

**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 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 "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." Both LOC and AOC are governmental agencies.

This Agreement establishes guidelines and working procedures for administering the federal aid program.

1. RECITALS

- a. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572, and 366.576, STATE may enter into cooperative agreements with Oregon counties and cities and other municipalities for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
- b. AOC is an entity formed by all counties within the State of Oregon, established through an ORS 190.010 intergovernmental agreement. Article XIII of the AOC Constitution and Bylaws says the Constitution and Bylaws are intended to constitute an agreement for intergovernmental cooperation under ORS Chapter 190.
- c. LOC was founded in 1925 and is an intergovernmental entity established through ORS 190.010(5) intergovernmental agreements with incorporated Oregon cities. Per ORS 190.030 and subject to the provisions of the intergovernmental agreements, LOC is vested with all the powers, rights and duties of its member cities and in that capacity, LOC serves as the functional equivalent of a public body.
- d. This agreement provides guidelines for allocation of federal funds from STATE to Oregon cities and counties ("Local Agencies"), project selection, delivery options available from STATE, and additional areas of cooperation between STATE and Local Agencies.
- e. The Fixing America's Surface Transportation Act (FAST Act) directs FHWA to apportion funding to each State for the Surface Transportation Block Grant (STBG) program to provide flexible funding to address State and local transportation needs (FAST Act § 1109; 23 U.S.C. 133).

2. TERMS

- a. The purposes for this Agreement are as follows:
 - i. To establish the process for allocating and administering the Surface Transportation Block Grant (STBG) program among the participating local public agencies. All counties participate in the STBG fund distribution. Cities participating in the STBG fund distribution are the following:
 1. those with populations over 5,000 (except for those cities in a Metropolitan Planning Organization (MPO) with populations over 200,000, which receive their own direct allocation of federal STBG funds) and
 2. certain smaller cities that are part of a MPO.
 - ii. To identify the selection process for the All Roads Transportation Safety and Local Bridge processes.
 - iii. To outline expectations for the Local Public Agency (LPA) Certification Program, State Funded Local Projects, Fund Exchange, and STATE-managed project delivery methods.
- b. The continuation of all funding programs and processes outlined in this Agreement is contingent upon STATE's receipt of continuing state and federal funding.
- c. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect until September 30th, 2024, the end date of the 2024 Statewide Transportation Improvement Program (STIP) cycle.
- d. This Agreement will be reviewed and revised as needed after the Oregon Transportation Commission establishes policies and funding allocations for the 2023-2027 STIP. Any revisions shall be made in the form of a fully executed and approved Amendment.
- e. It has now been determined by the Parties that this Agreement shall supersede and replace Agreement No. 28906 and all amendments to Agreement No. 28906 in their entirety.

3. POLICY

- a. STATE is responsible for the oversight of local government projects financed with federal funds made available to STATE by the Federal Highway Administration (FHWA) and shared with Local Agencies. This responsibility includes ensuring that projects are completed in conformance with plans and specifications and with the regulations adopted by FHWA in Title 23 of the Code of Federal Regulations (CFR).
- 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 Certification Program and in the individual Intergovernmental Agreements (IGAs) written for certification.
- c. STATE provides three options for delivering federal-aid local projects. Local Agencies may:
 - i. Exchange federal funds for state funds and deliver their project directly;
 - ii. Utilize the certification program by becoming certified to deliver federal-aid projects or working with a certified Local Agency to deliver the project on their behalf; or

- iii. Have the STATE directly deliver the project for the Local Agency.
- d. STATE shall provide staffing resources dedicated to local project delivery oversight with the understanding that financial support for these resources will come from STBG program funds. The Local Agency recipients of federal-aid funding will share financial support for STATE staff time necessary for overall FHWA program management and project selection. The STATE shall obtain population data through contracted services from Portland State University's Population Research Center necessary to administer funding distributions described in this agreement. The amount of financial support for the local project delivery oversight shall be \$350,000 per fiscal year.
- e. The STATE identifies the following forums for ongoing engagement with cities, counties, MPOs, federal agencies, and other public partners on the federal-aid transportation policies outlined in this agreement:
 - i. Oregon Association of County Engineers and Surveyors
 - ii. American Public Works Association (Oregon Chapter)
 - iii. Oregon Metropolitan Planning Organization Committee
 - iv. Certification User Group

