



## AGENDA

## CITY OF SISTERS SISTERS CITY COUNCIL

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**SISTERS CITY COUNCIL**  
**520 E. Cascade Avenue**  
**Sisters, OR 97759**

**August 20, 2015**

### **8:00 a.m. WORKSHOP**

1. Oregon Department of Transportation (ODOT) Intergovernmental Agreement (IGA) for Barclay /Highway 20 Intersection – *P. Bertagna /Gary Farnsworth, ODOT,*
2. Preview August 27, 2015 Workshop and Regular Meeting Agenda – *K. Nelson*
3. Other Business – *Staff/Council*

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*This agenda is also available via the Internet at [www.ci.sisters.or.us](http://www.ci.sisters.or.us)*  
*The meeting location is accessible to persons with disabilities. Requests for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling Kathy Nelson, City Recorder, at the number below.*  
520 E. Cascade Ave. – P.O. Box 39, Sisters, OR 97759 – 541-323-5213

**COOPERATIVE IMPROVEMENT AGREEMENT**  
**US20 @ Barclay (Sisters)**  
**City of Sisters**

**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"; and the City of Sisters, acting by and through its elected officials, hereinafter referred to as "City," collectively hereinafter referred to as the "Parties."

**RECITALS**

1. The Santiam Highway (Oregon Route 126 and US Route 20), Highway No. 16, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
2. Barclay Drive and McKinney Butte Road are a part of the City Street system under the jurisdiction and control of City.
3. By the authority granted in ORS 810.080, State has the authority to establish marked pedestrian crosswalks on its highway facilities.
4. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval.
5. By the authority granted in 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
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. 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.

State's Department of Transportation, Traffic Roadway Section issued Conceptual Approval Memo File Code: Hwy 016 MP 99.94 on May 13, 2015, approving a roundabout as an acceptable type of traffic control for the intersection of OR20 and OR126 with Barclay Drive and McKinney Butte Road. **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, the Parties agree to design and construct a single lane roundabout at the intersection of Santiam Highway (Oregon Route 126 and US Route 20), Highway No. 16, with Barclay Drive and McKinney Butte Road at approximately Mile Point 100, 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.

City of Sisters/ODOT  
Agreement No. 27236

2. The Parties agree that a mutual review of the specifications, staging plans and construction plans shall be conducted, and agreement reached on final plans, prior to advertisement for construction bid proposals.
3. The Parties agree to create a public outreach plan and will work collaboratively on public meetings, construction meetings, briefing and schedule updates, and in conducting any other needed public outreach during the life of the project. This shall include addressing any potential impacts and coordination needs for surrounding and affected businesses.
4. This work is included in the 2015-2018 STIP Safety/Enhance Project titled 'US20 @ Barclay (Sisters)', STIP Key No. 16239.
5. The Project cost is estimated at \$3,192,599 and is subject to change and shall be funded by a combination of Federal, State and Local funds as follows:

<b>Fund Source</b>	<b>Amount</b>
State's Region 4 Sidewalk Improvement Program (SWIP) Funds	\$252,499
State's Region 4 Fix It Funds	\$948,100
State's Region 4 Enhance Funds	\$1,632,000
City Contribution	\$360,000
<b>Total</b>	<b>*\$3,192,599</b>

- a. \*Parties agree that if the total estimated Project cost exceeds the Project funding as identified in the table above, Parties shall work collaboratively to address and resolve any funding shortages.
6. All maintenance responsibilities shall survive the terms of this Agreement.
7. Parties agree to work collaboratively and in good faith to execute any additional agreements or agreement amendments that may be necessary as the Project develops, including but not limited to:
  - a. Changes to the Project budget or Project scope.
  - b. Amendment(s) to this Agreement identifying each Party's maintenance responsibilities related to the completed Project
- 8.
9. 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.

## 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 \$360,000 for the Project, said amount being equal to the estimated total City contribution for the work performed by State at City's request under STATE OBLIGATIONS, Paragraph 1. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to City.
2. City shall grant State, its consultants and/or contractors, the right to enter onto and occupy City right of way within the Project limits as required to complete the Project and to stage construction supplies and equipment.
3. Agency 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. City agrees to have State perform all right of way functions and shall enter into a separate Right of Way Services Agreement between City and State Right of Way, referencing this Agreement number.
5. Upon completion of the Project, City shall accept, as a portion of its city street system that right of way acquired within the Project area, purchased by the State and needed for construction of city street 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 road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to State.
6. City agrees to accept ownership and maintain any improvements made to city owned property or constructed within city's jurisdiction as part of the Project excluding those identified in STATE OBLIGATIONS, Paragraph 6.
7. City agrees to maintain at its expense all decorative landscaping and decorative features installed under this Project. Any artwork or decorative features on ODOT right of way associated with the Project shall first be approved by the city council for the appropriate theme and then be approved by ODOT for conformance with applicable policies and standards.
8. City agrees to accept ownership and maintain any connecting sidewalks that are outside of current State jurisdiction and associated with this project
9. 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 this Agreement.
- 10.
11. 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
12. City's Project Manager for this Project is Paul Bertagna, Director of Public Works, [520](#) E. Cascade Avenue, Sisters, OR 97759, (541) 549-0561, [pbertagna@ci.sisters.or.us](mailto:pbertagna@ci.sisters.or.us), or assigned designee upon

