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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

SISTERS AIRPORT PROPERTY, LLC, an Oregon limited liability company, and SISTERS RUNWAY INC., an Oregon nonprofit corporation,

Plaintiffs,

vs.

STATE OF OREGON, by and through the Oregon Department of Transportation,

Defendant.

Case No. 18CV10187

**COMPLAINT
(DECLARATORY JUDGMENT)**

**JURY TRIAL DEMANDED FOR
FACT-FINDING**

**CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION**

ORS 21.135(2)(f) FILING FEE: \$265

Plaintiffs Sisters Airport Property, LLC and Sisters Runway Inc. allege:

PARTIES

1.

Plaintiff Sisters Airport Property, LLC (“SAP”) is an Oregon limited liability company with its principal place of business in Sisters, Oregon. SAP operates the Sisters Eagle Airport.

2.

Plaintiff Sisters Runway Inc. (“SRI”) is an Oregon mutual benefit nonprofit corporation with its principal place of business in Sisters, Oregon. SRI owns the real property under and including the runway at Sisters Eagle Airport.

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1 3.

2 Defendant State of Oregon, by and through the Oregon Department of
3 Transportation (“ODOT”), operated the *ConnectOregon* program, which granted funds to
4 SAP as further described below.

5 **JURISDICTION AND VENUE**

6 4.

7 All parties are residents of the State of Oregon.

8 5.

9 The contract at issue in the cases specifies that claims arising under the contract
10 will be brought in Marion County Circuit Court.

11 **FACTS COMMON TO ALL CLAIMS**

12 **ODOT Grants Funds to SAP to Improve Transportation Infrastructure in Oregon.**

13 6.

14 *ConnectOregon* was created by the Oregon legislature in 2005 as an initiative
15 operated by ODOT to invest in air, rail, marine, and bicycle/pedestrian infrastructure to
16 ensure Oregon’s transportation system is strong, diverse, and efficient. The program uses
17 Oregon Lottery-backed bond dollars to leverage funding of non-highway projects
18 throughout the state. Since its inception, *ConnectOregon* has granted \$417 million for
19 rail, aviation, marine, public transit, bicycle/pedestrian and multimodal projects.
20 The program has awarded grants in a series of rounds referred to as *ConnectOregon*
21 I through VI.

22 7.

23 SAP applied for a grant during the *ConnectOregon* V round of program funding.

24 8.

25 SAP did not receive a grant in the first stage of the *ConnectOregon* V round of
26 program funding, SAP received written notice that it would receive a grant through a

1 Notice of Award letter from ODOT dated April 1, 2015, approximately six weeks later
2 than those recipients that received a grant in the first stage.

3 9.

4 Pursuant to a Grant Agreement dated to be effective May 20, 2015, ODOT
5 granted SAP an amount not to exceed \$733,259 as part of the *ConnectOregon V* program
6 to support a \$1,649,832 project. The Grant Agreement is attached to this Complaint as
7 Exhibit A and incorporated as if fully set forth herein.

8 10.

9 The Grant Agreement described the funded project as follows:

10
11 This Project will construct a parallel taxiway along the
12 length of the runway (approximately 3,500 feet-long by a
13 minimum of 20 feet wide), pave transient aircraft
14 parking/ramp areas, install runway lighting and any
associated improvements at the Sisters Eagle Airport in
Sisters, Oregon. The Recipient [SAP] will install an
Automated Weather Observation Systems (AWOS) as part
of their match requirement for the Project.

15 11.

16 The Grant Agreement set December 31, 2015, as the required completion date of
17 the project. SAP began work as soon as reasonably possible in order to comply with the
18 grant deadline. For example, pavement batch plants close in the winter, making it
19 imperative for SAP to begin work before the Grant Agreement became effective. SAP
20 informed ODOT in its grant application that environmental considerations would affect
21 the timeframe for construction, and specifically stated that paving could not occur
22 between October 1 and April 1.

23 12.

24 Pursuant to the Grant Agreement, SAP submitted a pre-construction estimate to
25 ODOT. ODOT accepted SAP's pre-construction estimate and invited SAP to begin
26 sending invoices for preliminary engineering and design work. All of the expenses

1 incurred by SAP prior to the effective date of the Grant Agreement were reasonable and
2 necessary preliminary engineering and design work costs included in the pre-construction
3 estimate that was approved by ODOT.

