

State of Oregon, County of Klamath
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September 1, 2004
Revised November 10, 2004

Misc. Contracts & Agreements
No. 22,063

COOPERATIVE IMPROVEMENT AGREEMENT
Merrill Culvert Replacement

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;" City of Merrill, acting by and through its elected officials, hereinafter referred to as "City;" and Klamath County, acting by and through its elected officials, hereinafter referred to as "County," hereinafter collectively referred to as "Parties."

RECITALS

1. The Klamath Falls-Malin Highway (Oregon Highway 39) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. Clay Street is a part of the city street system under the jurisdiction and control of City.
2. By the authority granted in ORS 190.110, 366.572 and 366.576, 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 the State. 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.
4. The Bureau of Reclamation has already purchased the pipe necessary for the project set forth below and has donated said pipe to the project.

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. Under such authority, ODOT, City, and County agree to replace 1,100 feet of 36-inch corrugated metal pipe with 1,100 feet of 36-inch PVC pipe under Clay Street and Highway 39, 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.
2. The Project will be financed with state funds in an amount not to exceed 9.09% of the actual contract price estimated to be \$15,908 and county funds in an amount not to exceed \$150,000. The estimate for the total Project cost is \$175,000 and is subject to change. City shall be responsible for any Project costs beyond the estimate and for any Project costs beyond the ODOT and County share as set forth above.
3. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of the Project and final payment or two calendar years following the date all required signatures are obtained, whichever is sooner.

CITY OBLIGATIONS

1. City shall provide all funds needed in excess of County and ODOT contributions to complete the Project.
2. Upon completion of the Project and receipt from ODOT of an itemized statement of the actual total cost of County and ODOT's participation for the Project, City shall pay any amount which, when added to County's advance deposit and ODOT's contribution, will equal 100 percent of total costs for the Project.
3. City, by execution of Agreement, gives its consent as required by ORS 373.030(2) and ORS 105.760 to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the Project covered by the Agreement.

COUNTY OBLIGATIONS

1. County shall contribute a maximum of \$150,000 toward the Project.
2. 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 \$150,000 for the Project, said amount being equal to the County's total cost share for the work performed by ODOT at County and City's request under ODOT Obligations. Depending upon the timing of

portions of the Project to which the advance deposit contributes, it may be requested by ODOT prior to Project bid opening.

ODOT OBLIGATIONS

1. ODOT shall provide state funds in an amount not to exceed 9.09% of the actual contract price to remove and reinstall 100 feet of 36-inch pipe. This will include all labor, equipment, and materials (except the pipe) necessary to remove the existing pipe and reinstall the new pipe. The removal and reinstallation of this portion of the pipe is estimated to be \$15,908.
2. ODOT shall, as a Project cost, provide environmental services necessary to the construction of the pipe for the entire Project including necessary permits and biological assessment.
3. ODOT shall provide service to remove the existing pipe and install the new pipe for the entire Project.
4. 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 \$150,000 for payment of County's portion of the costs associated with the removal and reinstallation of 1,000 feet of 36-inch pipe.
5. Upon completion of the project, ODOT shall either send to City a bill for the amount which, when added to County's advance deposit and ODOT's contribution, will equal 100 percent of the total costs for project or ODOT will refund to County any portion of said advance deposit which is in excess of the total costs for project.
6. ODOT's Project Manager for this Project is Mike Stinson, 2557 Altamont Drive, Klamath Falls, OR, 97603-5701, phone (541) 883-1002, or assigned designee upon individuals absence.

GENERAL PROVISIONS

1. ODOT, City, and County agree that a mutual review of the construction plans will be conducted prior to advertisement for construction bid proposals.
2. This Agreement may be terminated by mutual written consent of all parties.
3. ODOT may terminate this Agreement effective upon delivery of written notice to City and County, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If County or City fail to provide services called for by this Agreement within the time specified herein or any extension thereof.

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- b. If County or City fail 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 or City fails to provide payment of its share of the cost of the Project.
 - 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.
- 4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.
 - 5. All employers 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. Parties shall ensure that each of its subcontractors complies with these requirements.
 - 6. Parties acknowledge and agree that ODOT, County, City, 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 Parties 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 final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
 - 7. 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 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, which hereby are incorporated by reference. Without limiting the generality of the foregoing, Parties expressly agree 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.

8. 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 Parties' respective performances under this Project.
9. Notwithstanding the foregoing defense obligations under paragraph 8 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.
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 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 October 1, 2004, the Director of the Oregon Department of Transportation approved Subdelegation Order No.2, in which the Director delegates to the Deputy Director , Highways, the authority to approve and sign agreements over \$75,000 when the work is related to a project included in a line item in the biennial budget approved by the Director.

CITY OF MERRILL, acting by and through
its elected officials

By *Ronda Lizon*
Mayor

Date 3-16-05

By *Samantha Meadows*
City Recorder

Date 3.16.05

KLAMATH COUNTY, acting by and
through its elected officials

By *[Signature]*
Commission Chair

By *William A. Brown*
Commissioner

By *John Elliott*
Commissioner

Date 3/15/2005

STATE OF OREGON, by and through its
Department of Transportation

By *Y.H. Tam*
Deputy Director, Highways

Date 04/20/05

APPROVAL RECOMMENDED

By *A.M. Nelson*
Chief Engineer/Technical Services
Manager

Date 4-1-05

By *Mark A. Zuck*
Region 4 Manager

Date 3-18-05

By *Michael J. Stinson*
District 11 Manager

Date 3/17/05

APPROVED AS TO LEGAL
SUFFICIENCY

By *Debra H. W. [Signature]*
Assistant Attorney General

Date 3/25/05

**KLAMATH COUNTY
DECEMBER, 2004**