individual's absence. State's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement

## STATE OBLIGATIONS

1. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the highway Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
2. State shall be responsible for all construction contract administration, inspection and change order approvals.
3. State shall purchase needed right of way for the Project. Upon completion of the Project, State shall, by relinquishment deed, convey to City, as a portion of its city street system that right of way acquired within the Project area, purchased by State and needed for construction of city street 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 road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to State.
4. The property described in Paragraph 3 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.
5. State agrees to submit any requests for approvals required by the State Traffic Engineer for the roundabout when the nature of the roundabout improvements at the intersection of US20 and Barclay Drive have been finalized.
6. State agrees to accept all maintenance and utility costs associated with traffic control devices and/or pedestrian improvements constructed within the Project limits, except as noted in CITY OBLIGATIONS, Paragraphs 5, 6 and 7.
7. 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.
8. 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 and Agency right of way..
9. State's Manager for this Project is Mike Darling, SeniorProject Leader, 63055 N Hwy 97, Bldg M, Bend, OR 97701, 541.388-6329, charles.m. darling@odot.state.or.us or assigned designee upon individual's absence. City's Project Manager shall be notified 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. State may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
  - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If City 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 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.
6. 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 City 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.
7. With respect to a Third Party Claim for which the State is jointly liable with the City (or would be if joined in the Third Party Claim ), the 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 the City in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the City 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 the State on the one hand and of the City 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. The 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 the State had sole liability in the proceeding.

8. With respect to a Third Party Claim for which the City is jointly liable with the State (or would be if joined in the Third Party Claim), the City 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 the State in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of the 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 the City on the one hand and of the 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. The City'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.
9. 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.
10. 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.
11. 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 State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**IN WITNESS WHEREOF**, the Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is in the 2015-2018 Draft Statewide Transportation Improvement Program, (Key #16239).

SIGNATURE PAGE FOLLOWS

City of Sisters/ODOT  
Agreement No. 27236

**CITY OF SISTERS**, by and through its elected officials

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

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

**City Contact:**

Paul Bertagna –Director of Public Works  
520 E. Cascade Avenue  
Sisters, OR 97759  
(541) 323-5212  
pbertagna@ci.sisters.state.or

**State Contact:**

Mike Darling - Senior Project Leader  
63055 N Hwy 97, Bldg M  
Bend, OR 97701  
(541) 388-6329  
charles.m.darling@odot.state.or.us

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date: \_\_\_\_\_

**EXHIBIT A**

DRAFT FOR REVIEW

**COOPERATIVE IMPROVEMENT AGREEMENT  
US20 @ Barclay (Sisters)  
City of Sisters**

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"; and the City of Sisters, acting by and through its elected officials, hereinafter referred to as "City," collectively hereinafter referred to as the "Parties."

**RECITALS**

1. The Santiam Highway (Oregon Route 126 and US Route 20), Highway No. 16, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
2. Barclay Drive and McKinney Butte Road are a part of the City Street system under the jurisdiction and control of City.
3. By the authority granted in ORS 810.080, State has the authority to establish marked pedestrian crosswalks on its highway facilities.
4. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval.
5. By the authority granted in 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
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. 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.
7. ~~State's Department of Transportation, Traffic Roadway Section issued Conceptual Approval Memo File Code: Hwy 016 MP 99.94 on May 13, 2015, approving a roundabout as an acceptable type of traffic control for the intersection of OR20 and OR126 with Barclay Drive and McKinney Butte Road. State's Department of Transportation, Traffic Roadway Section issued Approval Memo, File Code: Hwy 016 MP XXX on XXX XX, 2015, approving the installation of a new roundabout at the intersection of US Route 20 with Barclay Drive and McKinney Butte Road. A copy of the traffic roundabout approval is attached, marked Exhibit B, and by this reference made a part hereof.~~

