



DAN JOHNSON
DIRECTOR

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

January 24, 2019

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Canby to Transfer Permitting Authority and Maintenance Responsibility for a Portion of Township Road (County Road #47, DTD #31021) to the City

Purpose/Outcomes	Transfers permitting authority and maintenance responsibility for construction on portions of Township Road to the City of Canby.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway.
Funding Source	None
Duration	Upon execution; permanent
Previous Board Action	N/A
Strategic Plan Alignment	Build a strong infrastructure Build public trust through good government
Contact Person	Rick Maxwell, Engineering Technician; 503-742-4671

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of Township Road. An approximately 1/2 mile long section of Township Road is surrounded by the City of Canby yet lies outside the current City boundary and it is agreed that the City is best suited to exercise primary authority over this section of Township Road. This intergovernmental agreement addresses transferring rights and duties as "road authority," including permitting authority, development of road standards, and maintenance responsibility to the City for this portion of Township Road.

Transferring the rights and duties as road authority for this portion of Township Road to the City of Canby will eliminate confusion and improve efficiencies of maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and maintenance; and review and issuance of street opening permits. The County will retain official jurisdiction of this portion of the roadway until such time as the City of Canby completes the annexation process and requests a transfer of jurisdiction of this portion of Township Road as defined in this Intergovernmental Agreement.

This agreement has been reviewed and approved by County Counsel and signed by the Canby City Manager.

RECOMMENDATION:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Canby to transfer rights and duties as road authority for a portion of Township Road to the City.

Respectfully submitted,

Rick Maxwell – Engineering Technician
Attachments: IGA, Exhibit City Resolution

RESOLUTION NO. 1306

A RESOLUTION REQUESTING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING AUTHORITY OF TOWNSHIP ROAD

WHEREAS, Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform, including the authority to perform as the “Road Authority” related to maintenance and permitting responsibilities for roads; and

WHEREAS, Township Road is a County Road, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City.; and

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Township Road, approximately 110,000 square feet in area, as more particularly depicted in Exhibit “A” which is attached hereto and incorporated herein (“Township.”).

WHEREAS, transfer of responsibility with regards to Township 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 Township, which primarily serves the residents of the City; and

WHEREAS, the Parties acknowledge that jurisdiction of Township should transfer to the City once annexed into the City’s boundary, and that this Agreement will no longer be necessary once Township is annexed into the City and jurisdiction over Township has been transferred; and

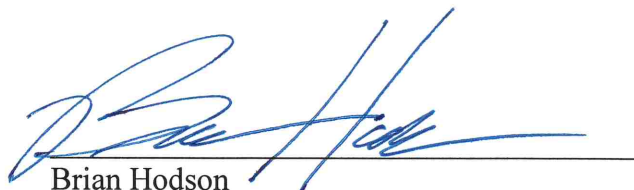
WHEREAS, it is the intent of the Parties that the County transfer as much of its responsibility under ORS 368 with regards to Township as may be allowed under state law in order to grant the City control of Township prior to the annexation and jurisdictional transfer of Township.

NOW, THEREFORE, BE IT RESOLVED by the Canby City Council, as follows:

The City agrees to assume responsibility for Road Authority activities (as outlined in Section 3) for Township and shall be surrendered to the City pursuant to the terms and conditions of the Agreement. The portion of Township subject to the Agreement is approximately 110,000 square feet in area, as more particularly depicted and specifically described in Exhibit “A”. The City agrees to assume responsibility from the date that the County concludes its hearing and decision on the matter by approval of the **INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING AUTHORITY OF TOWNSHIP ROAD**, Exhibit “A”.

This resolution will take effect on December 5, 2018.

ADOPTED this 5th day of December 2018 by the Canby City Council.



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND
CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING
AUTHORITY OF TOWNSHIP ROAD**

This agreement (the "Agreement") is made on the date all required signatures have been obtained, between the City of Canby ("CITY"), a political subdivision of the State of Oregon, and Clackamas County ("COUNTY"), a political subdivision of the State of Oregon, pursuant to ORS Chapter 190 (Intergovernmental Cooperation), collectively referred to as the "PARITES" and each a "PARTY."

RECITALS

WHEREAS, ORS Chapter 190 authorizes local governments to enter into intergovernmental agreements for the performance of any or all functions and activities that a local government, its officers or agencies, have the authority to perform, including the authority to perform as the "Road Authority" related to maintenance and permitting responsibilities for roads;

WHEREAS, Township Road is a County Road, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City.

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Township Road, approximately 110,000 square feet in area, as more particularly depicted on Exhibit "A" which is attached hereto and incorporated herein ("Township").

WHEREAS, transfer of responsibility with regards to Township 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 Township, which primarily serves the residents of the City;

WHEREAS, the Parties acknowledge that jurisdiction of Township should transfer to the City once annexed into the City's boundary, and that this Agreement will no longer be necessary once Township is annexed into the City and jurisdiction over Township has been transferred; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution, and shall expire automatically at the time Township has been annexed into the City and the City assumes jurisdiction of Township pursuant to ORS 368 and/or ORS 373.
2. **Transfer of Authority.**
 - A. Responsibility for Road Authority activities (as outlined in Section 3) for Township shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The portion of Township subject to this Agreement is approximately 110,000 square feet in area, as more particularly depicted on Exhibit "A" and more specifically described as follows:

All that portion of Township Road, County Road No. 47, Department of Transportation and Development maintenance No. 31021; Situated in the southwest 1/4 of Section 34, T. 3S., R. 1E., W.M. and the northeast 1/4 of Section 03, T. 4S., R. 1E., W.M., as depicted on Exhibit A, attached hereto, lying west of and between the westerly right of way line of Mulino Road (mile point 1.60) and westerly right of way line of the Molalla Forest Highway (mile point 2.07), being a total of approximately 2,550 feet long, varying in width.

Containing 110,000 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 Township, 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 (including capital improvements);
 - 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, street lights 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 Township; and
 - F. All other responsibilities the County may have under ORS 368 with regards to Township which may be assumed by the City under state law.

4. **Maintenance Standard.** Any maintenance on Township 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 the 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 effect 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 this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
 - D. The County or the 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 persons 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 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, governmental 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 unconstitutional, illegal or unenforceable shall construe this Agreement without 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 this 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 any 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 or otherwise, to third persons unless such third persons are individually 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 of 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.

