

AMENDMENT NUMBER 01
OREGON DEPARTMENT OF TRANSPORTATION (ODOT)
IN COOPERATION WITH THE
ASSOCIATION OF OREGON COUNTIES AND THE LEAGUE OF OREGON CITIES
FEDERAL-AID PROJECT
GUIDELINES AND WORKING AGREEMENT

This is Amendment 01 to the Agreement between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as “STATE” or “ODOT,” the Association of Oregon Counties, hereinafter referred to as “AOC,” and the League of Oregon Cities, hereinafter referred to as “LOC,” all hereinafter referred to individually as “Party” or collectively as the “Parties” entered into on August 23, 2018.

It has now been determined by State, AOC, and LOC that the Agreement referenced above shall be amended as follows: added provision to allow for renegotiating the exchange rates pending review by ODOT of its operational budget gap and increased revenue, corrected the Local Agency Certification Program title throughout, revised ARTS paragraph to clarify how ODOT will award projects, updated local bridge program contact information, updated future fund exchange rates and clarified what the fund exchange can be used for, added new fund exchange agreement process, updated SFLP project amount criteria, renumbered paragraphs, corrected grammatical errors, and revised ODOT and AOC contact information. New language is indicated by **underlining and bold** and deleted language is indicated by ~~strikethrough~~.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.
2. **Amendment to Agreement.**
 - a. **TERMS OF AGREEMENT, Paragraph 3, Subsection b, Page 3, shall be amended as follows:**
 - b. Local Agencies certified to administer federal-aid projects ~~that are not on the National Highway System (NHS)~~ shall follow the guidelines set forth by ODOT’s LPA **Local Agency** Certification Program and in the individual Intergovernmental Agreements (IGAs) written for certification.
 - b. **TERMS OF AGREEMENT, Paragraph 4, Subsection a.iii.1, Page 4, shall be amended as follows:**
 1. 60 percent of the funding available for STATE’s Local Program as stated in Paragraph 3, Subsection d of this Agreement. Funds for State’s Local Program will be used for Region and LPA **Local Agency** Certification Program project indirect charging.

c. TERMS OF AGREEMENT, Paragraph 5, Subsection a.ii and a.iii, Page 5, shall be amended as follows:

- ii. STATE shall use ARTS funds to address safety at: (1) specific locations with a high concentration of crashes ('hot spots') as identified using STATE's Safety Priority Index System} using traditional safety measures, and (2) systemically along corridors utilizing low-cost safety measures. ~~The proportion of hot spot and systemic safety measures is decided at the STATE Region level and based on fatal and serious injury crash types in each region.~~
- iii. ARTS funds are allocated to each STATE Region based on the number of fatal and serious crashes over a five year period. Funds are split between hotspot and systemic projects, including roadway departure, intersection, and bicycle-pedestrian crash categories, as identified in STATE's Transportation Safety Action Plan (TSAP). **The proportion of systematic safety measures is decided by STATE based on fatal and serious injury crash types statewide.**

d. TERMS OF AGREEMENT, Paragraph 5, Subsection b.i.1, Page 6, shall be amended as follows:

1. STATE's Bridge Engineer (~~Bruce Johnson; bruce.v.johnson@odot.state.or.us~~ **Ray Mabey; Raymond.mabey@odot.state.or.us**) and the Local Agency Bridge Selection Committee (LABSC), are responsible for administering the Local Bridge Program.

e. TERMS OF AGREEMENT, Paragraph 5, Subsection b.ii.3, Page 6, shall be amended as follows:

3. Local Bridge Program target funding is based on projected revenues during STIP development. ODOT's ~~Active Transportation Section~~ **Statewide Investments Management Section** calculates actual annual allocations once the final values are known and applies the actual values to the respective program year.

f. TERMS OF AGREEMENT, Paragraph 6, Subsection b, Page 11, shall be amended as follows:

- b. State funding methods. STATE provides two methods for Local Agencies to exchange awarded federal funds for state funds: Fund Exchange and State Funded Local Projects.
 - ~~1-i.~~ **Fund Exchange.** STATE will make state funds available for the exchange of federal STBG funds provided in Paragraph 4 (STBG Fund Allocation). The amount of funds available for exchange will be determined annually by STATE. ~~The exchange rate will be ninety-four (94) cents in state funds for (1) dollar local STBG funds.~~