4 13.

5 ODOT's notice to SAP that it had been awarded a grant included a copy of
6 *ConnectOregon V* Information Form No. 30619, which states that if ODOT can "confirm
7 that the Recipient's previous expenditures are directly related to the project, Recipient's
8 invoices may be reimbursed at a rate higher than 80%." Based on information and belief,
9 it is ODOT's practice to reimburse expenses incurred prior to the effective date of
10 *ConnectOregon* grants.

11 **SAP Successfully Completes the Project.**

12 14.

13 SAP completed the project on time, and although additional budget was required,
14 did not request additional grant reimbursement. SAP constructed the parallel taxiway
15 along the length of the Sisters Eagle Airport runway per the Grant Agreement's
16 specifications, paved transient aircraft parking/ramp areas, and installed runway lighting
17 and associated improvements. SAP's contractors completed the paving at the end of
18 September, just before paving batch plants were expected to close for the winter.
19 Additionally, SAP installed an Automated Weather Observation System.

20 15.

21 During the project, SAP submitted invoices and engineering, procurement and
22 construction ("EPC") sub-contractor back-up invoices to ODOT and was fully
23 reimbursed pursuant to the Grant Agreement.

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16.

ODOT inspected the project, accepted it, and released the grant retainage that was held pending satisfactory completion of the project. SAP reasonably believed it had complied with all requirements of the *ConnectOregon V* program.

ESI Served as EPC and General Contractor for the Construction Project.

17.

ODOT was aware that Energyneering Solutions, Inc. (“ESI”) would operate as the general contractor and that the Bensons were the owners. SAP does not have an engineering or construction contracting license, nor the required bonding and insurance. ESI was the general contractor for the project. ESI is an engineering and construction firm owned by Benjamin and Juliene Benson, who also own SAP. Mr. Benson identified himself as President and Chief Executive Officer of ESI in SAP’s grant application.

18.

ESI performed its services as the general contractor on commercially reasonable terms based on ESI’s standard fee schedule. SAP and ESI did not have a written contract for those services at the time of the project other than its published fee schedule. There has been no dispute between SAP and ESI.

19.

Since the completion of the project, SAP and ESI have entered into a written contract which reflects the commercially reasonable practices that were in fact followed during the project and which includes all the terms required by the Grant Agreement. The written contract specifies that its terms are effective retroactively to cover ESI’s performance during the entire project period.

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1 **ODOT Reverses Course; Demands Reimbursement.**

2 20.

3 SAP and the Bensons have a contentious relationship with one of their neighbors.
4 The neighbor instigated a review of the project by ODOT and has repeatedly
5 demanded that ODOT take action against SAP for various alleged violations of the Grant
6 Agreement. The neighbor has not been injured by the project or by any of
7 the alleged violations of the Grant Agreement, but nevertheless encouraged punitive
8 action by ODOT.

9 21.

10 Notwithstanding the successful completion of the project and payment of all
11 invoices, ODOT now alleges that SAP breached the Grant Agreement in the
12 following particulars:

- 13 a. SAP did not have a written contract with its general contractor,
14 ESI.
- 15 b. SAP was reimbursed for preliminary design (pre-construction)
16 expenses incurred prior to the execution of the Grant Agreement.
- 17 c. ESI was paid for professional services performed by Benjamin
18 Benson, one of the owners of SAP.
- 19 d. ESI was paid for mobilization expenses.
- 20 e. ESI was paid a mark-up for vendors and subcontractors.
- 21 f. SAP failed to document certain expenses adequately.
- 22 g. SAP could not be reimbursed for amounts paid to Potomac
23 Aviation because SAP had agreed to pay that amount as part of its grant match.
- 24 h. In some instances, SAP invoiced ODOT for expenses before
25 paying the vendor for the corresponding goods or services.
- 26

1 22.

2 In a letter dated February 16, 2018, ODOT demanded repayment within 15 days
3 of the entire amount granted to SAP (\$733,259) notwithstanding the fact that SAP
4 completed the project as promised and ODOT has suffered no damage as a result of
5 the alleged breaches.

