



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)

---

## **AGENDA REQUEST & STAFF REPORT**

**For WORK SESSION of 9/7/2016**

---

**DATE:** August 25, 2016

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

**TITLE OF AGENDA ITEM:**

Consideration of signature of Document No. 2016-588, ODOT Cooperative Improvement Agreement No. 30005, FFO - US97: Sunriver Interchange - OR 31

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

**BACKGROUND AND POLICY IMPLICATIONS:**

The Oregon Department of Transportation (ODOT) is working on a project that will repave approximately 16 miles of US 97 from the Sunriver Interchange (MP 154) to OR 31 (MP 170). This section of US 97 is showing signs of extensive cracking, patching and potholing with moderate rutting throughout the section. As part of this project, ODOT will be constructing sidewalks and streetscape elements of the west side of US 97 in La Pine between 3<sup>rd</sup> Street and 6<sup>th</sup> Street which will involve improvement to several County road intersections. They are also installing a flashing beacon to improve safety at the intersection of Vandeventer Road and US 97. This agreement outlines the obligations of ODOT, the City of La Pine and Deschutes County in relation to the project. By signature of this agreement, Deschutes County grants the State and its consultants or contractors the right to enter onto and occupy County right of way as required to complete the Project and to stage construction supplies and equipment. There is no financial obligation to the County for this project.

**FISCAL IMPLICATIONS:**

None.

**RECOMMENDATION & ACTION REQUESTED:**

The Road Department recommends signature of Document 2016-588, Approving ODOT Cooperative Improvement Agreement No. 30005, FFO - US97: Sunriver Interchange - OR 31

**ATTENDANCE:** George Kolb, County Engineer

**DISTRIBUTION OF DOCUMENTS:**

Return to Sheila Odle (ext. 7148) at the Road Department. Agreement will be forwarded on to ODOT for their signatures.

## 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:** August 25, 2016

**Department:** Road

**Contractor/Supplier/Consultant Name:** Oregon Department of Transportation  
(ODOT)

**Contractor Contact:** Mike Darling  
6329

**Contractor Phone #:** 541-388-

**Type of Document:** Document Number 2016-588: This is an IGA between ODOT, City of La Pine and Deschutes County concerning improvements to US 97 from the Sunriver Interchange to OR 31.

**Goods and/or Services:** This agreement outlines the obligations of ODOT, the City of La Pine and Deschutes County in relation to the project.

**Background & History:** The Oregon Department of Transportation (ODOT) is working on a project that will repave approximately 16 miles of US 97 from the Sunriver Interchange (MP 154) to OR 31 (MP 170). This section of US 97 is showing signs of extensive cracking, patching and potholing with moderate rutting throughout the section. As part of this project, ODOT will be constructing sidewalks and streetscape elements of the west side of US 97 in La Pine between 3rd Street and 6th Street which will involve improvement to several County road intersections. They are also installing a flashing beacon to improve safety at the intersection of Vandevent Road and US 97. This agreement outlines the obligations of ODOT, the City of La Pine and Deschutes County in relation to the project. By signature of this agreement, Deschutes County grants the State and its consultants or contractors the right to enter onto and occupy County right of way as required to complete the Project and to stage construction supplies and equipment. There is no financial obligation to the County for this project.

**Agreement Starting Date:** Upon Signature by all parties

**Ending**

**Date:** Completion of the project

**Annual Value or Total Payment:** N/A

☐ Insurance Certificate Received (check box)  
Insurance Expiration Date:

Check all that apply:

- ☐ RFP, Solicitation or Bid Process
- ☐ Informal quotes (<\$150K)
- ☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**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

08/25/16  
Date

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

---

**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 \_\_\_\_\_

**COOPERATIVE IMPROVEMENT AGREEMENT  
FFO - US97: Sunriver Interchange – OR 31  
City of La Pine and 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;" the CITY OF LA PINE, acting by and through its elected officials, hereinafter referred to as "City;" and DESCHUTES COUNTY, acting by and through its elected officials, hereinafter referred to as "County;" all herein referred to individually as "Party" or collectively as "Parties."

**RECITALS**

1. The Dalles-California Highway, US 97, Highway No. 4 is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. On October 9, 2013, City adopted the La Pine Transportation System Plan which identifies the lack of continuous sidewalks on the west side of US 97 and the need to improve pedestrian crossings.
3. By the authority granted in Oregon Revised Statutes (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.
4. To allow for ongoing maintenance activities of the highway and its appurtenances, State requests that City accept from State all its right, title, and interest of the highway west of the project constructed curb face along US97 within the boundaries of the incorporated City of La Pine.
5. By the authority granted in ORS 810.080 State has the authority to establish marked pedestrian crosswalks on its highway facilities.
6. By the authority granted in ORS 366.425, State 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. 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. Under such authority, State shall design, acquire right of way and construct a project with the following elements: repaving approximately 16 miles of US 97 from mile point 153.7 (Sunriver Interchange) to mile point 169.8 (OR31); safety improvements at Vandervert Road (signs, high friction surface treatment, actuated flashing beacons) and OR31 (sign upgrades); the upgrading of signs and guardrails through the project corridor; installing pedestrian crossing safety upgrades in the city core, including raised medians and Rapid