CLACKAMAS COUNTY

Chair

Date

Recording Secretary

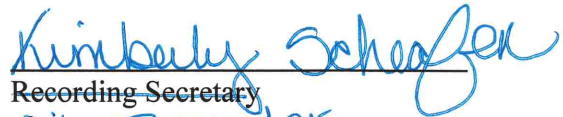
CITY OF CANBY



Mayor

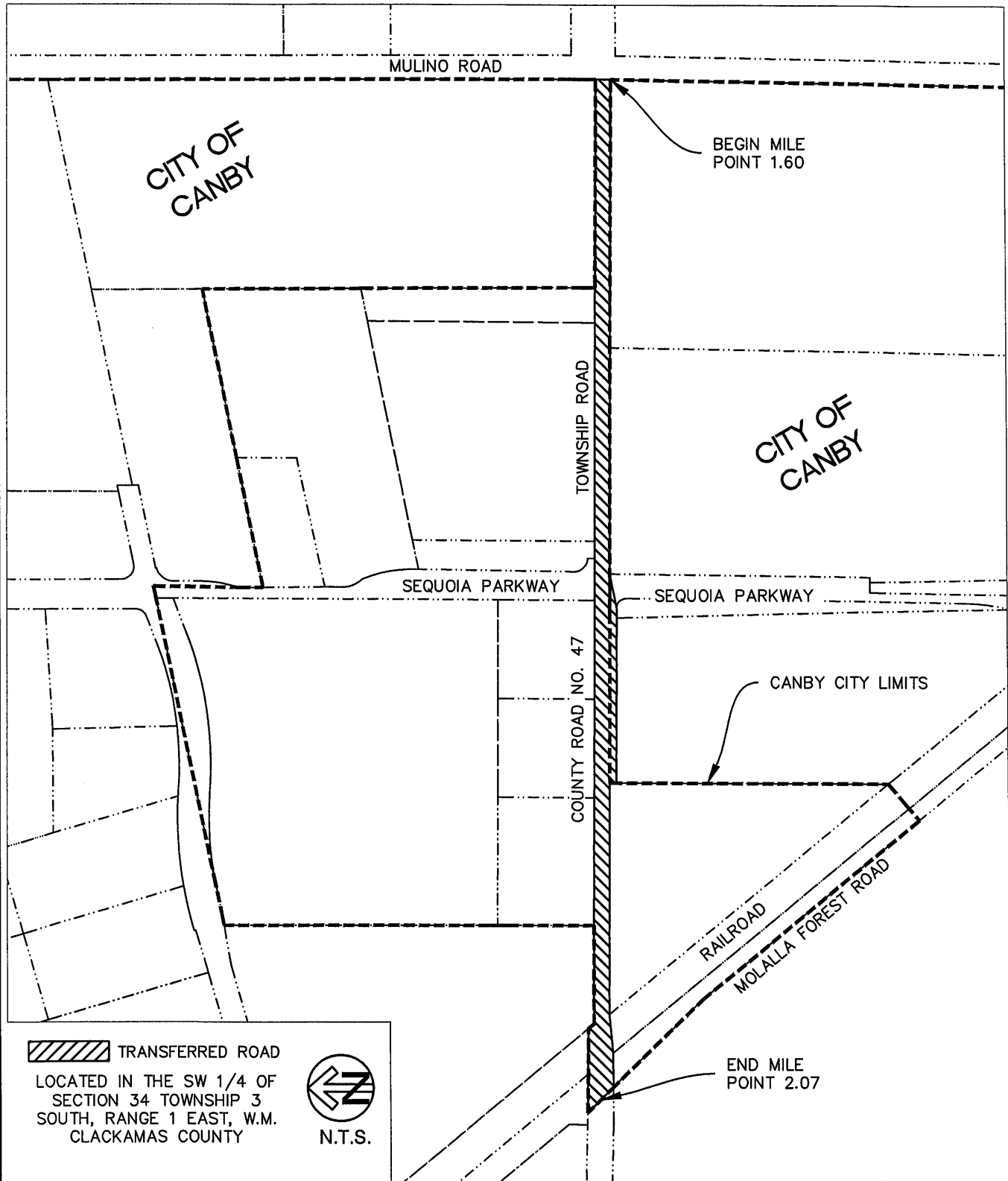
December 5, 2018


Date



Recording Secretary
City Recorder

EXHIBIT "A"



 TRANSFERRED ROAD
 LOCATED IN THE SW 1/4 OF
 SECTION 34 TOWNSHIP 3
 SOUTH, RANGE 1 EAST, W.M.
 CLACKAMAS COUNTY



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



BY: R. MAXWELL DATE: 11/2/2018
 TRANSFER OF ROAD AUTHORITY
 TOWNSHIP ROAD
 COUNTY ROAD NO. 47

SHEET
 1 OF 1



DAN JOHNSON
DIRECTOR

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

January 24, 2019

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of a Portion of Nixon Avenue

Purpose/Outcomes	Vacates a Portion of Nixon Avenue
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	N/A
Strategic Plan Alignment	Build Public Trust Through Good Government Grow a Vibrant Economy
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

Nixon Avenue, County Road Number 1995, was dedicated on September 6, 1911, in the Plat of Milwaukie Hillcrest, Plat Number 311, being a Re-plat of a Portion of Milwaukie Park, Plat Number 155. A portion of Nixon Street (per plat) was vacated in 1975 through Board Order 75-1689. The 1975 road vacation left a triangular shaped portion of excess road right of way that is of no public use. The petitioner's driveway utilizes most of the triangle area and they believe it would be in the county's interest to vacate said portion.

The triangular shaped portion to be vacated contains approximately 984 square feet, of right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this triangular shaped portion of excess road right of way will not deprive public access to adjoining properties and will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to this vacation.

County Counsel has reviewed and approved this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this triangular shaped portion of excess road right of way.

Sincerely,

Douglas Cutshall
D.T.D. Engineering Technician

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of a
Portion of Nixon Avenue, situated
in Section 1, T.2 S., R.1 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 1 of 1

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.351, a petition has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, have been submitted in the matter of the vacation of a portion of Nixon Avenue, described as follows:

All of that portion of Nixon Avenue, County Road 1995, situated in the southeast ¼ of Section 1, T.2 S., R.1 E., W.M., and the Plat of Milwaukie Hillcrest, Plat No. 311, Clackamas County Plat Records, lying east of the northerly projection of the east right of way line of Fernridge Avenue, Local Access Road No.P1003, depicted on attached Exhibit "A", and by this reference made a part hereof.

WHEREAS, the Board having read said petition and report from the County Road Official and having determined the vacation of the above described portion of roadway to be in the public interest; and,

WHEREAS, the Clackamas County Department of Transportation and Development's divisions of Transportation Maintenance, Engineering, Planning, and Traffic Engineering, along with all local utility companies, have been contacted and do not have any objections to this vacation, provided all utility rights be reserved; now therefore,

IT IS HEREBY ORDERED that the attached described portion of a Nixon Avenue, containing 984 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED that rights for all existing utilities within the vacated road be reserved. Nothing contained herein shall cause or require the removal or abandonment of any storm or sanitary sewer, water main, gas line, conduit of any kind, wires, or poles which are now installed in said right-of-way and used or intended to be used for any public service or utility. In addition, rights are reserved to access, maintain, repair, construct or reconstruct, install, renew, and enlarge all utilities that are now used for any public service or utility; and,

IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this ____ day of _____, 2019

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

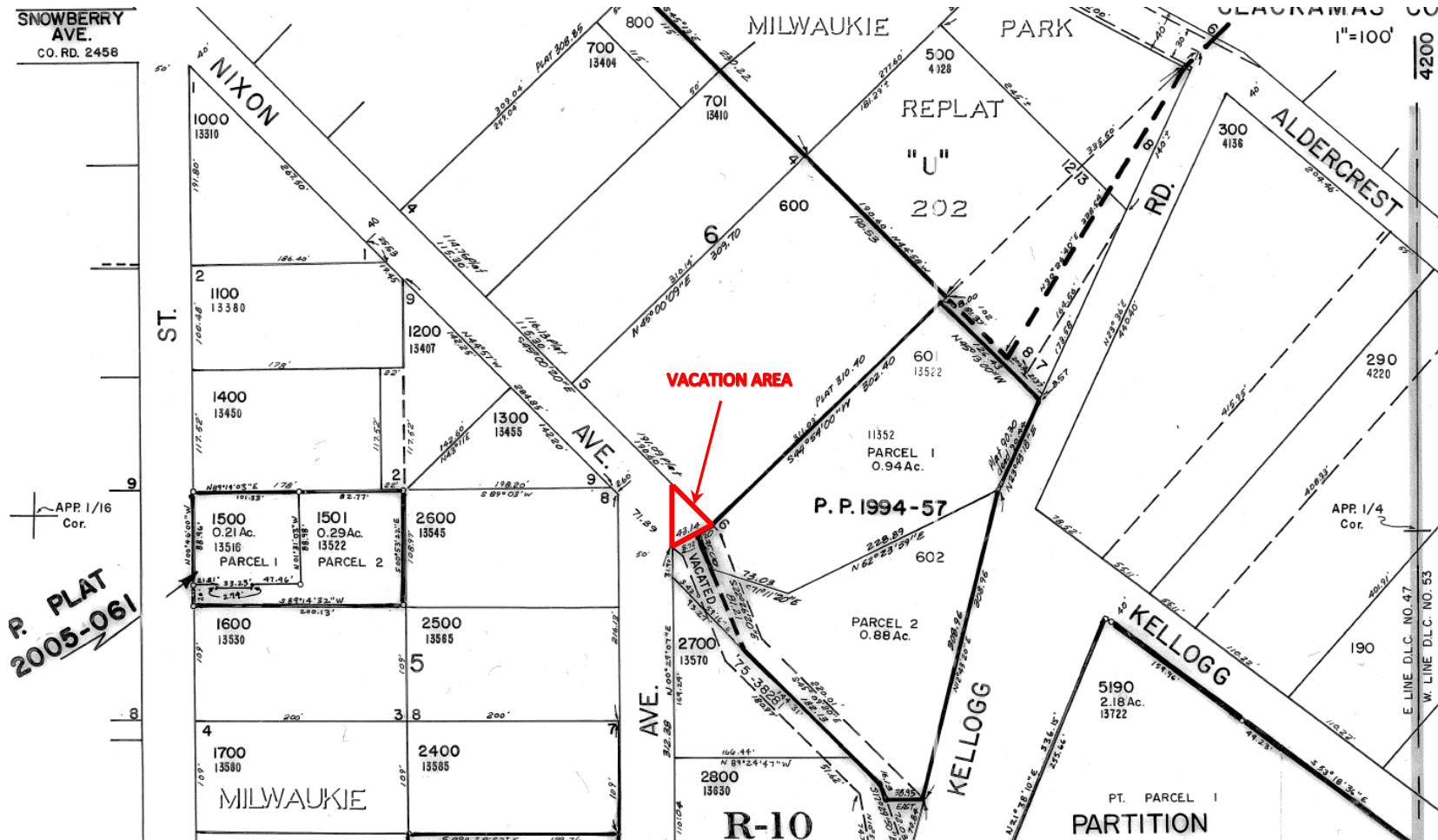
EXHIBIT A

PROPOSED VACATION OF A PORTION OF NIXON AVENUE

Depicted below in red

Located in the SE 1/4 of Section 1, T.2S., R.1E., W.M.

