



M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

May 7, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of 2015 Fund Exchange Agreement No. 30538
with Oregon Department of Transportation for the SE Foster Road Paving Project**

Purpose/Outcomes	Enter into an agreement with Oregon Department of Transportation for a pavement overlay of SE Foster Road.
Dollar Amount and Fiscal Impact	Federal Fund Exchange: \$1,595,744.68 Total Agreement Amount: \$1,500,000
Funding Source	Federal Fund Exchange Program as part of the 2012-2015 Statewide Transportation Improvement Program (STIP)
Safety Impact	A pavement overlay will extend the life of the existing pavement and provide for a safer riding surface.
Duration	Upon execution through completion of the project.
Previous Board Action	No prior actions.
Contact Person	Joel Howie, DTD Project Manager @ 503-742-4658

BACKGROUND:

Clackamas County Department of Transportation and Development (DTD) received federal funding as a part of the 2012-2015 Statewide Transportation Improvement Program. The Oregon Department of Transportation (ODOT) has a fund exchange program that allows for the exchange of federal funds to state funds based on a \$94 state for every \$100 in federal funds.

DTD requested ODOT to exchange \$1,595,744.68 in federal funding for \$1,500,000 in state funding. The exchange eliminates all federal requirements for design and construction and minimizes ODOT's oversight, thereby streamlining the project and using a more efficient funding source.

Transportation Maintenance identified SE Foster Road and three connecting streets as high priority projects for resurfacing due to age, deterioration and increasing traffic volumes. The three connecting streets are Hemrich Road, Vogel Road and Troge Road. SE Foster Road is classified as a minor arterial, Hemrich Road is classified as collector road, and Vogel and Troge roads are classified as local roads. New pavement will extend the life of these roads. Bids for this paving project were received on May 5, 2015 and any construction expense in excess of this funding will be paid with County Road Fund.

The IGA has been reviewed and approved by County Counsel.

Mike

RECOMMENDATION:

Staff respectfully recommends approval of the attached 2015 Fund Exchange Agreement No. 30538 for the SE Foster Road Paving Project.

Sincerely,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Joel Howie, Civil Engineering Supervisor at (503) 742-4658

2015 FUND EXCHANGE AGREEMENT
SE Foster Road Paving Project
Clackamas County

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 CLACKAMAS COUNTY, 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 Statute (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.
2. Foster Road is a part of the County's street system under the jurisdiction and control of the Agency.
3. Foster Road is a minor arterial in a need of an overlay due to age, utility cuts, and increased traffic volumes.

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 the road overlay on the full width of the roadway including intersections. Replacement of striping will be required and grinding to match existing roads, hereinafter referred to as "Project." The Project location map is attached hereto as Exhibit A and by this reference made a part hereof.
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 2015 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 \$1,595,744.68 federal funds for \$1,500,000 state funds.
5. The term of this Agreement will begin upon execution and will terminate in two (2) calendar years 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.
 - 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 \$1,500,000. 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; 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 quarterly 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 number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$1,500,000, 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:
 - 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 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 March 21, 2012, as a part of the 2012-2015 Statewide Transportation Improvement Program (STIP) (or subsequently approved by amendment to the STIP).

The Program and Funding Services Manager approved the Fund Exchange on February 18, 2015.

Signature Page to Follow

CLACKAMAS COUNTY, by and through
its elected officials

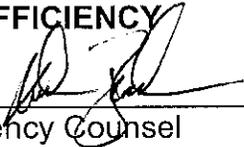
By _____
Chair

Date _____

By _____
Recording Secretary

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By  _____
Agency Counsel

Date 4/28/15

Agency Contact:

Joel Howie, Civil Engineering Supervisor
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4658
JHowie@co.clackamas.or.us

State Contact:

Justin Shoemaker, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
(503) 731-8485
justin.d.shoemaker@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____
Region 1 Project Services Manager

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Assistant Attorney General

Date _____

EXHIBIT A – Project Location Map

