

# Staff Report

For the Meeting of October 24, 2016

MAYOR AND MEMBERS OF THE CITY COUNCIL

Agenda Item #

NO. 2041 –

**SUBJECT: Proposed Revised  
ODOT IGA for Highland  
Trail**

## **Subject**

ODOT has prepared a revised intergovernmental agreement for the construction of the W Highland Trail connecting SW 11<sup>th</sup> Street to Riverfront Park.

## **Summary and Background**

The city council must review and approve the agreement between the State and City. The agreement details the responsibilities of each party in the design and construction of the W Highland multi-use trail. This is the trail project requested by the city through the Enhance grant program. The project was approved by ODOT and incorporated into the Statewide Transportation Improvement Program (STIP). The City is responsible for a match of 22% for the grant program. The final project will construct a separated multi-use path on the south side of W Highland Avenue.

ODOT estimates the cost of the project at \$663,225. The state will pay 77% or \$482,459. The city's share is 22.62% or \$150,000. The city's share will be invoiced on a pay-as-you-go basis. The state will be responsible for the acquisition of any needed right-of-way and hiring the contractor for construction of the trail. The city will coordinate with ODOT and hire the project engineer. The engineer will work with city staff to design a trail which meets ODOT's design standards. ODOT will have the ultimate authority to approve the design.

In the event the project comes in under budget, the same spending ratios will apply. ODOT will pay 77.38% and the city will pay 22.62%. Any project overruns above the \$663,000 will be the responsibility of the city. In the event that construction bids come in above the state's estimates, the state will retain the authority to award the contract as long as the bids are within 10% of the original estimate.

The new IGA is significantly different from the IGA approved by the council in March. The state has modified the program to utilize the fund exchange program rather than directly using federal dollars. This change removes several restrictions on the funds and allows the city to streamline the trail development process. Rather than the project being an ODOT project with ODOT selecting the engineer and contractor, the project is now a city project where the city can

use its existing engineer and later hire a contractor through the city's bid process. The city will act as the project manager rather than ODOT.

### **Fiscal Information**

In order to fund the city's matching portion for the trail, the city's budget has the following dollar amounts allocated from various funds.

- \$25,000 will be taken from the bicycle trails reserve fund
- \$90,000 will be taken from the community enhancement reserve fund
- \$35,000 will be taken from cash reserves

### **Alternatives and Recommendation**

The W Highland multi-use path is a valuable capital improvement and a vital component of the planned Hermiston Loop Trail. The construction costs have increased since the city originally applied for funding. Staff has developed a potential path to funding the project.

The city council may choose to:

- Adopt the staff funding plan and sign the IGA
- Reject the funding plan and reject the IGA, this will terminate the project

Staff recommends that the city council approve the IGA with the proposed funding path outlined in the fiscal information.

### **Requested Action/Motion**

Staff recommends that the city council move to approve the IGA.

Reviewed by:



Department Head – Clinton Spencer, City Planner



City Manager Approval

RESOLUTION NO. 2041

A RESOLUTION REPEALING RESOLUTION 2018 AND AUTHORIZING THE MAYOR TO SIGN, ON BEHALF OF THE CITY OF HERMISTON, A LOCAL AGENCY AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION TO INSTALL A MULTI-USE TRAIL ON THE SOUTH SIDE OF W HIGHLAND AVE BETWEEN SW 11<sup>TH</sup> STREET AND RIVERFRONT PARK AND FOR THE CITY TO CARRY OUT THE TERMS AND CONDITIONS OF THE INTERGOVERNMENTAL AGREEMENT.

WHEREAS, BY THE AUTHORITY GRANTED IN Oregon Revised Statutes (ORS) 190.110, state agencies and local governments may enter into agreements 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 and;

WHEREAS, OR 207 is a state highway over a city street that is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission. W Highland Ave, SW 23<sup>rd</sup> Street, and SW 11<sup>th</sup> street are part of the city street system under the shared jurisdiction and control of the city and county. and;

WHEREAS, the City of Hermiston previously approved Resolution 2018 on March 14, 2016 agreeing to a previous revision of this intergovernmental agreement, and;

WHEREAS, ODOT will utilize the federal fund exchange program and transfer control of the project to the city. NOW THEREFORE;