Clackamas County, Oregon



MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: December 27, 2018

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF A PORTION OF NIXON AVE**

LOCATION: A triangular shaped portion of Nixon Avenue, situated in the SE1/4 of Section 1, T.2 S., R.1 E., W.M. and Milwaukie Hillcrest, Plat No. 311

FACTS AND FINDINGS: Nixon Avenue, County Road Number 1995, was dedicated on September 6, 1911, in the Plat of Milwaukie Hillcrest, Plat Number 311, being a Re-plat of a Portion of Milwaukie Park, Plat Number 155. A portion of Nixon Street (per plat) was vacated in 1975 through Board Order 75-1689. The 1975 road vacation left a triangular shaped portion of excess road right of way that is of no public use. The petitioner's driveway utilizes most of the triangle area and they believe it would be in the county's interest to vacate said portion.

The triangular shaped portion to be vacated contains approximately 984 square feet of right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this triangular shaped portion of excess road right of way will not deprive public access to adjoining properties and will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation and Development's divisions of Transportation Maintenance, Engineering, Planning, and Traffic Engineering, along with all local utility companies have been contacted and do not have any objections to this vacation providing that rights are reserved for existing utilities.

After considering traffic impacts, fiscal impacts, and social impacts, it appears to be in the public interest to vacate the area petitioned.

It is my assessment to support the subject vacation.

Pursuant to ORS 368.351 and County policy, the Board may make its determination in the matter of this vacation without a public hearing. This is allowed when there is acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting any public property proposed to be vacated, this Road Official's Report is submitted, and there is no controversy related to the proposed vacation.



DAN JOHNSON
DIRECTOR

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

January 24, 2019

Board of Commissioners
Clackamas County

Members of the Board:

**A Board Order Adopting the Vacation of a
Non-Maintained Local Access Road**

Purpose/Outcomes	Vacates a Non-maintained Local Access Road
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	Upon execution; Permanent road vacation
Previous Board Action	N/A
Strategic Plan Alignment	Build Public Trust Through Good Government Grow a vibrant economy
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

This Non-Maintained Local Access Road, situated in the SE1/4 of Section 2, T.2 S., R.2 E., W.M., was created by an exception in a Warranty Deed from W.W. Hubbard to H. Cook, dated November 8, 1946, Clackamas County Deed Records. This Non-Maintained Local Access Road once provided access to several properties owned by the Hubbard family. Development in Happy Valley and the surrounding area has diminished the need for this narrow Non-Maintained Local Access Road. There are no immediate plans for developing the petitioners adjoining property. Vacating this Non-Maintained Local Access Road will not deprive public access to adjoining properties.

The Non-Maintained Local Access Road to be vacated is 20 feet wide and, 659 feet long. This right-of-way serves no public need and is not a benefit to the traveling public.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting any public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation and Development's divisions of Transportation Maintenance, Engineering, Planning, and Traffic Divisions, and all local

utility companies, have been contacted and do not have any objections to this vacation, provided all utility and access rights are reserved for P.G.E. and W.E.S.

County Counsel has reviewed and approved this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this Non-Maintained Local Access Road.

Sincerely,

Douglas Cutshall
Engineering Technician DTD

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the matter of the Vacation of
a Non-maintained Local Access
Road, situated In the SE ¼ of
Section 2, T. 2 S., R.2 E., WM
Clackamas County, Oregon



Order No.
Page 1 of 1

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.351, a petition has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, have been submitted in the matter of the vacation of a portion of a Non-maintained Local Access Road, described as follows:

All that portion of a Non-maintained Local Access Road situated in the southeast quarter of Section 2, T.2 S., R.2 E., WM, Clackamas County, Oregon, as more particularly described and shown on attached Exhibits "A" and "B".

WHEREAS, the Board having read said petition and report from the County Road Official and having determined the vacation of the above described portion of roadway to be in the public interest; and,

WHEREAS, Clackamas County Department of Transportation and Development's divisions of Transportation Maintenance, Engineering, Planning, and Traffic Engineering, along with all local utility companies, have been contacted and do not have any objections to this vacation provided that utility rights are reserved; now therefore,

IT IS HEREBY ORDERED that the attached described Non-maintained Local Access Road, containing 13,173 square feet, more or less, be vacated; and,

IT IS FURTHER ORDERED that rights for all existing utilities within the vacated Non-maintained Local Access Road, be reserved, for Water Environment Services, for access over the existing road and, existing sewer line and, Portland General Electric. Nothing contained herein shall cause or require the removal or abandonment of any storm or sanitary sewer, water main, gas line, conduit of any kind, wires, or poles which are now installed in said right-of-way and used or intended to be used for any public service or utility. In addition, the rights are reserved to access, maintain, repair, construct or reconstruct, install, renew, and enlarge all utilities that are now used for any public service or utility; and,

IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2019.
BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Exhibit “A”

Vacation of a Local Access Road
Date: November 15, 2018

Map No. 22E002DC
Page 1 of 1

VACATION OF A LOCAL ACCESS ROAD

A strip of land for road purposes, situated in the southeast quarter of Section 2, Township 2 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, being the same 20 foot strip of property for public road purposes described in Deed Book 380, Page 103, Clackamas County Deed Records, as depicted on attached Exhibit “B”, which by this reference is made a part hereof. Except therefrom any portion lying within the right of way of 132nd Avenue County Road No. 2591.

Containing 13,173 square feet, more or less.

Exhibit "B"

Public Road to be vacated highlighted in red.
Situating in the SE ¼ of Section 2, T.2 S., R.2 E., W.M. Clackamas County,
Oregon



MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: January 11, 2019

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF A NON-MAINTAINED LOCAL ACCESS ROAD**

LOCATION: A Non-Maintained Local Access Road, is situated in the SE1/4 of Section 2, T.2 S., R.2 E., W.M.

FACTS AND FINDINGS: The subject Non-Maintained Local Access Road, was created by an exception in a Warranty Deed from W.W. Hubbard to H. Cook, dated November 8, 1946, Clackamas County Deed Records. This Non-Maintained Local Access Road once provided access to several properties owned by the Hubbard family. Development in Happy Valley and the surrounding area has depleted the need for this narrow Non-Maintained Local Access Road. The petitioners have no immediate plans for their property once the road has been vacated. Vacating this portion of Non-Maintained Local Access Road will not deprive public access to adjoining properties.

The portion of Non-Maintained Local Access Road to be vacated is a 20 foot wide, 640 foot long, right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this Non-Maintained Local Access Road will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation and Development's divisions of Transportation Maintenance, Engineering, Planning, and Traffic Engineering, along with all local utility companies have been contacted and do not have any objections to this vacation.

After considering traffic impacts, fiscal impacts, and social impacts, it appears to be in the public interest to vacate the area petitioned.

It is my assessment to support the subject vacation.