6 23.

7 SAP did not breach the Grant Agreement or cause damage to ODOT for the
8 following non-exclusive list of reasons:

9 a. SAP and ESI have entered into a contract which satisfies the
10 requirements of the Grant Agreement, and ODOT has suffered no injury as a result of the
11 delay in executing the contract.

12 b. It was necessary for SAP to incur expenses prior to the execution
13 of the Grant Agreement in order to complete the project within ODOT's required
14 timeframe and Central Oregon's shorter construction season, ODOT approved the
15 expenses and paid them knowing when they were incurred, ODOT's rules explicitly
16 allow ODOT to waive the Grant Agreement's term regarding pre-grant expenditures for
17 situations like this, and ODOT has reimbursed other grant recipients for
18 pre-grant expenditures.

19 c. Nothing in the Grant Agreement prohibited the reimbursement of
20 professional services rendered by Benjamin Benson to ESI, which were billed at a
21 commercially reasonable rate, and ODOT has allowed other grant recipients to pay grant
22 funds to themselves for the services of their employees.

23 d. ESI's mobilization expenses were reasonable and necessary project
24 expenses reimbursable under the Grant Agreement, and ODOT has approved payments to
25 all other grant recipients that sought reimbursement for mobilization expenses.

26

1 e. ESI's mark-ups on subcontractor invoices were reasonable and
2 necessary project expenses reimbursable under the Grant Agreement to account for
3 overhead, and ODOT has approved payments to all other grant recipients that sought
4 reimbursement for general contractor mark-ups on subcontractor invoices.

5 f. All expenses for which SAP sought reimbursement were
6 reasonable expenses reimbursable under the Grant Agreement and were adequately
7 documented.

8 g. SAP is entitled to reimbursement of the amounts paid to Potomac
9 Aviation because SAP had fully complied with its match obligation without contributing
10 the funds paid to Potomac Aviation.

11 h. The Grant Agreement provides that ODOT will reimburse project
12 expenses as they are incurred, which does not require payment, and ODOT knowingly
13 approved payments to at least one other grant recipient before the grant recipient had paid
14 the invoice for which it claimed reimbursement.

15 24.

16 ODOT has suffered no injury or damages as a result of any alleged breach of the
17 Grant Agreement by SAP.

18 25.

19 ODOT has declared a breach of the Grant Agreement and demanded repayment of
20 the grant amount without a reasonable basis in law or fact to do so. In the process,
21 ODOT discriminated against SAP by treating it differently than other grant recipients
22 when no reasonable distinction can be drawn between them.

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1 **CLAIM FOR RELIEF**

2 **(Declaratory Judgment)**

3 26.

4 Plaintiffs incorporate paragraphs 1 through 25.

5 27.

6 SAP and ODOT are parties to a written contract, the Grant Agreement.

7 28.

8 An active controversy exists between the parties with respect to their rights and
9 status under the Grant Agreement.

10 29.

11 SAP and SRI seek a judicial declaration of their rights and status under the Grant
12 Agreement pursuant to the Uniform Declaratory Judgments Act, ORS 28.010 to 28.160.

13 30.

14 SAP seeks the following specific judicial declarations:

15 a. All expenses for which SAP sought reimbursement were
16 reasonable expenses reimbursable under the Grant Agreement and were adequately
17 documented;

18 b. No alleged breach of the Grant Agreement by SAP is material;

19 c. SAP substantially performed its obligations under Section 9 of the
20 Grant Agreement with respect to Recipient Subagreements and Procurements by entering
21 into a contract with ESI;

22 d. The Grant Agreement does not prohibit reimbursement of expenses
23 associated with Benjamin Benson's professional services to ESI;

24 e. ODOT is not entitled to repayment of grant funds unless an alleged
25 breach by SAP resulted in a cognizable injury to ODOT;

26

1 f. ODOT has suffered no cognizable injury as a result of the alleged
2 breaches by SAP; and

3 g. ODOT is estopped from demanding repayment of all or part of the
4 grant amount.

5 31.

