RURAL INVESTMENT FUND AWARD AGREEMENT FOR SERVICES

THIS AGREEMENT, made and entered into, by and between the Mid-Willamette Valley Council of Governments, a voluntary intergovernmental association created by Charter and Agreement pursuant to ORS Chapter 190 (hereinafter "COG") and City of Newberg, (hereinafter "GRANTEE").

WITNESSETH:

WHEREAS, in accordance with ORS 285B.230 to 285B.263, the governing bodies of Marion, Polk and Yamhill Counties, (hereinafter "REGION") have created the Mid-Willamette Valley Community Development Partnership (hereinafter "BOARD"); and

WHEREAS, the BOARD, in accordance with ORS 285B.254 to 285B.257, has prepared and approved a Rural Action Plan for the REGION"); and

WHEREAS, the State of Oregon (hereinafter "STATE") has awarded the REGION a Rural Investment Grant to be used to implement the Rural Action Plan; and

WHEREAS, the Mid-Willamette Valley Council of Governments is the designated fiscal agent for the BOARD and the REGION for the purposes of receiving and expending Rural Investment Grant moneys and administering implementation of the Rural Action Plan;

WHEREAS, the BOARD has duly awarded Rural Investment Grant moneys to GRANTEE for implementation of a Rural Investment Activity as part of the Rural Action Plan:

NOW, THEREFORE, in consideration of the terms, conditions, compensation and performances contained herein, the parties hereto do mutually agree as follows:

1. **Grant**

1.1 **Grant Amount.** In reliance upon the information provided in GRANTEE'S Grant Application, the COG agrees to provide GRANTEE with funds in an amount not to exceed $30,000, the use of which shall be expressly limited to the activities described in Section 1.2.

1.2 **Project Description**. GRANTEE shall develop a master plan for the Sportsman Airpark to promote the growth of aviation economic activity in the area.

1.3 **Rural Development Goals.** Grant monies shall be used to address the following rural development goal:

- Create jobs in rural communities. The project will create a minimum of 6 FTE jobs within five years.

1.4 **Disbursement Schedule.** COG agrees to pay GRANTEE a sum not to exceed $30,000 for work and expenses related to this Agreement. Payment shall be made after COG's receipt of documentation of costs and the written Request for Disbursement attached to this Agreement as Exhibit A. The Request for Disbursement shall be signed by an appropriate representative.

1.5 **Ineligible Activities.** Grant monies shall not be used to: retire any debt; reimburse any person, entity or municipality for expenditures made or expenses incurred prior to August 18, 2004; substitute for available budgeted resources in supporting ongoing public services or infrastructure that already exists, but rather shall support only new or enhanced local services benefiting the Region's capacity for economic and community development; maintain existing staff of a public or private entity, except to pay for staff time dedicated to the administrative needs of the Approved Rural Action Plan; assist in the relocation of a business facility within this state from one labor market to another; or award of a grant or loan to a private business.

1.6 **Unexpended Funds.** Any grant monies disbursed to the GRANTEE that are not used on the project set out in Section 1.2 or which remain after the project is completed or which remain unobligated by June 1, 2006 or by the date upon which this Agreement is terminated shall be immediately returned to the COG. Any interest earned by GRANTEE on grant monies shall be spent on the project or returned to the COG.

2. **Progress Reports & Benchmarks**

2.1 **Progress Report Schedule.** GRANTEE shall prepare progress reports documenting project implementation. Progress reports shall be due upon submission of requests for grant disbursement and at such other times as requested by COG.

2.2 **Progress Report Format.** Progress reports shall include a narrative description of progress to date, and shall address the following points:

- Procurement of a consultant to complete the project
- Progress toward completion of the master plan
- Amount of other funds used for the project. A minimum of $11,000 from other non-state sources shall be committed to the project.
- The creation of a minimum of six new jobs within five years of the execution of this agreement
- Others as determined by the BOARD.

3. **Miscellaneous Understandings**

3.1 **Agreement Modifications.** All amendments that are mutually agreed upon by and between the parties to this Agreement shall be reduced to writing and executed with the same formalities as this Agreement. In those instances where proposed modifications represent a substantial change in the program or activity, formal action by the BOARD may also be required.