4. FUNDING ALLOCATION

a. Surface Transportation Block Grant (STBG) Funding Allocation

- i. STBG funds are apportioned to STATE each federal fiscal year (FFY). The amount of those funds allocated to the Local Agencies shall be based on the total federal aid formula funds apportioned to STATE reduced by the annual formula obligation limitation imposed by Congress. Allocation of STBG funds to Local Agencies is based on calculations of the FFY 2004 federal aid formula apportionment and limitation (\$308,186,402) and shall serve as the baseline for calculating future STBG allocations to the Local Agencies. STBG funds STATE shares with Local Agencies do not include Urban STBG funds that are for urbanized areas with populations of 200,000 and greater. Cities received \$7,370,785 of STBG funds in FFY 2005 while counties received \$10,957,428 of STBG funds. The percent increase (or decrease) in formula obligation limitation from one FFY to the next will be applied to the previous year's STBG fund allocation in determining the following year's STBG fund allocation.
- ii. STBG funds allocated to the cities. The following deductions will be made prior to the allocation of STBG funds to the cities:
 - 1. 1.5 percent of that year's allocation will be deducted to finance a Senior Staff Associate position with LOC to work on transportation issues.

2. 40 percent of the funding available for STATE's Local Program as stated in Section 3, Paragraph D of this Agreement.
 3. \$25,000 for LOC's contribution to the Oregon Technology Transfer Center (T2 Center).
 4. The amount remaining after the above reductions shall be apportioned to each city by population. The apportionment for the cities with populations greater than 5,000 and less than 50,000 will be divided proportionately based on each city's population relative to all cities in this same range. ODOT shall use the most recent publication from the Center for Population Research and Census at Portland State University for population estimates.
- iii. STBG funds allocated to the counties. The following deductions will be made prior to the allocation of STBG funds to the counties:
1. 60 percent of the funding available for STATE's Local Program as stated in Section 3, Paragraph D of this Agreement. Funds for State's Local Program will be used for Region and LPA Certification Program project indirect charging.
 2. The amount needed to finance the County Road Program (CRP) at AOC. AOC will communicate to STATE, in writing, by January 1 of each year, the amount needed for this item. These CRP funds will be exchanged for state funds and paid to AOC in January of the federal fiscal year of the allocation (unless delayed by lack of an appropriation bill.)
 3. \$100,000 for AOC's contribution to the T2 Center.
 4. The amount remaining after the allocation to the AOC shall be apportioned to each county as follows:
 - a. Twenty-five (25) percent in equal amounts distributed to each county;
 - b. Sixty (60) percent distributed in proportion to rural population (latest available federal census, excluding urban and urbanized areas as defined by FHWA regulations); and
 - c. Fifteen (15) percent distributed based on the county's proportion of rural county road mileage.
- iv. Nothing in this Agreement is intended to prevent local government agencies from pooling their STBG funds with other local governments or transportation jurisdictions in order to accomplish one or more transportation projects.

b. **Other State and Federal Programs Available to Local Agencies**

- i. Other State and Federal-aid programs Local Agencies have access to, including Congestion Mitigation and Air Quality, Rail Crossing & Safety, Safe Routes to School, Bike-Pedestrian Off-System, Federal Lands Access Program, and other programs and grants shall follow guidance outside of this agreement.

