

Oregon Parks and Recreation Commission

June 29, 2016

Agenda Item:	9a	Action
Topic:	ODOT IGA, Latourell Falls Trail Project - Approval to Sign	
Presented by:	David Stipe, Integrated Park Services Section Manager	

Background:

This project is funded under the Federal Scenic Byway Program for improvements to be made at Guy W. Talbot and Shepperd's Dell state parks. The total estimated project cost is approximately \$800,000. Federal funds of \$618,590 will be applied towards project completion. While OPRD's expected match contribution is expected to be on the order of \$180,000, Commission approval to sign the IGA is being requested because of the total project budget. A copy of the proposed final IGA is included.

Improvements include the restoration of approximately 2.25 miles of trail, installation of historically accurate retaining walls and overlooks, improved wayfinding, and replacement of six trail bridges on the Latourell Falls trail. The funds also provide for improvements to be made at Sheppard's Dell to the historical stairs for improved visitor safety.

Prior Action by the Commission: none

Action Requested: Commission approval for OPRD signature of IGA

Attachments: Final IGA (Final 30952-Latourell Falls.pdf)

Prepared by: Laura Underhill

**Oregon Parks and Recreation Department
INTERAGENCY AGREEMENT
HCRH Scenic Byway – Latourell Falls Restoration**

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 "ODOT," and the STATE OF OREGON, acting by and through its Oregon Parks and Recreation Department, hereinafter referred to as "OPRD," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The property being improved in this Agreement is under the jurisdiction and control of OPRD.
3. By the authority granted in ORS 390.956 et seq., OPRD is responsible for selection and development of recreational trails in Oregon.
4. On October 6, 2014, the Oregon Division of the Federal Highway Administration concurred with ODOT and ORRD agreeing to progress the project identified in this Agreement using the Recreational Trails Program Guidelines. The program guidelines are agreed upon procedures OPRD normally uses to completed projects awarded under the federally funded Recreational Trails Program. OPRD will be responsible for contracting and completing the work and ODOT will be responsible for providing project oversight. In its oversight role, ODOT will administer the project consistent with the Recreational Trails Program guidelines.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

1. Under such authority, ODOT and OPRD agree that OPRD shall restore approximately 2.25 miles of trail and installation of historically accurate retaining walls, and replacement of six (6) trail bridges on the Latourell Falls trail, hereinafter referred to as "Project," and as further described in Exhibit B, Scope of Work, attached hereto and by this reference made a part hereof. 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 will be conducted as a part of the Scenic Byway Program under Title 23, United States Code. The total Project cost is estimated at \$796,918, which is subject to change. Federal funds are limited to \$618,590. OPRD shall be responsible for the twenty (20) percent match for the federal funds and any portion of the Project which is not covered by federal funding.

ODOT/OPRD
Agreement No. 30952

3. OPRD may satisfy a portion of the required matching funds through a contribution for materials and services for the Project. Credit for this contribution will only be allowed upon approval of ODOT's Active Transportation Section, Funding and Program Services Unit, after review for compliance with ODOT's "Procedures for Donations and Contributions."
4. ODOT will submit the requests for federal funding to Federal Highway Administration (FHWA). The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at OPRD expense.
5. ODOT considers OPRD a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.219, Recreational Trails.
6. OPRD shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and OPRD acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of OPRD which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by ODOT.
7. 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.
8. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2.
9.
 - a. Information required by 2 CFR 200.331(a), except for (xiii) indirect cost rate, shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to OPRD with the Notice to Proceed.
 - b. The indirect cost rate for this Project at the time the Agreement is written is zero (0) percent.
10. This Agreement may be terminated by mutual written consent of both Parties.

11. ODOT may terminate this Agreement effective upon delivery of written notice to OPRD, or at such later date as may be established by ODOT, under any of the following conditions:
 - a. If OPRD fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If OPRD 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 ODOT fails to correct such failures within ten (10) days or such longer period as ODOT may authorize.
 - c. If OPRD fails to provide payment of its share of the cost of the Project.
 - d. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - 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 ODOT is prohibited from paying for such work from the planned funding source.
12. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
13. OPRD, as a recipient of federal funds, pursuant to this Agreement with the ODOT, shall assume sole liability for OPRD's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon OPRD's breach of any such conditions that requires the ODOT to return funds to the Federal Highway Administration, hold harmless and indemnify the ODOT for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of OPRD, 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.
14. The 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.
15. The Parties certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of OPRD, under the direction or approval of each organizations' governing body, commission, board, officers, members or representatives, and to legally bind the Parties.

