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SECTION B

NON-CERTIFIED AGENCY

Chapter 3

Agreements

The Federal-aid Highway Program allows local agencies to be reimbursed with federal funds for costs incurred on approved local agency projects. Agreements (contracts) must be executed in order to reimburse local agencies for these costs. In the process of developing non-certified local agency projects, local agencies produce:

1. a project prospectus;
2. a non-certified master agreement and supplemental project agreement;
3. a project agreement if a master agreement is not necessary; and
4. an amended supplemental project agreement or project agreement if changes to the original project funding or scope occur.

ODOT's goal is to have a non-certified master agreement between ODOT and the local agency for all agencies regularly performing federal-aid work. The master agreement will also serve as the basis for all future federally funded local projects. Local agencies that only receive funding for one project and do not anticipate future federal funding, may not require a master agreement. In this situation, a stand alone project agreement will suffice. For those agencies that have a master agreement in place, a supplemental project agreement between ODOT and the local agency is required for every federally funded project. This chapter discusses each type of the above-mentioned agreements and amendments that non-certified agencies will include as a part of the project application package.



A. OVERVIEW

An agreement is a legally binding document that defines the obligations of all parties involved in a project. Agreements between ODOT and non-certified local agencies affect the public, are binding upon the parties and often involve resources, services and funding. A local agency non-certified master agreement and supplemental project agreement or a stand alone project agreement will be necessary for any federally funded projects.

Throughout the planning, design and construction phases of a project, the possibility of amending an agreement always exists. Every effort should be made to identify any necessary changes as early as possible in the agreement development process.

The agreement process should begin early in the program development stage and should be completed prior to the project delivery stage. Agreement development provides an arena for

collaboration and coordination between ODOT and local agencies until all project delivery issues are resolved. Agreements must be executed before any phase of the project is funded with federal money, or the project is advertised for bid. Ideally, agreements are in place before obligating funds for preliminary engineering, utility work, right of way, or construction. To codify resolution of issues, formal written agreements are needed between ODOT and other local agencies such as:

- Cities;
- Counties;
- Native American Tribes;
- Ports;
- Special Districts (e.g. Parks and Recreation Special Road Districts);
- Metropolitan Planning Organizations (MPOs);
- Other state agencies;
- Federal agencies.

B. NON-CERTIFIED AGENCY MASTER AGREEMENT

As appropriate a master agreement will be developed between ODOT and each local agency that will be using federal-aid funding to delivery non-certified local agency projects. The master agreement is a key component in the line of agreements used to obligate and utilize federal transportation funding. These agreements are:

- [FHWA/ODOT Stewardship Agreement](#);
- [AOC/LOC/ODOT Federal-Aid Project Guidelines and Working Agreement](#) (Association of Oregon Counties/League of Oregon Cities/ODOT Federal-Aid Agreement);
- Master Agreement;
- Supplemental Project Agreement;
- Amended Supplemental Project Agreements (as needed).

The master agreement is the foundational agreement upon which all non-certified supplemental project agreements are based. The master agreement will be updated with each new federal transportation act or to reflect revisions to ODOT's Stewardship Agreement with FHWA or the AOC/LOC Agreement and will include items, which are the basis for all federal-aid agreements, such as the following:

- Federal statute and law that defines requirements for utilizing federal funding;
- State statute and law that defines requirements for utilizing federal funding;
- Abbreviations.

C. NON-CERTIFIED SUPPLEMENTAL PROJECT AGREEMENTS

Supplemental project agreements should be developed as soon as possible to outline responsibilities of the parties for the various phases of project development to be performed. The type of supplemental project agreement will depend upon the work to be covered.

Similar to a project prospectus, the supplemental project agreement describes the proposed improvement, but it also serves as the support document for FHWA authorization of federal funds. The supplemental project agreement also provides a schedule identifying when the local agency anticipates obligating federal funds. If the federal-aid participation ratio entered in the agreement is not the full amount allowed by FHWA, then the participation ratio entered becomes the limit of funding allowed.

NOTE: No reimbursement payments can be made until the supplemental project agreement has been fully executed. Even after execution of the supplemental or stand alone project agreement, no costs are eligible for federal- aid reimbursement until authorized in writing by ODOT.

Supplemental project agreements are sometimes needed to determine project obligations such as:

- Funding and cost responsibilities for planning, project development, right of way acquisition, construction and maintenance;
- Long-term maintenance responsibilities of a facility, such as a traffic signal or landscaping;
- Guidance on federally funded non-highway projects for local governments;
- Access to right of way belonging to other agencies, temporary or permanent street closures and approval for required grade changes;
- Jurisdictional transfers of roadway from one agency to another or roadway abandonment;
- Permits; and
- Specific criteria for local land use and access management decisions affecting a transportation facility.

An agreement must contain the following elements:

- The purpose of the agreement;
- The term of the agreement, including specific beginning and ending dates, if applicable;
- The total cost of the agreement to each agency party, including payment terms, if any;
- The methods to be employed to terminate the agreement; and
- Any other necessary or proper terms or provisions.

D. AMENDED SUPPLEMENTAL PROJECT AGREEMENT

An amended supplemental project agreement documents any changes to the original project funding or scope. Changes to the project funding or scope must be made in accordance with the requirements of this manual. Projects that exceed the supplemental project agreement amount at the time of construction contract award must receive written approval from ODOT for the additional federal funds required. This requires the local agency to sign and submit an amended supplemental project agreement to the [Regional Local Agency Liaison](#) before the approving authority concurs in the contract award.

E. STAND ALONE PROJECT AGREEMENT

As noted above, master agreements and the corresponding supplemental project agreements may not be required for local agencies that only receive funding for one project and do not anticipate future federal funding. In this situation, a stand alone project agreement will suffice. Stand alone project agreements serve the same function as the master agreement and supplemental project agreement.

F. PROCESSING AGREEMENTS WITH NON-CERTIFIED LOCAL AGENCIES

The [Regional Local Agency Liaison](#) works directly with local agencies and:

- Coordinates agreement development with all involved stakeholders such as:
 - Local agency staff
 - ODOT's Procurement Office
 - Department of Justice staff
 - ODOT's Regional Agreement Specialists
 - ODOT's District and Area staff
 - FHWA
- Ensures that necessary agreements are included in the project schedule;
- Tracks the agreement status; and
- Ensures that the agreement is executed before advertising the project or beginning any work outlined in the agreement.

NOTE: As mentioned previously, no reimbursement payments can be made until the supplemental project agreement has been fully executed. Even after execution of the supplemental or stand alone project agreement, no costs are eligible for federal-aid reimbursement until authorized in writing by ODOT.

Generally, as determined by the [Regional Local Agency Liaison](#), all parties to the agreement will sign three to five “Blue Back” (original) agreements. As stated previously, the agreement process should begin well in advance of the time when the local agency desires federal reimbursement.

Refer to the “[What is an Agreement?](#)” web link for additional agreement information.