5. PROJECT SELECTION

a. All Roads Transportation Safety (ARTS)

- i. The ARTS program is a STATE administered program shared with Local Agencies that is primarily funded with federal Highway Safety Improvement Program funds. ARTS is a jurisdictionally blind, data-driven safety program to reduce fatal and serious injury crashes on all public roads in Oregon.
- 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).
- iv. ARTS investments must focus on reducing fatal and serious injury crashes. STATE Regional project selection process will engage local jurisdictions. ARTS projects with Local Agencies must maintain the original project scope and deliverables established at project selection, or seek STATE Region Traffic Manager approval for changes per the individual project agreement. Projects on state and local roads should be combined where possible to make projects more cost effective and keep project administration costs low. The principals of practical design shall be used when designing projects.
- v. Deliverables. When a Local Agency delivers an ARTS project, the Local Agency shall submit all of the following items at Project completion and prior to final payment:
 - 1. Final Project completion Inspection form No. 734-5063 (completed with State's Project Manager);
 - 2. Final Cost;
 - 3. As-Constructed Drawings

b. Local Bridge Program

i. Program Organization

1. STATE's Bridge Engineer (Bruce Johnson; bruce.v.johnson@odot.state.or.us) and the Local Agency Bridge Selection Committee (LABSC), are responsible for administering the Local Bridge Program.
2. The LABSC shall consist of STATE's Bridge Engineer and two other STATE representatives selected by STATE, three county representatives selected by AOC, and three city representatives selected by LOC. AOC and LOC may each have an alternate member designated to serve in the absence of any one of their three representatives. STATE's Bridge Engineer shall serve as chair.

ii. Project Funding

1. Local Bridge Program funding shall be calculated in the following manner:
 - a. The Local Bridge Program annual funding amount of \$22,963,391 shall serve as the baseline funding for the program for each year from 2013 onward.
 - b. For 2014 and each year thereafter, the percent increase (or decrease) in federal-aid funding received by ODOT from FHWA and distributed to Local Agencies using this agreement will be applied to the Local Bridge Program allocation.
 - c. Funding for local bridge inspections, load rating, project scoping and program support for National Bridge Inspection Standards (NBIS) bridges will be subtracted from the total federal-aid funding allocated to the Local Bridge Program.
2. Not less than fifteen (15) percent of the amount of funds apportioned to STATE for the Highway Bridge Program for fiscal year 2009 shall be obligated to meet Off-System Bridge needs (bridges on roads classified as local or rural minor collectors). Expenditures may be reduced if there are inadequate needs to justify the expenditure. STATE will perform an analysis each year to compare the relative needs of On-System and Off-System bridges from the eligible bridge list without regard to jurisdiction. The results of this analysis will be sent to AOC and LOC. AOC and LOC will notify STATE of their recommended reduction in expenditures. STATE will request FHWA approval of the reduction in expenditures.
3. Local Bridge Program target funding is based on projected revenues during STIP development. ODOT's Active Transportation Section calculates actual annual allocations once the final values are known and applies the actual values to the respective program year.

iii. Bridge Inspection and Project Eligibility

1. 23 USC 144 (Highway Bridge Program) requires the inspection of all bridges subject to NBIS and the reporting of this information to FHWA through the National Bridge Inventory (NBI).
2. STATE conducts local bridge inspections, load rating, project scoping, and program support for NBIS bridges under agreement with the respective Local Agencies. In addition to routine inspections, STATE will conduct special inspections such as scour evaluations, fracture critical evaluations, and load rating as needed.
3. STATE submits its NBI inspection list annually to FHWA. STATE produces a list of eligible bridges from the NBI inspection list for potential replacement or rehabilitation funding. Highway bridges considered structurally deficient or functionally obsolete and with a sufficiency rating of 80.0 or less will be eligible for project selection. Bridges on the eligible bridge list with a sufficiency rating of less than 50.0 will be eligible for rehabilitation or replacement while those with a sufficiency rating of 80.0 or less will be eligible for rehabilitation. To be considered for the classification of "deficient bridge," a structure must meet NBI bridge length requirements and not have been constructed or had major reconstruction within the past ten (10) years.
4. STATE shall, if requested in writing and included in the IGA, at no expense, provide plans and specifications for county bridges and culverts to eligible counties, pursuant to ORS 366.155(1) (h). Contact the State's Senior Local Bridge Standards Engineer (Holly Winston, holly.m.winston@odot.state.or.us) for further guidance and eligibility.
5. Inventories and inspections of bridges will be provided by STATE. All data necessary to calculate the Federal Sufficiency Rating will be from the NBI. NBI data shall be updated in the following ways:
 - a. STATE or its consultant will notify the Local Agency of the inspection schedule and invite the Local Agency to accompany inspections. At that time, the Local Agency will provide the consultant with updates to the NBI that cannot be directly gathered during the inspection. (Examples include but are not limited to Bypass; Average Daily Traffic; and Average Daily Truck Traffic.) This is the primary method in which changes are made to the NBI.
 - b. The secondary method of changing NBI data is for the Local Agency to submit changes directly to STATE.