16. 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.
17. 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 the Parties unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.
18. ODOT's Contact for this Agreement is Pat Moran, Scenic Byway Program Manager, Oregon Department of Transportation, Active Transportation Section, 555 13th Street NE, Salem, OR 97301; 503-986-4261; patrick.m.moran@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.
19. OPRD's Project Manager for this Project is Laura Underhill, Oregon Parks and Recreation Department, 725 Summer St NE Suite C, Salem, OR 97301; telephone 503-385-3246 ; laura.underhill@oregon.gov or assigned designee upon individual's absence. OPRD shall notify the other Party in writing of any contact information changes during the term of this Agreement.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

SIGNATURE PAGE FOLLOWS

This Project is in the 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #18303) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

STATE OF OREGON, by and through
its Oregon Parks and Recreation
Department

By _____
Title: Deputy Director

Date _____

OPRD Contact:

Laura Underhill
Oregon Parks and Recreation Department
725 Summer St NE Suite C
Salem, OR 97301
503-385-3246
laura.underhill@oregon.gov

ODOT Contact:

Pat Moran, Scenic Byway Program
Manager
Oregon Department of Transportation
Active Transportation Section
555 13th Street NE
Salem, OR 97301
503-986-4261
patrick.m.moran@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Active Transportation Section Manager

