

April 15, 2004

TED KEASEY TEA 21

Misc. Contracts & Agreements  
No. 21,381

LOCAL AGENCY AGREEMENT  
SCENIC BYWAY PROGRAM PROJECT  
City of Florence  
Siuslaw River Bridge

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 FLORENCE, hereinafter referred to as "Agency".

**RECITALS**

1. US 101, also known as the Oregon Coast Highway, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission.
2. By the authority granted in ORS 190.110, 366.770, and 366.775, State may enter into cooperative agreements with the counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.

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. Agency plans and proposes to construct interpretive waysides near the northern and southern end of the Siuslaw River Bridge, hereinafter referred to as "Project". The location of the project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project shall be conducted as a part of the Scenic Byway Program under Title 23, United States Code. The total Project cost is estimated at \$385,000, which is subject to change. The TEA-21 Federal Funds are limited to \$311,850 or 80% of the total eligible Project costs whichever is less. Eligible costs for this Project will be reimbursed at 80% until the \$311,850 limit is reached. ODOT shall contribute \$32,170 in District Maintenance funds which shall be applied towards the match for the federal funds. 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.

Key No. 13228

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Attachments 1 and 2. In the event of a conflict, this Agreement shall control over the attachments, and Attachment 1 shall control over Attachment 2.

7. Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
8. Agency shall enter into and execute this Agreement during a duly authorized session of its City Council.
9. 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 hereto have set their hands and affixed their seals as of the day and year hereinafter written.

This Project is in the 2004-2007 Statewide Transportation Improvement Program, Key No. 13228 that was approved by the Oregon Transportation Commission on November 17, 2003.

The federal funding for this Project is contingent upon approval by the FHWA. Any work performed prior to acceptance by FHWA will be considered nonparticipating and paid for at Agency expense.

The Oregon Transportation Commission on June 18, 2003, approved Delegation Order No. 2, which authorizes the Director to approve and execute agreements for day-to-day operations when the work is related to a project included in the Statewide Transportation Improvement Program or a line item in the biennial budget approved by the Commission.

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ATTACHMENT NO. 1 TO AGREEMENT # 21,381  
SPECIAL PROVISIONS

1. <sup>CDF</sup> 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 10%.
3. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered under this Agreement, Agency and Consultant shall enter into a Personal Services Contract approved by State's Purchasing and Contracts Unit Manager or designee (Salem). Said contract must be reviewed and approved by the Purchasing and Contracts Unit Manager or designee prior to beginning any work. This review includes, but is not limited to the Request for Proposal, Statement of Work, advertisement and all contract documents. This review and approval is required to ensure federal reimbursement.
4. 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, they agree 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.
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 Acknowledgment of Federal Assistance, which is attached hereto as Exhibit B, and by this reference is made a part hereof. Agency shall provide confirmation of this filing by forwarding to the Region 2 Manager a conformed copy of the recorded Exhibit B. By means of said acknowledgment, a lien shall be established against said property and assets subject to the satisfaction of Agency's financial obligations, the continued use of said property for public purposes, and the maintenance of the facility or service at a level consistent with normal depreciation and/or demand. State's interest in said property is proportional to the federal and state participation in Project.

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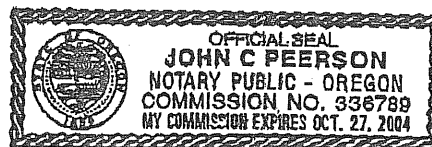
## EXHIBIT B

## ACKNOWLEDGMENT OF FEDERAL ASSISTANCE

The property and assets under the jurisdiction of The Oregon Department of Transportation were improved with assistance from the United States Government under an agreement executed between The City of Florence and the Oregon Department of Transportation dated \_\_\_\_\_. Such assistance was provided to the City of Florence in reimbursement of costs associated with the Siuslaw River Bridge Interpretive Wayside. The use and disposition of said property is subject to the terms of the above noted Agreement, copies of which may be obtained from the Director, Oregon Department of Transportation, and is also subject to 49 CFR Part 18 which may be obtained from the Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, S.W., Washington D.C. 20590.