3.2 **Payment Subject to Receipt of Funds from STATE.** Payment shall be made subject to receipt of funds from STATE. In the event that STATE reduces the amount of funding available, the compensation due under terms of the Agreement may be reduced accordingly. COG agrees to make its best efforts to notify GRANTEE of any change in the availability of funds in a timely fashion.

3.3 **Accounting of Rural Investment Grant Funds.** GRANTEE shall place all grant monies and interest earned thereon in a separate account or segregated fund and shall maintain discrete accounting records for expenditures and cash balances. GRANTEE shall use and maintain accounting policies, practices, and procedures that are consistent with generally accepted accounting principles, and in accordance with applicable statutes and regulations.

3.4 **Books and Inspection.** GRANTEE will keep proper books of record and account on all activities associated with the project, including receipt and expenditure of all Rural Investment funds and all matching funds and in-kind services. GRANTEE will maintain these books of account and records in accordance with generally accepted accounting principles and shall retain the books of account and records at least until three (3) years after the expiration of this Agreement or the date any dispute or controversy arising under this Agreement is resolved, whichever date is later. GRANTEE will permit the State and the Secretary of State of the State of Oregon as well as the COG and its agents to inspect its properties, all work done, labor performed and materials furnished in and about the project, and to review and make photocopies, excerpts and transcripts of its books of account and records with respect to the receipt and disbursement of grant monies received from the COG as well as matching funds and in-kind services.

3.5 **Indemnification.** GRANTEE agrees to indemnify, defend and save harmless the COG, its officers, employees and agents from any and all claims, demands, suits and legal actions including appeals arising out of or in connection with connection with GRANTEE'S performance of work or work product under this Agreement; provided, however, that GRANTEE shall have no obligation with respect to any such claim, demand, suit or legal action which arises out of or in connection with decisions or directions made by COG concerning structure, standards or operational requirements of the program, or in connection with work product which has been modified without GRANTEE'S express authorization, or which has been used contrary to GRANTEE'S express instructions or for other than its intended purpose, if such modification or misuse is a substantial factor in causing the asserted loss or injury.

3.6 **Attorney Fees.** In the event a lawsuit of any kind is instituted on behalf of either party to collect any payment due under this Agreement or to obtain performance of any kind under this Agreement, the losing party agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.

3.7 **Publication Rights.** GRANTEE may copyright the material prepared for this Agreement without approval of COG when publications of subject data are developed from work under this Agreement. Any such copyrighted materials shall be subject to a royalty-free, nonexclusive and irrevocable license to the State of Oregon and Mid-Willamette Valley Council of Governments through COG to reproduce, translate, publish, use and dispose, and to authorize others to do so to further the purposes of the Rural Action Plan.

3.8 **Signs and Notifications**

A. Temporary Signs. For Rural Investment Fund activities which involve construction, GRANTEE shall ensure that a sign, to be provided by the COG is displayed near the construction site and readily visible to the public, specifying that the construction is being funded by the Oregon State Lottery for the purpose of promoting economic development through the Mid-Willamette Valley Community Development Partnership. The sign shall remain in place until construction is complete.

B. Notice. GRANTEE shall ensure that all Rural Investment Fund Activities include the following statement on all plans, reports, studies, or bid advertisements relating to activities:

"The preparation of this report (document) was (This Project is) funded in part with a grant from the Oregon State Lottery through the Mid-Willamette Valley Community Development Partnership for the purpose of promoting economic and community development."

The statement shall be prominently placed on the document, i.e., on the title page of reports or documents, on the cover of blueprint sets, as part of map legends.

3.9 **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to GRANTEE or the COG. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

3.10 **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. If a provision of this Agreement conflicts with ORS 285B.230 to 285B.263, or with any administrative rules directly implementing those statutes, such laws or rules as amended shall govern, but only inasmuch as any rule as amended after the effective date of this Agreement specifies or clarifies issues materially established by this Agreement.

3.11 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the COG, GRANTEE, and their respective successors and assigns except that GRANTEE may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of the COG.

3.12 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. Any waiver or consent, if made, shall be effective only in the specific instance and for the specific purpose given.

4. **Special Conditions**

4.1 **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of Oregon.

