

Approved: OSHD Staff
EDM:me
7/14/86

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Vol M81 Page 16118

Misc. Contracts & Agreements
No. 8896

LOCAL AGENCY AGREEMENT
HIGHWAY BRIDGE REPLACEMENT PROJECT

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Highway Division, hereinafter referred to as "State"; and Klamath County, acting by and through its Elected Officials, hereinafter referred to as "Agency".

1. By the authority granted in ORS 366.770 and 366.775, the State may enter into cooperative agreements with the 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. Local matching shares of the project costs are based on the current working agreements with the Association of Oregon Counties and the League of Oregon Cities.

2. Under such authority, the State and the Agency plan and propose to construct the Lost River (Malone Road) Bridge, hereinafter referred to as "project". The location of the project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof. The project shall be conducted as a part of the Highway Bridge Replacement Program under Title 23, United States Code, and the Oregon Action Plan.

3. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.

4. Agency shall enter into and execute this agreement during a duly authorized session of its Board of County Commissioners.

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

This project was approved by the State Highway Engineer on June 20, 1985 in the Highway Bridge Replacement Program through 1989.

The Oregon Transportation Commission, by a duly adopted delegation order, authorized the State Highway Engineer to sign this agreement for and on behalf of the Commission. Said authority is set forth in the Minutes of the Oregon Transportation Commission.

All except SPECIAL PROVISIONS, approved as to legal sufficiency on September 1, 1983 by Jack L. Solis, Chief Counsel.

APPROVAL RECOMMENDED
By [Signature]
Region Engineer

STATE OF OREGON, by and through
its Department of Transportation,
Highway Division

By [Signature]
State Highway Engineer
Date 8/29/86

APPROVED AS TO
LEGAL SUFFICIENCY
By [Signature]
County Counsel

KLAMATH COUNTY by and through
its Elected Officials

By [Signature]
Chairman
By [Signature]
Commissioner

By Out of Office Today
Commissioner
Date August 13, 1986

ATTACHMENT NO. 1
SPECIAL PROVISIONS

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1. State shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations and hydraulic studies, identify and obtain all required permits, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. State shall, upon award of a construction contract, furnish all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract. The State shall obtain "Record Samples" at specified intervals for testing in the State Materials Laboratory in Salem.
3. State shall, conform with requirements of the Oregon Action Plan, and if necessary shall appoint and direct the activities of a Citizen's Advisory Committee and Technical Advisory Committee, conduct any required public hearings and recommend the preferred alternative.
4. State shall provide any required right-of-way description and/or acquisition.
5. State shall provide a bridge design, plans, and specifications at no cost to the County under ORS 366.155(k).
6. Agency shall furnish the field survey data and vicinity map.

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EXHIBIT A

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ATTACHMENT NO. 2
STANDARD PROVISIONS

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PRINT OBLIGATIONS:

PROJECT ADMINISTRATION

1. State is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this project, and the Agency hereby agrees that the State shall have full authority to carry out this administration. If requested by the Agency, the State will further act for the Agency in other matters pertaining to the project. The State and the Agency shall actively cooperate in fulfilling the requirements of the Oregon Action Plan. For all projects the State and the Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the project.

P.E. & CONSTRUCTION ENGINEERING

2. Preliminary and construction engineering may be performed by the State, the Agency or others. If the Agency, or others, perform the engineering, the State will monitor the work for conformance with FHWA rules and regulations. In the event that the Agency elects to engage the services of a consultant to perform any of the work covered by this agreement, no reimbursement shall be made using Federal-Aid funds for any costs incurred by such consultant prior to receiving written authorization from the State to proceed. Any such consultant shall be selected using procedures acceptable to the State and the FHWA, and an agreement prepared describing the work to be performed and the method of payment.

REQUIRED STATEMENT OR USDOT FINANCIAL ASSISTANCE AGREEMENT:

3. If as a condition of assistance the recipient has submitted and the U.S. Department of Transportation has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program, the U.S. Department of Transportation shall impose such sanctions as noted in Title 49, Code of Federal Regulations, Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future U.S. Department of Transportation financial assistance.

The recipient further agrees to comply with all applicable Civil Rights Laws, Rules and Regulations, including Section 504 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Act.

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4. The parties hereto agree and understand that they will comply with all applicable statutes and regulations, including but not limited to: Title 6, USC, Civil Rights Act; Title 49 CFR, Part 23; Title 18, USC, Anti-Kickback Act; Title 23, USC, Federal-Aid Highway Act; Titles 2 and 3 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; provisions of 23 CFR 1.11 and FHPM 1-4-5 (23 CFR 140.7); and the Oregon Action Plan.

STATE OBLIGATIONS:

PROGRAM REQUEST

5. State shall submit a program to the FHWA with a request for approval of federal aid participation in all engineering, right-of-way acquisition, eligible utility relocations and construction work for the project. **NO WORK SHALL PROCEED UNTIL SUCH APPROVAL HAS BEEN OBTAINED.** The program shall include services to be provided by the State, the Agency or others. The State shall notify the Agency in writing when authorization to proceed has been received from the FHWA. Major responsibility for the various phases of the project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations, and the Oregon Action Plan.

AUTHORITY FOR SURVEY

6. State shall prepare an Authority for Survey which will itemize the estimate of cost for preliminary engineering services to be provided by the State, the Agency or others, and shall furnish the Agency with a copy of such cost estimate.

FINANCE

7. State shall, in the first instance, pay all reimbursable costs of the project, submit all claims for federal aid participation to the FHWA in the normal manner, compile accurate cost accounting records and furnish the Agency with an itemized statement of actual costs to date at the end of each State Fiscal Year. When the actual total cost of the project has been computed, the State shall furnish the Agency with an itemized statement of such final costs.