By: Title: City ManagerSUBSCRIBED and SWORN to before me this 30 day of June, 2004John C. Pearson

NOTARY PUBLIC FOR OREGON

My commission expires: OCT. 27, 2004

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**EXHIBIT C****Agency Donation/Contribution Budget**

<b>CASH MATCHES</b>	
City of Florence, cash match	\$26,900
Merchants of Old Town, cash match (for interpretive signs)	\$2,000
<b>SOFT MATCHES</b>	
City of Florence, soft match (native plants, storm drains and sand)	\$15,000
Chamber of Commerce, soft match (brochure for interpretive site)	\$500
Siuslaw Pioneer Museum, soft match (research and historical data)	\$2,000
<b>TOTAL AGENCY DONATIONS/CONTRIBUTIONS</b>	<b>\$48,400</b>

## ATTACHMENT NO. 2

### STANDARD PROVISIONS

#### JOINT OBLIGATIONS

#### PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for the Agency in other matters pertaining to the project. State and Agency shall actively cooperate in fulfilling the requirements of the Oregon Action Plan. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting for FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

#### PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal service consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal service contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal service contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279.051, the current State Administrative Rules and ODOT Personal Services Contracting Procedures as approved by the Federal Highway Administration (FHWA). Such personal service contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to any limitations imposed by State law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

9. State shall submit a project funding request to the FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the project. No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained. The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from the FHWA. Major responsibility for the various phases of the project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations and the Oregon Action Plan.

### FINANCE

10. State shall, in the first instance, pay all reimbursable costs of the project, submit all claims for federal-aid participation to the FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the project expenditure account(s) and will be included in the total cost of the project.

### PROJECT ACTIVITIES

11. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
12. The party responsible for performing preliminary engineering for the project shall, as part of its preliminary engineering costs, obtain all project related permits necessary for the construction of said project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
13. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.
14. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the project.
15. The State shall, as a project expense, assign a liaison person to provide project monitoring as needed throughout all phases of project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

## AGENCY OBLIGATIONS

### FINANCE

22. Federal funds shall be applied toward project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
23. Agency's estimated share and advance deposit.
  - A. Agency shall, prior to commencement of the preliminary engineering and/or right-of-way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from the State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
  - B. Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the bid. Any additional balance of the deposit, based on the actual bid must be received within 45 days of receipt of written notification by the State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within 45 days of receipt by the State of the project sponsor's written request.
  - C. Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
  - D. Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
24. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which the FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If the State approves processes, procedures, or contract administration outside the Local Agency Guidelines, that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.
25. Costs incurred by the State and Agency for services performed in connection with any phase of the project shall be charged to the project, unless otherwise mutually agreed upon.



fiscal year in which the federal-aid funds were authorized for right-of-way acquisition.

- c) That construction proceeds after the project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
32. Agency shall maintain all project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

### RAILROADS

33. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through the appropriate Region contact or Railroad & Utility Engineer. Only those costs allowable under 23 CFR 646B & 23 CFR 140I, shall be included in the total project costs; all other costs associated with railroad work will be at the sole expense of the Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, the State is under no obligation to agree to perform said duties.

### UTILITIES

34. Agency 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 of the project. Only those utility relocations, which are eligible for federal aid participation under the FAPG, 23 CFR 645A, shall be included in the total project costs; all other utility relocations shall be at the sole expense of the Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than 21 weeks prior to bid let date. However, the State is under no obligation to agree to perform said duties.
35. Agency shall follow established State utility relocation policy and procedures. The policy and procedures are available through the appropriate Region Utility Specialist or ODOT Right of Way Section's Railroad and Utility Coordinator.

### STANDARDS

36. Design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current ODOT Highway Design Manual and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".

**MAINTENANCE RESPONSIBILITIES**

46. Agency shall, upon completion of construction, thereafter maintain and operate the project at its own cost and expense, and in a manner satisfactory to State and the FHWA.

**WORKERS' COMPENSATION COVERAGE**

47. All employers, including Agency 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. Agency shall ensure that each of its contractors complies with these requirements.

**LOBBYING RESTRICTIONS**

48. Agency certifies by signing the Agreement that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, US Code.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 34, 35, and 45 are not applicable to any local agency on state highway projects.

