

## **What is an Agreement?**

Agreements are legal and binding documents that define the obligations of all parties involved in a project, service, etc. An ODOT Agreement is an Agreement between ODOT and another party (i.e., County, City, State agency, etc.). They affect the public, are binding upon ODOT and the other party, and often involve significant amounts of money.

Throughout the planning, design, and construction phases of a project, the possibility of entering into an agreement or agreements always exists. Every effort should be made to identify cooperative features as early as possible in the project development stage, particularly by the Project Coordinator where coordination and communication take place with the various units affected by the project.

The purpose of an Agreement is to:

- a. Provide a detailed outline of the responsibilities of the parties involved. These responsibilities are referred to as “obligations”.
- b. Grant permission to perform work on or across right-of-way belonging to others; provide for temporary or permanent street closures; obtain approval for any required changes of grade; etc.
- c. Transfer jurisdiction or abandon a section of roadway from one agency to another.
- d. Determine long-term responsibility for a facility such as maintenance of a traffic control signal or landscaping.
- e. Provide additional support to ODOT permits or other documents.
- f. Establish specific criteria for local land use and access management decisions affecting an ODOT transportation facility.
- g. Coordinate with local agencies and provide guidance on federally funded non-highway projects.
- h. Address funding and cost responsibilities for planning; project development; right-of-way acquisition; construction; maintenance; etc.
- i. Allow ODOT and local agencies to share resources through maintenance agreements.

\*Please note that the above list is not all-inclusive.

The Divisions, Branches, Regions, Sections and Units of ODOT should enter into an agreement as soon as possible with the party (or parties) to outline responsibilities for the various phases of project development to be performed. The type of agreement or agreements will depend upon the work to be covered and the identity of the other party.

## **Is an Agreement really necessary?**

Anytime work is to be done on a local agencies' property, if our equipment will be placed on the property, or if we are cooperating with a local agency on a project, an IGA must be in place. **If you discover that you do not have an IGA for your project all work should be stopped until the IGA is in place.**

Pursuant to ORS 291.047(2), an Intergovernmental Agreement (IGA) must be in place prior to work being performed to pay the invoices. ODOT is not legally obligated to pay the invoices for work performed prior to execution of an Agreement for a project and without the final executed and approved agreement, the statutory requirement of ORS 291.047(2) isn't met.

**291.047 Public contract approval by Attorney General; exemptions.** (1) The Attorney General shall approve for legal sufficiency all personal services contracts, all architectural and engineering services contracts and all information technology contracts calling for payment in excess of \$75,000 entered into by a state agency before any such contract becomes binding on the State of Oregon and before any service may be performed or payment may be made under the contract.

**(2) The Attorney General shall approve for legal sufficiency all public contracts not subject to subsection (1) of this section that are entered into by a state agency and that provide for payment in excess of \$100,000 before any such contract becomes binding on the State of Oregon and before any service may be performed or payment may be made under the contract.**

## **What does my Agreement need to contain?**

**Per OAR 125-022-0100**

### **Interagency and Intergovernmental Agreements**

(1) Interagency and intergovernmental agreements must comply with the requirements of ORS 190.110.

(2) An interagency and intergovernmental agreement must specify:

(a) The purpose of the agreement;

(b) The term of the agreement, including specific beginning and ending dates, if applicable;

(c) The total cost of the agreement to each agency party, including payment terms, if any;

(d) The methods to be employed to terminate the agreement; and

- (e) Any other necessary or proper terms or provisions.
- (3) Interagency and intergovernmental agreements must be signed on behalf of each party by an official with appropriate signature authority;
- (4) Interagency and intergovernmental agreements need not be reported to or filed with the Department of Administrative Services.
- (5) Each agency must maintain records of interagency and intergovernmental agreements in accordance with the agency's records retention schedule as approved by the Secretary of State, Archives Division.

## **Types of Agreements**

### Local Agency

Any local agency project (usually a City or County) that is being funded with federal or state highway funds must have an agreement with ODOT. If federal funds are involved, FHWA requires an agreement to insure that the federal requirements are met.

