

RESOLUTION No. 2016-3314

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AGREEMENT WITH THE STATE OF OREGON TO EXCHANGE FEDERAL FUNDS FOR STATE FUNDS FOR THE CITY'S VILLA ROAD IMPROVEMENT PROJECT.

RECITALS:

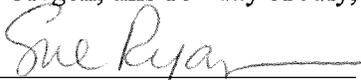
1. The Surface Transportation Program (STP) provides federal funding to states and local governments that can be used for selected transportation projects.
2. Under an agreement with the Association of Oregon Counties and the League of Oregon Cities, the Oregon Department of Transportation (ODOT) allocates a portion of its yearly STP funds to local governments for supporting selected local transportation projects.
3. Staff has proposed to ODOT that a major portion of the Villa Road Improvement Project is funded with the federal fund exchange allocations.
4. ODOT has agreed to exchange \$716,065.00 in federal funds for \$673,101.10 of state funds for the city's requested project.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The City Council does hereby authorize the City Manager to sign the agreement, and any future amendments, prepared by the state entitled Miscellaneous Contracts and Agreements No. 31335, 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: July 19, 2016.

ADOPTED by the City Council of the City of Newberg, Oregon, this 18th day of July, 2016.


Sue Ryan, City Recorder

ATTEST by the Mayor this 21st day of July, 2016.

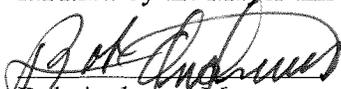

Bob Andrews, Mayor

EXHIBIT "A" for Resolution No. 2016-3314

Misc. Contracts and Agreements
No. 31335

2016 FUND EXCHANGE AGREEMENT

Villa Road 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 elected 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.

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 the Villa Road 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 2016 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 \$716,065.00 federal funds for \$673,101.10 state funds.
5. The term of this Agreement will begin upon execution and will terminate two (2) years later unless extended by an executed amendment.
6. 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.

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- 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 or 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 \$673,101.10. 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 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;

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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, or at the end of the Project, 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 number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$673,101.10, 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 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:

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- 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.
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

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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 representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on December 18, 2014, as a part of the 2015-2018 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on June 23, 2016.

SIGNATURE PAGE FOLLOWS

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CITY OF NEWBERG, by and through its
elected officials

By Authority of Resolution No. _____

By _____
Mayor

Date _____

By _____
City Manager

Date _____

APPROVED AS TO LEGAL FORM

By _____
City Attorney

Date _____

Agency Contact:

Paul Chiu, PE, Senior Engineer
City of Newberg, Engineering Services Dept.
PO Box 970
Newberg, OR 97132
Phone: (503) 554-1751
Email: paul.chiu@newbergoregon.gov

STATE OF OREGON, by and through its
Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 2 Manager

Date _____

By _____
Region 2 Planning and Development
Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

State Contact:

Shelly White-Robinson, Acting Local Project
Delivery Coordinator
ODOT, Region 2
455 Airport Road, SE, Bldg. B
Salem, OR 97301
Phone: (503) 986-6925
Email: shelly.white-robinson@odot.state.or.us