



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

June 22, 2023

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement between Clackamas County and the City of Happy Valley relating to SE Robert Avenue improvements. Total Value: \$0.00.
No General Funds are involved

Previous Board Action/Review	6/20/2023: Request for consent		
Performance Clackamas	1. Build trust with good government		
Counsel Review	Yes	Procurement Review	No
Contact Person	Kenneth Kent	Contact Phone	503-742-4673

EXECUTIVE SUMMARY:

Certain County roads, such as SE Robert Avenue in Happy Valley, are wholly, mostly, or partially within various cities throughout Clackamas County. Fragmented jurisdiction over these roads often results in differing road maintenance activities and confusion by the public as to which agency is responsible for the operation and maintenance of the roads. A jurisdictional transfer is needed to eliminate confusion for the public and improve the efficiencies of maintenance and public service.

SE Robert Avenue is a local access road, with a portion of the road located within the jurisdiction of the City of Happy Valley and a portion of the road located within the jurisdiction of the County. There are currently proposed improvements to SE Robert Ave conditioned as part of a City Land Use Decision, which includes local industrial street improvements. The Intergovernmental Agreement (IGA) sets forth the process for the City to assume exclusive jurisdiction over a portion of SE Robert Avenue, which lies outside of the City and contains approximately 58,600 square feet of Right-of-Way. The jurisdiction of Robert Avenue will automatically transfer to the City upon the planned annexation of the improved portion of Robert Avenue into the City's boundary, and this IGA will no longer be necessary once that occurs.

For Filing Use Only

RECOMMENDATION:

Staff respectfully requests that the Board approve the attached IGA between Clackamas County and the City of Happy Valley related to the transfer of jurisdiction of SE Robert Avenue.

Respectfully submitted,

Dan Johnson

Dan Johnson
Director of Transportation & Development

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF HAPPY VALLEY AND CLACKAMAS COUNTY
RELATING TO SE ROBERT AVENUE IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into between the City of Happy Valley, an Oregon municipal corporation (“City”), and Clackamas County, a political subdivision of the state of Oregon (“County”), collectively referred to as the “Parties” and each a “Party.”

RECITALS

WHEREAS, This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform, including the authority to perform as the “Road Authority” related to maintenance and permitting responsibilities for roads;

WHEREAS, SE Robert Ave. is a local road, with a portion of the road located within the jurisdiction of the City and a portion of the road located within the jurisdiction of the County. The County portion of the road lies adjacent to the boundaries of the City. There are currently proposed improvements to Robert Ave conditioned as part of a City Land Use Decision, DR-16-22. Improvements required as part of the development are identified in Exhibit “A” to this Agreement, which include local industrial street improvements from SE Jennifer Street to a proposed cul-de-sac approximately 950-ft from the Jennifer Street right of way. Right of way dedication is included as part of the improvements;

WHEREAS, the Parties agree that the City is the best suited to assume primary responsibility for maintenance and permitting for the improved portion of SE Robert Avenue, approximately 52,000 square feet in area, as depicted in Exhibit “A”, which is attached hereto and incorporated herein, as the improved portion of Robert Avenue is planned to be annexed into the City at which time the jurisdiction of the annexed portion will be under the jurisdiction of the City;

WHEREAS, the Parties have determined that transfer of responsibility with regards to Robert Avenue will lead to efficient and consistent road maintenance activities and reduce any confusion on the part of the public as to which party is responsible for the condition and maintenance of Robert Avenue, which primarily will serve property in the City;

WHEREAS, the Parties acknowledge that jurisdiction of Robert should transfer to the City upon planned annexation of the improved portion of Robert Avenue into the City’s boundary, and that this Agreement will no longer be necessary once jurisdiction of Robert has been transferred through annexation; and

WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to Robert Avenue as may be allowed under state law in order to grant the City control of Robert Avenue prior to the annexation and jurisdictional transfer of Robert Avenue.

AGREEMENT

NOW, THEREFORE, based on the foregoing, the Parties hereby agree as follows:

1. **Term.** This agreement shall be effective upon execution, and shall expire automatically at the time the City assumes jurisdiction of Robert Avenue pursuant to ORS 368 and/or ORS 373.
2. **Transfer of Authority.**
 - a. Responsibility for Road Authority activities (as outlined in Section 3) for Robert Avenue shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The portion of Robert Avenue subject to this Agreement is approximately 58,600 square feet in area, as more particularly depicted on Exhibit "A" and more specifically described as follows:

All that improved portion of SE Robert Avenue, as depicted on Exhibit A, attached hereto, lying South of the Southerly right of way line of SE Jennifer Street, and North of the Clackamas River being a total of approximately 925-feet long. Containing approximate 52,000-square-feet, more or less.
 - b. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for Road Authority activities (as outlined in Section 3) for Robert Avenue, as described herein.
 - c. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City through this agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include, but are not necessarily limited to, the following:
 - a. Construction and reconstruction;
 - b. Improvement or repair, and maintenance;
 - c. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, and roadside barriers;
 - d. Timely elimination or mitigation of known hazards to the road users;
 - e. Issuance of permits for work or the establishment of roadway standards on Robert; and
 - f. All other responsibilities the County may have under ORS 368 with regards to Robert with may be assumed by the City under state law.
4. **Maintenance Standard.** Any maintenance on Robert required by this Agreement shall be carried out in a manner that is similar to other roads with similar features, function, and characteristics under the City's jurisdiction.

5. Termination.

- a. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- b. Either the County or City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to affect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- c. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- d. The County or City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- e. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to person or property caused by the negligent or

willful acts of the County or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the County has a right to control.

- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

7. General Provisions.

- a. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of the law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, government immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. County, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- d. **Access to records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- e. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- f. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision to give effect to the maximum extent possible the intentions of the Parties.
- g. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of this Agreement. 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 the Agreement shall not constitute a waiver by such Party of that or any other provision.
- h. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- i. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent employee or contractor of the other Party for an purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- j. **No Third-Party Beneficiary.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be

construed to give or provide any benefit or right, whether directly, indirectly identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.


- k. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- l. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, 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.
- m. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of the City or County’s reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. Each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance or its obligations under this Agreement.
- n. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- o. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Happy Valley

Tootie Smith
Chair, Board of County Commissioners



Jason A. Tuck, ICMA
City Manager

05/22/23

Date

Date

EXHIBIT A

SE Robert Avenue Improvements included into this Agreement

