

## Chapter 4. Agreements

### A. OVERVIEW

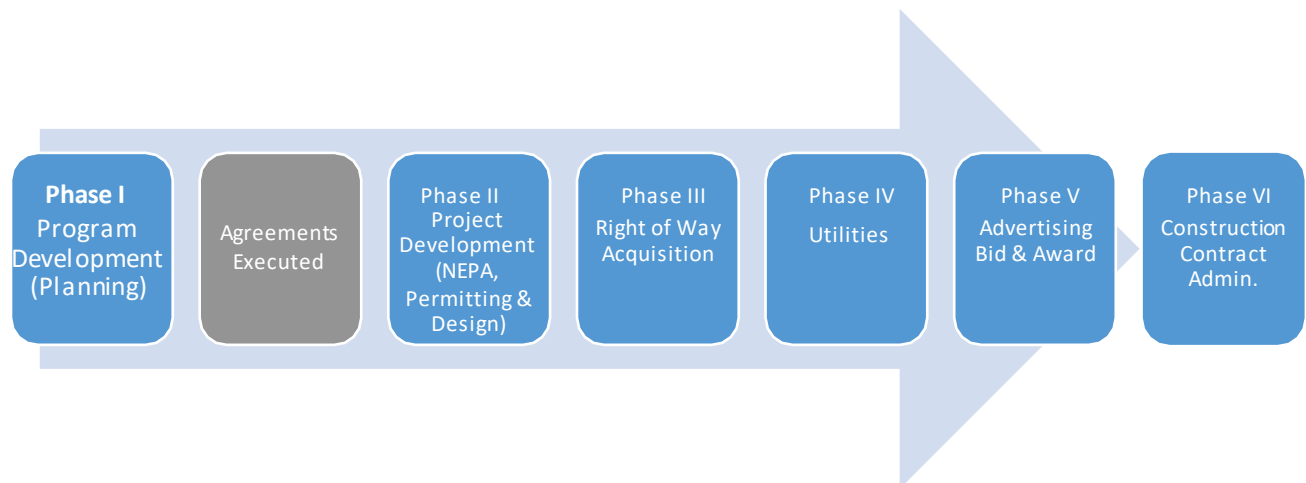
The Federal-aid Highway Program allows LPAs to be reimbursed with federal funds for costs incurred on approved LPA projects. Agreements (contracts) must be executed and funding approval from FHWA received in order to reimburse an LPA for these costs.

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Costs incurred prior to execution of an agreement cannot be reimbursed.

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There are two primary agreements associated with LPA project delivery. The “master certification agreement” between ODOT and each LPA serves as the basis for the LPA’s participation in the Certification Program and for the delivery of federally funded projects. A “supplemental project agreement” setting out project-specific details and costs is also required for each federally funded project. Many projects may also require other agreements, such as right of way services, utility or rail crossing agreements. This chapter provides an overview of these agreements.



### B. AGREEMENTS

An agreement is a legally binding document that defines the obligations of all parties involved. Intergovernmental agreements (IGAs) between ODOT and LPAs affect the public, are binding upon the parties, and typically involve resources, services and funding.

An agreement must contain the following elements:

- Purpose
- Total cost to each agency party, including payment terms, if any

- Term of the agreement, including specific beginning and ending dates, if applicable
- Methods to be employed to terminate the agreement
- Any other necessary or proper terms or provisions

Since it may take several months to prepare and execute an IGA, the process should begin as early as possible. Ideally, the IGA development process should provide an arena for collaboration and coordination between ODOT and the LPA to resolve any certification program or project delivery issues.

### **B.1. Master Certification Agreement**

The master certification agreement between ODOT and each LPA approved to participate in the Certification Program is a key component in the line of agreements used to obligate federal transportation funding. These agreements include the following:

- FHWA/ODOT Stewardship and Oversight Agreement
- AOC/LOC/ODOT Federal-Aid Project Guidelines and Working Agreement (Association of Oregon Counties/League of Oregon Cities/ODOT Federal-Aid Agreement)
- Master certification agreement
- Supplemental project agreement
- Amendments (as-needed to any of the above-listed agreements)

The master certification agreement is the foundational agreement upon which all supplemental project agreements are based and sets out the terms of the LPA's participation in the Certification Program. It is updated periodically to reflect changes in federal and state law and ODOT policy. It includes, but is not limited to, the following elements:

#### **a. Authorities (recitals)**

#### **b. Terms of Agreement**

- Certification
- Performing work on behalf of a non-certified agency
- Program administration (funding and finance, standards, A&E contracts, preliminary engineering, right of way, Title VI, ADA, civil rights programs, ad/bid/award, construction contract administration, claims and change orders, railroads, utilities, maintenance, records and reporting requirements)
- Design standards
- Insurance and indemnification requirements
- Term and termination

- Federal provisions or requirements
- Contacts and signature authorities
- Other general provisions

A master certification agreement has been developed and executed between ODOT and each LPA delivering federal-aid projects under the Certification Program. For LPAs new to the Certification Program, a master certification agreement will be developed and executed upon ODOT-approval of the LPA's foundational documents. For more information on the certification process, refer to Section B of this LAG for Certified LPAs.