Date _____

REVIEWED FOR ODOT BY

Bonnie Heitsch, Assistant Attorney
General by email dated May 19th, 2016

EXHIBIT A – Project Location Map

Latourel Falls - Trail Improvements for Scenic Byway

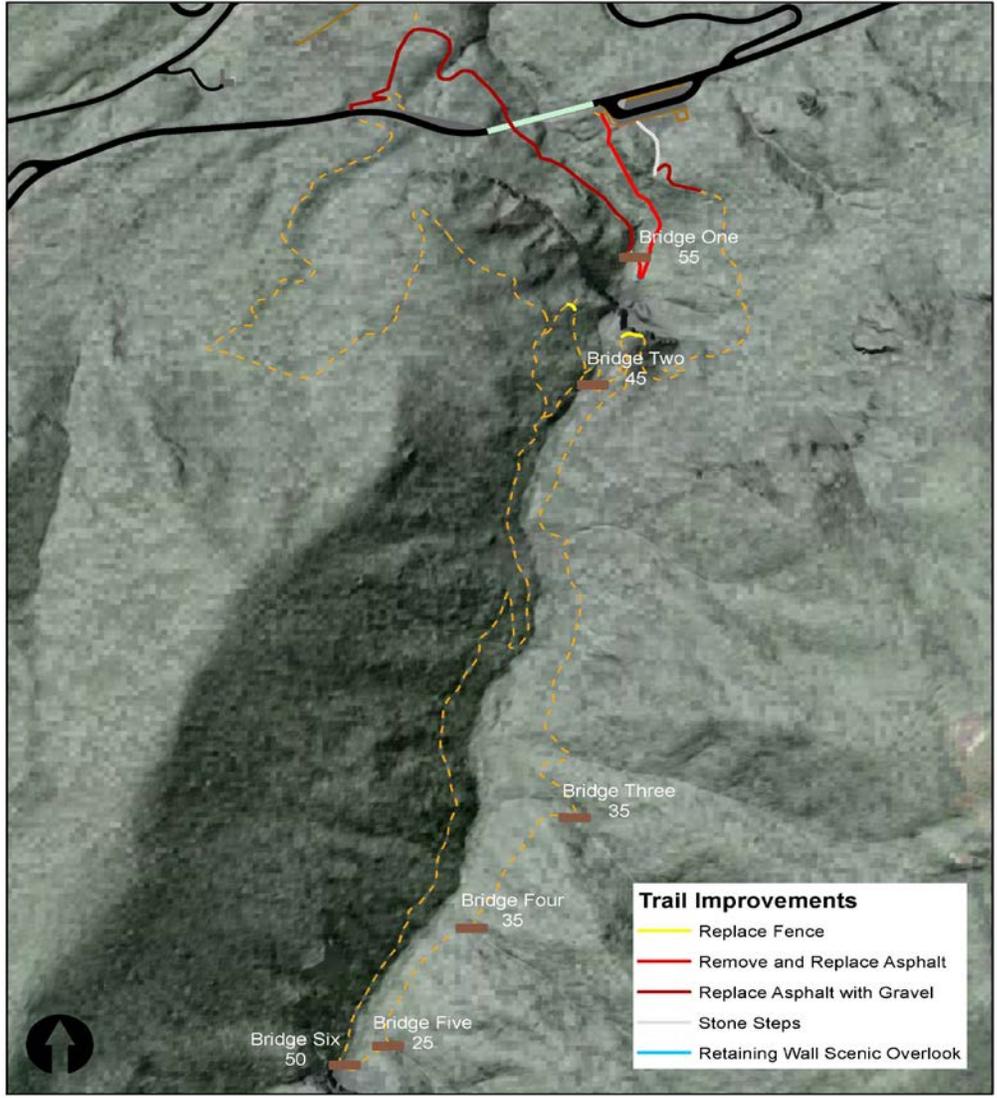


EXHIBIT B – SCOPE OF WORK
Historic Columbia River Highway (HCRH) Scenic Byway – Latourell Falls
Restoration

OPRD will perform the following work described below on the HCRH Scenic Byway – Latourell Falls Restoration Project.

Trail Restoration:

1. The Project consists of resurfacing sections of trail with gravel (roughly 1,775' in length), adding additional stone steps to take up the steep grade (length of trail 90'), and remove and replace asphalt sections of the trail (625' in length) to have a consistent surface (see updated Project map for further locations). Latourell Falls and Shepperd's Dell Bridge are included in the designation of the Columbia River Highway National Historic District. The Project work will provide restoration of historic masonry features in compliance with the National Scenic Area requirements.
2. Anticipated Completion Date: November 30, 2018

Overlooks/View Points/Fencing

1. The project includes reconstruction of three (3) overlook/falls viewing areas adjacent to the trail roughly 115' of repair will occur for fence replacement and stone masonry repair work. The overlook/viewing areas design will be compatible with National Scenic Area requirements and where appropriate masonry elements will be incorporated.
2. Anticipated Completion Date: November 30, 2018

Trail Bridge Replacement

1. The Project includes removal and replacement of the six (6) bridges, pending completion of the trail restoration adjacent to the Historic Columbia River Highway. The following outlines the higher and lower priority bridges dependent on federal funds as well as completion of FHWA priority elements.
2. Highest Priority Bridges:
 - a. Bridge One – 55' span at lower falls
 - b. Bridge Two – 45' span at trail cutoff
 - c. Bridge Six – 50' span at upper falls
3. Lower Priority Bridges:
 - a. Bridge Three – 35' span
 - b. Bridge Four – 35' span
 - c. Bridge Five - 25' span

4. Anticipated Completion Date: November 30, 2018

Wayfinding Signs

1. Wayfinding signs will be placed at all trail intersections to help the byway traveler navigate the loop system.
2. Anticipated Completion Date: November 30, 2018

Shepard's Dell Stair Restoration

1. **Stair Restoration** - The stair super-structure is being undermined through erosion. Several stairs are cracking or have broken off and are a safety risk. This Project will stabilize the stair footing and repair the stair steps.
2. Anticipated Completion Date: November 30, 2017

ATTACHMENT NO. 1 to Agreement No. 30952
SPECIAL PROVISIONS

1. OPRD, or its consultant, shall perform all Project work including conducting the necessary field surveys, environmental studies, traffic investigations, foundation explorations, hydraulic studies, obtain all required permits and arrange for all utility relocations/adjustments.
2. Upon OPRD's award of the construction contract, OPRD, or its or contractor, shall be responsible for all required materials testing and quality documentation; and prepare necessary documentation make all contractor payments.
3. OPRD shall follow Recreational Trails Program (RTP) guidance for this Project.
4. OPRD shall provide ODOT's Project Manager with quarterly reports and status updates during design and construction phases. OPRD will contact ODOT's Project Manager if the anticipated completion dates shown in Exhibit B will not be met. OPRD will work with the ODOT Project Manager to amend the agreement if needed.
5. OPRD shall pay all contractors and send invoices to ODOT's Project Manager for reimbursement.
6. OPRD guarantees the availability of OPRD funding in an amount required to fully fund OPRD's share of the Project.
7. OPRD confirms no right of way will be required for this Project.
8. The Parties agree that the useful life of this Project is defined as twenty **(20)** years.
9. OPRD shall obtain a miscellaneous permit to occupy ODOT right of way through the ODOT District Office prior to the commencement of construction.
10. ODOT grants authority to OPRD to enter upon ODOT right of way for the construction of this Project as provided for in miscellaneous permit to be issued by ODOT District Office.
11. OPRD grants ODOT the right to enter onto OPRD right of way for the performance of duties as set forth in this Agreement.

