

**AMENDMENT NUMBER 01
LOCAL AGENCY AGREEMENT
MULTIMODAL TRANSPORTATION ENHANCE PROGRAM (MTEP)
(Match only)
Project Name: US395: SIDEWALK IMPROVEMENTS (JOHN DAY)**

This is Amendment No. 01 to the Agreement 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," entered into on August 10, 2016

It has now been determined by State and Agency that the Agreement referenced above shall be amended to increase funding, change Project Scope, and update Agreement language.

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendment to Agreement.**

Exhibit A shall be deleted in its entirety and replaced with the attached Revised Exhibit A. All references to "Exhibit A" shall hereinafter be referred to as "Revised Exhibit A."

Attachment No. 1 to Agreement, Special Provisions shall be deleted in its entirety and replaced with the attached Revised Attachment 1, Special Provisions. All references to "Attachment 1" or "Special Provisions" shall hereinafter be referred to as "Revised Attachment No. 1, Special Provisions."

a. **RECITALS, Paragraph 2, Page 1, Which reads:**

2. US395 (John Day Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW 4th Avenue is a part of the Agency street system under the jurisdiction and control of the Agency.

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

2. US395 (John Day Highway) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). SW 6th Avenue is a part of the Agency street system under the jurisdiction and control of the Agency.

b. **Terms of Agreement, Paragraphs 1 and 2, Page 2, which read:**

1. Under such authority, Agency and State agree to State designing, obtaining right of way, and constructing sidewalks, bicycle and parking lanes along US Highway 395 from SW 4th Ave to Grant Union High School in John Day, on behalf of Agency, hereinafter referred to as "Project" and is further defined below. Additionally, as part of this Project State will be responsible for all work described in Special Provisions,

- paragraphs 1 and 2. The location of the Project is approximately as shown on the map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project Description and Deliverables are as follows:

This project will design, obtain necessary right of way and construct sidewalks, storm drain, and bicycle and parking lanes along US395 (West side only, Canyon Boulevard) from SW 6th Avenue to Grant Union High School (MP0.84). This project will also design, obtain necessary right of way and construct storm drain only from SW 4th to SW 6th on US395 (Canyon Boulevard), tying into the existing City Storm drain system on SW 4th Avenue, including re-construction of the City storm drain system on SW 4th Avenue (SouthSide only), if needed.

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

1. Under such authority, Agency and State agree to State designing, obtaining right of way, re-constructing impacted potable waterline (using design provided by Agency's Engineer), and constructing sidewalks and bicycle lanes along US Highway 395 from SW 6th Ave to Grant Union High School in John Day, on behalf of Agency, hereinafter referred to as "Project" and is further defined below. Additionally, as part of this Project State will be responsible for all work described in Revised Attachment 1, Special Provisions, paragraphs 1 and 2. The location of the Project is approximately as shown on the map attached hereto, marked " Revised Exhibit A," and by this reference made a part hereof.

2. The Project Description and Deliverables are as follows:

As part of this Project ODOT shall design, obtain necessary right of way and construct sidewalks, and bicycle lanes along US Highway 395 (West side only, Canyon Boulevard) from SW 6th Avenue to Grant Union High School (MP 0.55 - MP 0.84). Project shall also include State, re-constructing (project impacted), City potable waterline; using design provided by Agency. During the re-construction of the potable waterline, the Agency shall provide construction support work through it's engineering firm. Construction support work includes, but is not limited to, verification of materials to be used for construction of the waterline and necessary design changes due to unforeseen circumstances.

c. Terms of Agreement, Paragraphs 4 and 5 , Page 2, which read:

4. The Project shall be conducted as a part of the Multinodal Transportation Enhance Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds. The Total Project Cost is estimated at \$839,970.00, which is subject to change. MTEP funding for this Project shall be limited to \$753,705.00. Agency shall be responsible for all remaining costs, including the 10,27 percent match for all eligible costs, any non-participating costs, and all costs in excess of the available federal or state funds.

5. The Funding Ratio for this Project is 89,73% of MTEP funds to 10.27% Agency funds and applies to Project Underruns. The Funding Ratio for this Project does not apply in the case of Project Overruns,

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

4. The Project shall be conducted as a part of the Multimodal Transportation Enhancement Program (MTEP) with funds provided under Title 23, United States Code and may include a combination of federal and state funds. The Total Project Cost is estimated at \$2,600,084.00, which is subject to change. The Project will include a combination of federal and state funding as follows: federal (MTEP) funding limited to \$753,705.38, Safe Routes to School and Sidewalk Improvement Program funding is limited to \$1,640,114.00. Agency shall be responsible for all remaining costs, including any required match, all eligible costs, any non-participating costs, and all costs in excess of the available federal and state funds. Reimbursement to Agency for work related to the design of the potable waterline will be funded using local and Safe Routes to Schools funding as provided in this section.
5. The Funding Ratio for the MTEP funds is 89.73% of MTEP funds to 10.27% Agency funds and applies to Project Underruns. The Funding Ratio does not apply in the case of Project Overruns.

d. Terms of Agreement, Paragraph 14, Page 4, which reads:

14. 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 Agency with the Notice to Proceed.
- b. The indirect cost rate for this project at the time the agreement is written is zero percent.