4.2 **Independent Contractor.** GRANTEE is engaged as an independent contractor and COG shall not have the right to control or interfere with the manner or method of GRANTEE'S accomplishment of its work specified in this Agreement. GRANTEE shall be solely responsible for payment of contributions and benefits under FICA, Workers Compensation, Unemployment Compensation, and benefits programs as may be offered by GRANTEE or required by law. GRANTEE shall likewise be solely responsible for the collection, accounting and payment of personal income taxes, property taxes and excise taxes, as may be applicable.

4.3 **Existence and Power.** GRANTEE has full power and authority to transact the business in which it is engaged, and full power and authority and legal right to make this Agreement and to incur and perform its obligations hereunder.

4.4 **Authority, No Contravention.** The making and performance by GRANTEE of this Contract (a) have been duly authorized by all necessary action of the GRANTEE, (b) 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 and (c) 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 GRANTEE is a party or by which GRANTEE or any of its properties may be bound or affected.

4.5 **Compliance with Land Use Regulations and Comprehensive Plan.** The activities funded with the Rural Investment Fund Grant will comply with applicable city or county comprehensive plans, public facility plans, and land use regulations.

4.6 **Nondiscrimination.** GRANTEE shall comply with all applicable federal, state, and local laws, rules and regulations on nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or disability.

4.7 **Statutory and Regulatory Compliance.** GRANTEE shall comply with all federal, state, and local laws, ordinances and regulations applicable to the work under this agreement, including, if applicable, the contract provisions of ORS Chapter 279, particularly 279.312, 279.313, 279.314, 279.316, 279.320, as amended. In addition, GRANTEE expressly agrees to comply with Title VI of the Civil Rights Act of 1964 and comparable state and local laws. GRANTEE shall also comply with Section V of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (pub.

Law No. 101-336), ORS 30.670 to ORS 30.685, ORS 659.425, ORS 659.430, and all regulations and administrative rules established pursuant to these laws.

4.8 **First Source Agreement.** Any business receiving $50,000 or more from Rural Investment Funds shall enter into a First Source Agreement with publicly funded job training providers in accordance with OAR 123-70-300 through 123-70-370. The Agreement shall be in effect until such time as the terms and conditions of GRANTEE'S Agreement with the COG have been satisfied.

5. **Time of Performance**

5.1 This Agreement shall be effective when it has been signed by both parties and shall terminate at the completion of all project activities or January 31, 2006, whichever first occurs unless terminated sooner as provided in Section 6.

6. **Termination**

6.1 **Mutual Termination**
This Agreement may be terminated by the consent of both parties.

6.2 **Termination by COG**
In the event that the STATE terminates its Regional Investment Fund and Rural Investment Fund Grant Award Contract with COG, COG may terminate this Agreement upon delivery of written notice to GRANTEE. GRANTEE shall be entitled to receive compensation for any work completed at that point. GRANTEE shall not be entitled to compensation for work in progress which is not reduced to a useable format.

6.3 **Termination for Cause**
Either party may terminate this Agreement for cause, provided the other party is given 30 days notice specifying the cause and an opportunity to remedy.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their respective names by their duly authorized representatives.

MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS	**CITY OF NEWBERG**
D. A. Galati Executive Director	James H. Bennett City Manager
Date: 11/5/04	Date: 10/27/04

RURAL INVESTMENT FUND AWARD AGREEMENT
EXHIBIT A

REQUEST FOR DISBURSEMENT FORM
RURAL INVESTMENT FUND

REQUEST # ______ DATE ___________

GRANTEE ____

PROJECT NAME ____

A. Grant Request

a) AMOUNT OF THIS RIF REQUEST	b) RIF AMOUNT PREVIOUSLY RECEIVED	c) TOTAL RIF GRANT	d) RIF GRANT BALANCE REMAINING (Column "c" less the total of columns "a" and "b")
$	$	$	$

B. Project Budget Summary

Item	a) RIF Funds	b) Grantee Funds	c) Value In-Kind Resources Used To Date	e) Total Amount Budgeted/Spent To Date (Total columns "a" through "c")
Budgeted	$	$	$	$
Spent	$	$	$	$
Balance	$	$	$	$

C. Briefly describe grant funded expenditure:

D. Please attach documentation of costs (if appropriate):

I certify by my signature below that the funds requested in this disbursement will be used for eligible purposes as described in the Rural Investment Fund Application.

______________________________ ______________________________
Signature of Requesting Authority Name and Title (printed or typed)

Date: __________________