Pursuant to ORS 368.351 and County policy, the Board may make its determination in the matter of this vacation without a public hearing. This is allowed when there are acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting any public property proposed to be vacated, this Road Official's Report is submitted, and there is no controversy related to the proposed vacation.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

January 24, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Supplemental Project Agreement No. 32756 with
Oregon Department of Transportation for the
S. Ivy Street (Canby) Project**

Purpose/Outcomes	Using State Funded Local Project (SFLP) Program funds, this agreement allows Clackamas County to proceed with design and construction of sidewalk and bicycle improvements to South Ivy Street between OR99E and Lee Elementary School. The proposed improvements include constructing sidewalks and bike lanes on both sides of the street where needed and other associated improvements.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$2,188,815 State Funded Local Project Program funds: \$1,751,045 City of Canby match (20%): \$437,762 County additional match (if required): up to \$406,918
Funding Source	State Funded Local Project Program (SFLP) Funds, City of Canby Funds, and County Road Funds.
Duration	Completion of the Project or ten (10) years following the date of final execution, whichever is sooner.
Previous Board Action	07/13/17: BCC Approval of Supplemental Project Agreement 31172 01/24/19: Pending BCC Approval of Intergovernmental Agreement between Clackamas County and the City of Canby related to the South Ivy Street Sidewalk Improvement Project
Strategic Plan Alignment	This project will “Build a strong infrastructure” and “Ensure safe, healthy and secure communities” by constructing sidewalks and bicycle lanes.
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658

BACKGROUND:

This is a project agreement between Clackamas County and the Oregon Department of Transportation (ODOT) to construct improvements along South Ivy Street from OR99E to Lee Elementary School. The project will provide enhanced bicycle and pedestrian connectivity and include constructing bike lanes and sidewalks on both sides of the road where needed, ADA improvements, and installing a signal at the intersection of South Ivy Street and Township Road.

This agreement replaces a previous three-way agreement (Agreement #31172) between the City of Canby, ODOT and the County. The previous agreement included federal funds and this new agreement replaces the federal funds with State Funded Local Project Program funds. The state funds will be matched by City of Canby and County Road Funds, if required. A separate Staff Report requesting approval of an Intergovernmental Agreement with the City of Canby to transfer the jurisdiction of Ivy Street to the City is placed on the same BCC Consent Agenda as this IGA.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Supplemental Project Agreement with ODOT for the S. Ivy Street (Canby) Project as listed in the agreement.

Respectfully submitted,

Joel Howie,
Civil Engineering Supervisor

LOCAL AGENCY AGREEMENT
State Funded Local Project Program
Project Name S Ivy Street (Canby)

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" or "ODOT;" and CLACKAMAS COUNTY, 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. Agency wishes to exchange unspent federal funds previously allocated to the Project for state funds, in order to fund the Project using state funding. State has determined that Agency is eligible for state funds for the work to be performed under this Agreement through the State Funded Local Project Program. The Parties enter into this Agreement to exchange these funds, identify the Project that will be funded with the state funds, and describe the method State will use to reimburse Agency for work performed on the Project using the state funds, including establishing invoicing requirements and the proportional reimbursement rate.
2. 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.
3. S Ivy Street is a part of the county road system under the jurisdiction and control of Agency.
4. The Parties previously entered into Agreement Number 31172 wherein the Agency would deliver the S. Ivy Street project on behalf of the City of Canby using federal funds. Agency has decided to exchange federal funds for state funds through the State Funded Local Program to deliver this project. Agreement 31172 will be terminated prior to or in conjunction with the execution of this Agreement.

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 delivering the S. Ivy Street project, hereinafter referred to as "Project." The Project includes the following improvements on S. Ivy Street between OR-99E and Lee Elementary School: (1) construction of sidewalks and bike lanes on both sides of the street where needed, (2) construction of ADA improvements, (3) installation of a signal at the intersection of S. Ivy Street and Township Road, and (4) addressing a residential driveway within the intersection of S. Ivy Street and Township Road. 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 \$2,188,815, which is subject to change. Prior to exchanging funds, the federal share of the total Project cost is 1,751,045.
 - a. Per the 1:1 fund exchange ratio of state dollars to federal dollars, Agency will exchange \$1,751,045 of federal dollars allocated for this Project for \$1,751,045 of state dollars.
 - b. State funds under this Agreement are limited to \$1,751,045.
3. Upon receipt and approval of Agency's invoice(s), State shall proportionately reimburse Agency eighty (80) percent of eligible, actual costs incurred in carrying out the Project, up to the maximum amount of state funds committed for the Project.
4. Agency is solely responsible for any and all costs incurred in excess of the state funds identified in this Agreement. 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. 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. **Americans with Disabilities Act Compliance:**
 - a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i. Agency shall 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. Agency shall follow ODOT's processes for design, modification, upgrade, or construction 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, Agency shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed, modified, upgraded, or improved 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:

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

- iv. Agency shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.
- v. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction, to the greatest extent possible.

b. **Local Roads**: For portions of the Project located on Agency roads or facilities that are not on or along a state highway:

- i. Agency shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
- ii. Agency may follow its own processes or may use ODOT's processes for design, modification, upgrade, or construction of Project 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

Curb Ramp Inspection form, available at:
<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>;

Additional ODOT resources are available at:
<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ODOT has made its forms, processes, and resources available for Agency's use and convenience.

- iii. Agency assumes sole responsibility for ensuring that the Project complies with the ADA, including when Agency uses ODOT forms and processes. Agency acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction, to the greatest extent possible.
- c. 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, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - 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.

- d. Maintenance obligations in this section shall survive termination of this Agreement.
3. Agency agrees that the Project shall be developed in conformance with the applicable American Association of State Highway and Transportation Officials (AASHTO) standards, including the current edition of A Policy on Geometric Design of Highways and Streets.
4. Agency shall follow the Buy America statute under Title 23, United States Code, Section 313. Such provision shall be included as part of the construction contract.
5. Agency shall submit all of 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
6. 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, Key Number, the Agreement number, the Project phase and amount charged to each (such as preliminary engineering, right of way, and construction), the invoice number, and will itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods greater 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 will not be reimbursed.
7. 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.
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. To the fullest extent permitted by law, and except to the extent otherwise prohibited under ORS 30.140, 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, Oregon 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of the State, be indemnified from and against all Claims caused or alleged to be caused by the contractor or subcontractor.

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. To the fullest extent permitted by law, and except to the extent otherwise prohibited under ORS 30.140, 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 Joel Howie, 150 Beaver Creek Road, Oregon City, OR 97045, (503)742-4658, JHowie@co.clackamas.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 eighty (80) 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 2 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, except that 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 30 days after 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 Project includes traffic signal improvements 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. Consistent with Agency Obligations Paragraph 2 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. Upon completion of the Project, 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 and at State's expense,
 - e. Maintain the pavement markings and signing installed on the State highway in accordance with current ODOT standards, and
 - 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. Any such timing modification shall comply with the ADA and Agency Obligations Paragraph 2,

5. State's Project Manager for this Agreement is Mahasti Hastings, Local Agency Liaison, 123 NW Flanders St., Portland, OR 97209, (503)731-8595 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.

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 (STIP), (Key #18805) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently by amendment to the STIP).

Signature Page to Follow

Agency/State
Agreement No. 32756

CLACKAMAS COUNTY, by and through
its elected officials

By _____

Date _____

By _____

Date _____

**LEGAL REVIEW APPROVAL (If required
in Agency's process)**

By _____
Agency Counsel

Date _____

Agency Contact:

Joel Howie,
150 Beaver Creek Road
Oregon City, OR 97045
(503)742-4658
JHowie@co.clackamas.or.us

State Contact:

Mahasti Hastings, LAL
123 NW Flanders St.
(503)731-8595
Mahasti.v.hastings@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Manager

Date _____

By _____

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

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

Date via email dated September 26, 2018

EXHIBIT A – Project Location Map





DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

January 24, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement between Clackamas County
and the City of Canby related to the
South Ivy Street Sidewalk Improvement Project**

Purpose/Outcomes	Using matching funds from the City of Canby, this agreement allows Clackamas County to proceed with design and construction of sidewalk and bicycle improvements to South Ivy Street between OR99E and Lee Elementary School. The proposed improvements include constructing sidewalks and bike lanes on both sides of the street where needed and other associated improvements.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$2,188,815 State Funded Local Project Program funds: \$1,751,045 City of Canby match (20%): \$437,762 County additional match (if required):: up to \$406,918
Funding Source	State Funded Local Project Program (SFLP) Funds, City of Canby Funds, and County Road Funds.
Duration	Completion of the Project or ten (10) years following the date of final execution, whichever is sooner.
Previous Board Action	07/13/17: BCC Approval of Supplemental Project Agreement 31172 01/24/19: Pending BCC Approval of Supplemental Project Agreement No. 32756 with Oregon Department of Transportation for the S. Ivy Street (Canby) Project
Strategic Plan Alignment	This project will “Build a strong infrastructure” and “Ensure safe, healthy and secure communities” by constructing sidewalks and bicycle lanes.
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658

BACKGROUND:

This is a project agreement between Clackamas County and the City of Canby to construct improvements along South Ivy Street from OR99E to Lee Elementary School. The project will provide enhanced bicycle and pedestrian connectivity and include constructing bike lanes and sidewalks on both sides of the road where needed, ADA improvements, and installing a signal at the intersection of South Ivy Street and Township Road.