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

14. a. Information required by 2 Code of Federal Regulation (CFR) 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by ODOT to Agency with the Notice to Proceed.
- b. Indirect Cost Rate.
 - i. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is zero percent (0%). This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
 - ii. If the approved rate(s) change(s) during the term of this Agreement,

Agency shall invoice ODOT using the current indirect cost rate(s) for the project on file with ODOT at the time the work is performed. If Agency does not have approved indirect cost rate(s) on file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.

e. Existing Terms of Agreement Paragraphs 6 through 23, shall be hereinafter re-numbered as Paragraphs 10 through 27.

f. Insert new Terms of Agreement , Paragraphs 6-9, Page 3, to read as follows:

6. Agency shall utilize their chosen engineering firm to provide State with the design for project impacted potable waterline, which shall Agency shall ensure is provided to State in an ODOT format that will allow State to incorporate the design into the construction bid package. State shall work with the Engineering firm to identify a format acceptable to State. Agency shall be responsible for all payments to its engineering firm for the design work identified in this Paragraph 6.
7. State shall be responsible for the construction of the portion of the potable waterline impacted by Project, using the design provided by Agency's Engineering firm. State shall be responsible for reimbursing the Agency for costs of the design and construction support work done by the engineering firm, subject to the limitations set forth in Terms of Agreement Paragraph 8. Construction support work includes, but is not limited to, verification of materials to be used for construction of the waterline and necessary design changes due to unforeseen circumstances.
8. Agency shall invoice State for its actual costs identified in Terms of Agreement Paragraph 7 above. The invoice shall identify the Project, design work done, and shall reference the Agreement number. In consideration for the design services performed, State agrees to reimburse Agency within forty-five (45) days of approval by State of the invoice for potable water design from the Agency. The reimbursement amount shall not to exceed a maximum amount of \$40,000.

9. Americans with Disabilities Act Compliance:

- a. **When the Project scope includes work on sidewalks, curb ramps, bike lanes, or pedestrian-activated signals or triggers an obligation to address curb ramps or pedestrian signals, the Parties shall:**
 - i. 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. 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, send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as 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>; and

- b. 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, bike lanes, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Agency, or abutting property owner, pursuant to 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.

c. Maintenance obligations in this section shall survive termination of this Agreement.

g. Insert new Terms of Agreement, Paragraphs 28 and 29, Page 5, to read as follows:

15. By signing this Federal-Aid Agreement Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its

top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "C".

16. State shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. State shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.

9. **Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

10. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. Agency certifies that the representations, warranties and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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

This Project is in the 2018- 2021 Statewide Transportation Improvement Program, (Key #18918) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

City of John Day, by and through its
elected officials

By _____

Title _____

Date _____

By _____

Title _____

Date _____

**APPROVED AS TO FORM (If required
by Agency)**

By _____
Agency Counsel

Date _____

Agency Contact:
Nick Green, City Manager
City of John Day
450 East Main Street
John Day, Oregon 97846
Phone: (541) 575-0028
Email: green@grantcounty-or.gov

State Contact:
Sean Maloney, Project Leader
Oregon Department of Transportation
1390 SE 1st Avenue
Ontario, Oregon 97914
Phone: (541) 823-4025
Email: Sean.Maloney@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Director