ATTACHMENT NO. 2 FEDERAL STANDARD PROVISIONS

PROJECT ADMINISTRATION

1. ODOT is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project. OPRD (i.e. county, city, unit of local government, or other state agency) hereby agrees that ODOT shall have full authority to carry out this administration. If requested by OPRD or if deemed necessary by ODOT in order to meet its obligations to FHWA, ODOT will act for OPRD in other matters pertaining to the Project. Prior to taking such action, ODOT will confer with OPRD concerning actions necessary to meet federal obligations. ODOT and OPRD shall each assign a person in responsible charge "liaison" to coordinate activities and assure that the interests of the 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 ODOT acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.
3. OPRD will provide or secure services to perform plans, specifications and estimates (PS&E), construction contract advertisement, bid, award, contractor payments and contract administration. An OPRD-approved consultant may be used to perform preliminary engineering, right of way and construction engineering services.

PROJECT FUNDING REQUEST

4. ODOT shall submit a separate written Project funding request to FHWA requesting approval of federal-aid participation for each project phase including a) program development (Planning), b) preliminary engineering (National Environmental Policy Act - NEPA, permitting and project design), c) right of way acquisition, d) utilities, and e) construction (construction advertising, bid and award). Any work performed prior to FHWA's approval of each funding request will be considered nonparticipating and paid for at OPRD expense. ODOT, the consultant or OPRD shall not proceed on any activity in which federal-aid participation is desired until such written approval for each corresponding phase is obtained by ODOT. ODOT shall notify OPRD in writing when authorization to proceed has been received from FHWA. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

5. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. OPRD shall be responsible for the entire match amount for the federal funds and any portion of the Project which is not covered by federal funding, unless otherwise agreed to and specified in the intergovernmental Agreement (Project Agreement). OPRD must

obtain written approval from ODOT to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement. If federal funds are used, ODOT will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Project Agreement. ODOT will also determine and clearly state in the Project Agreement if recipient is a subrecipient or vendor, using criteria 2 CFR 200.330.

6. If the estimated cost exceeds the total matched federal funds available, OPRD shall be responsible for all costs in excess of the total matched federal funds. OPRD shall pay one hundred (100) percent of the cost of any item in which FHWA will not participate.
7. OPRD agrees that costs incurred by OPRD for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon by the Parties.
8. If OPRD makes a written request for the cancellation of a federal-aid project; OPRD shall bear one hundred (100) percent of all costs incurred as of the date of cancellation. If ODOT was the sole cause of the cancellation, ODOT shall bear one hundred (100) percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of ODOT or OPRD, OPRD shall bear all costs, whether incurred by ODOT or OPRD, either directly or through contract services, and ODOT shall bear any ODOT administrative costs incurred. After settlement of payments, ODOT shall deliver surveys, maps, field notes, and all other data to OPRD.
9. OPRD shall follow the requirements stated in the Single Audit Act. Agencies expending \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, shall have a single organization-wide audit conducted in accordance with the Single Audit Act of 1984, PL 98-502 as amended by PL 104-156 and subject to the requirements of 49 CFR Parts 18 and 19. Agencies expending \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014 shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Agencies expending less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials based on the records retention period identified in the Project Agreement. The cost of this audit can be partially prorated to the federal program.
10. OPRD shall present invoices for one hundred (100) percent of actual costs incurred by OPRD on behalf of the Project directly to ODOT's Liaison for review, approval and reimbursement to OPRD. OPRD invoices submitted to ODOT will be reimbursed at eighty (80) percent. Such invoices shall identify the Project by the name of the Project Agreement, reference the Project Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Invoices shall be presented based on actual expenses to date. All invoices received from OPRD must

be approved by ODOT's Liaison prior to payment. OPRD's actual costs eligible for federal-aid shall be those allowable under the provisions of the Federal-Aid Policy Guide (FAPG), Title 23 CFR parts 1.11, 140 and 710. Final invoices shall be submitted to ODOT for processing within forty-five (45) days from the end of each funding phase as follows: a) preliminary engineering, which ends at the award date of construction b) last payment for right of way acquisition and c) contract completion for construction. Partial billing (progress payment) shall be submitted to ODOT within forty-five (45) days from date that costs are incurred. Invoices submitted after 45 days may not be eligible for reimbursement by FHWA. OPRD acknowledges and agrees that ODOT, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of OPRD which are directly pertinent to the Project Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period ending on the later of six (6) years following the date of final voucher to FHWA or after resolution of any disputes under the Project Agreement. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (2 CFR 200.333(c)).