This agreement replaces a previous three-way agreement (Agreement #31172) between the City of Canby, ODOT and the County. The previous agreement included federal funds and matching City of Canby funds, and this new agreement transfers the jurisdiction of South Ivy Street to the City and confirms the City of Canby’s commitment of funds to match State Funded Local Project Program (SFLP) Funds. The SFLP funds will be matched by City of Canby and County Road Funds, if required. A separate Staff Report requesting approval of an Intergovernmental Agreement with the Oregon Department of Transportation for this project is placed on the same BCC Consent Agenda as this IGA.

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement between Clackamas County and the City of Canby related to the South Ivy Street Sidewalk Improvement Project as listed in the agreement.

Respectfully submitted,

Joel Howie,
Civil Engineering Supervisor

RESOLUTION NO. 1308

**A RESOLUTION REQUESTING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY AND THE CITY OF CANBY RELATED TO THE
SOUTH IVY STREET SIDEWALK IMPROVEMENT PROJECT.**

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, S. Ivy St. is a County Road, as defined in ORS 368, which is currently maintained by the County but within the corporate limits of the City; and

WHEREAS, County and City desire to make the following improvements to S. Ivy St. between OR-99E and Lee Elementary School (hereafter called "Ivy St. Improvements" or the "Project"): (1) construction of sidewalks and bike lanes on both sides of the street where needed, (2) construction of ADA improvements, (3) installation of a signal at the intersection of S. Ivy Street and Township Road, and (4) addressing a residential driveway within the intersection of S. Ivy Street and Township Road. The Project location and approximate limits are shown the map marked "Exhibit A," attached hereto and by this reference made a part hereof; and

WHEREAS, the County has entered into an agreement with the State of Oregon through its Department of Transportation (the "ODOT") to exchange unspent federal funds previously allocated to the Project for state funds, in order to fund the Project using state funding. ODOT has determined that Agency is eligible for state funds for the work to be performed under this Agreement through the State Funded Local Project Program; and

WHEREAS, the total Project cost for the work to be performed under this Agreement is estimated at \$2,188,815, which is subject to change. Prior to exchanging funds, the federal share of the total Project cost is \$1,751,053. The City has committed \$437,762 as a matching amount, to be applied to the Project. In the event, the total Project cost exceeds the estimated total, County has committed to donating staff time to the project for managing the design and right-of-way phases of the project and for the construction management and inspection phase of the project (up to \$250,000 in staff time). In the event the total cost exceeds the estimated total and County-donated staff time, the County shall provide up to \$156,918 in funding; and

WHEREAS, City desires that County perform the Project on its behalf, and agrees that the County should be entitled to payment for completion of that agreed upon work;

WHEREAS, the County desires to perform the work on behalf of the City.

NOW THEREFORE, BE IT RESOLVED by the City of Canby City Council, as follows:

- (1) The City agrees to enter into agreement with Clackamas County in pursuant to ORS 190.010 for purposes of the terms and conditions as outlined in the **INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF CANBY RELATED TO THE SOUTH IVY STREET SIDEWALK IMPROVEMENT PROJECT**, Exhibit "A".

This resolution will take effect on January 16, 2019.

ADOPTED this 16th day of January 2019 by the Canby City Council.



Brian Hodson
Mayor

ATTEST:



Kimberly Scheafer, MMC
City Recorder

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND THE CITY OF CANBY RELATED TO THE SOUTH IVY STREET
SIDEWALK IMPROVEMENT PROJECT**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a corporate body politic, and the City of Canby ("City"), an Oregon municipal corporation, pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform;

WHEREAS, S. Ivy St. is a County Road, as defined in ORS 368, which is currently maintained by the County but within the corporate limits of the City;

WHEREAS, County and City desire to make the following improvements to S. Ivy St. between OR-99E and Lee Elementary School (hereafter called "Ivy St. Improvements" or the "Project"): (1) construction of sidewalks and bike lanes on both sides of the street where needed, (2) construction of ADA improvements, (3) installation of a signal at the intersection of S. Ivy Street and Township Road, and (4) addressing a residential driveway within the intersection of S. Ivy Street and Township Road. The Project location and approximate limits are shown the map marked "Exhibit A," attached hereto and by this reference made a part hereof;

WHEREAS, the County has entered into an agreement with the State of Oregon through its Department of Transportation (the "ODOT") to exchange unspent federal funds previously allocated to the Project for state funds, in order to fund the Project using state funding. ODOT has determined that Agency is eligible for state funds for the work to be performed under this Agreement through the State Funded Local Project Program.

WHEREAS, the total Project cost for the work to be performed under this Agreement is estimated at \$2,188,815, which is subject to change. Prior to exchanging funds, the federal share of the total Project cost is \$1,751,053. The City has committed \$437,762 as a matching amount, to be applied to the Project. In the event, the total Project cost exceeds the estimated total, County has committed to donating staff time to the project for managing the design and right-of-way phases of the project and for the construction management and inspection phase of the project (up to \$250,000 in staff time). In the event the total cost exceeds the estimated total and County-donated staff time, the County shall provide up to \$156,918 in funding.

WHEREAS, City desires that County perform the Project on its behalf, and agrees that the County should be entitled to payment for completion of that agreed upon work;

WHEREAS, the County desires to perform the work on behalf of the City;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** This Agreement shall be effective upon execution, and shall continue until final payment is made under this Agreement, or ten (10) calendar years following the date all required signatures are obtained on this Agreement, whichever is sooner.
2. **Rights and Obligations of the County.**
 - A. The County shall administer the Project on behalf of City and shall perform the work associated with the Ivy St. Improvements, all within the Project limits described in Exhibit "A." To complete the Project, the County agrees to the following:
 1. The County will facilitate and coordinate design work, permitting and land use entitlements. Additionally, the County will develop and approve any design exceptions for the project including any ADA design exceptions.
 2. The County will develop bid specifications and advertise the bid for construction.
 3. The County will acquire the right of way necessary to complete the Project.
 4. The County will enter into a contract for construction and the County will provide construction management services.
 - B. Project Invoicing and Payment.
 1. The County shall submit invoices to ODOT for reimbursement of costs billed to the Project and paid by the County, including, but not limited to costs associated with design, right of way acquisition and construction. The County shall submit invoices to ODOT within six (6) months from the date that costs are incurred.
 2. In the event, the total Project cost exceeds the estimated total, County has committed to donating staff time to the project for managing the design and right-of-way phases of the project and for the construction management and inspection phase of the project (up to \$250,000 in staff time). In the event the total cost exceeds the estimated total and County-donated staff time, the County shall provide up to \$156,918 in funding. In the event the Project cost exceeds the estimated total and exceeds the County's additional contribution of \$250,000 in staff time and \$156,918 in funding, the County shall submit invoices to the City for reimbursement of costs billed to the Project which are not reimbursed by ODOT, including, but not limited to costs associated with design, right of way acquisition and construction. The County shall submit invoices to the City within six (6) months from the date that costs are incurred.
 3. Project overruns and non-participating costs shall be the responsibility of the City. "Project Overruns" means the final cost estimate at contract award exceeds the estimated total Project cost estimate in this Agreement in addition to the County's additional contribution of \$250,000 in staff time and \$156,918 in funding, or the final actual project costs exceed the final cost estimate at contract award in addition to the County's additional contribution of \$250,000 in staff time and \$156,918 in funding.
 - C. Upon substantial completion of the Project, the County will relinquish jurisdiction of S. Ivy St. within the entire City limits to the City.
 - D. Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272.