### **B.2. Supplemental Project Agreement**

A supplemental project agreement should be developed as early as possible in the project development process to outline responsibilities of the parties for the various phases of project delivery to be performed. The type of supplemental project agreement will depend upon the work to be covered.

The supplemental project agreement describes the proposed improvement, serves as the supporting document for FHWA authorization of federal funds and provides a schedule identifying the federal fund obligation years as identified in the STIP. If the federal-aid participation ratio entered in the agreement is not the full amount allowed by the FHWA, then the participation ratio entered becomes the limit of funding allowed. A supplemental project agreement typically includes the following elements:

#### **a. Authorities (recitals, including certification status and facility ownership)**

#### **b. Terms of Agreement**

- Project description and limits, including vicinity map as exhibit
- Total estimated cost, maximum federal fund participation and percentage of required LPA match
- Payment and invoicing requirements
- Indirect costs
- Master certification agreement requirements
- Federal provisions and requirements
- Project-specific design standards
- Funding program-specific deliverables (e.g., bridge)
- Work on or along a state highway
- Insurance and indemnification requirements

- Term and termination
- Contacts and signature authorities
- Other general provisions

Supplemental project agreements are also used to document other project obligations such as:

- 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
- Specific criteria for local land use and access management decisions affecting a transportation facility

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**Notice to Proceed Requirement:** No reimbursement payments can be made until the supplemental project agreement has been fully executed. Even after the supplemental project agreement is executed; no costs are eligible for federal-aid reimbursement until ODOT authorizes a written Notice to Proceed (NTP).

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### **B.3. Other Agreements**

Many projects may also require other agreements, such as right of way services, utility or rail crossing agreements.

#### **a. Right of Way Services Agreements:**

If federal funds will be used to acquire right of way for the project, or if the LPA would like to contract with ODOT Right of Way for acquisition services for the project, a right of way services agreement will also be required. For details on right of way acquisition requirements for federal-aid projects, including more information on right of way services agreements, refer to Section C, Chapter 7 of this LAG for Certified LPAs.

#### **b. Utility Relocation and Railroad Crossing Agreements:**

For information about when utility relocation and railroad crossing agreements may be required, refer to Section C, Chapter 13 of this LAG for Certified LPAs.

### C. AGREEMENT PROCESSING

Master certification agreements are prepared and processed by ODOT's Statewide Programs Unit in coordination with the Certification Program Office.

Supplemental Project Agreements are prepared and processed by ODOT regional agreement writers in close coordination with regional local agency liaisons. For each type of agreement, drafts are shared with the LPA for review by local staff and legal counsel. Prior to finalization and circulation of an agreement for signature, ODOT subject matter resources and the Oregon Department of Justice also provide review, consultation and authorizations or approvals as needed.

As previously noted, the project agreement process should begin well in advance of the time when the LPA plans to begin work on the project (several months). If applicable, the LPA should also consider the time it takes for agreements to be approved by their local board or commission.

To begin preparation of a supplemental project agreement:

- LPA prepares a **Local Agency Technical Scope Sheet** form 734-5151 for the project and submits it to the regional Local Agency Liaison for review and concurrence.
- LPA provides a **project vicinity map** for use as an exhibit in the agreement.
- ODOT Local Agency Liaison coordinates with the LPA and an ODOT agreement writer to **prepare and process the agreement**.
- ODOT Local Agency Liaison requests the **obligation of federal funds** for the applicable project phase once a supplemental project agreement is executed.
- ODOT Local Agency Liaison is responsible for issuing a **written notice to proceed** for the LPA to begin reimbursable work on the applicable project phase.

Resources:

- [Local Agency Technical Scope Sheet \(734-5151\)](#)

The LPA should contact the regional Local Agency Liaison to coordinate the development and processing of any other agreements needed between the LPA and ODOT for the project. Development of these other agreements should occur as early as possible in project development. If applicable and feasible, the LPA should consider working with the Local Agency Liaison and region Right of Way Agent to develop the right of way services agreement concurrently with the related supplemental project agreement.

### D. AMENDMENTS TO AGREEMENTS

From time-to-time, amendments to the agreements may be needed as a result of:

- Change in certification status
- Changes in federal or state law
- Legal language updates from the Oregon Department of Justice
- Changes to project scope or
- Changes in project funding

Amendments are prepared and processed as described above, but usually do not take as much time as the original agreement to process. However, every effort should be made to identify and act on any needed amendments early to guard against delays in later phases of the project.