6 SRI seeks the following specific judicial declarations:

7 a. SRI is not a party to the Grant Agreement; and

8 b. SRI has no liability to ODOT for any alleged breach of the Grant
9 Agreement by SAP.

10 **CLAIM FOR ATTORNEY FEES**

11 32.

12 Pursuant to ORS 182.090, plaintiffs are entitled to an award of their reasonable
13 attorneys' fees incurred herein.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, plaintiffs pray for judgment in their favor against defendant as
16 follows:

17 1. On plaintiffs' Claim for Relief (Declaratory Judgment), for a judicial
18 declaration:

19 a. Of their rights and status under the Grant Agreement pursuant to
20 the Uniform Declaratory Judgments Act, ORS 28.010 to 28.160.

21 And specific judicial declarations that:

22 b. All expenses for which SAP sought reimbursement were
23 reasonable expenses reimbursable under the Grant Agreement and were adequately
24 documented;

25 c. No alleged breach of the Grant Agreement by SAP is material;

26

1 d. SAP substantially performed its obligations under Section 9 of the
2 Grant Agreement with respect to Recipient Subagreements and Procurements by entering
3 into a contract with ESI;

4 e. The Grant Agreement does not prohibit reimbursement of expenses
5 associated with Benjamin Benson's professional services to ESI;

6 f. ODOT is not entitled to repayment of grant funds unless an alleged
7 breach by SAP resulted in a cognizable injury to ODOT;

8 g. ODOT has suffered no cognizable injury as a result of the alleged
9 breaches by SAP;

10 h. ODOT is estopped from demanding repayment of all or part of the
11 grant amount;

12 i. SRI is not a party to the Grant Agreement; and

13 j. SRI has no liability to ODOT for any alleged breach of the Grant
14 Agreement by SAP.

15 2. For plaintiffs' reasonable attorney fees and expenses pursuant to
16 ORS 182.090.

17 3. For plaintiffs' reasonable costs and disbursements.

18 4. For such other and further relief as this court deems just and proper.

19 DATED this 15th day of March, 2018.

20 HARRANG LONG GARY RUDNICK P.C.

21 By: s/ C. Robert Steringer

22 C. Robert Steringer, OSB 983514

23 bob.steringer@harrang.com

24 1001 SW Fifth Avenue, 16th Floor

25 Portland, OR 97204

26 Telephone: 503-242-0000

Facsimile: 503-241-1458

Of Attorneys for Plaintiffs Sisters Airport
Property, LLC and Sisters Runway Inc.

Trial Attorney: C. Robert Steringer

P0754327.v1

GRANT AGREEMENT
CONNECTOREGON V
OREGON DEPARTMENT OF TRANSPORTATION
MULTIMODAL TRANSPORTATION FUND PROGRAM 2014
Project Name: Sisters Airport Capital Improvement

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “ODOT,” and Sisters Airport Property, LLC, acting by and through its Owner, hereinafter referred to as “Recipient,” both hereinafter referred to individually or collectively as “Party or “Parties.”

- 1. Effective Date.** This Agreement shall become effective on the date 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 five years after the Effective Date (Availability Termination Date). No Grant Funds are available for any expenditures before the Effective Date or after the Availability Termination Date. ODOT’s obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
- 2. Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: **Project Description, Key Milestones, Schedule and Budget**
 - b. Exhibit B: **Recipient Requirements**
 - c. Exhibit C: **Subcontractor Insurance**
 - d. Exhibit D: **Memorandum of Agreement and Acknowledgement of ODOT Assistance**
 - e. Exhibit E: **Application and documents provided by Recipient to ODOT prior to the execution of the Agreement.**

Exhibits A through E are incorporated by reference into this Agreement. Exhibits A through D 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 D; Exhibit A; Exhibit B; Exhibit C; Exhibit E.

- 3. Project Cost; Grant Funds; Match.** The total Project Cost is estimated at \$1,649,833. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient Grant Funds in an amount not to exceed \$733,259 or eighty (80) percent of the total eligible Project Costs, whichever is less, of eligible Project Costs described in Section 6 hereof. Recipient has already met the required match. Eligible costs incurred for this Project will be reimbursed at one-hundred (100) percent until the \$733,259 limit is reached. Recipient shall provide matching funds for all Project Costs as described in Exhibit A. ODOT will withhold five (5) percent of the Grant Funds to be distributed as provided in Section 6.c.