11. OPRD shall maintain all Project documentation in keeping with 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 the Project is completed in conformance with approved plans and specifications.
12. ODOT shall submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. ODOT shall pay OPRD all reimbursable costs of the Project. ODOT may request from OPRD 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, OPRD shall furnish ODOT with an itemized statement of final costs. OPRD shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal one hundred (100) percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of the Project, minus federal reimbursement, shall be released to OPRD. The actual cost of services provided by ODOT will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.

STANDARDS

13. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

PRELIMINARY & CONSTRUCTION ENGINEERING

14. Preliminary engineering and construction engineering may be performed by either OPRD or OPRD's consultant. Engineering work will be monitored by ODOT or to ensure conformance with FHWA rules and regulations. Project plans, specifications and cost estimates shall be performed by OPRD or OPRD's consultant. ODOT shall review and approve Project plans, specifications and cost estimates. ODOT shall review, process and approve, or submit for approval to the federal regulators, all environmental statements. OPRD shall offer ODOT the opportunity to review and approve the documents prior to advertising for bids.
15. Use of the ODOT's processes is required to ensure federal reimbursement. OPRD will award and execute the contracts. OPRD's personal services contracting process and resulting contract document will follow Title 23 CFR part 172, Buy America - 23 CFR 635.410, 2 CFR part 1201, ORS 279A.055, 279C.110, 279C.125, OAR 137-048-0130, OAR 137-048-0220(4) and ODOT Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. No reimbursement shall be made using federal-aid funds for any costs incurred by OPRD or the consultant prior to receiving authorization from ODOT to proceed.
16. 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.
17. OPRD shall prepare construction contract and bidding documents, advertise for bid proposals, and award all construction contracts.
18. Upon OPRD's award of a construction contract, OPRD shall perform quality assurance and independent assurance testing in accordance with the FHWA-approved Quality Assurance Program found in ODOT's Manual of Field Test Procedures, 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.
19. ODOT shall assign a liaison to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). ODOT's liaison shall process reimbursement for federal participation costs.

**REQUIRED STATEMENT FOR United States Department of Transportation
(USDOT) FINANCIAL ASSISTANCE AGREEMENT**

20. By signing the Federal-Aid Agreement to which these Federal Standard Provisions are attached, OPRD agrees to adopt ODOT's DBE Program Plan, available at http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/pages/sbe/dbe/dbe_program.aspx#plan. OPRD shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. OPRD agrees to take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. ODOT's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this Project Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Project Agreement. Upon notification to the recipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (USC) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

Disadvantaged Business Enterprises (DBE) Obligations

21. ODOT and OPRD agree to incorporate by reference the requirements of 49 CFR part 26 and ODOT's DBE Program Plan, as required by 49 CFR part 26 and as approved by USDOT, into all contracts entered into under this Project Agreement. The following required DBE assurance shall be included in all contracts:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR part 26 in the award and administration of federal-aid contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Agency deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b))."

22. The Parties agree to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.

23. The Parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR parts 1.11, 140, 635, 710, and 771; Title 49 CFR parts 24 and 26; , 2 CFR 1201; Title 23, USC, Federal-Aid Highway Act; Title

41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; the provisions of the FAPG and *FHWA Contract Administration Core Curriculum Participants Manual & Reference Guide*. ODOT and OPRD agree that FHWA-1273 Required Contract Provisions shall be included in all contracts and subcontracts verbatim and not by reference.

24. The Parties grant each other authority to enter onto the other's right of way for the performance of non-construction activities such as surveying and inspection of the Project.

MAINTENANCE RESPONSIBILITIES

25. OPRD shall, at its own expense, maintain operate, and provide power as needed upon Project completion at a minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. The useful life of the Project is defined in the Special Provisions. ODOT may conduct periodic inspections during the life of the Project to verify that the Project is properly maintained and continues to serve the purpose for which federal funds were provided. Maintenance and power responsibilities shall survive any termination of the Project Agreement. In the event the Project will include or affect a state highway, this provision does not address maintenance of that state highway.

CONTRIBUTION

26. 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 ODOT or OPRD 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.

27. With respect to a Third Party Claim for which ODOT is jointly liable with OPRD (or would be if joined in the Third Party Claim), ODOT 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 OPRD in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of OPRD 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 ODOT on the one hand and of OPRD 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. ODOT'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 ODOT had sole liability in the proceeding.