PROJECT ACTIVITIES

8. State shall, if the work is performed by the Agency or others, review and process or approve all environmental statements, preliminary plans, specifications and cost estimates, prepare the contract and bidding documents, advertise for bid proposals, award all contracts and, upon award of a construction contract, perform all necessary laboratory testing of materials, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the project. The actual cost of laboratory testing services provided by the State will be charged to the project construction engineering cost account number (prefix) and will be included in the total cost of the project.

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9. State shall, as provided in ORS 366.155(k), prepare plans and specifications for bridges and culverts (structure portion only) at no expense to the counties.

AGENCY OBLIGATIONS:

FINANCE

10. The project applicant will, prior to the commencement of the preliminary engineering and right-of-way acquisition phases, deposit with State its estimated share of each phase.

CONSTRUCTION

The applicant's share of construction will be deposited in two parts. The initial deposit will represent 65 percent of the applicant's share, based on the engineer's estimate, and will be requested three weeks prior to opening bid on the project. Upon award of the contract, the balance of the applicant's share will be requested.

Collection of advance deposits amounting to less than \$2,500 for any phase of project (P.E., R/W) will be postponed until collectively the amount exceeds \$2,500 or until the collection of the advance deposit for construction is required.

Pursuant to ORS 366.425, as amended by Chapter 365, Oregon Laws of 1979, the advance deposit may be in the form of 1) check or warrant; 2) irrevocable letter of credit deposited in a local bank in the name of State; and 3) deposit in the Local Government Investment Pool accompanied by an irrevocable limited power of attorney.

11. Agency shall present properly certified bills for 100 percent of actual costs incurred by the Agency on behalf of the project directly to the State Liaison Person for review and approval. Such bills shall be in a form acceptable to the State and documented in such a manner as to be easily verified. Billings shall be presented for periods of not less than one month duration, based on actual expenses to date. All billings received from the Agency must be approved by the State Liaison Person prior to presentation to the Highway Division Accounting Office for payment. The Agency's actual costs eligible for federal-aid participation shall be those allowable under the provisions of 23 CFR 1.11 and FHWA 1-4-5 (23 CFR 140.7).

12. The cost records and accounts pertaining to the work covered by this agreement are to be kept available for inspection by representatives of the State and the FHWA for a period of three (3) years following the date of final payment. Copies of such records and accounts shall be made available upon request.

PROJECT CANCELLATION

13. Agency agrees that should the project be cancelled or terminated for any reason prior to its completion, the Agency shall reimburse the State for any costs that have been incurred by the State on behalf of the project.

DELAYED STARTING DATE

14. In the event that right-of-way acquisition, or actual construction of the facility for which this preliminary engineering is under-

year in which this agreement is executed, the State may request reimbursement of the sum or sums of Federal-Aid funds disbursed to the Agency under the terms of this agreement.

RIGHT OF WAY

15. Agency shall be responsible for acquisition of the necessary right-of-way and easements for construction and maintenance of the project. The State shall review all right-of-way activities engaged in by the Agency to assure compliance with applicable laws and regulations. The Agency may request the State to perform the acquisition functions, subject to execution of a Right-of-Way Services Agreement. If any real property purchased with federal-aid participation is no longer needed for right-of-way or other public purposes, the disposition of such property shall subject to applicable rules and regulations which are in effect at the time of disposition. Reimbursement to the State of the required proportionate share of the fair market value may be required.

UTILITIES

16. Agency shall relocate or cause to be relocated, all utility conduits, lines, poles, mains, pipes and such other facilities where such relocation is necessary in order to conform said utilities and facilities with the plans and ultimate requirements of the project. Only those utility relocations which are eligible for federal-aid participation under the Federal-Aid Highway Program Manual, Volume 1, Chapter 4, Section 4, shall be included in the total project costs and participation; all other utility relocations shall be at the sole expense of the Agency, or others. The State will arrange for utility adjustments in areas lying within jurisdiction of the State and, if the State is performing the preliminary engineering, the Agency may request the State to arrange for utility adjustments lying within Agency jurisdiction, acting on behalf of the Agency.

Agency shall, five weeks prior to the opening of construction bids, proposals, furnish the State with an estimate of cost for eligible reimbursable utility relocations, based on the plans for the project. The Agency shall notify the State Liaison Person prior to proceeding with any utility relocation work in order that the work may be properly coordinated into the project and receive the proper authorization.

CONSTRUCTION

17. Construction plans shall begin conformance with standard practices of the State for plans prepared by its own staff, and shall be developed in accordance with the design standards published by AASHTO which pertain to the type of facility proposed. The latest design standards adopted by AASHTO shall govern the design of highway bridges and related structures. All specifications for the project shall be in substantial compliance with the "Oregon Standard Specifications for Highway Construction".

GRADE CHANGE LIABILITY

18. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by the State shall not subject the State to liability under ORS 105.760 for change of grade.

CONTRACTOR CLAIMS

19. Agency shall provide legal defense against all claims brought by the contractor, or others, resulting from the Agency's failure to comply with the terms of this agreement.

MAINTENANCE RESPONSIBILITIES

20. Agency shall, upon completion of construction, thereafter maintain and operate the project at its own cost and expense, and in a manner satisfactory to the State and the FHWA.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the 8th day
of September A.D., 19 86 at 12:13 o'clock P M., and duly recorded in Vol. 186,
of Deeds on Page 16118.

NONE
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By Pat Smith County Clerk