The following programs are covered under local agency agreements:

- a. OTIA – Oregon Transportation Investment Act
- b. OTIB - Oregon Transportation Infrastructure Bank
- c. OTIF – Oregon Transportation Infrastructure Funds
- d. CMAQ - Congestion Mitigation and Air Quality Program
- e. HEP - Hazard Elimination Program
- f. Enhancement
- g. HBRR - Highway Bridge Replacement and Rehabilitation Program
- h. STP - Surface Transportation Program
- i. Bike/Ped Program
- j. ISIP – Infrastructure Safety Improvement Program
- k. Fund Exchange
- l. SCA – Special City Allotment
- m. Scenic Byways
- n. High Priority
- o. Emergency Relief

Local Agency agreements may include more than one work type (i.e., CMAQ, HEP, Bridge, etc.) and more than one funding type. One of ODOT's jurisdictional exchange projects includes a modernization and safety element, and County, State, STIP and HEP dollars.

OTIB: The Oregon Transportation Infrastructure Bank (OTIB) is a statewide revolving loan fund designed to promote innovative financing solutions for transportation needs. Oregon's program

was started in 1996 as part of a federal pilot program. (Because of the source of initial capital for the OTIB, most loans involve the use of federal funds.) Legislative action in 1997 established the program in state law and expanded the bank's authority. Staff support for the program is provided by the Financial Services office of ODOT.

**CMAQ:** The Congestion Mitigation and Air Quality program directs funds toward transportation projects and programs in Clean Air Act non-attainment or maintenance areas for ozone and carbon monoxide. These projects and programs must contribute to attaining a national ambient air quality standard. Federal funds are allocated only to areas not meeting Department of Environmental Quality air quality standards.

**Enhancement:** Local governments and other public agencies can apply for enhancement funds on a competitive basis. Federal Transportation Enhancement funds may only be used for 12 specific activities that enhance the cultural, aesthetic, or environmental value of the transportation system. The majority of Oregon's Transportation Enhancement funds have been used for pedestrian and bicycle facilities. Other current or completed projects involve transportation-related historic preservation, acquisition of scenic easements, landscaping and scenic beautification, and mitigation to reduce water pollution due to highway runoff. Projects are selected based on applications from local governments and other public agencies.

**HBRR:** The distribution of federal bridge funds to states is based on the percent of deficient bridges nationwide. Under an agreement with Oregon counties, ODOT allocates the federal bridge funds to local governments based on their percentage of deficient bridges in Oregon. Bridges are inspected every two years in order to determine which bridges are deficient.

**STP:** The Surface Transportation Program provides federal funding to states and local governments which can be used for highways, bridges, or transit projects. Under provisions of the program, urbanized areas of 200,000 and above receive an annual allocation of STP funding based on their populations. Under an agreement developed in cooperation with Oregon cities and counties, ODOT shares a portion of its yearly STP funding with local governments with populations above 5,000 and less than 200,000.

**Bike/Ped:** State law (ORS 366.514) requires ODOT, cities and counties to spend reasonable amounts of their share of the State Highway Fund (but not less than 1 percent) on footpaths and bicycle trails. To fulfill this requirement, ODOT generally provides appropriate sidewalks and bikeways when modernizing a roadway. The most common way to accommodate bicyclists is on paved highway shoulders, which are sometimes marked as bike lanes in urban areas. ODOT also constructs stand-alone pedestrian and/or bicycle improvement projects, such as filling in missing gaps of sidewalks, creating island and curb extensions to make pedestrian crossing easier and safer, performing Americans with Disabilities Act upgrades, and providing minor shoulder widening or re-striping for bicycle lanes.

ODOT also has a local assistance grant program for these types of improvements. In this program, local governments compete for funding for projects that are the highest priority in their community. ODOT and local governments share the costs of these projects. Grant projects are selected by the Oregon Bicycle & Pedestrian Advisory Committee, appointed by the Governor.

**Fund Exchange:** The State will make funds available to individual cities and counties for the exchange of flexible federal funds. The amount of funds available for exchange is determined annually. Exchanging federal funds for state funds helps local agencies avoid complicated federal contracting regulations. Exchanged funds may be used for all phases of a specified capital improvement within the roadway right-of-way, but are not intended for maintenance.

**SCA:** The Legislature mandated \$1 million in state gas taxes to be distributed annually among cities with populations of less than 5,000. ODOT sets the distribution and dollar amount by agreement with the League of Oregon Cities. Half of the funds come from the cities' share of gas tax revenues and the half comes from ODOT's share of the State Highway Fund. Locals can receive \$25,000, one-half the maximum grant amount, up front, with final payment due upon completion of the project. Payments are included in the expenditure budget for Local Government in the Highway Program. (Note: A similar program exists for small counties, however, funds are transferred directly and are not contained as a budget expenditure.)