iv. Project Selection Criteria

1. Local Bridge Program project selection will be done through the LABSC in accordance with the adopted Bridge Priority Selection Policy, which can be found at: <http://www.oregon.gov/ODOT/Bridge/Pages/Local-Agency.aspx>
2. After allocating funding to meet federal off-system bridge commitments, The LABSC will review the most current needs analysis and determine the relative allocation of the available funding (STIP target) to each of six project pools, as described in Section 5 Paragraph F (Annual Bridge Needs Analysis Process).
3. The allocations adopted by the LABSC for small bridges are applied to the project lists described in Section 5 Paragraph E (Biennial Project Selection Process).
4. 23 CFR 490.413 (Penalties for Not Maintaining Bridge Condition) includes a penalty if more than ten percent of the total deck area of bridges in the State of Oregon on the NHS is located on bridges that have been classified as being structurally deficient for a three year period. The penalty is that fifty percent of the funds apportioned to STATE for fiscal year 2009 to carry out the bridge program shall be set aside only for eligible projects on bridges on the NHS. If activated, this penalty could affect the selection of Local Agency bridge projects. The current condition of bridges on the NHS should be considered by the LABSC when selecting projects.

v. Biennial Project Selection Process

1. The application and selection process for Local Bridge Program projects shall be reviewed by the LABSC and will be articulated in the Bridge Priority Selection Policy. STATE shall send applications to each Local Agency with a letter detailing the application process for the Local Bridge Program and a list of all bridges maintained by that agency that are on the eligible bridge list. Final approval of the application criteria and process will be made by STATE prior to initiating the process.
2. STATE shall receive applications and process them in accordance with the above process.
3. Only those bridges with properly submitted applications from the Local Agency with jurisdiction for the bridge will be given consideration for selection.
4. The Technical Ranking System (TRS) will be used for calculating the priority points for the "small" Local Agency bridges (deck area of less than 30,000 square feet). The TRS is primarily based on data that is in the NBI. However, a portion of the TRS is based on other data.

5. STATE shall prepare a ranking of local small bridge projects, separating On-System from Off-System, based on the TRS score each project receives.
6. After the LABSC has approved the projects to be funded, STATE's Bridge Section will provide the list of approved projects to the Regions for inclusion in the STIP.

vi. Annual Bridge Needs Analysis Process

Waiver Analysis. To ensure states allocate sufficient funding to off-system bridges, 15% of federal bridge funding must be used to address the needs of bridges that are not on the federal-aid highway system. ODOT calculates off-system bridge needs, where the condition (good/fair/poor) of each bridge is noted, along with the deck area for that bridge. ODOT calculates the total deck area of all bridges along with the deck area of bridges that are in poor condition and are off of the federal-aid highway system. If the needs of the off-system bridges are less than the 15% federal bridge funding requirement, ODOT requests a waiver from FHWA to reduce off-system bridge requirement to match the calculated need

Relative Needs Analysis. After calculating the funding level for off-system bridges, ODOT determines how the remaining funding will be split for on-system bridges. The relative needs are based on the condition (good, fair, or poor) of each bridge, with the deck area for that bridge, and a cost factor based on project costs. The deck area and costs of bridges that are that are in poor condition and 30,000 square feet and above is compared to the deck area and costs of bridges that are in poor condition and are less than 30,000 square feet. The resulting comparison is the funding that is dedicated to "Large" and "Small" on-system bridges, as described in the Bridge Priority Selection Policy.