4. Project:

- a. **Use of Grant Funds.** 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 such changes are approved by ODOT by amendment pursuant to Section 11.c hereof.
- b. **Project Change Procedures.**
 - i. If Recipient anticipates Project key milestones will be delayed by more than ninety (90) days from the key milestones shown in Exhibit A, Recipient shall submit a Request for Change Order (Form 734-2648), the form of which is hereby incorporated by reference, to ODOT's Project Liaison 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. The fillable form can be downloaded on-line at the following address: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
 - ii. 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 ODOT's approval of a Request for Change. A Request for Change Order may be rejected at the discretion of ODOT. ODOT may choose to request review by the Oregon Transportation Commission.

5. Progress Reports.

- a. **Monthly Reports.** Recipient shall submit monthly progress reports to ODOT using the *ConnectOregon* Monthly Progress Report (Form 734-2668), attached by reference and made a part of this Agreement. ODOT will appoint a Project Liaison after execution of this Agreement and provide Recipient with the contact information. Progress reports must be submitted to ODOT Project Liaison and ODOT's *ConnectOregon* Program Manager by the first Wednesday of each month. The fillable form can be downloaded on-line at the following address: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
- b. **Final Report.** Recipient shall submit a written report to ODOT's *ConnectOregon* Program Manager that identifies the number of jobs created or retained both during construction and after Project completion, as a direct result of this Project. The 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 ODOT within eighteen (18) months after the completion of Project. Recipient's obligation to provide this report will survive expiration of this Agreement. Recipient shall use ("Final Report" Form 734-2947), which also must be signed by Recipient. The form is available at: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.

6. Disbursement and Recovery of Grant.

- a. Disbursement Generally.** ODOT shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by ODOT within forty-five (45) days of ODOT's approval of a request for reimbursement from Recipient. Requests for Reimbursement will identify the Project, Agreement number, Project start and end date, 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. 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 subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by ODOT, either by this Agreement or by exclusion as a result of financial review or audit.
- b. Conditions Precedent to Disbursement.** ODOT'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.** ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, 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 provided in Exhibit B.
 - iii.** Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
 - iv.** Recipient has provided to ODOT a request for reimbursement in accordance with Section 6.a. 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.
- c. Retainage.** ODOT will withhold five percent retainage from the amount paid pursuant to each reimbursement request and shall release this retainage to Recipient as the following conditions are met:

 - i.** Eighty percent (80%) of the five percent retainage shall be released to Recipient upon final project acceptance by ODOT.

ii. Twenty percent (20%) of the five percent retainage shall be released to Recipient upon approval by ODOT of the report described in Section 5.b of this Agreement. In accordance with Administrative Rule OAR 731-035 and Oregon Laws 2013, Chapter 723 (House Bill 5008) ODOT may not pay and the Recipient forfeits the amount under this paragraph if the Recipient does not submit the report required by Section 5.b on or before the due date. Recipient acknowledges and agrees that Recipient may not apply for another *ConnectOregon* grant during the next application cycle if Recipient fails to submit the report required by Section 5.b on or before the due.

d. **Recovery of Grant Funds.** Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one (1) 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 ODOT. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT’s written demand and no later than fifteen (15) days after ODOT’s written demand. Recipient shall return all Unexpended Funds to ODOT within fourteen (14) days after the earlier of the Availability Termination Date or termination of this Agreement.

7. **Representations and Warranties of Recipient.** Recipient represents and warrants to ODOT 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 ODOT immediately if it is debarred, suspended or otherwise excluded from this 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. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. 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. ODOT, 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, ODOT, 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 ODOT, 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.
- 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 for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Availability Termination Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant moneys were expended.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** 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 ODOT as a third party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional obligee on contractors' bonds.
- iii. Recipient agrees to provide ODOT with a copy of any signed subagreement upon request by ODOT. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to ODOT within ten (10) days of its being discovered.

b. Subagreement indemnity; insurance.

- i. *Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless ODOT 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, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.*
- ii. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT 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 may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient 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.