1. (By the authority granted in ORS 190.110, 366.800 and 366.805, there has been withdrawn from State Highway Funds appropriated for allocation to cities of the State of Oregon the sum of \$500,000 and an additional \$500,000 available to the Department of Transportation from the State Highway Fund. These sums have been set up in a separate account to be

administered by the Department of Transportation. The \$1,000,000 shall be allotted each year by the Transportation Commission for use upon city streets that are not a part of the state highway system, that are within cities with populations of 5,000 or fewer persons, and that are inadequate for the capacity they serve or are in a condition detrimental to safety. No one project can receive more than \$25,000.) The parties hereto mutually agree and understand that the cost of said Project shall be paid for by Special City Allotment funds and by City as follows: Special City Allotment funds will pay for eligible Project costs up to an amount not to exceed \$25,000, and City shall pay any costs in excess of \$25,000. State shall issue payments after January 1, 2004. Only work begun after the effective date of this Agreement is eligible for reimbursement with Special City Allotment funds.

Discretionary Funds: Through ODOT, local governments can apply for and receive federal discretionary funds such as Scenic Byways Program, Emergency Relief, Covered Bridge, and special congressional earmarks.

#### Cooperative Improvement Agreement

Any projects being planned, developed, and/or constructed on the state highway system by ODOT that could have impacts to a local system (city or county) require this type of an agreement. This type of agreement can also be used for a partnering relationship not directly associated with a state facility.

The following 'subtypes' of agreements would fall under the Cooperative Improvement Agreement type:

- a. Corridor Studies and Planning
- b. Traffic Demand Management (TDM)
- c. Land use issues
- d. Maintenance
- e. Access control
- f. Equipment and material sharing
- g. Employee sharing
- h. Signal installations and maintenance
- i. Exaction agreements with developers
- j. Developer or local project impacting a state highway system (when a permit is not adequate)

#### Grant Agreement

Giving of funds for a specific purpose.

## Intergovernmental Agreement (IGA)

An Intergovernmental agreement is written for a jointly initiated project, sharing funds, right of way, or responsibilities possibly involving multiple jurisdictions.

The following 'subtypes' of agreements would fall under the Intergovernmental Agreement type:

- a. Immediate Opportunity Fund (IOF)
- b. Forest Highway
- c. Transportation Growth Management (TGM)
- d. Tribal
- e. Federal agency

IOF: The Immediate Opportunity Fund (IOF) supports primary economic development in Oregon. It does this by building and improving streets and roads in strategic locations. The IOF only funds strategic projects that require a quick response and commitment of funds because other sources are unavailable or insufficient. It is not a substitute for other funding sources. The IOF is a discretionary program. The maximum amount available for a single project is \$500,000. Starting in 2002, all new IOF projects are represented in the Modernization Program.

## Interstate Agreement

An Interstate agreement is between ODOT and an agency in another state.

## Interagency Agreement

An Interagency agreement is between ODOT and another State of Oregon agency.

## Jurisdictional Transfer (formerly called Abandonment & Retention)

ODOT has identified over 1,000 miles of state highways that primarily serve local purposes. These include urban arterials serving mostly local travel, urban streets that are parallel to highway bypasses, and roads that function like county roads. Through negotiated agreements, ODOT will transfer jurisdiction of these highways to local governments. The agreements may include the cost to maintain or improve the facility based on the condition of the highway at the time of transfer

These agreements relinquish sections of roadway (operating right of way) that are no longer needed as a portion of the State Highway system to the city or county of which it falls. These agreements are followed by a Jurisdictional Transfer Document signed by the Chair of the Oregon Transportation Commission or Right-of Way Manager and filed with the appropriate County. A subset of these agreements would be Property Exchange (where the transaction is simply trading or exchanging Parcel A for Parcel B).

### Right-of-way Services

These agreements are usually supplements to a Local Agency agreement. They address federal requirements for ODOT to obtain right-of-way on behalf of the agency.

### Memorandum of Understanding (MOU)/Letter of Intent (LOI)/Memorandum of Agreement (MOA)

These sometimes precede an IGA, Cooperative Improvement, or Local Agency agreement when certain items of work need to proceed and others are still in negotiation; these are also referred to as an “agreement to agree”. MOU’s, LOI’s and MOA’s constitute solely as a guide to the obligations, intentions and policies of the parties involved. These are legal documents but **are not binding documents** (however, the federal government views MOU’s and MOA’s as binding). Such documents must be followed by an Agreement if funds and/or resources are to be exchanged between ODOT and an Agency.