

FUNDING CONTRIBUTION AGREEMENT
US20 at Locust Street Intersection (City of Sisters)
Contributor: 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" or "ODOT;" and DESCHUTES COUNTY, acting by and through its elected officials, hereinafter referred to as "County," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. 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 of Oregon. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. The McKenzie-Bend Highway, US Route 20, State Highway No. 017 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
4. Locust Street within Sisters city limits is a part of the city street system under the jurisdiction and control of the city of Sisters.
5. State's "US20 at Locust Street Intersection (City of Sisters)" Project includes design improvements at the intersection of US20 and Locust Street to include a roundabout, sidewalks, curb ramps, and pedestrian-activated signals to increase safety for pedestrians and drivers.
6. County wishes to contribute \$1,000,000 to the design and construction phases of State's US20 at Locust Street Intersection (City of Sisters).
7. State intends to enter into a separate Agreement with the city of Sisters for the construction of State's US20 at Locust Street Intersection (City of Sisters) when funding becomes available.

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 agrees to use County contributions as identified in TERMS OF AGREEMENT, Paragraph 2 below, as a portion of the funds used by State or State's contractor for the preliminary engineering and construction phases of State's US20 at Locust Street Intersection (City of Sisters) Project, hereinafter referred to as "Project". The approximate location of the Project is as identified on Exhibit A, attached hereto and by this reference made a part hereof.
2. County shall contribute to ODOT a maximum amount of \$1,000,000 to be used by ODOT for the Project ("County Contribution"). Unless agreed to by the Parties and documented via a fully executed amendment to this Agreement, County's financial obligations under this Agreement shall not exceed \$1,000,000.
3. The Parties agree that any funds in excess of the amounts needed to perform the preliminary engineering and construction phases of the Project, may be used by State for the construction phase of the Project.
4. **Americans with Disabilities Act Compliance**
 - a. State shall utilize ODOT standards to assess and ensure that the Project and all component activities comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all plans and proposed alternatives for future design or construction of pedestrian, bicycle, and transit routes and facilities will result in ADA-compliant facilities and improvements.
 - b. State shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. State shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the establishment of any work zone.
5. 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 ten (10) calendar years following the date all required signatures are obtained, whichever is sooner.

COUNTY OBLIGATIONS

1. County shall upon receipt of a fully executed copy of this Agreement and upon a subsequent letter of request from State, forward to State an advance deposit or irrevocable letter of credit in the amount of \$1,000,000 for the Project by August 31, 2023 said amount being equal to a portion of the estimated cost for the work performed

by State at County's request under State Obligations paragraph 1. Unless agreed to by the Parties and documented via a fully executed amendment to this Agmt, County's financial obligations shall not exceed the \$1,000,000 identified in TERMS OF AGREEMENT, Paragraph 2 above.

2. County certifies, that funds will be available and authorized for expenditure to meet the timeframe requirements of this agreement.
3. County certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of County, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind County.
4. County's Project Manager for this Project is Cody Smith – County Engineer/Assistant Road Department Director, 61150 SE 27th Street, Bend, OR 97702, (541) 322-7113, cody.smith@deschutes.org, or other assigned designee upon that individual's absence. County shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State or its contractor shall deliver the Project by performing the work described in TERMS OF AGREEMENT, Paragraph 1.
2. State shall, upon execution of this Agreement and on August 1, 2023, forward to County a letter of request for funds in the amount of \$1,000,000, said amount being equal to the estimated total cost for a portion of the work performed by State at County's request under State Obligations paragraph 1.
3. ODOT's Project Manager for this Project is Bob Townsend – Area Manager, 63055 N Highway 97, Bldg M, Bend, OR 97703, (541) 980-2800, robert.l.townsend@odot.oregon.gov, or assigned designee upon that individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by mutual written consent of both Parties.
2. If this Agreement is terminated before completion of the Project as determined by ODOT; ODOT shall promptly reimburse any unspent contribution from County for any portion of the Project work not yet performed, in proportion to the total funds expended or owing for work completed prior to the termination of ODOT's contract with its consultant.
3. ODOT may terminate this Agreement effective upon 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 the funding contributions for the cost of the Project as provided in this Agreement.
 - b. If County fails to perform any of the other provisions of this Agreement, and after receipt of written notice from ODOT fails to correct such failure within ten (10) days or such longer period as ODOT may authorize.
 - c. 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.
 - d. 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 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. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or County with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
 6. With respect to a Third Party Claim for which State is jointly liable with County (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
 7. With respect to a Third Party Claim for which County is jointly liable with State (or would be if joined in the Third Party Claim), County shall contribute to the amount of

expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, the 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, as amended; (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.
10. 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included.
11. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to the conflict of law principles thereof. Any action or suit brought by the parties relating to this Agreement shall be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon, provided, however, that if a claim must be brought in a federal forum, then it will be brought and adjudicated exclusively within the United States District Court for the District of Oregon. County hereby consents to the personal jurisdiction of these courts. In no way will any provision of this Agreement be construed as a waiver by the State of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court.

12. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation
13. 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.
14. 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.
15. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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.

SIGNATURE PAGE FOLLOWS

DESCHUTES COUNTY, by and through its elected officials

By _____
Commission Chair

Date _____

By _____
Commissioner

Date _____

By _____
Commissioner

Date _____

**REVIEWED FOR COUNTY BY
(if required in County's process)**

By _____
County Counsel

Date _____

County Contact:

Cody Smith – County Engineer/
Assistant Road Department Director
61150 SE 27th Street
Bend, OR 97702
(541) 322-7113
cody.smith@deschutes.org

STATE OF OREGON, by and through its Department of Transportation

By _____
Delivery and Operations Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 4 Manager

Date _____

By _____
Central Oregon and Lower John Day
Area Manager

Date _____

State Contact:

Bob Townsend – Central Oregon and
Lower John Day Area Manager
63055 N. Highway 97, Bldg M
Bend, OR 97703
(541) 388-6252
Robert.l.townsend@odot.state.or.us

EXHIBIT A Approximate Project Locations