- c. Procurements.** 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;
 - 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);

10. Termination

- a. Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, if:
 - i.** Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii.** ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii.** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv.** The Project would not produce results commensurate with the further expenditure of funds; or
 - v.** Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required the approval of ODOT.
- b. Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to ODOT, or at such later date as may be established by Recipient in such written notice, if:
 - i.** The requisite local funding to continue the Project becomes unavailable to Recipient;

- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- iii. ODOT fails to make payments due in accordance with this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Agreement shall not prejudice any rights or obligations accrued 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.

11. GENERAL PROVISIONS

- a. **Indemnity.** *RECIPIENT SHALL INDEMNIFY AND DEFEND ODOT AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ARISING OUT OF, OR RELATING TO THE INTENTIONAL MISCONDUCT, OR RECKLESS OR NEGLIGENT ACTS OR OMISSIONS OF RECIPIENT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.*

ODOT shall reasonably cooperate in good faith, at Recipient's reasonable expense, in the defense of a covered claim. Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by Recipient. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, ODOT, its officers, employees or agents. ODOT may elect to assume its own defense with an attorney of its own choice and its own expense at any time ODOT determines important governmental interests are at stake. ODOT agrees to promptly provide Recipient with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Recipient may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of ODOT, which consent shall not be unreasonably withheld, conditioned or delayed.

- b. **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.

- c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. 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.
- e. No Third Party Beneficiaries.** ODOT 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.
- f. 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 ODOT 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 11.f. 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 ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT 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.
- g. 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 ODOT (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.
- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. 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.

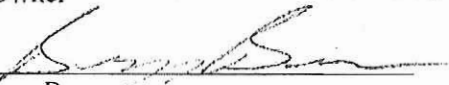
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability 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. Recipient shall obtain and maintain insurance covering ODOT of the same types and in the same amounts provided in Exhibit C to this Agreement.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT 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 ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. 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.
- l. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes 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. The delay or failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

ODOT/Recipient
Agreement No. 30619

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

The Oregon Transportation Commission at its August 2014 meeting approved the *ConnectOregon V* project application list and delegated authority to the Director of the Oregon Department of Transportation to enter into project agreements.

Sisters Airport Property, LLC by and through its Owner

By 
Benny Benson

Date 05/15/2015

APPROVED AS TO LEGAL SUFFICIENCY

(If required in local process)

By N/A
Recipient's Legal Counsel

Date _____

Recipient Contact:


Hobbs Magaret, Sisters Airport Manager
15820 Barclay Drive
SistersOR97759
541-513-8948
hmagaret@sistersairport.com

STATE OF OREGON, by and through its Department of Transportation

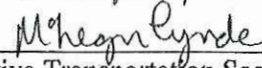
By 
Director

Date 5-20-15

APPROVAL RECOMMENDED

By 
Freight Planning Program Manager

Date 5/19/15

By 
Active Transportation Section Manager

Date 5/19/15

APPROVED AS TO LEGAL SUFFICIENCY

By Keith L. Kutler, Assistant Attorney General, by e-mail dated May 4th, 2015

ODOT Contact:

Marie Wright, *ConnectOregon* Program Manager
ODOT - Active Transportation Section
555 13th Street NE
Salem, OR 97301
503-986-3327
marie.a.wright@odot.state.or.us

EXHIBIT A
Project Description, Key Milestones, Schedule and Budget
Agreement No. 30619
Application Number: 4A0278
Project Name: Sisters Airport Capital Improvement

A. PROJECT DESCRIPTION

This Project will construct a parallel taxiway along the length of the runway (approximately 3,500 feet-long by a minimum of 20 feet wide), pave transient aircraft parking/ramp areas, install runway lighting and any associated improvements at the Sisters Eagle Airport in Sisters Oregon. The Recipient will install an Automated Weather Observation System (AWOS) as part of their match requirement for the Project.

B. PROJECT KEY MILESTONES AND SCHEDULE

Project has six (6) Key Milestone(s). Key Milestones are used for evaluating performance on Project and determining level of compensation for completed work as described in the Agreement. Key Milestones cannot be changed without an amendment to the Agreement. Recipient may shift the estimated Grant Funds shown below between milestones without an amendment to the Agreement, but shall not, under any circumstances, exceed the "Total Not To Exceed Grant Fund Allocation." Recipient shall report changes to the Estimated Amounts corresponding to each Key Milestones, shown below, in Recipient's Monthly Report to the ODOT Project Liaison.

