

COOPERATIVE IMPROVEMENT AGREEMENT
Rectangular Rapid Flashing Beacon Installation
West Park Elementary City of Hermiston

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (ODOT), hereinafter referred to as "State;" the CITY OF HERMISTON, acting by and through its elected officials, hereinafter referred to as "Agency," all herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. OR207 (also known as SW 11th Street) is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
2. By the authority granted in Oregon Revised Statutes (ORS) [190.110](#), [366.572](#) and [366.576](#), State may enter into cooperative agreements with 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.
3. In order to provide motorists with advance warning of pedestrian crossing on State Highway OR 207 at MP 8.5, State shall purchase and install two (2) Rectangular Rapid Flashing Beacons (RRFB) poles and assemblies and two (2) light poles. Installation of the RRFB will be done under the West Park Elementary Sidewalk Project Agreement number 73000-00015295.
4. State, by ORS [366.220](#), is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. By the authority granted by ORS 373.020, the jurisdiction extends from curb to curb, or, if there is no regular established curb, then control extends over such portion of the right of way as may be utilized by State for highway purposes. Responsibility for and jurisdiction over all other portions of a city street remains with the Agency.
5. By the authority granted in ORS [810.210](#), State is authorized to determine the character or type of traffic control devices to be used, and to place or erect them upon state highways at places where State deems necessary for the safe and expeditious control of traffic. No traffic control devices shall be erected, maintained, or operated upon any state highway by any authority other than State, except with its written approval. Traffic signal work on this Project will conform to the current State standards and specifications.

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. Under such authority, the Parties agree to State purchasing and installing two (2) RRFB poles/ assemblies and two (2) light poles; these will be installed on OR-207 (Hermiston highway) at MP 8.5 (between Highland Ave and Orchard Ave) 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.
 - a. Installation of the RRFB will be done in conjunction with the West Park Elementary Sidewalk Project, reference Agreement number 73000-00015295.
2. The Project will be financed at an estimated cost of \$470,959 in state funds. The estimate for the total Project cost is subject to change. State shall be responsible for all Project costs.
3. If the total cost of this Agreement exceed \$150,000, the Department of Justice must review and approve any amendments prior to performance of any work.
4. The term of this Agreement will begin upon the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the RRFB's installed as part of this Project. The useful life is defined as twenty (20) calendar years following the date of final execution of this Agreement by both Parties. Maintenance responsibilities shall survive termination of this Agreement. The Project shall be completed within one (1) calendar year following the date of final execution of this Agreement by both Parties.

Agency OBLIGATIONS

1. Agency shall grant State the right to enter onto City's right of way for the performance of the duties as set forth in this Agreement.
2. The Project will be constructed within State right of way, no additional right of way is anticipated for the Project.
3. Agency shall pay for all on-going maintenance costs for the RRFBs performed by State. Agency agrees to pay State within forty-five (45) days of receipt by Agency of the invoice from State. Agency shall remit payment to State at the following address: Oregon Department of Transportation, Financial Services Section, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302. Agency's total cost for maintenance and timing for the function of the flashing beacons under this Agreement shall not exceed \$1500.00 per calendar year unless otherwise agreed upon prior to the maintenance activity being performed.

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4. Agency shall be responsible for 100 percent of power costs associated with the RRFBs. Agency shall require the power company to send invoices directly to the Agency.
5. Agency certifies and represents that the individual(s) signing this Agreement have been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing bodies, commissions, boards, officers, members or representatives, and to legally bind Agency.
6. Agency's contact is: Mark Morgan, Assistant City Manager, City of Hermiston, 180 NE 2nd Street, Hermiston Oregon 97838. Phone: (541) 567-5521, mmorgan@hermiston.or.us, or other assigned designee upon individual's absence. City shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. State shall purchase and install two (2) RRFB poles/assemblies and two (2) light poles, at the location shown in Exhibit A. This Project will include the installation of all necessary signage.
2. Upon completion of the project, State shall provide on-going maintenance of RRFBs installed as part of this Project at Agency's expense. State will perform timing changes, as requested by the Agency, at their earliest convenience - usually within 1 week of receiving the request. State shall perform maintenance as it determines a necessity, or when requested by Agency. Maintenance also includes service calls not requested by the Agency for the purpose of updating for daylight savings time, and corrective maintenance found to be necessary during routine inspection.
3. State shall on a semi-annual basis send a bill to the Agency, for labor and equipment rental costs (if any), associated with the on-going maintenance of the RRFBs.
4. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
5. State's Project Manager for this Project is Erin Winterton, Construction Project Manager, 3012 Island Avenue, La Grande, Oregon 97850. Phone (541) 963-1371, Erin.WINTERTON@odot.oregon.gov, 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 the 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 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.
 - b. 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 State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.

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 (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.
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 any of the Parties unless in writing and signed by all 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.

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 TO FOLLOW

Agency/State
Agreement No. 73000-00034037

CITY OF HERMISTON, by and through its
elected officials

By _____
Mayor (or other assigned designee)

Date _____

By _____
City Manager (or other assigned designee)

Date _____

APPROVED AS TO LEGAL SUFFICIENCY
(If required by City)

By _____
Counsel

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By Serena D. Hewitt - via email

Assistant Attorney General (If over \$150,000)

Date 2/16/2023

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 5 Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 5 Traffic Engineer

Date _____

By _____
District 12 Manager

Date _____

City Contact

Mark Morgan, Assistant City Manager
City of Hermiston
180 NE 2nd Street
Hermiston, Oregon 97838
(541) 567-5521
mmorgan@hermiston.or.us

State Contact:

Rich Lani, District 12 Manager
Oregon Department of Transportation
1327 SE 3rd St.
Pendleton, Oregon 97801
(541) 278-6021
Richard.Lani@odot.oregon.gov

EXHIBIT A

