

October 18, 2000

Misc. Contracts and Agreements

No. 18,738

2000 FUND EXCHANGE AGREEMENT

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1779

City of Newberg

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", and the CITY OF NEWBERG acting by and through its elected officials, hereinafter referred to as "Agency".

RECITALS

1. By the authority granted in ORS 190.110, 366.770 and 366.775, State may enter into cooperative agreements with counties and cities 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.

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

1. Agency has submitted a completed and signed Part I of the Project Prospectus outlining the schedule and costs associated with all phases of the replacement of parking on Hancock Street and improvements to the storm sewer drainage in conjunction with the ODOT Brutscher-Main Street Project, hereinafter referred to as "Project".
2. To assist in funding the project, Agency has requested State to exchange 2000 Federal Funds, which have been allocated to Agency, for State funds based on the following ratio:

\$94 State for \$100 Federal

Based on this ratio, Agency wishes to trade \$96,667 Federal Funds for \$90,867 State Funds.

3. State has reviewed Agency's prospectus, considered Agency's request for the fund exchange, and has determined that Agency's project is eligible for the exchange funds.
4. The term of this agreement shall begin on the date all required signatures are obtained and shall terminate within two calendar years following that date, unless otherwise extended or renewed by formal agreement of the parties.

5. The parties agree that the exchange is subject to the following conditions:
- A. The Federal Funds transferred to State may be used by State at its discretion.
 - B. State dollars transferred to Agency must be used for the project named in Terms of Agreement, Item 1, Page 1, of this agreement. This fund exchange is to provide funding for specific roadway projects and is not intended for maintenance.
 - C. State funds may be used for all phases of the project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible for accounting for expenditure of State Funds.
 - D. This Fund Exchange shall be on a reimbursement basis, with State funds limited to a maximum amount of \$90,867. All costs incurred in excess of the fund exchange amount will be the sole responsibility of Agency.
 - E. State certifies at the time this agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this agreement within State's current appropriation or limitation. Funds available for reimbursement on or after July 1, 1999 are contingent upon the legislatively approved budget of State.
 - F. Agency shall be responsible for all costs and expenses related to its employment of individuals to perform the work under this agreement, including but not limited to retirement contributions, workers' compensation, unemployment taxes, and State and Federal income tax withholding.
 - G. Agency 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 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (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.

- H. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current State and Federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the project.
- I. Agency shall compile accurate cost accounting records. Agency shall bill State in a form acceptable to State no more than once a month for costs incurred on the project. State will reimburse Agency at 100 percent of the billing amount not to exceed \$90,867. The cost records and accounts pertaining to the work covered by this agreement shall be retained for inspection by representatives of State for a period of three years following final payment. Copies shall be made available upon request.
- J. Agency shall, upon completion of project, maintain and operate the project at its own cost and expense.
- K. Agency, its consultants or subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers.
- L. This agreement may be terminated by mutual written consent of both parties.
 - 1. State may terminate this agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 State fails to correct such failures within 10 days or such longer period as State may authorize.

2. Either party may terminate this agreement effective upon delivery of written notice to other party, or at such later date as may be established by the terminating party, under any of the following conditions:
 - a. If either party fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in the agreement.
 - b. 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 either party is prohibited from paying for such work from the planned funding source.
 3. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
- M. State and Agency hereto agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.
6. Agency personnel who sign this agreement shall be duly authorized to do so by the City Council.
 7. This agreement and attached exhibits constitute 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. The failure of State to enforce any provision of this agreement shall not constitute a waiver by State of that or any other provision.

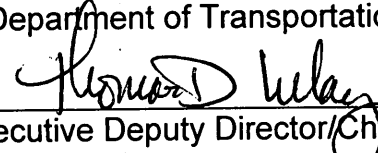
IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

The funding for this fund exchange program was approved by the Oregon Transportation Commission on October 13, 1999, as a part of the 2000-2003 Statewide Transportation Improvement Program (STIP).

The Financial Services Branch Manager approved the fund exchange on October 10, 2000.

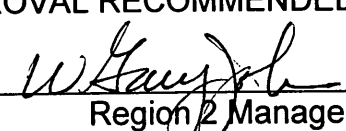
The Oregon Transportation Commission on March 18, 1999, approved Subdelegation Order No. 2 in which the Director grants authority to the Executive Deputy Director/Chief Engineer to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program or in a line item in the approved biennial budget.

STATE OF OREGON, by and through
its Department of Transportation

By 
Executive Deputy Director/Chief Engineer

Date 10/01

APPROVAL RECOMMENDED

By 
Region 2 Manager

Date 12.13.00

APPROVED AS TO LEGAL
SUFFICIENCY

By N/A
Assistant Attorney General

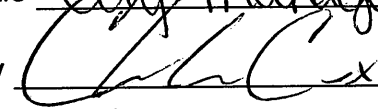
Date _____

Agency Contact: Mike Soderquist, PE
Community Development Director
414 E First Street
Newberg, OR 97132

CITY OF NEWBERG, by and through its
elected officials

By 

Title City Manager

By 

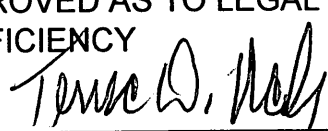
Title Mayor

By _____

Title _____

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By 
Agency Legal Counsel

Date 10/30/00