IT IS RESOLVED that the form, terms and provisions of the “LOCAL AGENCY AGREEMENT Locally Delivered State Funded Project Program” attached hereto and the transactions contemplated thereby, providing for, among other things, the installation and construction of a multi-use pathway on the south side of W Highland Ave, connecting SW 11<sup>th</sup> Street to SW 23<sup>rd</sup> Street, copies of which have been presented to and reviewed by the Council, be, and they are, in all respects, hereby approved and adopted; and;

IT IS FURTHER RESOLVED that Mayor Dr. David Drotzmann be, and is, hereby authorized to execute and deliver the “LOCAL AGENCY AGREEMENT Locally Delivered State Funded Project Program” to the Oregon Department of Transportation substantially in the form heretofore approved and adopted by the City Council; and;

IT IS FURTHER RESOLVED that Resolution 2018 is hereby repealed; and;

IT IS FINALLY RESOLVED that pursuant to ORS 221.310(3), this resolution is effective immediately upon its passage.

Dated this 24<sup>th</sup> day of October, 2016.

CITY OF HERMISTON

ATTEST:

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Mayor

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Assistant City Recorder

**LOCAL AGENCY AGREEMENT**  
**Locally Delivered State Funded Project Program**  
**Project Name**

W HIGHLAND: SW 23RD-SW 11TH BIKE LANES (HERMISTON)  
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 "State;" and City of Hermiston, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities, and units of local government 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. OR 207 Hermiston Highway (11<sup>th</sup> Street) is a State Highway over a City Street is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). 23<sup>rd</sup> Street, and 11<sup>th</sup> Street are part of the city street system under the jurisdiction and control of Agency. W. Highland Avenue has shared jurisdiction between the City and County. For the purpose of this Project the County has granted City access to the County portion of W. Highland Avenue to construct improvements. State has determined that Agency is eligible for State funds for the work to be performed under this Agreement through the Locally Delivered State Funded Project Program.

**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. State and Agency agree to Agency widening and extension of existing bicycle ways on W. Highland on behalf of the Agency, from SW 23<sup>rd</sup> Street along W. Highland Street to 11<sup>th</sup> Street, hereinafter referred to as "Project." The Project location and approximate limits are shown the map Marked "Exhibit A," attached hereto and by this reference made a part hereof.
2. The total Project cost for the work to be performed under this Agreement is estimated at \$663,255.00, which is subject to change. The federal share of the total Project cost is 513,255.00.
  - a. Per the fund exchange ratio of \$0.94 state dollars for \$1.00 federal dollars, Agency will exchange \$513,255.00 of federal dollars allocated for this Project for \$482,459.00 of state dollars. State funds under this Agreement are limited to

\$482,459.00.

3. State shall reimburse Agency one hundred (100) percent of eligible, actual costs incurred in carrying out the Project, up to the maximum amount of state funds committed for the Project. Agency shall contact State's Project Manager and obtain State's approval prior to incurring any potential cost overruns.
4. Travel expenses shall be reimbursed to Agency in accordance with the current State of Oregon Department of Administrative Services' rates. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. In the event of an underrun, any unspent state funds will be retained by State and will not be available for Agency use. State funds transferred to Agency must be used for the Project.
5. To be eligible for reimbursement, expenditures must comply with the requirements of Article IX, Section 3a of the Oregon Constitution. Eligible costs are defined as reasonable and necessary costs incurred by the Agency in performance of the Project.
6. This Agreement shall supersede and replace Agreement number 30443, and its subsequent amendment(s), in its/their entirety. Agreement No. 30443 will terminate upon the execution of this Agreement.
7. The term of this Agreement will begin upon the date all required signatures are obtained and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.

#### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in TERMS OF AGREEMENT, Paragraph 1 of this Agreement.
2. Agency agrees that the Project shall be developed in conformance with the current edition of A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO). For non-highway projects Agency shall use applicable AASHTO standards.
3. If sidewalk, curb ramp and traffic signal improvements are on or along a State Highway, Agency shall:
  - a. Ensure Project meets current ODOT Highway Design Manual design standards.
  - b. Obtain a miscellaneous permit to occupy State right of way through the State District 12 Office prior to the commencement of construction.
  - c. Follow ODOT's processes in addressing Americans with Disabilities Act of 1990 (ADA) features, including using the ODOT Highway Design Manual, Design Exception process, ODOT Standard Drawings, ODOT Construction

Specifications, the Manual on Uniform Traffic Control, and current ODOT State Traffic Signal Policy and Guidelines, and ODOT Curb Ramp Inspection form.

