

Cooperative Improvement Agreement
Rectangular Rapid Flashing Beacon Installation
OR 207/Hartley/Joseph
Umatilla/Morrow County Curb Ramps Phase 2B
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, hereinafter referred to as "ODOT" and "State;" and the CITY OF HERMISTON, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" and collectively as "Parties."

RECITALS

1. OR 207, is part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). OR 207 is known within the limits of this project as Hartley and Joseph. All city streets impacted by this project are a part of the city street system under the jurisdiction and control of Agency.
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. To provide motorist with advance warning of pedestrian crossing on State Highway OR 207 at MP 8.47 (Hartley) and MP 9.11 (Joseph). State shall purchase and install four (4) new Rectangular Rapid Flashing Beacons (RRFB) poles and assemblies and four (4) light poles. Installation of the RRFBs will be done under the Americans with Disabilities Act Curb Ramp Project, Agreement number 73000-00023030.
4. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes. The Parties initially agree that 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 Agency. The Parties further understand and agree to amend this Agreement if the jurisdiction stated in this recital is altered or determined to be incorrect.
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.

6. If any existing marked crosswalks and rectangular rapid flashing beacons (RRFB) will be replaced, or location adjusted, according to the project plans in Agreement No. 73000-00023030. All maintenance responsibilities for these elements remain as assigned when originally constructed.

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, all Parties agree to State purchasing and installing four (4) RRFB poles/ assemblies and four (4) light poles; these will be installed on OR-207 (Hermiston highway) at MP 8.47 (Hartley Ave) and MP 9.11 (Joseph 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 RRFBs will be done under the Americans with Disabilities Act Curb Ramp Project, Agreement number 73000-00023030.
2. The Project will be financed at an estimated cost of \$200,000 in federal 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 exceeds \$250,000, 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. Maintenance responsibilities shall survive termination of this Agreement. The Project shall be completed within two (2) calendar year following the date of final execution of this Agreement by all 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 and City right of way, no additional right of way is anticipated for the Project.
3. Agency is responsible for the cost of all maintenance for any RRFBs installed under this Project Agreement. Once the RRFBs are installed and deemed operational, Agency shall assume maintenance and power costs of the RRFBs, and the signs installed with them. Agency shall contact the ODOT District 12 Electrician when service and/or repair is needed. Agency shall be responsible for all costs of labor,

equipment rental, and materials needed for repairs. The agency shall also be responsible for the replacement of the RRFBs, and any signs installed for the RRFB's, should they become damaged. In instances where damage has been caused by a Third Party; State shall request reimbursement from the Third Party for costs of replacement or repair. If those costs cannot be recovered from the Third Party, then the Agency shall be responsible for those costs. Maintenance shall include any repairs deemed necessary by State during routine inspections. Routine maintenance will not include emergency repairs performed by the State on the RRFBs. These costs shall be the responsibility of the Agency. In the future should a State construction project impact the placement of an RRFB installed as part of this Project, State shall be responsible for the relocation costs. Should a City construction project impact the placement of an RRFB installed as part of this Project, Agency shall be responsible for the relocation costs. State responsibilities are further defined under State Obligations.

4. In consideration for the State's services performed for the maintenance and timing required for the function of the RRFB under this Agreement, City agrees to pay State within forty-five (45) days of receipt by City of the invoice from State. City shall remit payment to State at the following address: Oregon Department of Transportation, Financial Services Section, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302. City's total cost for maintenance and timing shall not exceed \$2,500 per RRFB per calendar year, unless otherwise agreed upon prior to the maintenance activity being performed.
5. 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.
6. 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 City and Agency.
7. Agency's Project Manager for this Project is Mark Morgan, Assistant City Manager, 180 NE 2nd Street, Suite 220, Hermiston, Oregon 97838; telephone: (541) 567-5521; email: mmorgan@hermiston.or.us, 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 purchase and install one overhead electric rectangular rapid flashing beacon (RRFB) and four (4) poles and mount (RRFB assemblies), at the locations 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, and signs installed for the RRFBs as part of this Project; this shall be done at the expense of the Agency. 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. State responsibilities are further defined under Agency Obligations.

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 Bryan Strasser, Resident Engineer, 1390 SE 1st Avenue, Ontario, Oregon 97914. Phone (541) 823-4039, bryan.e.strasser@odot.state.or.us, 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 City 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 City (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 /City in such proportion as is appropriate to reflect the relative fault of State on the one hand and City 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 District, or City 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/City is jointly liable with State (or would be if joined in the Third Party Claim), Agency/City 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 District, or City 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/ City 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/city'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.

10. Electronic Signatures. The Parties agree that signatures showing on PDF documents, including but not limited to PDF copies of the Agreement and amendments, submitted or exchanged via email are "Electronic Signatures" under ORS Chapter 84 and bind the signing Party and are intended to be and can be relied upon by the Parties. State reserves the right at any time to require the submission of the hard copy originals of any documents.

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

City/State
Agreement No. 73000-00037091

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 _____

Agency Contact:

Mark Morgan, Assistant City Manager
City of Hermiston
180 NE 2nd Street, Suite 220
Hermiston, Oregon 97838
(541) 567-5521
mmorgan@hermiston.or.us

State Contact:

Erin Winterton
Transportation Project Manager
3012 Island Avenue
La Grande, Oregon 97850
(541) 252-2226
Erin.Winterton@odot.oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By _____
Delivery and Operations Administrator

APPROVAL RECOMMENDED

By _____
Region 5 Manager

Date _____

By _____
Region 5 Traffic Engineer

Date _____

By _____
District 12 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____

EXHIBIT A
Project Location Map – Hartley



EXHIBIT A
Project Location Map – Joseph