3. Rights and Obligations of the City.

A. The City hereby authorizes the County to administer the Project on behalf of the CITY and will provide necessary assistance to the COUNTY in order to complete the Project. CITY will provide assistance in the following ways;

1. CITY will coordinate with the COUNTY in the design, bidding and construction of the projects and when requested, CITY will provide timely feedback regarding design, construction bid advertisements, design exceptions, permitting and construction issues. Timely feedback is defined as any reasonable deadline specified by the COUNTY in carrying out the above mentioned tasks.
2. CITY will respond in a timely manner to COUNTY's requests to execute applications or documents and to provide information or approval to the COUNTY or consultants for purposes of fulfilling the purpose of this Agreement.
3. The CITY shall be primarily responsible for facilitating public meetings associated with the Project. COUNTY shall supply the CITY up to four 22" by 34" plan sheets for use at the public meetings. The COUNTY Project Manager shall attend up to three public meetings associated with the Project at the request of the CITY.

B. Project Payment

1. CITY shall pay to COUNTY amounts invoiced to the City for reimbursement of costs billed to the Project which are not reimbursed by ODOT, including, but not limited to costs associated with design, right of way acquisition and construction. Payment shall be made to the COUNTY within forty-five (45) days of receipt of the invoice by the CITY.

3. The CITY guarantees the availability of CITY funding in an amount required to fully fund CITY's share of the Project.

4. CITY shall submit payment to the COUNTY at the following address:

Clackamas County Engineering
Attention: Joel Howie
150 Beaver Creek Road
Oregon City, OR 97045

C. Transfer and Maintenance

1. Upon substantial completion of the Project, the CITY shall participate in a jurisdictional transfer of S. Ivy St. from the COUNTY.

2. As a condition of jurisdiction transfer, the County agrees to pay to the City a sum of money equal to the cost of a two-inch asphaltic overlay from the start of SE 16th Avenue to the end of Tax Lot 41E04D02000, as shown in Exhibit B, over the width of the then-existing pavement; however, if the width of pavement is less than twenty feet, the sum shall be calculated for an overlay twenty feet wide. The cost of asphaltic concrete overlay to be used in the calculation shall be the average of the most current asphaltic concrete overlay projects performed by each of the City and County.

3. Upon transfer of jurisdiction of S. Ivy St. from the COUNTY, the City shall be responsible for ongoing maintenance and shall maintain S. Ivy St. in a manner that is similar to other CITY roads with similar features, function, and characteristics. The City 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. County and City agree that the useful life of this Project is defined as 20 years.

3. The maintenance and power obligation shall survive any termination of this Agreement.

4. Work Plan and Project Schedule.

- A. It is the desire of both Parties to complete the Project as soon as practicable, if possible within five years of execution of this agreement and the County will diligently pursue completion of the Project prior to that date. The City acknowledges that it may not be possible to complete any or all of the Project within the desired time frame due to circumstances beyond the control of the Agency. Design and construction timing is also highly dependent on the receipt of necessary information and approvals requested by the County. All Parties will in good faith attempt to meet Project deadlines but recognize timelines may need to be adjusted because of unforeseen circumstances. The County will provide prompt notice to the City of any anticipated delays in the schedule.
- B. In the event any part of the Project is unable to be completed within 7 years of execution of this agreement, the Parties may mutually agree in writing to adjust the Project timeline and this Agreement, or modify or terminate the Project as necessary. The City agrees to not unreasonably withhold consent to extensions in the schedule. In the event of alterations to the Project, other terms of this Agreement shall remain in effect except for mutually agreed upon changes. In no event shall the City claim any damages, monetary or otherwise, resulting from the County's failure to complete the Project within 7 years of execution of this agreement.

5. Termination.

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the 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 effect 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 or the 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.
- D. 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.

E. 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 and Article 11 Section 10 of the Oregon Constitution, 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 persons 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 and Article 11 Section 10 of the Oregon Constitution, 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. Party Contacts

A. Joel Howie or his designee will act as liaison for the County for the Project.

Contact Information:

Clackamas County- Department of Transportation and Development
Attn: Joel Howie
150 Beaver Creek Road
Oregon City, OR 97045
(503) 742-4658 or jhowie@clackamas.us

B. City Administrator or his or her designee will act as liaison for the City for the Project.

Contact Information:

City of Canby
Attn: Rick Robinson, City Administrator
PO Box 930
Canby, OR 97103

C. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

8. General Provisions

A. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- 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. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved
- E. **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 three 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.
- F. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. **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 unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. 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 such Party of that or any other provision.
- I. **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.

- J. **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 any 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.
- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **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.
- M. **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.
- 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.

[Signatures on Following Page]

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

Clackamas County

City of Canby

Chair, Board of County Commissioners



Richard Robinson
City Administrator

Date

1/16/2019

Date

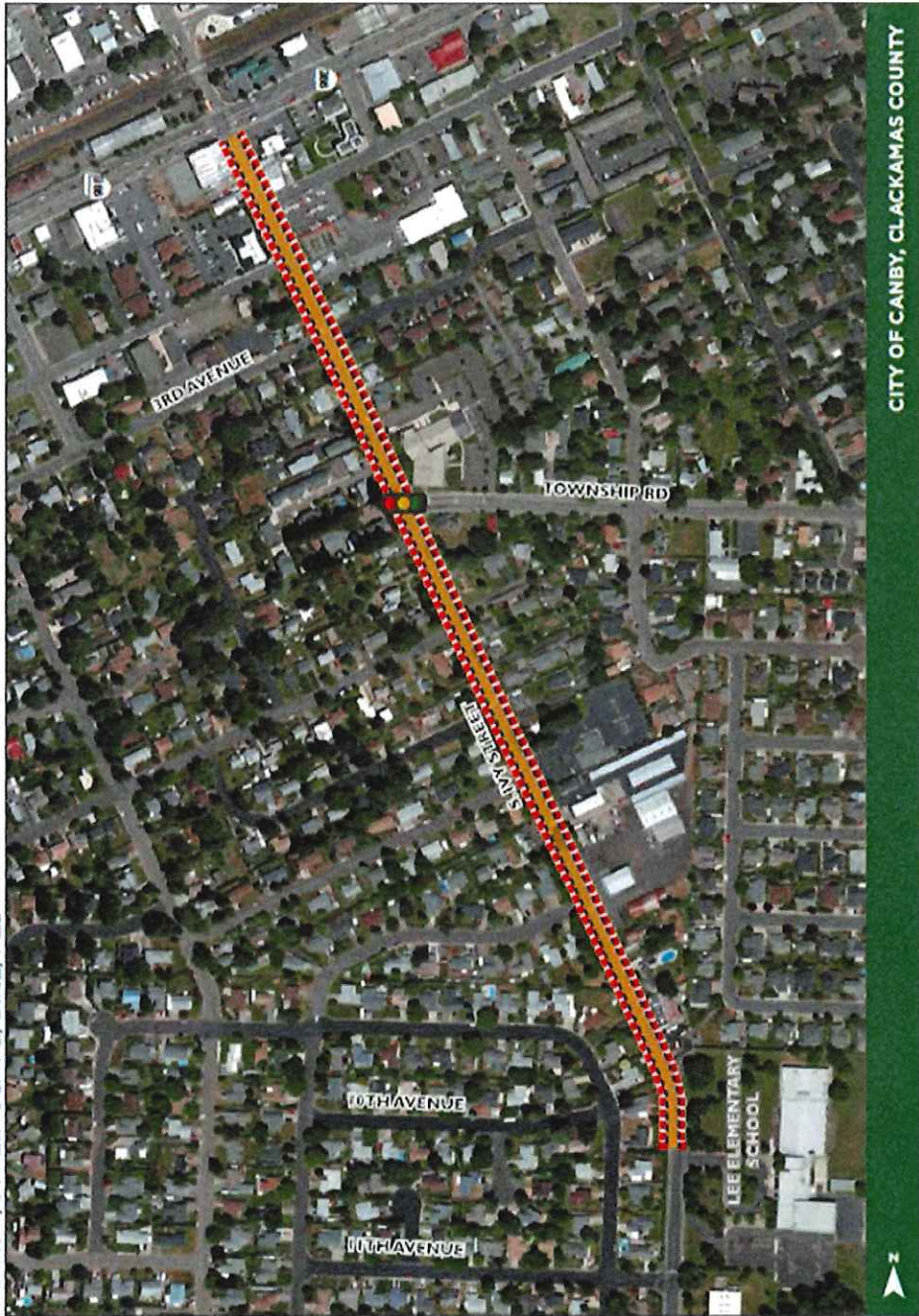
Exhibit A – Project Location Map



2016-2018 STIP

S. IVY STREET PEDESTRIAN & INTERSECTION IMPROVEMENTS

TRANSIT/STREETSCAPE/BIKE/PED



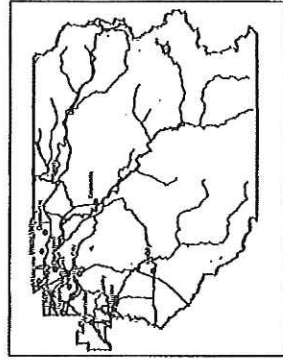
CITY OF CANBY, CLACKAMAS COUNTY

S.E. 1/4 SEC. 4 T. 4S. R. 1E. W.M.
CLACKAMAS COUNTY
1" = 200'