If Recipient anticipates Project Key Milestones will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(b) of the Agreement, to the ODOT Project Liaison as soon as Recipient becomes aware of any possible delay. The Request for Change Order must be submitted prior to the Key Milestone completion date shown in this Exhibit.

The anticipated start date of Project is: 7/1/2015

The estimated completion date of Project is: 12/31/2015

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date
1	Scoping and planning	N/A
2	Right of way and land acquisition	N/A
3	Permits	N/A
4	Final plans/bidding engineering documents	7/15/2015
5	Construction contract award	7/30/2015
6	Project completion	12/31/2015

Table 2 – Funding Breakdown

A	Total Not To Exceed Grant Fund Allocation	\$733,259	
B	<i>ConnectOregon</i> V twenty (20) percent required match	\$183,315	
C	<i>ConnectOregon</i> V Total		\$916,574
D	Other Funds In Addition to twenty (20) percent Required Match	\$733,259	
E	Total Project Funding		\$1,649,833

EXHIBIT B

Recipient Requirements

- I.** Recipient shall comply with all applicable requirements of ORS 367.080 to 367.086, OAR chapter 731, Division 35. Failure by Recipient to comply with these requirements will subject Recipient to the sanctions as described in OAR735-035-0080.
- II.** Recipient shall comply with ORS 280.518, which requires any economic development program financed with proceeds from the state lottery to display a sign in a conspicuous location on Project site or specify in the program information that Project is financed with proceeds from the state lottery. ODOT will provide standard signage as appropriate. If Recipient chooses to make a custom sign, Recipient must obtain written approval from ODOT's *ConnectOregon* Program Manager to use its custom sign and Recipient shall be responsible for the cost of such custom signage. If Project site is remote and a sign would not be visible to the public, Recipient shall provide proof to ODOT's *ConnectOregon* Program Manager that Recipient has specified in its program information that Project is financed with proceeds from the state lottery.
- III.** Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
- IV.** Recipient acknowledges and agrees that, whenever 839-025-0230(4) requires ODOT as the public agency providing public funds for a project that is a public work under ORS 279C.800(6)(a)(B) to pay the fee required under ORS 279C.825, ODOT will calculate and pay the fee and deduct the amount of the fee from Recipient's Grant Funds under this Agreement.
- V.** Recipient shall notify ODOT's Project Liaison and ODOT's *ConnectOregon* Program Manager in writing when any contact information changes during the term of this Agreement.
- VI.** Recipient must provide matching funds in an amount equal to twenty (20) percent of the eligible Project Costs. Matching funds must be used for elements necessary for implementation of Project, including land, excavation, permits, engineering, payroll, special equipment purchase, rental or lease. Recipient is responsible for all costs in excess of the Grant Funds.
- VII.** Recipient shall pay back all of the Grant Funds to ODOT if Project is not completed in accordance with, or consistent with Exhibit A and Exhibit E, as each may be amended. Recipient obligations for Recovery of Grant Funds are provided in Section 6.d of this Agreement.