1. The following pools of bridges shall be established for the purpose of analysis:
 - a. A pool of all eligible bridges. (Used for waiver analysis)
 - b. A pool of all eligible Off-System bridges. (Used for waiver analysis)
 - c. A pool of all eligible local bridges. (Used for local relative needs analysis)
 - d. A pool of eligible bridges comprised of all local "Large" bridges of 30,000 square feet of deck area and above. (Used for local relative needs analysis)
 - e. A pool of eligible bridges comprised of all eligible "Small" On-System local bridges of less than 30,000 square feet of deck area. (Used for local relative needs analysis)
 - f. A pool of bridges comprised of all eligible Off-System local bridges of less than 30,000 square feet of deck area. (Used for local relative needs analysis.)

2. Allocation of funds in each pool is calculated as follows:
 - a. The deck area of each bridge on the eligible bridge list multiplied by a cost factor, based on prior actual project costs, which produces relative cost units for that structure.
 - b. The relative cost units for all structures within each pool are added together.
 - c. The percent of funds for each pool is the ratio of that pool's total relative cost units to the total relative cost units for the comparison pool, which will vary depending on the purpose of the analysis (waiver or local subprogram splits).

vii. Local Bridge Emergency Projects

1. In the event a local bridge has been destroyed or substantially damaged, causing an emergency situation, and no other state or federal funds are available for its replacement or restoration, the bridge owner may apply to have the bridge replaced or restored.
2. STATE's Bridge Engineer's Office will conduct an on-site inspection of the bridge and determine if all three (3) of the following conditions exist:
 - a. No reasonable alternate detours are available
 - b. The structure had a valid inspection in the last two years
 - c. The structure failed or received a ten ton or less load rating
3. The failed or damaged structure will be given a new sufficiency rating to reflect its new condition. If the failed or damaged structure is less than 30,000 square feet of deck area a new technical ranking will be calculated, using the recalculated sufficiency rating. If the emergency structure has a lower ranking than currently scheduled projects, the emergency funding will be denied.
4. If an emergency request is approved, another project may have to be delayed by adding this emergency project.
5. If the failed or damaged structure is 30,000 square feet of deck area or greater, the bridge will be evaluated and a funding strategy recommended by the LABSC.

viii. Bridge Deliverables

1. When a Local Agency delivers a bridge project, regardless of funding source, the Local Agency shall submit all of the following items to State's Project Manager within 90 days of the issuance of Second Notification pursuant to Oregon Standard Specification 00180.50(g), or the Local Agency's approved equivalent:

- a. Final Project completion Inspection form No. 734-5063 (completed with State's Project Manager);
- b. Final Cost;
- c. As-Constructed Drawings
- d. Structural Analysis Information (if applicable);
- e. Foundation Report;
- f. Hydraulic Report including Scour Analysis.
- g. Pile Records and drill logs (if applicable);
- h. Final Load Rating calculation with a stamped report delivered electronically to the State's Senior Local Bridge Standards Engineer;
- i. Notify State's Local Agency Bridge Inspection Coordinator (bridge@odot.state.or.us) to ensure the final inspection will be scheduled; and
- j. Complete an Inspection with State's Project Manager, State's Region Senior Structural Designer, or State's Senior Local Bridge Standards Engineer.

6. DELIVERY

- a. STATE provides three (3) methods for administering projects funded under the federal-aid programs identified in this agreement:
 - i. State funds in exchange for federal-aid funds
 - ii. Certification to deliver federal-aid projects
 - iii. STATE directly deliver for the Local Agency
- 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.
 - i. Fund Exchange. STATE will make state funds available for the exchange of federal STBG funds provided in Section 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 one (1) dollar local STBG funds.
 1. 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. 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, including Forest Land Access Program (FLAP) funded projects. In addition, Fund exchanges may be used for the following maintenance purposes:

- a. Purchase or Production of Aggregate. The purchase or production of aggregate must clearly be roadway related and used exclusively for roadway work.
3. 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. All Cities above 5,000 residents, counties, and MPOs under 200,000 residents are eligible for fund exchange.
5. At no point can a fund exchange eligible Local Agency carry a balance of more than the most recent four years of STBG allocation.
- 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. Agencies outside of Transportation Management Areas (TMAs) may use SFLP funding for projects up to \$5 million in total cost.
 2. 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.

