

**Oregon Department of Transportation  
REINSTATEMENT/AMENDMENT NUMBER 04  
LOCAL AGENCY AGREEMENT  
SCENIC BYWAY PROGRAM PROJECT  
Siuslaw River Bridge Interpretive Wayside (Florence)  
City of Florence**

The **STATE OF OREGON**, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the **CITY OF FLORENCE**, acting by and through its designated officials, hereinafter referred to as "Agency," entered into an Agreement on July 22, 2004; Amendment No. 01 on October 20, 2006; Amendment No. 02 on July 6, 2007; and Amendment No. 3 on November 21, 2008. Said Agreement covers the construction of interpretive waysides near the northern and southern end of the Siuslaw River Bridge.

It has now been determined by State and Agency that the Agreement referenced above although remaining in full force and affect, shall be amended to reinstate the Agreement, extend the time, replace Exhibit A and Revised Attachment No. 1, and add an additional funding source to the Project. Except as expressly amended below, all other terms and conditions of the Agreement are still in full force and effect.

**REVISED ATTACHMENT NO. 1, SPECIAL PROVISIONS** shall be deleted in its entirety and replaced with the attached **REVISED ATTACHMENT NO. 1, SPECIAL PROVISIONS** dated 10-6-2011. All references to "**REVISED ATTACHMENT NO. 1, SPECIAL PROVISIONS**" shall hereinafter be referred as "**REVISED ATTACHEMENT NO. 1, SPECIAL PROVISIONS** dated 10-6-2011."

**TERMS OF AGREEMENT, Paragraph 2, Page 1, which reads:**

2. The Project shall be conducted as a part of the Scenic Byway Program under Title 23, United States Code. The total Project cost is estimated at \$1,040,750, which is subject to change. The federal Scenic Byway funds are limited to \$311,850, or 80% of the total eligible Project costs, whichever is less. Eligible Scenic Byway costs for this Project will be reimbursed at 80% until the \$311,850 limit is reached. State shall contribute \$32,170 in District Maintenance funds which shall be applied towards the match for the federal funds, and funding of the construction phase. Agency shall be responsible for any additional match for the federal funds and any portion of the Project which is not covered by federal funding. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of work. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of obligating funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.

**Shall be deleted in its entirety and replaced with the following:**

2. The Project will be financed at an estimated cost of \$1,040,750 in federal, state, and city funds. The estimate for the total Project cost is subject to change.
  - a. A portion of the Project will be conducted as a part of the Scenic Byway Program under Title 23, United States Code. The federal Scenic Byway funds are limited to \$311,850, or 80% of the total eligible Project costs, whichever is less. Eligible Scenic Byway costs for this Project will be reimbursed at 80% until the \$311,850 limit is reached.
  - b. A portion of the Project will be conducted as a part of the local Surface Transportation Program (STP) under Title 23, United States Code. The estimated STP-L funds for the Project are \$130,000. The STP-L funds will be financed at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs.
  - c. State shall contribute \$32,170 in District Maintenance funds which shall be applied towards the match for the federal funds, and funding of the construction phase.
  - d. Agency shall be responsible for any additional match for the federal funds beyond State's contribution, and any portion of the Project which is not covered by federal or State funding. Agency shall be responsible for determining the amount of federal funds to be applied to each phase of work. Agency is not guaranteed the use of unspent funds for a particular phase of work. It is Agency's responsibility to notify State in advance of obligating funds for a subsequent phase if Agency wants to release funds on the current authorized phase(s) of work.

**TERMS OF AGREEMENT, Paragraph 4, Page 2, which reads:**

4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of Project and final payment or December 31, 2010, whichever occurs first.

**Shall be deleted in its entirety and replaced with the following:**

4. The term of this Agreement shall begin on the date all required signatures are obtained and shall terminate upon completion of Project and final payment, or December 31, 2013, whichever occurs first.

**TERMS OF AGREEMENT, Paragraph 8, Page 3, which reads:**

8. Agency shall enter into and execute this Agreement during a duly authorized session of its City Council.



**Shall be deleted in its entirety and replaced with the following:**

8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

**Insert new TERMS OF AGREEMENT, Paragraphs 14 through 18, to read as follows:**

14. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
15. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
16. If Agency causes the Project to be canceled or terminated for any reason prior to its completion, Agency shall reimburse State for any costs that have been incurred by State on behalf of Project.
17. State's Project Liaison for this Project is Ted Keasey, ODOT Region 2 Local Agency Liaison, 455 Airport Road SE, Building B, Salem, Oregon 97301-5395; phone: (503) 986-6903; email: [ted.w.keasey@odot.state.or.us](mailto:ted.w.keasey@odot.state.or.us), or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

18. Agency's Project manager for this Project is Robert S. Willoughby, City Manager, City of Florence, 250 Highway 101, Florence, Oregon 97439; phone: (541) 997-3437; email: [robert.willoughby@ci.florence.or.us](mailto:robert.willoughby@ci.florence.or.us), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

This Amendment 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 Amendment so executed shall constitute an original.