## Project Narrative (Continued)

Interpretive signage will be placed at two viewpoints on the trail looking west over the river and the dunes. Signs will have information about (1) the Dunes National Recreation Area, and (2) historical shipwrecks in the Siuslaw River. Viewing deck signs will contain information about the history of Old Town and about the estuary and habitat restoration projects currently underway through cooperative efforts of Ducks Unlimited, The Nature Conservancy, landowners, Oregon Department of Fish and Wildlife, the Siuslaw Watershed Council and others.

### Interpretive / Way finding Signage

#### North Side

Signage will consist of: (1) A sign in the parking lot under the bridge containing historic and structural information about the bridge. (2) A sign providing data about the Siuslaw River. (3) A sign containing regulations for fishing and harvesting of shellfish. Brochures will be placed in weather proof dispensers providing information about Pacific Coast Scenic Byway facilities; walking tour of Old Town; and additional information and references about the design and construction of the bridge, Siuslaw River historic use information and aquatic tour guide; and fish and wildlife regulations.

The Siuslaw River Bridge has received recognition for its historic and cultural significance. A September 1999 edition of USA Today published an article entitled "10 bridges that connect with greatness". The article noted the significant roles that bridges play as destinations. It was noted that "...sometimes they (bridges) are so majestic, so monumental in scope and beauty, that they become not just the gateway to a destination, but the destination itself." Listed in this article, together with the likes of the Golden Gate and George Washington Bridges, was the Siuslaw River Bridge. The article noted the bridge for its Art Deco style built during the great public works era of the Depression. History surrounds the bridge. Ferries ran and shipwrecks occurred where the bridge presently stands. The bridge is listed on the National Register of Historic Places. Unfortunately, this type of information is not adequately conveyed to the community and travelers of the Pacific Coast Scenic Byway. This, along with efforts to preserve this historic structure, is precisely the reason for proposing the Siuslaw River Bridge Interpretive Sites.

## Work Plan

Line Item	Task/Milestone Description	Start Date/ Duration	Work Category
001	Upon notice of award, formally accept grant, complete agreements, and set up reimbursement procedures.	01 Mar 2003 6 weeks/2 months	Facilities: Interpretive
	Responsible Party: FHWA/ODOT/City of Florence		
	Justification: Work cannot begin until all agreements and authorizations are complete.		
	The last component in the request for engineering is for the parking interpretive area under the north side of the Siuslaw River Bridge.		
002	Complete final engineering/preparation of bid documents under ODOT flexible services contract.	01 Jun 2003 3 months	Facilities: Interpretive
	Responsible Party: ODOT		

**Work Plan (Continued)**

002	<b>Justification:</b> Final engineering must be completed in order to prepare bid documents. Contractor(s) must be chosen through competitive bidding.		
003	Complete environmental assessment and obtain all permits. (to be done simultaneously with Task 2)	01 Jun 2003 3 months	Facilities: Interpretive
	Responsible Party: ODOT/City of Florence		
	<b>Justification:</b> All permits must be obtained prior to bid award in order that the scope of work is fully defined.		
004	Advertise bid, review responses, award bid. Prepare and sign necessary contracts.	01 Jul 2003 2 months	Facilities: Interpretive
	Responsible Party: ODOT/City of Florence		
	<b>Justification:</b> Public funds must be spent through a fair and competitive process.		
005	Begin construction.	01 Sep 2003 6 months	Facilities: Interpretive
	Responsible Party: Contractor(s)		
	<b>Justification:</b> The goal is to construct the south side facilities first, since there is less conflict with summer visitors and traffic, and then to construct the north side facilities beginning in September. Pilings cannot be set before October 1.		
008	Provide monitoring for adherence to contract specifications schedules and cost containment.	01 Sep 2003 6 months	Facilities: Interpretive
	Responsible Party: General contractor/City of Florence/ODOT		
	<b>Justification:</b> Necessary to insure successful, timely completion of the project within budget.		
009	Process contractor billings and requests for reimbursement	01 Mar 2003 1 year at least.	Facilities: Interpretive
	Responsible Party: City of Florence		
	<b>Justification:</b> Necessary for successful completion of project.		
010	Grant closeout	01 Mar 2004 2 months	Facilities: Interpretive
	Responsible Party: City of Florence/ODOT		
	<b>Justification:</b> Necessary to complete project, and to finalize closure of grant.		