- 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 and assign specific responsibilities in matters of project financing.
- c. LPA 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 Consultant Selection; Design; Advertisement, Bid, and Award; and Construction Contract 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 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. LPA Certification guidance can be found at: <http://www.oregon.gov/ODOT/LocalGov/Pages/Certification-Guidance-Forms.aspx>
- d. STATE Delivery. Local Agency federal-aid projects that do not meet the eligibility requirements for state funding or certification will have their project delivered directly by the STATE.
 - i. STATE will determine the appropriate delivery method for Local Agency projects STATE manages, utilizing internal or consultant services.
 - ii. If STATE determines consultant services are needed, STATE will follow Oregon statute and Administrative Rules for two-tier consultant selection (ORS 279C.125).
 - iii. Local Agencies cannot administer consultant or construction contracts owned by STATE.

7. FINANCIAL EXPECTATIONS FOR EACH DELIVERY OPTION

- a. Fund Exchange. STATE will reimburse Local Agencies at 94 cents (STATE) per dollar up to the total federal dollar amount. No deposit will be collected.
- b. State Funded Local Projects. STATE will reimburse Local Agencies at the applicable federal match rate for the federal program that the project was selected through, up to the federal share identified in the project IGA. The reimbursement model allows STATE to collect local matching funds throughout project delivery. No deposit will be collected.

- 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. Exception 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 1.10 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 Active Transportation 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
- d. LPA 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 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 for further details on reimbursement, deposit, and match requirements.

8. MISCELLANEOUS

- a. ADA Coordination. AOC and LOC shall assist in communicating between ODOT and their respective constituent agencies to share information resources between ODOT and constituent agencies necessary to provide accessible transportation routes that comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together "ADA"). Where accessible routes fall under the jurisdiction of multiple agencies, AOC and LOC agree to provide coordination among their respective constituent agencies and ODOT in order to construct missing curb ramps and upgrade noncompliant sidewalks, curb ramps and pedestrian activated signals.

- i. Additional project-specific ADA requirements shall be set forth in each individual project agreement.
- b. Bridge and Pavement Condition Reporting. Section 11 of Oregon House Bill 2017 requires the Oregon Transportation Commission (OTC) to develop a set of uniform standards, in coordination with Local Agencies, for the consistent description and reporting of the condition of the transportation infrastructure owned by the state, counties, and cities. The infrastructure described must include pavement and bridges. Every city and county must submit the report by February 1 of each odd-numbered year. The reports are to be posted on an OTC developed website. Any city or county failing to file a report under this section may not receive any payments from the State Highway Fund until the report is filed. The OTC must submit a report by April 1 of each odd numbered year to the legislature on the state of the transportation infrastructure.
 - i. Bridge Condition. Three levels or categories will be used to describe bridge conditions: good, fair, and poor. The lowest condition rating for the deck, superstructure, and substructure will be used to determine if the bridge is in good, fair, or poor condition. STATE will provide the bridge condition data to the Local Agency for reporting.
 - ii. Pavement Condition. Three levels or categories will be used to describe pavement conditions: good, fair, and poor. STATE does not provide pavement condition data to Local Agencies for reporting.
 - iii. Condition Reporting. Every city and county will self-report bridge and pavement condition information on the web site required to be established under Section 12 of Oregon House Bill 2017. A condition reporting template is available through STATE's Bridge Section.
 - iv. Additional Information. Local Agencies should contact ODOT Technical Services Branch for further guidance on condition reporting.
- c. Federal Earmarks. The unfunded portion of any unfunded or partially funded Congressional earmarks received in Oregon is the sole responsibility of the agency or entity that proposed the earmark. The Local Agency funds will not be used to fund unfunded STATE earmark projects unless the Local Agency desires to use its funds in that manner. STATE funds will not be used to fund unfunded Local Agency earmark projects unless STATE desires to do so. Unless otherwise agreed upon, the funding for unfunded agency sponsored earmarks will be the responsibility of the sponsoring agency.
 - i. Unfunded Congressional earmarks received by entities or jurisdictions other than STATE or local public agencies will be funded by the entity or jurisdiction that sponsored the earmark.
 - ii. STATE maintains oversight responsibilities of federal earmark projects per FHWA-STATE Stewardship and Oversight Agreement as stewards of federal funds in Oregon.
- d. Emergency Relief Projects