Date _____

APPROVAL RECOMMENDED

By _____
Region 5 Manager

Date _____

By _____
State Traffic/Roadway Engineer

Date _____

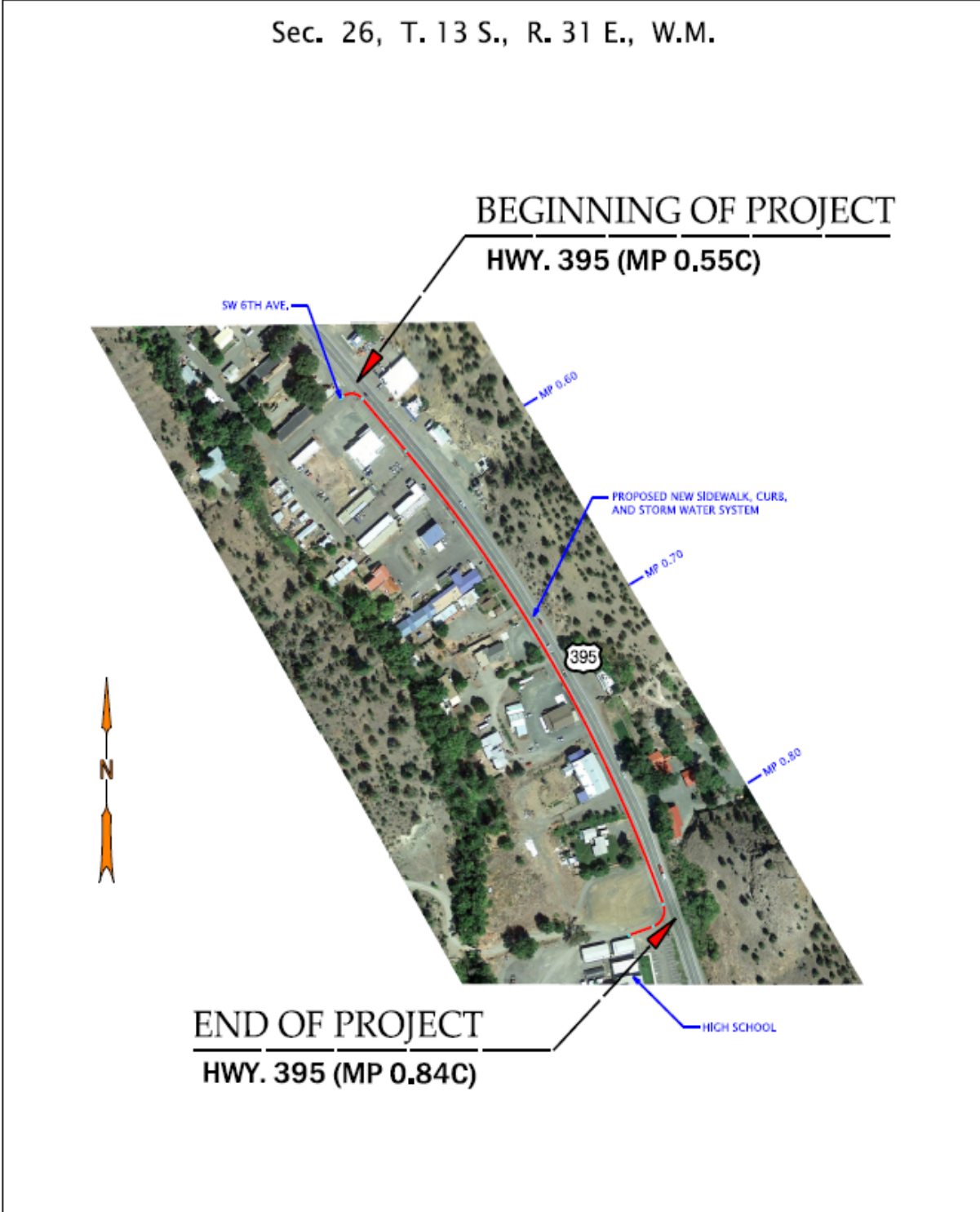
**APPROVED AS TO LEGAL
SUFFICIENCY**


By _____
Assistant Attorney General

Date: _____

Revised Exhibit A

Sec. 26, T. 13 S., R. 31 E., W.M.



OREGON DEPARTMENT OF TRANSPORTATION  PROJECT EXHIBIT MAP	SECTION	<i>US395: Sidewalk Improvements (John Day)</i>		
	HIGHWAY	<i>John Day Hwy. No. 048</i>	SCALE	<i>1" = 300'</i>
	COUNTY	<i>Grant</i>	Key #	<i>K18918</i>
	DATE	<i>August, 2019</i>	<i>MP 0.55 To MP 0.84</i>	

REVISED
ATTACHMENT NO. 1 to Agreement No. 31224
SPECIAL PROVISIONS

1. State, or the consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, hydraulic studies, assist with acquisition of necessary right of way and easements; obtain all required permits and arrange for all utility relocations/adjustments. State or its consultant shall conduct all work components necessary to complete the Project, except those expressly assumed by Agency in Terms of Agreement, Paragraph 6.
2. Upon State's award of the construction contract, State, or its consultant, shall be responsible for all required materials testing and quality documentation; and prepare necessary documentation with ODOT-qualified personnel, and State will make all contractor payments, except those payments to Agency's engineering firm identified in Terms of Agreement, Paragraph 6, which shall be made by Agency. State or its consultant shall also be responsible for contract administration, construction engineering and inspection, and will follow the most current version of the ODOT Construction Manual and the ODOT Inspector's Manual.
3. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
4. State and Agency agree that the useful life of this Project is defined as (20 years).
5. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
6. State will perform work throughout the duration of the Project and shall provide a preliminary estimate of State costs for this work. Prior to the start of each Project phase State shall provide an updated estimate of State costs for that phase. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per this Agreement.
7. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency's proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach. Agency will be ineligible to receive or apply for any Title 23, United States Code funds until State receives full reimbursement of the costs incurred.