Rectangular Flashing Beacons (RRFB); constructing sidewalks and streetscape elements on the west side of US97 between approximately 1<sup>st</sup> Street and 6<sup>th</sup> Street on behalf of the City, upgrading curb ramps to ADA standards on both sides of US97; and acquiring property and making minor site enhancements as Phase 1 of a Transit Center located between US97 and Huntington Road along the north side of 4<sup>th</sup> Street. These work elements are 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 work is included in the 2015-2018 State Transportation Improvement Program (STIP) Project titled 'FFO - US97: Sunriver Interchange – OR 31', STIP Key No. 18679.
3. The Total Project Cost is estimated at \$9,813,529 which is subject to change. The Project shall be financed as follows:

PHASE	COST	STATE REGION 4 FIX-IT	STATE REGION 4 ENHANCE	CITY
Preliminary Engineering	\$410,000	\$410,000		
Right of Way	\$700,000	\$70,000	\$630,000	
Utility Relocation	\$5,000	\$5,000		
Construction	\$8,698,529	\$8,240,000	\$428,529	\$30,000
<b>SUM</b>	<b>\$9,813,529</b>	<b>\$8,725,000</b>	<b>\$1,058,529</b>	<b>\$30,000</b>

4. Project Overruns or costs beyond the estimate which occur at the time of Contract Award, and or at the time of Project Closeout shall be addressed as defined in TERMS OF AGREEMENT, Paragraph 9 below.
5. Prior to the advertisement of construction plans and request for bid proposals, all specifications, staging plans and construction plans will be subject to a mutual review and the approval by the Parties, and the Parties will reach an agreement on the final plans.
6. Parties agree to create a public outreach plan and will work collaboratively on public meetings, briefing and schedule updates, and in conducting any other needed public outreach during the life of the Project.
7. The Parties agree to execute a separate Right of Way Services Agreement with State.
8. All maintenance responsibilities relevant to the Project shall survive the terms of this Agreement.

9. Parties agree to work collaboratively and in good faith to execute any additional agreement or agreement amendment that may be necessary as the Project develops, including but not limited to:
  - a. Changes to the project budget or scope.
  - b. Amendment(s) to this Agreement identifying each Party's maintenance responsibilities related to the completed project.
10. This Agreement shall become effective 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 that all required signature are obtained, whichever is sooner.

#### **CITY OBLIGATIONS**

1. City 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 \$30,000, said amount being equal to the estimated City's contribution for the sidewalk and streetscape elements portion of the work performed by State under TERMS OF AGREEMENT, Paragraph 1.
2. Subject to the terms and conditions contained in this Agreement, City grants State, its consultants or contractors, the right to enter onto and occupy City right of way within the project limits for the performance of State's duties as set forth in this Agreement and as required to complete the Project and to stage construction supplies and equipment.
3. City agrees to allow State to complete the utility relocation process per State established statutes, policies and procedures when impacts occur to privately or publicly owned utilities located within city right of way.
4. Prior to acquisition of any property for the Project, City shall accept, by quitclaim deed, all of State's right, title, and interest in the highway west of the curb faces to be constructed as part of the Project along US97 within the boundaries of the incorporated City of La Pine. Any right of way being conveyed in which State has any title shall be vested to City only so long as used for public transportation purposes. If said right of way is no longer used for public transportation purposes, it shall automatically revert to State.
5. Upon completion of the Project, City shall accept, in a condition consistent with City's standards as they now exist, as a portion of its city transportation system, that right of way acquired within the Project area, purchased by the State and required for the construction of city transportation improvements. Any right of way being conveyed in which State has any title shall be vested to City only so long as used for public transportation purposes. If said right of way is no longer used for public transportation purposes, it shall automatically revert to State.
6. The property described in Paragraphs 4 and 5 above will be transferred subject to the rights of any utilities located within said property and further subject to rights of the owners of said existing facilities, if any there be, to operate, reconstruct, and maintain their utility facilities presently located within said property.

