

RESOLUTION No. 2011-2950

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENT WITH THE STATE OF OREGON TO EXCHANGE FEDERAL FUNDS FOR STATE FUNDS

RECITALS:

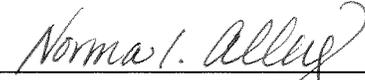
1. The Surface Transportation Program (STP) provides federal funding to states and local governments that can be used for highways, bridges or transit projects.
2. Under an agreement developed in cooperation with Oregon cities and counties, Oregon Department of Transportation (ODOT) shares a portion of its yearly STP funding with select local governments. This federal funding can only be used for specific types of federally approved transportation projects and under stringent regulations.
3. ODOT will exchange the federal funds for state funds that can be used with greater flexibility for transportation projects that the local agency selects. The state has agreed to exchange \$269,072.00 federal funds for \$252,927.68 state funds.
4. Staff has proposed to use this money to pay for the cost of the Sheridan Street Road Improvements at the Chehalem Cultural Center with the remaining funds for approved maintenance activities.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

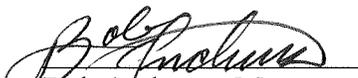
The City Council authorizes the city manager to sign the agreement, and any future amendments, prepared by the state entitled Miscellaneous Contracts and Agreements No. 27573, shown in Exhibit "A", which is attached. Exhibit "A" is hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 7, 2011.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of June 2011.


Norma I. Alley, City Recorder

ATTEST by the Mayor this 9th day of June 2011.


Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ / ____ meeting. Or, None.
(committee name) (date) (check if applicable)

EXHIBIT "A" TO
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Misc. Contracts & Agreements
No. 27573

Oregon Department of Transportation
2011 FUND EXCHANGE AGREEMENT
Sheridan Street Improvement Project
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 CITY OF NEWBERG, acting by and through its designated officials, hereinafter referred to as "Agency", both herein referred to individually or collectively as Party" or "Parties".

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572, and 366.576, State may enter into cooperative agreements with counties, cities, and units of local governments 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 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of Sheridan Street Improvement project, hereinafter referred to as "Project".
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2011 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal
4. Based on this ratio, Agency wishes to trade \$269,072 federal funds for \$252,927.68 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) calendar years later, unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:

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- a. The federal funds transferred to State may be used by State at its discretion.
- b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
 - i. Purchase of Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
 - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
- 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 to account for expenditure of state funds.
- d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$252,927.68. 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 executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
- f. Agency and any contractors shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers' compensation, unemployment taxes, and state and federal income tax withholdings.
- 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 279C.505, 279C.515, 279C.520, 279C.530, and 279B.270, incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees 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

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- 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 submit invoices to State on a monthly basis for actual costs incurred by Agency on behalf of the Project directly to State's Project manager for review and approval. Such invoices will be in a form identifying the Project, the Agreement number, the invoice or account number (or both), and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$252,927.68, including all expenses. Travel expenses will not be reimbursed.
 - j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
 - k. All employers, including Agency, that employ subject workers 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. Agency shall ensure that each of its subcontractors complies with these requirements.
 - l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing, and delivered by certified mail or in person.
 - i. 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

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notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the 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 sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this 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.
 - iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 - m. State and Agency 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.
7. Agency acknowledges and agrees that State, 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 Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
9. 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.

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10. 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.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representative have read this Agreement, understand it, and agrees to be bound by its terms and conditions.

The funding for this Fund Exchange Program was approved by the Oregon Transportation Commission on December 16, 2010 as a part of the 2010-2013 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on April 12, 2011.

The Oregon Transportation Commission on December 29, 2008, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations. Day-to-day operations include those activities required to implement the biennial budget approved by the Legislature, including activities to execute a project in the Statewide Transportation Improvement Program.

Signature page to follow

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On August 2, 2005, the Director, Deputy Director, Highways and Chief Engineer approved Subdelegation Order No. 5, in which the Director, Deputy Director, Highways and Chief Engineer delegate authority to the Region Managers to approve and sign intergovernmental agreements over \$75,000 up to a maximum of \$500,000 when the work is related to a project included in the Statewide Transportation Improvement Program (STIP).

CITY OF NEWBERG, by and through its designated officials

STATE OF OREGON, by and through its Department of Transportation

By _____
Mayor

By _____
Region 2 Manager

Date _____

Date _____

By _____
City Manager

APPROVAL RECOMMENDED

Date _____

By _____
Region 2 Project Delivery Manager

APPROVED AS TO LEGAL SUFFICIENCY

Date _____

By _____
City Legal Counsel

By _____
Region 2 Planning & Development Manager

Date _____

Date _____

By _____
Assistant Attorney General

Date _____

Agency Contact:

Tabrina R. McPherson, CIP Administrator
City of Newberg Public Works Engineering
414 East First Street
PO Box 970
Newberg, OR 97132
Phone: (503) 554-7705
Email: tabrina.mcpherson@newbergoregon.gov

State Contact:

Michael Starnes, Local Agency Liaison
ODOT, Highway Division, Region 2
455 Airport Road SE, Bldg. B
Salem, OR 97301-5395
Phone: (503) 986-6920
Email: michael.s.starnes@odot.state.or.us