- 1. For funding allocated prior to the 2022 allocation, the exchange rate will be ninety-four cents (\$0.94) in state funds for one-dollar (\$1.00) of federal funds.**
- 2. For funding allocated in 2022 and beyond, the exchange rate will be ninety cents (\$0.90) in state funds for one dollar (\$1.00) dollar of federal funds.**
- ~~1.3.~~ State funds may be used for all phases of a project, including but not limited to preliminary engineering, right of way, utility relocation, construction. Said use shall be consistent with the Oregon Constitution (Section 3a. of Article IX Oregon Constitution) and statutes. Local government agencies shall be subject to audit for expenditure of state funds.
- ~~2.4.~~ Fund exchanges provide funding for specific roadway projects, including but not limited to pavement preservation programs, match for federal aid projects, and repayment of bonds and loans on eligible projects. (In order to use fund exchanges for repayment of bonds and loans, local government agencies must contact STATE prior to taking out the loan or bond and obtain approval from STATE to use fund exchange for that purpose.) Fund exchanges can be used on any transportation project that is State Highway Trust Fund eligible, including non-federal matching funds for Federal-Aid projects, **and** Forest Land Access Program (FLAP) funded projects. In addition, Fund exchanges may be used for the following maintenance purposes:
 - ~~a.~~**A.** Purchase or Production of Aggregate. The purchase or production of aggregate must clearly be roadway related and used exclusively for roadway work.
 - ~~3.~~**B.** Purchase of Equipment. Purchased equipment shall be used exclusively for highway purposes for the useful life of the equipment. The Local Agency must clearly demonstrate that the equipment will only be used for highway purposes. The Local Agency would need to be able to verify, in an auditable manner, how the equipment would only be used on roadways. In the event that the equipment is not used for highway purposes, the Local Agency shall pay to STATE the fair market rental value for the Local Agency's non-highway use of the equipment. If the equipment is sold or otherwise disposed of prior to the end of the useful life, the Local Agency shall pay to STATE the full fair market value of the equipment at the time of sale or disposal. The useful life, the fair market rental value, and the fair market value of the equipment shall be determined by State, based on the type and condition of the equipment.
- ~~4.5.~~ All Cities above 5,000 residents, counties, and MPOs under 200,000 residents are eligible for fund exchange.
- ~~5.6.~~ At no point can a fund exchange eligible Local Agency carry a balance of more than the most recent four years of STBG allocation.
- 7. Upon request by a Local Agency to utilize their Agency's available Fund Exchange dollars, and verification by ODOT that the request is consistent with the terms of the Local Agency's Fund Exchange master agreement, ODOT will distribute the requested amount to the Local Agency via electronic transfer. ODOT's distribution will be limited as provided by the Local Agency's Fund Exchange master agreement, and may not exceed the Local Agency's current cumulative amount available, as determined by ODOT. ODOT will not advance funds based upon anticipated future allocations of STBG funds.**

- ii. State Funded Local Projects (SFLP). Consistent with SFLP policies, STATE will make state highway funds available for individual projects selected through approved state- or MPO-managed federal-aid selection processes, including ARTS, Local Bridge, Transportation Alternatives Program, and Surface Transportation Program -Urban programs. All Local Agencies are potentially eligible for SFLP, subject to the following limitations:
 - 1. **Total project costs for local bridge projects may not exceed \$5 million; or** Agencies outside of Transportation Management Areas (TMAs) may use SFLP funding for projects up to \$5 million in total cost.
 - 2. **Total project costs for all other projects may not exceed \$1 million.** Local Agencies inside TMAs may use SFLP funding for projects up to \$1 million in total cost.
 - 3. STATE makes final determination of whether Local Agency projects can use SFLP for delivery.
 - iii. ~~Fund Exchange and SFLP funding methods will be paid on a reimbursement basis up to the maximum amount and proportion specified in the applicable signed project IGA. For Local Bridge projects, the required local contribution is 10.27% of the total project cost. For ARTS projects, the required local contribution is 7.78% of the total project cost.~~
Reimbursement Methods. SFLP will be paid on a reimbursement basis up to the maximum amount and proportion specified in the applicable signed project IGA.
 - A. For Local Bridge projects, the required minimum Local Agency contribution is 10.27% of the total project cost.**
 - B. For ARTS projects, the Local Agency is required to provide a minimum local contribution of 7.78% of the total project cost.**
 - iv. STATE and Local Agencies shall enter into IGAs for fund exchange and SFLP projects prior to expending funds. Each IGA shall describe the projects use of funds and assign specific responsibilities in matters of project financing.
- g. TERMS OF AGREEMENT, Paragraph 6, Subsection c, Page 13, shall be amended as follows:**
- c. LPA Local Agency Certification Program. The Local Public Agency (LPA) Certification Program is a federally-authorized program that allows the STATE to certify Local Agencies in federal-aid highway project delivery processes. In the Certification Program, STATE maintains stewardship and oversight responsibilities for all federal funds but delegates certain responsibilities to local public agencies for project delivery.
 - i. Certification is primarily, but not exclusively, focused on Local Agencies in Transportation Management Areas with sufficient staff, experience, and project volume to warrant certification. STATE requires Local Agencies in the Certification Program to demonstrate competency in the functional areas necessary to deliver all phases of the federal-aid