7. City agrees at its own expense to maintain and repair all improvements within the incorporated limits of the city including but not limited to those sidewalks, landscaping, drainage swales, irrigation, decorative pedestrian lighting, electrical infrastructure and appurtenances constructed as a part of the Project but excluding highway surfaces and curbing.
8. 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.
9. City certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of City, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind City.
10. City's Project Manager for this Project is Cory Misley – City Manager, P.O. Box 2460, 16345 6<sup>th</sup> Street, La Pine, OR 97739, (541) 536-1432, [cmisley@ci.la-pine.or.us](mailto:cmisley@ci.la-pine.or.us), or assigned designee upon individual's absence. City shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

#### **COUNTY OBLIGATIONS**

1. County shall grant State, its consultants or contractors, the right to enter onto and occupy County right of way with the project limits as required to complete the Project and to stage construction supplies and equipment.
2. 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 County.
3. County, by execution of Agreement, gives its consent as required by ORS 373.050(1) to any and all closure of streets that intersect the state highway, if any there be in connection with or arising out of the Project covered by the Agreement.
4. 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.
5. County's Project Manager for this Project is George Kolb – County Engineer, 61150 SE 27<sup>th</sup> Street, Bend, OR 97702, (541) 388-6581, [george.kolb@co.deschutes.or.us](mailto:george.kolb@co.deschutes.or.us), or assigned designee upon individual's absence. County shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

#### **STATE OBLIGATIONS**

1. State shall complete the Project as described in TERMS OF AGREEMENT, Paragraph 1.

2. State shall be responsible for all construction contract administration, inspection and change order approvals.
3. State shall, upon obligation of the construction phase, forward to City a letter of request for an advance deposit or irrevocable letter of credit in the amount of \$30,000 for payment of the sidewalk and streetscape elements portion of the work performed by State.
4. Prior to the acquisition of any property for the Project, State shall, by quitclaim deed, convey to City all of State's right, title, and interest in the highway west of the curb faces to be constructed as part of the Project along US97 within the boundaries of the incorporated City of La Pine. Any right of way being conveyed in which State has any title shall be vested to City only so long as used for public transportation purposes. If said right of way is no longer used for public transportation purposes, it shall automatically revert to State.
5. State shall purchase needed right of way for the Project. Upon completion of the Project, State shall, transfer to City, as a portion of its city transportation system that right of way acquired within the Project area, purchased by State and needed for construction of city transportation improvements. Any right of way being conveyed in which State has any title shall be vested in City only so long as used for public transportation purposes. If said right of way is no longer used for public transportation purposes, it shall automatically revert to State.
6. The property described in Paragraph 4 and 5 above will be transferred subject to the rights of any utilities located within said property and further subject to the rights of the owners of said existing facilities if any there be, to operate, reconstruct, and maintain their utility facilities presently located within said property.
7. State shall cause to be relocated or reconstructed, all privately or publicly owned utility conduits, lines, poles, mains, pipes, and all other such facilities of every kind and nature where such relocation or reconstruction is made necessary by the plans of the Project in order to conform the utilities and other facilities with the plans and the ultimate requirements for the portions of the Project which are on State, City and County right of way.
8. 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
9. State's Manager for this Project is Mike Darling, Senior Project Leader, 63055 N Hwy 97, Bldg M, Bend, OR 97703, 541.388-6329, [charles.m.darling@odot.state.or.us](mailto:charles.m.darling@odot.state.or.us) or assigned designee upon individual's absence. State shall notify the other Parties 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 all Parties.



2. State may terminate this Agreement effective upon delivery of written notice to City and County, or at such later date as may be established by State, under any of the following conditions:
  - a. If City or County fail to provide their respective services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If City or County 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 State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If City fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, 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 State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. Parties hereto 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..
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 Parties 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 City or 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 City or County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of City or

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 City or 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 City or County is jointly liable with State (or would be if joined in the Third Party Claim), City or 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 City or 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 City or 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. City or 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. 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 presentations, 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.

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #18679) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

**SIGNATURE PAGE FOLLOWS**

City of La Pine/Deschutes County/ODOT  
Agreement No. 30005

**CITY OF LA PINE**, by and through its elected officials

By \_\_\_\_\_  
Mayor

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

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

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

**City Contact:**

Cory Misley – City Manager  
P.O. Box 2460  
16345 6<sup>th</sup> Street  
La Pine, OR 97739  
(541) 536-1432  
[cmisley@ci.la-pine.or.us](mailto:cmisley@ci.la-pine.or.us)

**County Contact:**

George Kolb – County Engineer  
61150 SE 27<sup>th</sup> Street  
Bend, OR 97702  
(541) 388-6581  
[george.kolb@co.deschutes.or.us](mailto:george.kolb@co.deschutes.or.us)

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Region 4 Right of Way Manager

Date \_\_\_\_\_

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

Date \_\_\_\_\_

By \_\_\_\_\_  
District 10 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

**State Contact:**

Mike Darling – Senior Project Manager  
63055 N. Highway 97, Bldg M  
Bend OR, 97703-5765  
(541) 388-6329  
[Charles.m.darling@odot.state.or.us](mailto:Charles.m.darling@odot.state.or.us)