- i. Emergency Relief (ER) is a special program from the Highway Trust Fund for the repair or reconstruction of Federal-aid highways and roads on Federal lands which have suffered serious damage as a result of (1) natural disasters or (2) catastrophic failures from an external cause.
- ii. The applicability of the ER program to a natural disaster is based on the extent and intensity of the disaster. Damage to highways must be severe, occur over a wide area, and result in unusually high expenses to the highway agency. Applicability of ER to a catastrophic failure due to an external cause is based on the criteria that the failure was not the result of an inherent flaw in the facility but was sudden, caused a disastrous impact on transportation services, and resulted in unusually high expenses to the highway agency
- iii. Emergency repair work to restore essential travel, minimize the extent of damage, or protect the remaining facilities, accomplished in the first 180 days after the disaster occurs, may be reimbursed at 100 percent Federal share. The 180 day time period for 100 percent eligibility of emergency repairs may be extended if a State cannot access a site to evaluate damages and the cost of repair.
- iv. Permanent Repairs are those that occur after the disaster to restore the roadway to its pre-disaster condition. Unlike work performed within 180 days of the disaster, permanent repairs must be administered through standard federal-aid contracting procedures. ER projects can be delivered through the Local Public Agency Certification Program (Section 6, Paragraph C), direct delivery by the STATE (Section 6, Paragraph D), or through alternate delivery methods approved by FHWA. State funded delivery options cannot be used for ER project delivery.
- v. Local Agencies should refer to the Federal Emergency Relief Manual for more detailed information (<https://www.fhwa.dot.gov/reports/erm/er.pdf>) or contact STATE's Emergency Operations Program.

9. GENERAL PROVISIONS

- a. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
- b. ODOT may terminate this Agreement effective upon delivery of written notice to AOC and LOC, or at such later date as may be established by ODOT, under any of the following conditions:
 - i. If AOC or LOC fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - ii. If AOC or 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.
- c. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- d. 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 as amended 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.
- e. All 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. All Parties shall ensure that each of its contractors complies with these requirements.
- f. 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), whichever is later. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
- g. Parties certify and represent that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of their respective parties, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind ODOT, AOC and LOC.
- h. 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, AOC or LOC with respect to which any other Party may have liability, the notified Party must promptly notify the other Parties in writing of the Third Party Claim and deliver to the other Parties 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.

- i. With respect to a Third Party Claim for which ODOT is jointly liable with AOC or 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 AOC or LOC in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of AOC and 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 AOC and 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.
- j. With respect to a Third Party Claim for which AOC or LOC is jointly liable with ODOT (or would be if joined in the Third Party Claim), AOC and 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 AOC and 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 AOC and 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. AOC's and LOC's contribution amounts in any instance are capped to the same extent they would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if they had sole liability in the proceeding.
- k. 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.
- l. This Agreement may be executed in several counterparts 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.

- m. 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.

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 _____

Date August 21, 2018

**APPROVED AS TO LEGAL
SUFFICIENCY**

League of Oregon Cities

By Jennifer O'Brien,
Assistant Attorney General by email
dated July 13th, 2018

By: see next page
Executive Director

Date _____

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mmcarthur@aocweb.org

LOC Contact:
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League of Oregon Cities
1201 Court St., Suite 200
Salem, OR 97301
503-588-6550
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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

By [Signature]
Director

Date 8-23-18

Association of Oregon Counties

By See previous page
Executive Director

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By Jennifer O'Brien,
Assistant Attorney General by email
dated July 13th, 2018

League of Oregon Cities

By [Signature]
Executive Director

Date 07/30/2018

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