**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 2010-2013 Statewide Transportation Improvement Program, (Key No. 13228) that was approved by the Oregon Transportation Commission on December 16, 2010 (or subsequently approved by amendment to the STIP).

*Signature page to follow*



City of Florence / State of Oregon – Dept. of Transportation  
Agreement No. 21381, Amendment No. 4

**CITY OF FLORENCE**, by and through  
its designated officials

By [Signature]  
City Manager

Date 10/11/11

By Kelli Weese  
City Recorder

Date 10/11/11

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By [Signature]  
City Legal Counsel

Date 10/13/11

By [Signature]  
Assistant Attorney General

Date 10/25/11

**Agency Contact:**

Robert S. Willoughby, City Manager  
City of Florence  
250 Highway 101  
Florence, OR 97439  
Phone: (541) 997-3437  
Email: [robert.willoughby@ci.florence.or.us](mailto:robert.willoughby@ci.florence.or.us)

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

By [Signature]  
Highway Division Administrator

Date 11/3/11

**APPROVAL RECOMMENDED**

By [Signature]  
Technical Services Manager/Chief  
Engineer

Date 11-1-11

By [Signature]  
Region 2 Manager

Date 10-23-11

By [Signature]  
Region 2 Project Delivery Manager

Date 10-20-11

By [Signature]  
Region 2 Planning and Development  
Manager

Date 10-20-11

**State Contact:**

Ted Keasey, Local Agency Liaison  
ODOT, Highway Division, Region 2  
455 Airport Road SE, Bldg. B  
Salem, OR 97301-5395  
Phone: (503) 986-6903  
Email: [ted.w.keasey@odot.state.or.us](mailto:ted.w.keasey@odot.state.or.us)

**REVISED ATTACHMENT NO. 1  
SPECIAL PROVISIONS  
Dated 10-5-2011**

1. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way; obtain all required permits; arrange for all utility relocations or reconstruction; perform all construction engineering, including all required materials testing and quality documentation; and prepare necessary documentation to allow State to make all contractor payments.
2. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project. Prior to award of the contract, the Project cost is defined as the Engineer's estimate plus ten (10) percent.
3. State may make available Region 2's On-Call PE, Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work done by the consultant and make funds available to the State for payment of those services. All eligible work shall be a federally participating cost and included as part of the total cost of the Project.
4. Indemnification language in the Standard Provisions, Paragraphs 46 and 47, and in Paragraph 4 in regards to tort claims, shall be replaced with the following language:
  - a. 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 Agency 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.
  - b. With respect to a Third Party Claim for which State is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency 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 Agency 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.

- c. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency'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.
  - d. 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.
- 5. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and/or service demand.
  - 6. Agency shall, upon completion of Project and as a condition to this Agreement, complete and file with the appropriate County Clerk, an Acknowledgement of Federal Assistance, which is attached hereto as "Revised Exhibit B", and by this reference is made a part hereof or the filing of a memorandum of this Agreement including Acknowledgement of Federal Assistance. Agency shall provide confirmation of this filing by forwarding to the State's Region 2 Manager a conformed copy of the recorded Exhibit B or memorandum. By means of said acknowledgement of Agency's financial obligations, the continued use of said property for public purposes, and the maintenance of the facilities or service at a level consistent with normal depreciation and/or demand is recognized and attached to the property as conditions of receipt of these funds. Any interest in said property by State is proportional to the federal and

state participation in Project. Agency will be ineligible to receive any state or federal funds while in default of conditions of this Agreement or the Acknowledgement of Federal Assistance.

7. Agency shall not hinder access to State's Siuslaw River Bridge for maintenance or other improvements to the bridge or highway within the State right of way.
8. Agency shall obtain access permit for work within State right of way from the Oregon Department of Transportation, District 5 Office prior to advertising of bidding documents.
9. Project shall not be considered a public recreational facility under the definition of a Section 4(f) resource in the Code of Federal Regulations in Title 23, Part 771.135, Section 4(f) (49 U.S.C. 303). If Land and Water Conservation Fund (LWCF) Act of 1965 (16 U.S.C. 4601-4) funding or support is obtained by the Agency for part of that facility, it shall be coordinated with State to ensure no LWCF restrictions (Section 6(f)) are placed on State for any future actions within the State's right of way.
10. Maintenance and power responsibilities will survive any termination of this Agreement.