

A051-G041918

2019 SMALL CITY ALLOTMENT AGREEMENT
Charolais Heights Intersection Reconstruction Project
City of John Day

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 City of John Day, acting by and through its elected officials, hereinafter referred to as "Agency," each herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. Valley View Drive, NW Charolais Heights, NW Bridge Street and Boulder Lane are part of the city street system under the jurisdiction and control of Agency.
2. County Road 50 (also known as NW Valley View Drive) is part of the county street system and under the jurisdiction of Grant County.
3. City of John Day and Grant County entered into an Intergovernmental Agreement for Right-of-Way Use on July 11, 2019. Grant County granted the City permission to enter, access, and use the Work Area as defined in the Intergovernmental agreement. The County will transfer jurisdiction to the City that portion of its right of way being improved under Small City Allotment Agreement #33208. A copy of the Intergovernmental Agreement for Right-of-Way Use is attached at Exhibit A.
4. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.800 and 366.805, there has been withdrawn from State Highway Funds appropriated for allocation to cities of the State of Oregon the sum of \$2,500,000 and an additional \$2,500,000 available to the Oregon Department of Transportation from the State Highway Fund. These sums have been set up in a separate account to be administered by the Department of Transportation for the Small City Allotment (SCA) Program ("the Account"). The \$5,000,000 shall be allotted each year by State for use upon streets that are not a part of the state highway system, that are within cities with populations of 5,000 or fewer persons, and that are inadequate for the capacity they serve or are in a condition detrimental to safety. No single project may receive more than \$100,000 in SCA funds.

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. By the authority granted in ORS 366.805(2), Agency has requested monies from the Account for the reconstruction of the Charolais Heights Intersection hereinafter referred to as "Project." Said Project improvements shall consist of restructuring a six-way intersection into a four-way intersection and re-routing County Road 50, regrading the streets, storm drainage and paving. Agency acknowledges that such Project improvements funded under this Agreement may trigger other Agency responsibilities under the Americans with Disabilities Act. Agency agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Agency Obligations, Paragraph 15. The total estimated cost of this Project is \$244,143.00.
2. State has considered Agency's request for the Project and has determined that this Project is eligible for funding under the Small City Allotment (SCA) Program.
3. The Parties hereto mutually agree and understand that the cost of the Project will be paid for with SCA funds and by Agency as follows:
 - a. SCA funds will pay for eligible Project costs up to an amount not to exceed \$100,000.00.
 - b. Agency shall pay all Project costs in excess of the SCA funds.
 - c. State may, upon request by Agency after execution of this Agreement, and upon receipt and review of the Project plans and specifications, advance to Agency 50% of the Award Amount, not to exceed \$25,000 in SCA funds.
 - d. Only expenses incurred after the Effective Date of this Agreement are eligible for reimbursement with SCA funds.
 - e. To qualify for reimbursement, each expenditure must be an Eligible Project Cost. Eligible Project Costs are documented costs of preliminary engineering and construction engineering services performed by the Agency or the Agency's consultant in performance of the Project, after the effective date of this Agreement, and that comply with the requirements of Article IX, Section 3a of the Oregon Constitution.
4. The term of this Agreement will begin on the date all required signatures are obtained herein referred to as "Effective Date" and will terminate two (2) years following the Effective Date unless extended by an executed amendment.

AGENCY OBLIGATIONS

1. Agency shall conduct all right of way activities in accordance ORS Chapter 35.
2. Agency shall, at its own expense, acquire all right of way.

3. Agency shall, at its own expense, adjust, reconstruct, and relocate utility installations, as necessary for the Project.
4. Agency shall prepare, or cause to be prepared, the plans and specifications for the Project, advertise the Project, contract the work, perform the construction engineering, and make the necessary contract payments.
5. If work will occur on or along the state highway, Agency shall obtain a miscellaneous permit to occupy State right of way through the State's District Permitting Office prior to the commencement of construction.
6. If Agency enters into a contract for performance of Project work on or along a State highway, then Agency will require its contractor to provide the following:
 - a. Contractor shall indemnify, defend and hold harmless State from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under the resulting contract.
 - b. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
 - c. Commercial General Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to State. This insurance will include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage will be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence will not be less than **\$1,000,000** **\$2,000,000** **\$5,000,000** for each job site or location. Each annual aggregate limit shall not be less than **\$1,000,000** **\$2,000,000** **\$4,000,000** **10,000,000**.
 - d. Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the resulting contract, Commercial Business Automobile Liability Insurance covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits). Combined single limit per occurrence will not be less than \$1,000,000.
 - e. Additional Insured. The liability insurance coverage, except Professional Liability, Errors and Omissions, or Workers' Compensation, if included, required for performance of the resulting contract will include State and its divisions, officers

and employees as Additional Insured but only with respect to Contractor's activities to be performed under the resulting contract. Coverage will be primary and non-contributory with any other insurance and self-insurance.