Consolidated Zonings

- 300
- 305
- 310
- 315
- 320
- 325
- 330
- 335
- 340
- 345
- 350
- 355
- 360
- 365
- 370
- 375
- 380
- 385
- 390
- 395
- 400

- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- Tract/Code/Line
- Map Inset
- Water Lines
- Land Use Zoning
- Pits
- Water
- Corner
- Section Corner
- 1/16th Line
- Doc Let Line
- DCC Line
- Mandator Line
- P.L.S.S Section Line
- Historic Corner 40'
- Historic Corner 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY

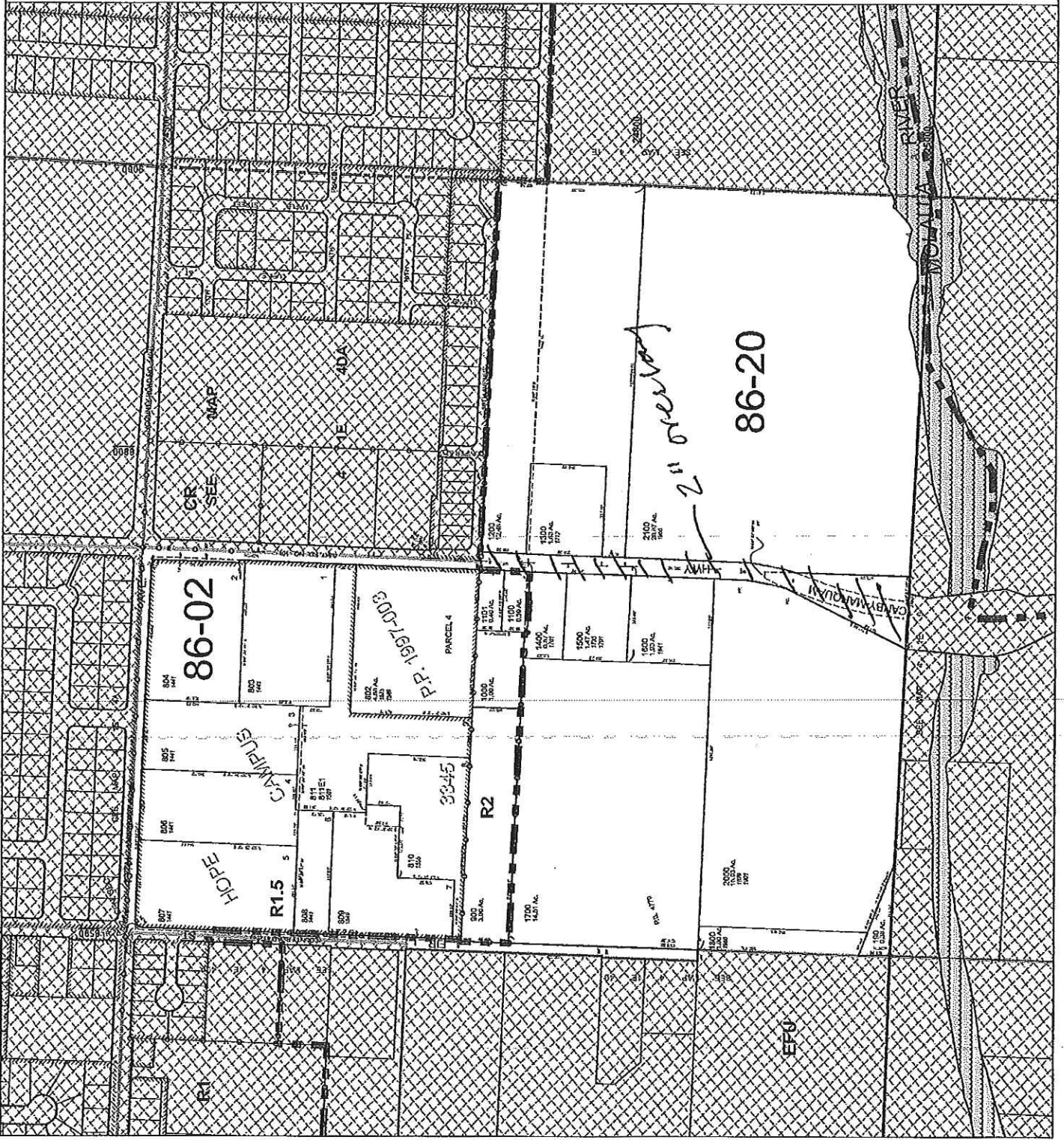
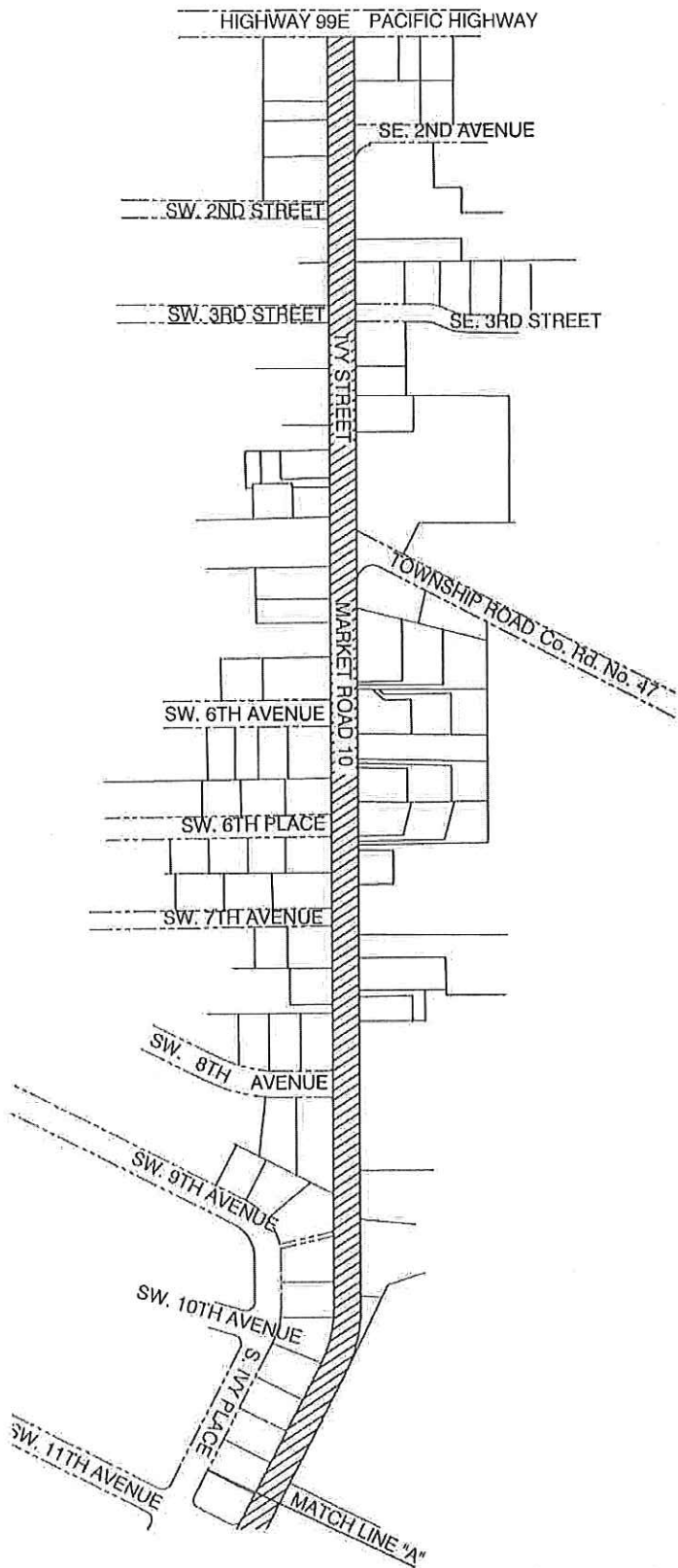