- VIII.** Recipient and ODOT's Project Liaison shall, upon completion of all on-site work for the Project, perform an on-site review. Once review is completed, the ODOT Project Liaison may recommend acceptance of Project by signing the *ConnectOregon* "Recommendation of Acceptance" (Form 734-2649), which also must be signed by Recipient. The form is available at: <http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>.
- IX.** Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this *ConnectOregon* V grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. Recipient agrees to require any successor owner of the Project property to comply with this requirement. Failure to comply with this requirement may be remedied by Recipient or its successor in interest by (a) restoring the property to the uses(s) required by this Agreement or (b) repayment of expended funds. In the event repayment of expended funds is required, the amount determined using the Straight Line Depreciation (SLD) method must be repaid to ODOT. The SLD is calculated by taking the grant amount divided by twenty years. ODOT may conduct site reviews of the Project as provided in Section 8.a of this Agreement throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.
- X.** Recipient shall, upon execution of this Agreement and as a condition to this Agreement, complete and file with the appropriate County Clerk, "Memorandum of Agreement and Acknowledgment of ODOT Assistance", substantially in the form of Exhibit D attached hereto and by this reference made a part hereof. Recipient shall provide confirmation of this filing by forwarding to ODOT's *ConnectOregon* Program Manager a notarized copy of the recorded Memorandum of Agreement and Acknowledgment of ODOT Assistance. By means of said acknowledgment of Recipient's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation or demand or both is recognized and attached to the property as conditions. Any interest in said property by ODOT is proportional to the state participation in Project. While in default of conditions of this Agreement, Recipient will be ineligible to receive state funds from any ODOT-administered program for any project on a street, road or property. The Memorandum of Agreement and Acknowledgment of ODOT Assistance shall remain in place for the useful life of Project. ODOT acknowledges that such interest shall not be deemed a lien, mortgage, deed of trust or other security instrument or interest granted by Recipient for security purposes. The useful life of Project is defined as twenty (20) years. Reimbursement to Recipient will not be made until the Recipient receives a letter from the *ConnectOregon* Program Manager indicating that the conformed copy of the Memorandum of Agreement and Acknowledgment of Assistance has been received. Recipient may have additional obligations to meet in prior to receiving reimbursement for construction costs identified in this Agreement.

XI. Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed. These photographs must be provided to the ODOT Project Liaison and ODOT's *ConnectOregon* Program Manager.

XII. Additional requirements

A. Prerequisites for Reimbursement of Construction Costs – General

- 1. Pre-construction estimate.** Recipient shall provide a pre-construction estimate based on the final design prior to any construction (labor and material) costs being considered eligible for reimbursement or reimbursed from Grant Funds. Project Costs will only be reimbursed through the design phase of Project until all applicable documentation is received. Recipient shall provide this documentation to ODOT's *ConnectOregon* Program Manager.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

Recipient shall require in its first tier subagreements with entities 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 performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. 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 ODOT. Recipient shall not authorize work to begin under subagreements 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 subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

TYPES AND AMOUNTS.

- i. **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.
- ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to ODOT. 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 ODOT:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

- iii. **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 ODOT:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

- iv. **ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include ODOT, 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.
- v. **"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 Recipient'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 ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
- vi. **NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide 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).
- vii. **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 and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

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

After recording, return to:

EXHIBIT D

MEMORANDUM OF AGREEMENT AND ACKNOWLEDGEMENT OF ODOT ASSISTANCE

[State Recording Authority: ORS 93.710 and ORS 205.130(2)]

Agreement Number: 30619

Project Name: Sisters Airport Capital Improvement

Grant Agreement No. 30619 (“Grant Agreement”) between the Sisters Airport Property, LLC and the State of Oregon, Department of Transportation (ODOT) was executed on _____. Pursuant to Exhibit B, Section VII, of the Grant Agreement, upon the recording of this document, the Sisters Airport Property, LLC will receive Grant Funds for Project described in the Grant Agreement. The property and assets under the jurisdiction of the Sisters Airport Property, LLC will be improved with the assistance from the State of Oregon, Department of Transportation, in accordance with the terms of the Grant Agreement. Such assistance will be provided to Sisters Airport Property, LLC in reimbursement of costs associated with the Sisters Airport Capital Improvement Project. The use and disposition of said property is subject to the terms of the Grant Agreement, copies of which may be obtained from the Director of ODOT. A description of the improved property is attached.

Sisters Airport Property, LLC

By: _____

(Notary Stamp)

Benny Benson

Title: _____

State of Oregon: County of _____

Signed or attested before me on _____ **by** _____
(Date) (Name of person)

_____ **My commission expires on** _____.

STATE OF OREGON, DEPARTMENT OF TRANSPORTATION

By: _____

(Notary Stamp)

McGregor Lynde

Title: Active Transportation Section Manager

State of Oregon: County of Marion

Signed or attested before me on _____ **by** _____
(Date) (Name of person)

_____ **My commission expires on** _____.

Oregon Department of Transportation; 555 13th Street NE, Salem, OR 97301-4178.