OREGON DEPARTMENT OF TRANSPORTATION  
IN COOPERATION WITH THE  
LEAGUE OF OREGON CITIES

SMALL CITY ALLOTMENT PROGRAM 
GUIDELINES AND WORKING AGREEMENT

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 the
LEAGUE OF OREGON CITIES, acting by and through its Board of Directors, hereinafter referred
to as “LOC,” both herein referred to individually or collectively as “Party” or “Parties.”

RECITALS

I. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may
enter into agreements with units of local government for the performance of any or all
functions and activities that a party to the agreement, its officers, or agents have the
authority to perform.

II. LOC was founded in 1925 and is formed by an intergovernmental agreement among all of
Oregon’s 241 incorporated cities. Per ORS 190.030, and subject to the provisions of said
intergovernmental agreement, LOC is vested with all the powers, rights and duties of its
member cities and serves as the functional equivalent of a public body.

III. Pursuant to ORS 366.800 and 366.805, ODOT shall annually allocate $5,000,000 for the
SCA Program. Within that total allocation, $2,500,000 shall be withdrawn annually from the
Appropriation of Highway funds specified in ORS 366.800, and $2,500,000 shall be
withdrawn annually from the State Highway Fund, as set forth in ORS 366.805.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals it is
agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

I. Purpose

The purpose of this Agreement is to establish guidelines and working procedures for
administration of the Small City Allotment (SCA) Program, hereinafter referred to as the “SCA
Program.”

II. Policy

ODOT shall cooperate with LOC to adopt procedures and guidelines for selecting, developing,
financing, and constructing SCA projects in accordance with ORS 366.800 and ORS 366.805.
III. Organization

A. ODOT's SCA Program Manager shall provide general administrative oversight for the SCA Program.

B. Oregon cities are governed by city councils and are staffed to identify and develop local street improvement projects under the SCA Program and in cooperation with ODOT.

C. In consultation with the LOC, the Director of Transportation (Director) shall appoint a small city advisory committee (Advisory Committee) with one representative of a small city in each of the five regions of this state, in accordance with ORS 366.805. Advisory Committee members shall be appointed for three year terms beginning on May 1st, 2018, with possibility of renewal.

IV. SCA Program Eligibility

A. Cities of less than 5,000 in population ("Cities"), based on the latest available census data, are eligible to participate in the SCA Program.

B. Eligible City streets must not be part of the state highway system, and must be inadequate for the capacity they serve or are in an unsafe condition.

C. Cities can have no more than two (2) active SCA projects at any time.

V. Financial Participation and Fund Allocation

A. Small City Allotment Account

1. ODOT shall annually allocate $5,000,000 for the SCA Program. Within that total allocation, $2,500,000 shall be withdrawn annually from the Appropriation of Highway funds specified in ORS 366.800, and $2,500,000 shall be withdrawn annually from the State Highway Fund, as set forth in ORS 366.805.

2. SCA funds shall be placed in a separate account administered by ODOT.

B. Administration

1. The Advisory Committee shall review applications submitted by small Cities and shall recommend applications for approval to the Director or his designee.

2. ODOT shall enter into a separate agreement (Project Agreement) with each City approved to receive SCA funding. Each approved project shall receive a maximum allotment of $100,000.

3. Cities shall, following execution of a Project Agreement, submit plans, estimates and specifications to ODOT's regional Local Agency Liaison for review. Upon
concurrency by ODOT's regional Local Agency Liaison, ODOT may, upon request, advance Cities up to $25,000 of the total Project costs.

4. As detailed in the Project Agreement, Cities shall repay the full amount of SCA funding awarded by ODOT if any SCA project is cancelled by the City, or if the City fails to comply with the terms of the Project Agreement.

5. Cities shall complete project construction within two (2) years of the execution date of the Project Agreement, unless the SCA Program Manager grants an extension.

6. Cities shall, upon project completion, certify to ODOT that projects have been constructed in substantial conformance with plans and specifications. Cities shall submit final invoices to ODOT's regional Local Agency Liaison for final payment. Invoices shall include sufficient documentation to reflect full project costs.

7. ODOT's regional Local Agency Liaisons shall perform final project inspections and shall reimburse Cities upon approval of invoice documentation.

VI. Project Application and Review

A. ODOT's SCA Program Manager shall distribute an advisory letter and project application instructions to eligible Cities by June 1st of each calendar year.

B. Cities shall apply for SCA funding prior to August 1st of each calendar year for the following calendar year program.

C. ODOT shall maintain a record of all Cities that submit SCA project applications.

D. ODOT's regional Local Agency Liaisons shall conduct on-site project reviews as needed for each submitted application and, when necessary, meet with City officials to discuss a local project.