- d. At Project completion, send an ADA Ramp Inspection Form 734-5020 to the address on the form as well as to State's Project Manager.

ODOT's fillable ADA Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- e. 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 signal, or illumination to be installed on a State Highway.
  - f. Enter into a separate traffic signal agreement with State to cover obligations for any traffic signal being installed on a State Highway.
  - g. Ensure Agency, or its contractor's, 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.
  - h. Upon completion of the Project and at its own expense, maintain the pavement surrounding the vehicle detector loops installed in the Agency street 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 expense. Future Agency roadwork activities involving the detector loops may also result in the same State requirements. Agency shall also adequately maintain the 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.
4. Agency shall submit the following items to State's Project Manager, at Project completion and prior to final payment:
    - a. Final Project completion Inspection form No. 734-5063 (completed with State's Project Manager);
    - b. Final Cost;
    - c. As-Constructed Drawings; and
  5. Agency shall present invoices for the eligible, actual costs incurred by Agency on behalf of the Project directly to State's Project Manager listed in this Agreement for review and approval. Such invoices shall be in a form identifying the Project, the Agreement number, the Project phase (such as preliminary engineering, right of way

and construction), the invoice number or the account number or both, and will itemize all expenses for which reimbursement is claimed. Invoices shall not be presented for periods of less than one month, based on actual expenses incurred, and must clearly specify the percentage of completion of the Project. Agency shall also include with the invoice a Project progress report or summary that describes work accomplished for the period being invoiced and work expected for the next invoicing period. Travel expenses shall be reimbursed to Agency in accordance with the current State of Oregon Department of Administrative Services' rates

6. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
7. Agency shall, at its own expense, periodically inspect the Project upon completion and throughout the useful life of the Project to ensure continuing compliance with ADA standards. This provision shall survive termination of the Agreement.
8. Agency or its consultant shall acquire all necessary right of way in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the State Right of Way Manual.
9. 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.
10. Agency shall perform the services 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 federal income tax withholdings.
11. 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 subcontractors complies with these requirements.

12. 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 20 years. Maintenance and power responsibilities shall survive any termination of the Project Agreement.
13. Utility relocation or reconstruction may or may not be an eligible Project expense according to the following standard:
  - a. The expense is an eligible expense if the owner of the utility facility possesses a property right for its location on the public right of way.
  - b. The expense is not an eligible expense if the owner of the utility facility does not possess a property right for its location, but the facility exists on the public right of way solely under the permission of the Agency or other road authority, whether that permission is expressed or implied, and whether written or oral.
14. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of the current budget. Agency further agrees that they will only submit invoices to State for reimbursement on work that has been performed and paid for by Agency as described in this Agreement.
15. 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, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the State, be indemnified by the contractor and subcontractor from and against any and all Claims.
16. 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 anytime 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.

17.If Agency enters into a construction contract for performance of work for the Project, then Agency will include provisions in that contract requiring its contractor to comply with the following:

- a. Contractor and Agency shall name State as a third party beneficiary of the resulting contract.
- b. 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, sub-contractors, or agents under 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 shall include personal and advertising injury liability, products and completed operations. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Coverage shall be written on an occurrence basis. If written in conjunction with Automobile Liability the combined single limit per occurrence shall 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 shall not be less than \$1,000,000.
- e. Additional Insured Endorsement. 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 the Contractor's activities to be performed under the resulting contract. Coverage shall 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 the Contractor or its

insurer(s) to State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of the resulting contract and shall be grounds for immediate termination of the resulting contract and this Agreement.

18. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts during the course of the Project and 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's Project Manager for this Agreement is Byron Smith, City Manager, 180 NE Second St., Hermiston, OR 97838. Phone: (541) 567-5521. Email: bsmith@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. In consideration for the services performed under this Agreement, State shall reimburse Agency one hundred (100) percent of eligible costs incurred in carrying out the Project up to the maximum amount of state funds committed for the Project in Terms of Agreement, Paragraph 3 of this Agreement. Reimbursements shall be made by State within forty-five (45) days of State's approval of a request for reimbursement from Agency. Final payment will be withheld until the State's Project Manager has completed final project inspection and project acceptance.
2. State shall provide the following items to Agency's Project Manager no later than execution of this Agreement:
  - a. Scoping Notes; and
  - b. Any other project specific information gathered during the scoping and selection process
3. State's Project Manager will arrange for a final project inspection upon notification from Agency of Project completion, to confirm project completeness and fulfillment of Agreement obligations, prior to final payment.
4. If traffic signal improvements are on or along a State Highway, traffic signal timing shall be the responsibility of State, unless there is an agreement that specifically

allows Agency to perform that function. As part of those traffic signal responsibilities State shall:

- a. Ensure its Region Electrical Crew, at Project expense, perform the signal equipment environmental testing and perform the signal field testing and turn on.
  - b. Retain the right of review of the traffic signal timing for signals on state highways, or those which State maintains, and shall reserve the right to request adjustments when needed.
  - c. Notify the local jurisdiction whenever timing changes that affect the operation of local street connections to the state highway are scheduled. All modifications shall follow guidelines set forth in the current Manual on Uniform Traffic Control Devices, and the current ODOT State Traffic Signal Policy and Guidelines.
  - d. Maintain the pavement surrounding the vehicle detector loops installed in the State highway in such a manner as to provide adequate protection for said detector loops at its own expense upon completion of the Project.
  - e. Maintain the pavement markings and signing installed on the State highway in accordance with current State standards.
  - f. Where Agency has an agreement with State to modify signal timing and the Agency modifies timing to add railroad or emergency vehicle preemption, bus priority, or other changes that affect vehicle or pedestrian clearances, or operation of the state highway, Agency shall promptly report such modifications to State's Region Traffic Engineer.
5. State's Project Manager for this Agreement is Michael P. Barry, Local Agency Liaison, 3012 Island Avenue, la Grande Oregon, 97850 (541-963-1353) (michael.p.barry@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 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 Agency fails to provide payment of its share of the cost of the Project.
  - d. 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.
  - 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 if State is prohibited from paying for such work from the planned funding source.
3. If State terminates this Agreement for the reasons described in General Provisions 2, "a" or "b" above, Agency must reimburse State for all state funds expended. If Agency fails to reimburse State, State may withhold Agency's proportional share of State Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.
  4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
  5. 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.
  6. 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.

7. 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.
8. 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.
9. State and Agency are the only Parties to this Agreement and, as such, are the only Parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to third persons unless such third persons are expressly identified by name and specifically described as intended to be beneficiaries of its terms.
10. 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.
11. 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 either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

Agency/State  
Agreement No. 31688

**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 2015-2018 Statewide Transportation Improvement Program (STIP), (Key #18868) that was adopted by the Oregon Transportation Commission on December 18, 2014 (or subsequently by amendment to the STIP).

**CITY OF HERMISTON**, by and through its elected officials

By \_\_\_\_\_  
Mayor (or other assigned designee)

Date \_\_\_\_\_

By \_\_\_\_\_  
City Recorder (or other assigned designee)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY (If required in Agency's process)**

By \_\_\_\_\_  
Agency Counsel

Date \_\_\_\_\_

**Agency Contact:**

Byron Smith, City Manager  
180 NE Second St.  
Hermiston, OR 97838  
Phone: (541) 567-5521  
Email: bsmith@hermiston.or.us

**State Contact:**

Michael P. Bary, Local Agency Liaison  
Oregon Dept of Transportation  
3012 Island Ave  
La Grande, OR 97850  
Phone: (541) 963-1353  
Email: Michael.p.barry@odot.state.or.us

**STATE OF OREGON**, by and through its Department of Transportation

By \_\_\_\_\_  
Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 5 Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General (If Over \$150,000)

