures the Project's success as described in the grant application. The report must be received and approved by ODA within ninety (90) days after the completion of Project. Recipient's obligation to provide this report will survive expiration of this Agreement. Recipient shall use Final Report form, which also must be signed by Recipient

9. Disbursement and Recovery of Grant.

a. Disbursement Generally. ODA shall reimburse Eligible Project Costs that Recipient incurs, subject to Section 5 up to the 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. Requests for Reimbursement will identify the Project, Agreement number, the request for reimbursement number or the account number or both, and itemize all expenses as well as provide a detailed breakdown of Project Costs expended and Grant Funds reimbursed to date, and the amount of undisbursed Grant Funds. Upon request by ODA, Recipient shall provide to ODA proof of payment and backup documentation supporting Recipient's invoices. Requests for reimbursement shall be submitted monthly for any month for which Recipient seeks reimbursement of eligible costs. Eligible costs are the reasonable and necessary costs incurred by the Recipient, or under a sub-agreement described in Section 13 of this Agreement, in performance of the Project and that are not excluded from reimbursement by ODA, either by this Agreement or by exclusion as a result of financial review or audit. ODA shall disburse funds to Recipient direct deposit through an Automatic Clearing House (ACH).

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:

1. 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.
2. Recipient is in compliance with the terms of this Agreement, including without limitation completion of all prerequisites for reimbursement.
3. Recipient has provided to ODA a request for reimbursement 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.
4. Recipient agrees to submit an IRS form W-9 form, and any other required documentation requested by ODA in order to be established through ODA's financial system for the disbursement of Grant Funds.

c. Retainage. ODA will withhold five percent (5%) of the entire cost for the duration of the project and shall release this retainage at such time as ODA certifies completion and acceptance of the Project.

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 Fund 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 DOT 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 any item 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 & 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 date of the Agreement. If this condition is not met, Recipient shall immediately reimburse to ODA all State funds used on Project State. The amount reimbursed shall be the sum 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 Grant Funds were provided distributed.

b. Recipient also warrants and agrees that all income derived from the airport shall be deposited in an account for a period of at least 20 years from the date of the Agreement, and these funds shall be used only for 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 (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. Subagreements. Performance of this Agreement shall not be subcontracted in whole or in part, except with the written consent of ODA. Recipient shall not assign this Agreement in whole or in part or attempt to convey any right, privilege, duty or obligation hereunder, without the prior written consent of ODA.

14. 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 conditions:

1. If The Recipient fails to provide payment of its share of the cost of the Project;
2. If Recipient fails to provide services or funds called for by this Agreement within the time specified herein or any extension thereof.

3. If Recipient fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODA fails to correct such failures within 10 days or such longer period as ODA may authorize.

4. If ODA fails to receive funding, appropriations, limitations or other expenditure;

5. authority sufficient to allow ODA, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;

6. 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

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

c. Rights upon Termination. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination. The remedies set forth in this Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

III. GENERAL PROVISIONS:

15. 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.

16. 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.

17. Amendments. This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

18. 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.

19. 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.

20. 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 Contactor 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.

21. 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 such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

22. 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.

23. Costs and Expenses Related to Employment of Individuals; Insurance; Workers' Compensation. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

SIGNATURE PAGE TO FOLLOW

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 NAME, by and through its
elected officials

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

(If required in local process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

STATE OF OREGON, by and through its
Department of Aviation

By _____
Director

Name _____
(printed)

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

(For funding over \$150,000)

By _____
Department of Justice

Date _____

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