VII. Project Selection

A. The Advisory Committee shall review applications submitted by small Cities and shall recommend applications for approval to the Director or his designee.

B. If the total cost of all applications exceeds available SCA funds, ODOT's regional Local Agency Liaisons shall prioritize and recommend those projects that best meet eligibility requirements to the ODOT SCA Program Manager and Advisory Committee for review and subsequent recommendation to the Director or his designee for approval. ODOT will then distribute SCA awards statewide by formula, based on the total number of SCA-eligible cities, applications, and population, consistent with ORS 366.805.

C. Selected projects shall meet the criteria described in ORS 366.805 and this Agreement.
Application review and project selection shall begin after **August 1st** of each calendar year.

D. ODOT's regional Local Agency Liaisons shall inform applicants of the action taken regarding requested projects.

E. ODOT shall enter into Project Agreements with Cities approved for SCA funding by **December 31st** of each calendar year. These agreements shall be prepared by ODOT and shall describe the project and assign specific responsibilities.

VIII. **Preliminary Engineering**

A. Cities shall use design standards identified in the Project Agreement.

B. Preliminary engineering shall be performed by Cities or their consultants and shall be included in the total project costs. Cities or consultants shall prepare all plans, specifications, and estimates in conformance with the design standards identified in the Project Agreement.

C. Cities shall advertise for bids and award individual contracts, unless otherwise agreed upon by the Parties.

IX. **Right of Way**


B. Cities shall assume management and financial responsibility for the acquisition of all right of way. Right of way may be acquired by a City or by a consultant or ODOT on behalf of a City at a City’s choice. If ODOT performs the acquisition, a right of way services agreement shall be executed setting forth the responsibilities of each party.

X. **Utilities, Construction Engineering, Maintenance and ADA**

A. Responsibility for management and funding of the adjustment, reconstruction, and relocation of utility installations, including all privately or publicly owned utility conduits, lines, poles, mains, pipes and all other facilities of every kind and nature are identified in the Project Agreement, if such relocation or reconstruction is required for project completion.

B. Responsibility for construction engineering will include such activities in the total project cost as identified in the Project Agreement.

C. Responsibility for management and funding of the ongoing maintenance of any SCA
project following construction completion is identified in the Project Agreement.

D. All projects must fully comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, “ADA”). Specific requirements for compliance with ADA requirements and standards are identified in the Project Agreement.

XI. General Provisions

A. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate ten (10) calendar years following the date all required signatures are obtained, unless extended by an amendment.

B. This Agreement may be terminated by either Party upon thirty (30) days’ notice, in writing and delivered by certified mail or in person.

C. ODOT may terminate this Agreement effective upon delivery of written notice to LOC, or at such later date as may be established by ODOT, under any of the following conditions:

i. If LOC fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

ii. If LOC fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.

iii. If 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.

iv. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.

D. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

E. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, both Parties expressly agree 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.

F. All employers, including both Parties, that employ subject workers who work under this Agreement 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. Employers Liability insurance with coverage limits of not less than $500,000 must be included. Both Parties shall ensure that each of its contractors complies with these requirements.

G. Both Parties acknowledge and agree that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of both Parties which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment (or completion of Project -- if applicable.) Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.

H. ODOT and LOC certify and represent that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of ODOT and LOC, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind ODOT and LOC.

I. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or LOC with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

J. With respect to a Third Party Claim for which ODOT is jointly liable with LOC (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by LOC in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of LOC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of LOC on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution
amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

K. With respect to a Third Party Claim for which LOC is jointly liable with ODOT (or would be if joined in the Third Party Claim), LOC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of LOC on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of LOC on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. LOC's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

L. 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.

M. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which, when taken together, shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

N. This Agreement 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. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either party's failure to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that its signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.
ODOT/LOC
Agreement No. 32724

LEAGUE OF OREGON CITIES, by and through its Board of Directors
By ____________________________
President
Date 4-19-18

LEGAL REVIEW APPROVAL (if required in LOC's process)
By ____________________________
League of Oregon Cities Counsel
Date 4-19-2018

STATE OF OREGON, by and through its Department of Transportation
LEAGUE OF OREGON CITIES
By ____________________________
Director
Date 04-19-2018

APPROVED AS TO LEGAL SUFFICIENCY
By Jennifer O'Brien, Assistant Attorney General by e-mail dated March 27th, 2018

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STATE OF OREGON, by and through its Department of Transportation
By ____________________________
Director
Date 4-20-18

LOC Contact:
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