**Commented [AHB1]:** Moved to State Obs, Para 5. 7/30/15. Added Conceptual Approval Memo back as paragraph 7.

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**

Key Number 16239

1. Under such authority, the Parties agree to design and construct a single lane roundabout at the intersection of Santiam Highway (Oregon Route 126 and US Route 20), Highway No. 16, with Barclay Drive and McKinney Butte Road at approximately Mile Point 100, 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 Parties agree that a mutual review of the specifications, staging plans and construction plans shall be conducted, and agreement reached on final plans, prior to advertisement for construction bid proposals.
3. ~~The Parties agree to work collaboratively on public meetings, construction meetings, briefings and schedule updates, and in conducting public outreach and public meetings during the Project. The Parties agree to create a public outreach plan and will work collaboratively on public meetings, construction meetings, briefing and schedule updates, and in conducting any other needed public outreach during the life of the project. This shall include addressing any potential impacts and coordination needs for surrounding and affected businesses.~~
4. This work is included in the 2015-2018 STIP Safety/Enhance Project titled 'US20 @ Barclay (Sisters)', STIP Key No. 16239.
5. The Project cost is estimated at \$3,192,599 and is subject to change and shall be funded by a combination of Federal, State and Local funds as follows:

**Commented [AHB2]:** 7/29/15: Reworded per Gary's suggested language  
 7/30/15: Changed 'downtown' to 'affected'.

Fund Source	Amount
State's Region 4 Sidewalk Improvement Program (SWIP) Funds	\$252,499
State's Region 4 Fix It Funds	\$948,100
State's Region 4 Enhance Funds	\$1,632,000
City Contribution	\$360,000
<b>Total</b>	<b>*\$3,192,599</b>

- a. \*Parties agree that if the total estimated Project cost exceeds the Project funding as identified in the table above, Parties shall work collaboratively to address and resolve any funding shortages.

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6. All maintenance responsibilities shall survive the terms of this Agreement.
7. Parties agree to work collaboratively and in good faith to execute any additional agreements or agreement amendments that may be necessary as the Project develops, including but not limited to:
  - a. Changes to the Project budget or Project scope.

~~b. Amendment(s) to this Agreement identifying each Party's maintenance responsibilities related to the completed Project (Defining responsibility for installation and maintenance of landscaping, architectural and decorative elements, and appurtenances).~~

~~b-8. City agrees to allow temporary closure or detouring of City streets to allow construction and tie-in to said streets as deemed necessary by State during the construction phase of the Project.~~

8-9. 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.

Commented [AHB3]: 7/29/15: Note: This now sounds very similar to revised City Obs, Para 6  
7/30/15: Revised language to reflect Agmt Amendment for maintenance.

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Commented [AHB4]: 7/29/15: Moved from City Obs and reworded.

#### 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 \$360,000 for the Project, said amount being equal to the estimated total City contribution for the work performed by State at City's request under STATE OBLIGATIONS, Paragraph 1. Any portion of said advance deposit which is in excess of the State's total costs will be refunded or released to City.
2. City shall grant State, its consultants and/or contractors, the right to enter onto and occupy City right of way within the Project limits as required to complete the Project and to stage construction supplies and equipment.
- 2.3. Agency 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.
- 3-4. City agrees to have State perform all right of way functions and shall enter into a separate Right of Way Services Agreement between City and State Right of Way, referencing this Agreement number.
- 4-5. Upon completion of the Project, City shall accept, as a portion of its city street system that right of way acquired within the Project area, purchased by the State and needed for construction of city street 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 road purposes. If said right of way is no longer used for public road purposes, it shall automatically revert to State.
- 5-6. City agrees to accept ownership and maintain any improvements made to city owned property or constructed within city's jurisdiction as part of the Project excluding those identified in STATE OBLIGATIONS, Paragraph 5-6.
- 6-7. ~~City agrees to maintain at its expense all landscaping and decorative features installed under this project. Any artwork or decorative features on ODOT right of way associated with the Project that are not in the approved construction plans, shall first be approved by the city council for the appropriate theme and then be approved by ODOT for conformance with applicable safety standards. When Parties are in agreement, ODOT shall issue the required permit(s).~~ City agrees to maintain at its expense all decorative landscaping and decorative features installed under this Project. Any artwork or decorative features on ODOT right of way associated with the Project shall first be approved by the city council for the appropriate theme and then be approved by ODOT for conformance with applicable policies and standards.

Commented [AHB5]: 7/29/15 - Revised per suggestion of city.

~~7-8.~~ City agrees to accept ownership and maintain any connecting sidewalks that are outside of current State jurisdiction and associated with this project

~~8-9.~~ 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 this Agreement.

~~9-10.~~ City agrees to allow temporary closure or detouring of City streets to allow construction and tie-in to said streets as deemed necessary by State during the construction phase of the Project.