28. With respect to a Third Party Claim for which OPRD is jointly liable with ODOT (or would be if joined in the Third Party Claim), OPRD 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 ODOT in such proportion as is appropriate to reflect the relative fault of OPRD on the one hand and of ODOT 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 OPRD on the one hand and of ODOT 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. OPRD'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.

ALTERNATIVE DISPUTE RESOLUTION

29. The Parties shall attempt in good faith to resolve any dispute arising out of this Project 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.

WORKERS' COMPENSATION COVERAGE

30. All employers, including OPRD, that employ subject workers who work under this Project Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than five hundred thousand (\$500,000) must be included. ODOT and OPRD shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS – pursuant to Form FHWA-1273, Required Contract Provisions

31. The Parties certify by signing the Project 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 one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.
- d) 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 Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

Oregon Parks and Recreation Commission

June 29, 2016

Agenda Item:	9b	Information
Topic:	Sitka Sedge Master Plan Update	
Presented by:	David Stipe, Integrated Park Services Section Manager	

Background:

Sitka Sedge State Natural Area (formerly known as the Beltz Property) is located at the southern end of the Sand Lake estuary approximately five miles north of Pacific City. Sand Lake estuary is one of Oregon's most pristine estuaries.

A park master plan will focus park development priorities and resource management to provide low impact recreation and access in the short term, while guiding preservation for the enjoyment of future generations.

Where we are in the planning process:

A draft Master Plan was released on May 2, 2016. As part of the planning process, three rounds of public meetings were held in Pacific City and Wilsonville in May 2016, in addition to a neighborhood meeting in Tierra Del Mar. These meetings were well attended. In addition to comments about recreation development and the park Master Plan, restoration of site hydrology was a primary topic that came up in public discussions. In December 2015, an inter-agency study group focused on exploring the merits of restoring fish passage to Beltz and Reneke Creeks (which both run into the property from the east) determined that in order to meet state and federal criteria for fish passage standards at the dike, a minimum 18-foot gap would need to be created in the Beltz Dike. Information and data regarding this study and the potential effects on park resources was shared at January public meetings, and also related in the draft Master Plan.

OPRD has expressed that further study is needed to determine potential effects of modification to the Beltz Dike prior to recommending actions regarding stream restoration efforts. OPRD has been collecting groundwater data in the Tierra Del Mar neighborhood since March 2016 as a result of concerns raised by park neighbors at January meetings. OPRD is currently working with partner agencies and the neighborhood on developing a comprehensive analysis of local hydrology.

In the meantime, OPRD is confident that limited park development for recreation access described in the Master Plan can move forward while a plan for restoration is finalized in the near future, utilizing an inter-agency, public process to facilitate all interests in project development. The master plan supports adaptive management of the site, utilizing professional

research, expertise, innovations, and practical experience to achieve desired outcomes for restoration by adjusting management strategies based on changing site conditions.

IPS staff extended the comment period for the draft master plan, based on public comments that additional time was needed to review complex hydrological data and natural resource reports. A revised draft Master Plan incorporating comments from the May public meetings will be released in mid-June with an additional 30 day –comment period.

Park Development:

IPS staff has identified several low impact park development and maintenance projects that can be initiated this spring and summer, in preparation for a projected park opening in 2017. Portions of the meadow near the proposed parking area have been planted to establish a vegetative buffer with neighboring properties in addition to increasing the natural quality of the future park entrance. Trail maintenance work and park host site development is underway as of June, with additional development projects planned following approval of the master plan.

Next Steps:

A revised final draft master plan incorporating comments from the May public meetings will be released in mid-June with an additional 30 day –comment period. Once the final draft plan is approved by the OPRD Commission, OPRD staff will be working with the county to determine land use compatibility prior to design development and permitting throughout 2016-2017. IPS staff, with the support of the Engineering and Stewardship sections, is currently developing a scope of work for a comprehensive hydrologic analysis of the site.

Prior Action by Commission:

Beltz Property Master Plan Update (Information) September 23, 2015
Beltz Property Master Plan Update (Information) April 15, 2015
Sand Lake Initiative - Beltz Farm Acquisition (Action) June 25, 2014
Sand Lake Initiative - Beltz Farm (Informational) April 9, 2014
Acquisition Initiatives: Sand Lake (Informational) April 4, 2012
2007 - 2013 Acquisition Plan approved Nov. 9, 2006
Acquisition Priorities Report (Informational), Sept. 2005

Action Requested: None

Attachments: None

Prepared by: Ben Hedstrom