- f. Notice of Cancellation or Change. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from Contractor's or its insurer(s) to State. Any failure to comply with the reporting provisions of this clause will constitute a material breach of the resulting contract and will be grounds for immediate termination of the resulting contract and this Agreement.
7. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Agency shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to the design and construction of any traffic control device to be installed.
8. Agency shall enter into a separate traffic signal agreement with State to cover obligations for any traffic signal being installed on a state highway.
9. Agency shall ensure its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate, in order to inspect electrical installations on State highways. The State District Permitting Office shall verify compliance with this requirement prior to construction. The permit fee should also cover the State electrician's supplemental inspection.
10. Upon completion of the Project and at its own expense, Agency shall maintain the pavement surrounding the vehicle detector loops installed in the Agency's street(s), if any, in such a manner as to provide adequate protection for said detector loops. Failure to do so may result in State requiring Agency to repair or replace the damaged loops at Agency's expense. Future Agency roadwork activities involving the detector loops may also result in the same State requirements. Agency shall also adequately maintain any pavement markings and signing installed, in accordance with the approved signal plan sheets for the signal installation or current Manual on Uniform Traffic Control Devices standards.
11. Agency shall, during the course of the work, accumulate and retain documentation of all Project costs.
12. Agency shall, upon completion of Project, certify to State that Project is complete and in substantial conformance with the plans and controlling specifications.
13. Agency shall, no later than ninety (90) days after the completion of the Project or the Termination Date, whichever occurs earlier, submit an invoice for the remaining eligible costs of Project which, when added to any amount previously advanced by State, shall not exceed the actual total cost of Project or \$100,000.00, whichever is

less. Such invoices shall be on Agency letterhead and shall identify the Project, Agreement number, Project start and end dates and itemize all expenses for which reimbursement is claimed, as well as provide a detailed breakdown of Project Costs expended and funds reimbursed to date. Upon request by ODOT, Agency shall provide to ODOT proof of payment and backup documentation supporting Agency's invoice.

14. Agency 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. State and Agency agree that the useful life of this Project is defined as 7 years. Maintenance and power responsibilities shall survive any termination of this Agreement. If Project is canceled by Agency after Agency has received payment of any SCA funds from State, or not completed within the time requirements or in accordance with the terms of this Agreement, Agency shall immediately repay to State the full amount of SCA funds received by Agency.

15. **Americans with Disabilities Act Compliance:**

- a. State Highway: For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Agency shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Agency shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Agency shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - iv. Agency shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals

located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

- v. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days prior to the start of construction.
- b. Local Roads: For portions of the Project located on Agency roads or facilities that are not on or along a state highway:
- i. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Agency may follow its own processes or may use ODOT's processes for design, construction or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Agency's use and convenience.
 - iii. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the

public, people with disabilities, and disability organizations prior to the start of construction.

- c. Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to applicable local code provisions, performs any repair or removal of obstructions needed to maintain the facility in compliance with the ADA requirements that were in effect at the time the facility was constructed or altered.
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

16. 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. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
17. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS [279C.505](#), [279C.515](#), [279C.520](#), [279C.530](#) and [279B.270](#) incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) [Title VI of Civil Rights Act of 1964](#); (ii) [Title V and Section 504 of the Rehabilitation Act of 1973](#); (iii) the [Americans with Disabilities Act of 1990](#) and ORS [659A.142](#); (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

18. Agency acknowledges and agrees that State, 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 Agency which are directly pertinent to this 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 State.
19. 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.
20. 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, 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.
21. 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 any time 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.
22. Agency's Project Manager for this Project is Aaron Lieuallen, Senior Project Manager, 450 East Main St., John Day, OR 97845, (541)620-2360, 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.

STATE OBLIGATIONS

1. State shall administer the funds in the SCA Account in the following manner:
 - a. At Agency's request, State may, upon execution of this Agreement, and after receipt and review of the Project plans and specifications, forward to the Agency an advance payment of 50% of the Award Amount, not to exceed \$25,000.
 - b. State shall make final payment to Agency for all remaining eligible Project costs upon satisfactory final review of the Project, and after receipt of the certification of acceptance of work by the Agency accompanied by documentation of all Project costs. Total payments to Agency, including any advance deposit payment, shall not exceed the actual total cost of the Project or \$100,000.00, whichever is less.
2. State's Project Manager for this Project is Michael Barry, Local Agency Liaison, 3012 Island Avenue, La Grande, OR 97850, (541)963-1353 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.

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 Agency, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency 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 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.
 - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

4. 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.
5. With respect to a Third Party Claim for which the 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 the State had sole liability in the proceeding.
6. 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.
7. 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.

8. This Agreement may be executed in several counterparts 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.
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.

SIGNATURE PAGE TO FOLLOW

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

City of John Day, by and through its elected officials

By _____
(Legally designated representative)

Name _____
(printed)

Date _____

By _____

Name _____
(printed)

Date _____

**LEGAL REVIEW APPROVAL
(If required in Agency's process)**

By _____
Agency's Legal Counsel

Date _____

Agency Contact:

Aaron Lieuallen, Sr. Project Manager
450 East Main Street
John Day, OR 97845
(541) 620-2360
lieuallena@grantcounty-or.gov

STATE OF OREGON, by and through its Department of Transportation

By _____
Transportation Development Division Administrator

Name _____
(printed)

Date _____

APPROVAL RECOMMENDED

By _____
SCA Program Manager

Date _____

**APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)**

By Sam Zeigler via email dated August 23, 2019
Assistant Attorney General

State Contact:

Michael Barry
Local Agency Liaison
23012 Island Avenue
La Grande, OR 97850
(541)963-1353
michael.p.barry@odot.state.or.us