~~10.~~ City agrees that all required utility relocation expenses associated with the Project for City utilities located within State Highway right of way and City right of way shall be the responsibility of the City.

**Commented [AHB6]:** 7/29/15: Removed and added to T/A as a joint obligation.

**Commented [AHB7]:** Removed per approval of State Utility Liaison.

11. 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

12. City's Project Manager for this Project is Paul Bertagna, Director of Public Works, 520 E. Cascade Avenue, Sisters, OR 97759, (541) 549-0561, pbertagna@ci.sisters.or.us, or assigned designee upon individual's absence. State's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement

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~~4.~~ The property described in Paragraph ~~5-3~~ 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.

**Commented [AHB8]:** 7/29/15: Corrected numbering reference.

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City of Sisters/ODOT  
Agreement No. 27236

~~4.5. State agrees to submit any requests for approvals required by the State Traffic Engineer for the roundabout when the nature of the roundabout improvements at the intersection of US20 and Barclay Drive have been finalized.~~

~~5.6. State agrees to accept all maintenance and utility costs associated with traffic control devices and/or pedestrian improvements constructed within the Project limits, except as noted in CITY OBLIGATIONS, Paragraphs 3-5, 6 and 97.~~

Commented [AHB9]: 7/29/15. Corrected numbering reference.

~~6.7. 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.~~

~~7.8. 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 and Agency right of way.~~

~~8.9. State's Manager for this Project is Mike Darling, Senior Project Leader, 63055 N Hwy 97, Bldg M, Bend, OR 97701, 541.388-6329, charles.m. darling@odot.state.or.us or assigned designee upon individual's absence. City's Project Manager shall be notified in writing of any contact information changes during the term of this Agreement.~~

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2. State may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by State, under any of the following conditions:
  - a. If City fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If City 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 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.

May 5, 2015

6. 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 City 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.
7. With respect to a Third Party Claim for which the State is jointly liable with the City (or would be if joined in the Third Party Claim), the 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 the City in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the City 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 the State on the one hand and of the City 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. The 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 the State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which the City is jointly liable with the State (or would be if joined in the Third Party Claim), the City 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 the State in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of the 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 the City on the one hand and of the 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. The City'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.
9. 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.
10. 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.
11. 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 State to

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enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**IN WITNESS WHEREOF**, the Parties, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

This Project is in the 2015-2018 Draft Statewide Transportation Improvement Program, (Key #16239).

SIGNATURE PAGE FOLLOWS

May 5, 2015

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City of Sisters/ODOT  
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**CITY OF SISTERS**, by and through its elected officials

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

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date \_\_\_\_\_

**City Contact:**

Paul Bertagna –Director of Public Works  
520 E. Cascade Avenue  
Sisters, OR 97759  
(541) 323-5212  
pbertagna@ci.sisters.state.or

**State Contact:**

Mike Darling - Senior Project Leader  
63055 N Hwy 97, Bldg M  
Bend, OR 97701  
(541) 388-6329  
charles.m.darling@odot.state.or.us

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

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

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Technical Services Manager/Chief Engineer

Date \_\_\_\_\_

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

Date \_\_\_\_\_

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

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

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

Date: \_\_\_\_\_

City of Sisters/ODOT  
Agreement No. 27236

**EXHIBIT A**

PRELIMINARY



**SISTERS CITY COUNCIL**  
**520 E. Cascade Avenue**  
**Sisters, OR 97759**

**August 27, 2015**

**6:00 P.M. CITY COUNCIL WORKSHOP**

1. Traffic Study Presentation – *Scott Baird*,
2. City Parks Advisory Board Recommendations for Creekside Park – *P. Davenport*
3. Other Business – *A. Gorayeb/Council*

**7:00 P.M. CITY COUNCIL REGULAR MEETING**

- I. CALL TO ORDER/PLEDGE OF ALLEGIANCE**
- II. RECOGNITION OF FORMER COUNCILOR WENDY HOLZMAN**
- III. VISITOR COMMUNICATION**
- IV. CONSENT AGENDA**
  - A. Minutes
  - B. Bills to Approve
    1. August Accounts Payable
- V. STAFF REPORTS**
  - A. Deschutes County Sheriff's Office
- VI. COUNCIL BUSINESS**
- VII. OTHER BUSINESS**
- VIII. MAYOR/COUNCILOR BUSINESS**
- IX. ADJOURN**

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*This agenda is also available via the Internet at [www.ci.sisters.or.us](http://www.ci.sisters.or.us)*

*The meeting location is accessible to persons with disabilities. Requests for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling Kathy Nelson, City Recorder, at the number below.  
520 E. Cascade Ave. – P.O. Box 39, Sisters, OR 97759 – 541-323-5213*