



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

### **For Board Business Meeting of June 8, 2016**

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**DATE:** June 1, 2016

**FROM:** George Kolb, County Engineer                      Road                      541-322-7113

**TITLE OF AGENDA ITEM:**

Consideration of Board Signature of Document No. 2016-347, 2016 Fund Exchange Agreement No. 31197 addressing ODOT's and Deschutes County's responsibilities concerning the exchange of Surface Transportation Program (STP) funds for State funds.

**PUBLIC HEARING ON THIS DATE?** NO.

**BACKGROUND AND POLICY IMPLICATIONS:**

Local agencies receive federal Surface Transportation Program (STP) funds each year, based on a formula developed in conjunction with the League of Oregon Cities (LOC) and the Association of Oregon Counties (AOC). Local agencies are given the option to exchange their federal dollars for state dollars. ODOT set aside approximately \$14.7 million in 2016 for this program.

The program was designed to help local agencies contract projects without the need to accumulate federal funds and eliminate the added complications of federal regulations. This program allows the local agency to exchange their federal STP funds for State funds. The exchange rate is \$0.94 state for every \$1 federal exchanged. Based on this ratio, Deschutes County will exchange \$631,882 STP federal funds for \$593,969 state funds. These funds will be used for the overlay of NW Chinook Drive, Burgess Road, Arnold Market Road and Baker Road.

The local agency sends billings for the actual cost of construction to ODOT for reimbursement upon completion of the projects. The local agency has two years to complete their projects.

**FISCAL IMPLICATIONS:**

Deschutes County will receive an additional \$593,969 in state funds to be used for specific road projects. This revenue and expenditure appropriation is included in the proposed FY 2016-17 budget.

**RECOMMENDATION & ACTION REQUESTED:**

Move approval of Board Signature on Document No. 2016-347, 2016 Fund Exchange Agreement No. 31197 between ODOT and Deschutes County

**ATTENDANCE:** George Kolb, County Engineer

**DISTRIBUTION OF DOCUMENTS:**

Original returned to Sheila Odle (ext. 7148) at the Road Department for forwarding on to ODOT for their signature.

## DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

**Date:**

**Department:**

**Contractor/Supplier/Consultant Name:**

**Contractor Contact:**

**Contractor Phone #:**

**Type of Document:** This is an IGA between ODOT and Deschutes County.

**Goods and/or Services:** Provides for the use of Surface Transportation Funds (STP) by the County for road maintenance projects

**Background & History:** Local agencies receive federal Surface Transportation Program (STP) funds each year, based on a formula developed in conjunction with the League of Oregon Cities (LOC) and the Association of Oregon Counties (AOC). Local agencies are given the option to exchange their federal dollars for state dollars. ODOT set aside approximately \$14.7 million in 2016 for this program. The program was designed to help local agencies contract projects without the need to accumulate federal funds and eliminate the added complications of federal regulations. This program allows the local agency to exchange their federal STP funds for State funds. The exchange rate is \$0.94 state for every \$1 federal exchanged. Based on this ratio, Deschutes County will exchange \$631,882 STP federal funds for \$593,969 state funds. These funds will be used for the overlay of NW Chinook Drive, Burgess Road, Arnold Market Road and Baker Road.

The local agency sends billings for the actual cost of construction to ODOT for reimbursement upon completion of the projects. The local agency has two years to complete their projects.

**Agreement Starting Date:**

**Ending**

**Date:**

**Annual Value or Total Payment:**

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Insurance Certificate Received (check box)

Insurance Expiration Date:

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Check all that apply:

RFP, Solicitation or Bid Process

Informal quotes (<\$150K)

Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

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Funding Source: (Included in current budget?  Yes  No

If **No**, has budget amendment been submitted?  Yes  No

Is this a Grant Agreement providing revenue to the County?  Yes  No

Special conditions attached to this grant:

Deadlines for reporting to the grantor:

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter:  Yes  No

Contact information for the person responsible for grant compliance: Name:

Phone #:

Departmental Contact and Title: George Kolb  
322-7113

Phone #: 541-

Department Director Approval:

  
Signature

06/01/16  
Date

Distribution of Document: Original returned to Sheila Odle (ext. 7148) at the Road Department for forwarding on to ODOT for their signature.

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**Official Review:**

County Signature Required (check one):  BOCC  Department Director (if <\$25K)

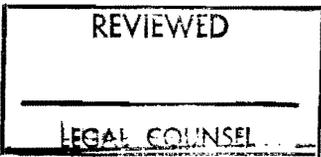
Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review \_\_\_\_\_

Date \_\_\_\_\_

Document Number

DC 2016-347



2016 FUND EXCHANGE AGREEMENT  
NW Chinook Dr, Burgess Rd, Arnold market Rd and Baker Rd Overlay  
Deschutes 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 DESCHUTES 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. NW Chinook Drive; Burgess Road, Arnold Market Road and Baker Road are a part of the County road system under the jurisdiction and control of Agency.

**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 asphalt overlay of NW Chinook Drive; Burgess Road, Arnold Market Road and Baker Road, as identified on the maps attached hereto, marked Exhibit A and by this reference made a part hereof, 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 \$631,882 federal funds for \$593,969 state funds.

5. The term of this Agreement will begin upon execution and will terminate two (2) years from the date that all required signatures are obtained 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 \$593,969. 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 \$593,969, 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 May 20, 2015, as a part of the 2015-2018 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on February 8, 2016.

**Signature Page to Follow**

**DESCHUTES COUNTY**, by and through  
its elected officials

By \_\_\_\_\_  
Commission Chair

Date \_\_\_\_\_

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

By \_\_\_\_\_  
Commissioner

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Counsel

Date \_\_\_\_\_

**Agency Contact:**  
Chris Doty – Public Works Director  
6150 SE 27<sup>th</sup> Street  
Bend, OR 97702  
(541) 322-7105  
[Chris.doty@co.deschutes.or.us](mailto:Chris.doty@co.deschutes.or.us)

**State Contact:**  
Darrell Newton - Local Agency  
Programs Coordinator  
63055 N. Highway 97, Bldg M  
Bend OR, 97701-5765  
(541) 388-6272  
[darrell.r.newton@odot.state.or.us](mailto:darrell.r.newton@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 4 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

