

December 2, 2003
Revised February 2, 2004

State of Oregon, County of Klamath
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Misc. Contracts & Agreements
No. 21,325

COOPERATIVE IMPROVEMENT AGREEMENT
Junction OR39/OR140 Highway – Ritter Road
Klamath 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 "ODOT"; and Klamath County, acting by and through its elected officials, hereinafter referred to as "County."

RECITALS

1. Oregon 39 and Oregon 140 are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Ritter Road is a part of the county road system under the jurisdiction and control of County.
2. By the authority granted in ORS 190.110, 366.770 and 366.775, ODOT may enter into cooperative agreements with the 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.
3. By the authority granted in ORS 366.425, ODOT may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within ODOT. When said money or a letter of credit is deposited, ODOT shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.

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. For the purpose of providing acceptable traffic patterns on public highways, County plans to construct a left-turn lane near the junction of Highway OR39/OR140 for better access into the Klamath Community College property, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map, marked Exhibit A, attached hereto and by this reference made a part hereof.

512-0404-700
Rt: Dept of Trans.
Trans. Bldg.
355 Capitol St. NE
Salem, OR 97301

- 1. County shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from ODOT, forward to ODOT an advance deposit or irrevocable letter of credit in the amount of \$360,000 for the Project, said amount being equal to the estimated total cost for the work performed by ODOT at County's request under ODOT Obligations Paragraph two. County agrees to make additional deposits as needed upon request from ODOT. Depending upon the timing of portions of the Project to which the advance deposit contributes, it may be requested by ODOT prior to Preliminary Engineering, purchase of right-of-way, or approximately 4-6 weeks prior to Project bid opening.**
- 2. Upon completion of the Project and receipt from ODOT of an itemized statement of the actual total cost of ODOT's participation for the project, County shall pay any amount which, when added to County's advance deposit, will equal 100 percent of actual total ODOT costs for the Project. Any portion of said advance deposit which is in excess of the ODOT's total costs will be refunded or released to County.**
- 3. County shall be responsible for all costs associated with Project up to a maximum commitment of \$360,000, as described in Paragraph 2 of Terms of Agreement.**
- 4. County or its consultant shall ensure project specifications and design are delivered to ODOT in a timely manner to facilitate coordinating this Project work with the existing STIP project, Key No. 11879.**
- 5. All employers, including County, that employ subject workers who work under this Agreement 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. County shall ensure that each of its subcontractors complies with these requirements.**

6. 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.
7. County shall enter into and execute this Agreement during a duly authorized session of its Board of County Commissioners.

ODOT OBLIGATIONS

1. ODOT agrees to coordinate work for this Project with the existing STIP project, key number 11879, as described under Paragraph 2 of Terms of Agreement. ODOT shall incorporate the plans and specifications for this Project into the bid documents for the STIP project.
2. ODOT shall, upon execution of the agreement, forward to County a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$360,000 for payment of work to be performed under paragraph 1 of Terms of Agreement. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete project.
3. Upon completion of the project, ODOT shall either send to County a bill for the amount which, when added to County's advance deposit, will equal 100 percent of the total ODOT costs for project or ODOT will refund to County any portion of said advance deposit which is in excess of the total ODOT costs for project.
4. ODOT's Project Manager for this Project is Brad Grimm, 2557 Altamont Drive, Klamath Falls, OR 97603 (541-883-5665).

GENERAL PROVISIONS

1. Both parties acknowledge and agree that either party, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of either party which are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after completion of Project. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting party.

2. Both parties 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 279.312, 279.314, 279.316, 279.320 and 279.555, which hereby are incorporated by reference. Without limiting the generality of the foregoing, both parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V 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.

3. This Agreement may be terminated by mutual written consent of both parties. ODOT may terminate this Agreement effective upon delivery of written notice to County, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If County fails to provide services called for by this Agreement within the time specified herein or any extension thereof.

 - b. If County 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 ODOT fails to correct such failures within 10 days or such longer period as ODOT may authorize.

 - c. If County fails to provide payment of the maximum commitment of \$360,000 upon receipt of a letter of request from ODOT.

 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this agreement.

 - e. 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 if ODOT is prohibited from paying for such work from the planned funding source.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

4. Both parties shall, to the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, indemnify, defend, save, and hold harmless each other, their officers and employees from any and all claims, suits, and liabilities which may occur in the performance of this Project.

5. Notwithstanding the foregoing defense obligations under paragraph 5 above, neither party nor any attorney engaged by either party shall defend any claim in the name of the other party or any agency/department/division of such other party, nor purport to act as legal representative of the other party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other party. Each party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other party is prohibited from defending it, or that other party is not adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the party to do so. Each party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.
6. 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 ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

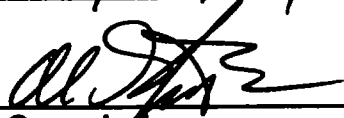
SIGNATURE PAGE TO FOLLOW

On September 6, 2002, the Director of the Oregon Department of Transportation approved Subdelegation Order No. 2, in which the Director delegates authority to the Executive Deputy Director for Highways to approve and execute agreements over \$75,000 when the work is related to a project included in the Statewide Transportation Improvement Program.

Klamath County, by and through its
elected officials

By 
Commission Chair

Date 3/16/04

By 
Commissioner

Date 3-16-2004

By 
Commissioner

Date 3/16/04

REVIEWED FOR COUNTY
By 
County Legal Counsel

Date 12 Mar 04

STATE OF OREGON, by and through its
Department of Transportation

By 
Deputy Director for Highways

Date 4-12-04

APPROVAL RECOMMENDED

By 
Tech Svcs Mgr/Chief Engineer

Date 4-6-04

By 
Region 4 Manager

Date 3/25/04

By N/A
Area Manager

Date _____

APPROVED AS TO LEGAL
SUFFICIENCY

By 
Assistant Attorney General

Date 3/31/07