projects that the Local Agency plans to deliver. The necessary functional areas are ~~c~~Consultant ~~s~~Selection **and contract administration**; ~~d~~Design; ~~a~~Advertisement, ~~b~~Bid, and ~~a~~Award **procedures**; and ~~c~~Construction ~~c~~Contract ~~a~~Administration.

- ii. Certified Local Agencies may deliver projects on behalf of non-certified Local Agencies. Non-certified Local Agencies can provide financial match to the project but are considered third-parties and are not eligible for reimbursement.
- iii. The **Local Agency Guidelines for Certified Local Public Agencies (LAG Manual)** ~~LPA Certification Manual~~ and related bulletins provides the primary program guidance for local project delivery staff engaged in becoming certified, maintaining certification, and delivering federal-aid projects. **Local Agency** ~~LPA Certification~~ guidance can be found at:
<http://www.oregon.gov/ODOT/LocalGov/Pages/Certification-Guidance-Forms.aspx>
<https://www.oregon.gov/odot/LocalGov/Pages/Certification-Guidance-Forms.aspx>

h. TERMS OF AGREEMENT, Paragraph 7, Subsection a, Page 14, shall be amended as follows:

- a. ~~Fund Exchange.~~ STATE will reimburse **exchange STBG funds** ~~Local Agencies in the amounts specified in Paragraph 6.b.i~~ at 94 cents (STATE) per dollar up to the total federal dollar amount. No deposit will be collected.

i. TERMS OF AGREEMENT, Paragraph 7, Subsection c, Page 14, shall be amended as follows:

- c. ~~STATE management of federal funds.~~ The project sponsor shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with STATE its estimated share of each phase. Exceptions may be made in the case of projects where the project sponsor has written approval from STATE to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - i. The project sponsor's construction phase deposit shall be 110 percent of the project sponsor's share of the Engineer's Estimate and shall be received prior to award of the bid. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by STATE of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by STATE of the project sponsor's written request. For certified projects, local public agencies remain responsible for payment of matching funds as required, but local public agencies do not need to deposit match funds with the State.
 - ii. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to ODOT's Statewide Investments Management Section); 2) an Irrevocable Letter of

Credit issued by a local bank in the name of STATE; 3) cash; or 4) in-kind contributions when the project sponsor has written approval from STATE to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.

- iii. Local Agencies can provide financial match to projects delivered by STATE but are considered third-parties and are not eligible for reimbursement

j. TERMS OF AGREEMENT, Paragraph 7, Subsections d, e, and f, Page 15, shall be amended as follows:

- d. LPA Local Agency Certification Program. For projects delivered by certified Local Agencies, no deposit is required. Certified Local Agencies will be reimbursed according to the terms of each individual project supplemental agreement.
- e. ODOT will pay invoices within **thirty (30)** ~~forty five (45)~~ days of the receipt of the invoice in accordance with ODOT's Financial Administration and Standards Manual.
- f. Local Agencies should look to individual project agreements or the Local Agency's Fund Exchange master agreement for further details on distributions, reimbursements, deposits, and match requirements.

k. TERMS OF AGREEMENT, Paragraph 9, Subsection g, Page 18, shall be amended as follows:


- g. Each Parties ~~certifies~~ and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on its behalf ~~of their respective parties~~, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind that Party ~~ODOT, AOC and LOC~~.
- 3. Counterparts. This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
 - 4. Original Agreement. Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Recipient certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.


SIGNATURE PAGE TO FOLLOW

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.

STATE OF OREGON, by and through
its Department of Transportation

Association of Oregon Counties

By 
Director

By 
Executive Director

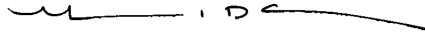
Date 4/30/2021

Date 4.16.2021

APPROVED AS TO LEGAL
SUFFICIENCY

League of Oregon Cities

By Jennifer O'Brien via email dated 4.8.21
Assistant Attorney General

By 
Executive Director

Date 4/19/21

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