Date \_\_\_\_\_

### EXHIBIT A – Project Location Map

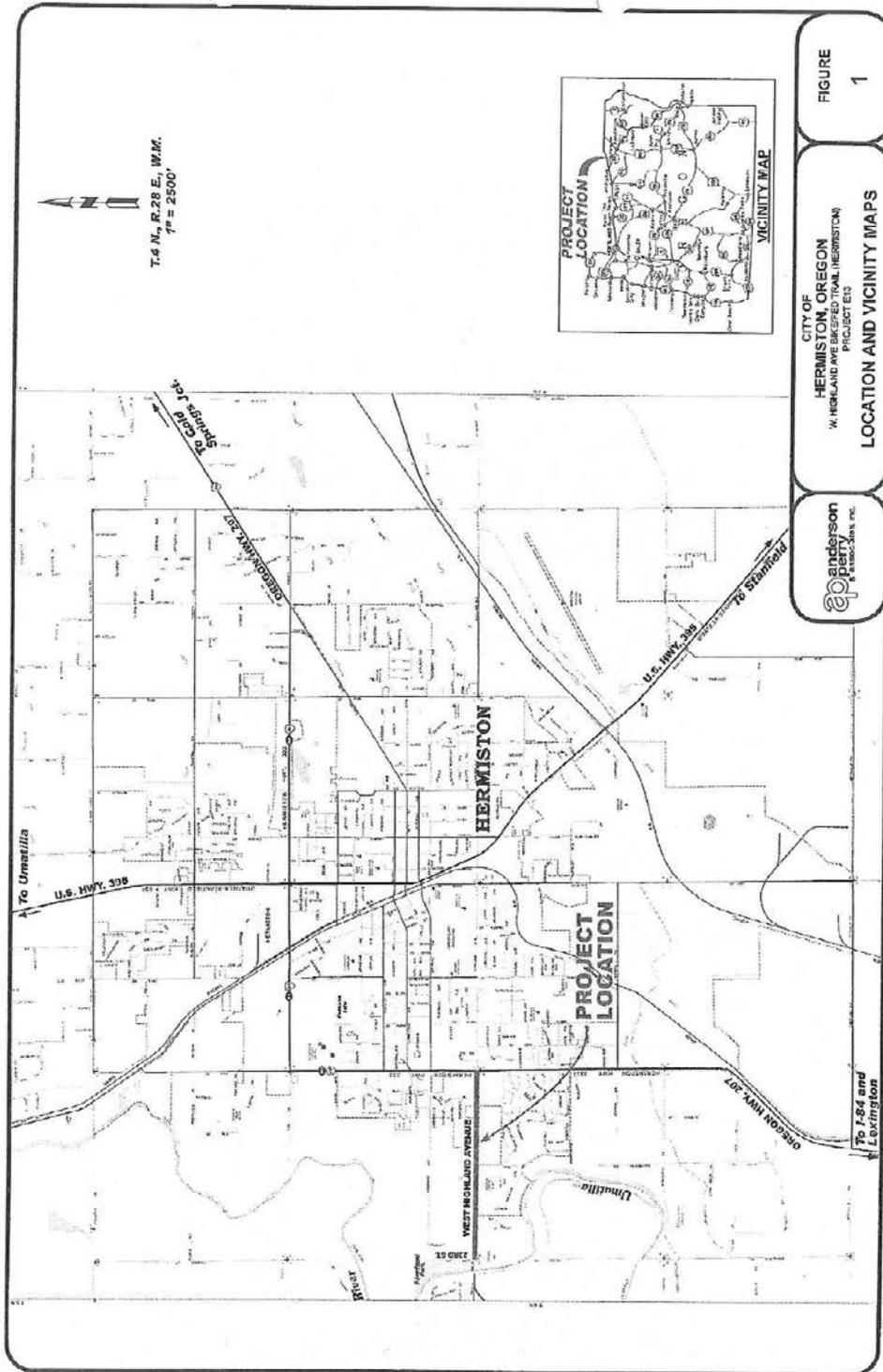


FIGURE 1

CITY OF  
**HERMISTON, OREGON**  
W. HIGHLAND AVE IMPROVED TRAIL (HERMISTON)  
PROJECT EIS

**LOCATION AND VICINITY MAPS**

**Sp**  
anderson  
& berry  
PLANNERS ARCHITECTS INC.

Job# 653 126 020 Jun 17, 2013 Baker