EXHIBIT "B"



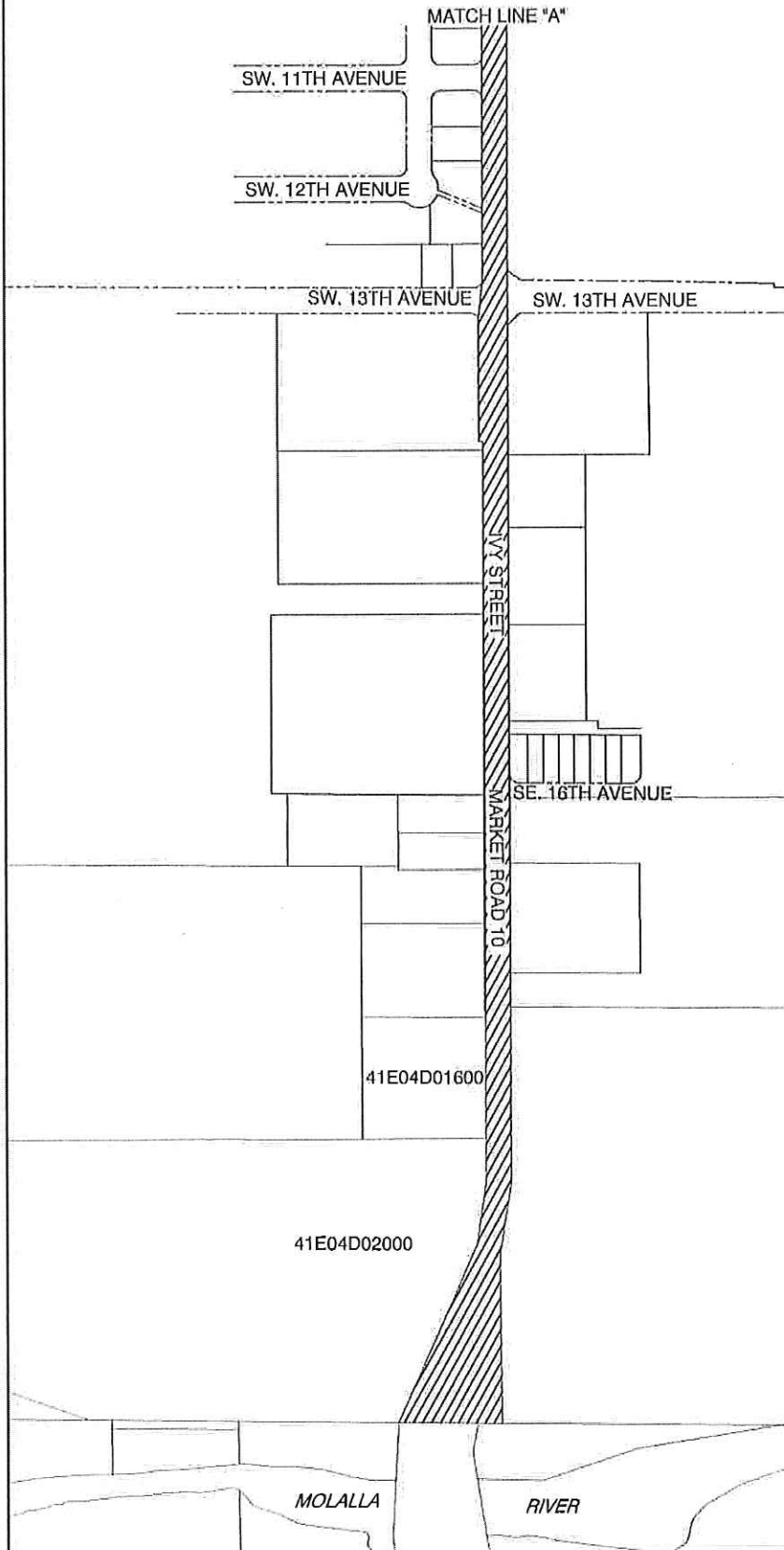
LEGEND

- TRANSFERRED STREET
- STREET R-O-W LINES
- TAX LOT LINES

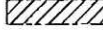


IVY STREET LENGTH 6,650'±
 IVY STREET AREA 441,260 Sq. Ft.±

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT 150 BEAVERCREEK ROAD OREGON CITY, OR 97045	 CLACKAMAS COUNTY	CUTSHALL/BAYS 08/16/2018 JURISDICTIONAL TRANSFER OF IVY STREET - MARKET ROAD 10	SHEET 1 OF 2
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EXHIBIT "B"



LEGEND

-  TRANSFERRED STREET
-  STREET R-O-W LINES
-  TAX LOT LINES

IVY STREET LENGTH 6,650'±
 IVY STREET AREA 441,260 Sq. Ft.±

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT 150 BEAVERCREEK ROAD OREGON CITY, OR 97045		CUTSHALL/BAYS 08/16/2018 JURISDICTIONAL TRANSFER OF IVY STREET - MARKET ROAD 10	SHEET 2 OF 2
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EBEN POLK, MANAGER
SUSTAINABILITY & SOLID WASTE

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Contract with Bell & Associates Inc. to provide
Solid Waste Annual Financial Review Services**

Purpose/ Outcomes	This contract will provide solid waste annual financial report reviews of the County's multiple franchised solid waste collectors.
Dollar Amount and Fiscal Impact	The contract value is \$270,000.00
Funding Source	217-2742-43100 Franchise Fees: Solid Waste Collection and Transfer
Duration	Contract signing through January 31, 2024
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none">• Build public trust through good government and ensure safe, healthy and secure communities Foster accountability among the public of Clackamas County
Contact Person	Rick Winterhalter- 503-742-4466

BACKGROUND:

Through Sustainability and Solid Waste ("SSW") of the Department of Transportation and Development the County implements all administrative and program requirements for Solid Waste management in the unincorporated portions of the County.

Clackamas County would like to contract with Bell & Associates, Inc., as professional solid waste annual report review experts. The purpose of this contract is for continued review and analysis of the franchised solid waste collectors in Clackamas County.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on July 19, 2018. Proposals were closed on October 10, 2018 at 2:00PM. The County received 2 proposals: Bell & Associates, Merina & Company. Final evaluations determined that Bell & Associates, Inc., was the highest ranking proposer and could meet the needs of the County. The total contract amount is not to exceed \$270,000.00.

County Counsel has reviewed this contract.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners, acting as the governing body of the County, approve and execute the Contract between Clackamas County and Bell & Associates, Inc., for the Department of Transportation and Development.

Respectfully submitted,

Dan Johnson, Director

Placed on the Agenda of _____ by the Procurement Division



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Bell & Associates, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Transportation and Development.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on January 31, 2024 with the option of one (1) year renewal thereafter.

2. Scope of Work. Contractor will provide the following personal/professional services: to provide solid waste annual financial review services. ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, for an annual contract value not to exceed Forty Five Thousand dollars (\$45,000.00) and for total contract value sum including any optional renewal not to exceed Two Hundred Seventy Thousand dollars (\$270,000.00), for accomplishing the Work required by this Contract.

4. Travel and Other Expense. Authorized: [] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, D, E and F.

6. Contractor Data.

Bell & Associates, Inc.

Address: 1628 NW 33rd Way, Camas, WA 98607

Contractor Contract Administrator: Christopher J Bell, CPA

Phone No.: 360-210-4344

Email: chris@bellassociatesinc.com

MWESB Certification: [] DBE # [] MBE # [] WBE # [] ESB #

Payment information will be reported to the Internal Revenue Service ("IRS") under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or

suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)
10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
12. **NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other

addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County

to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated

pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, 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 of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor

collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. CONFIDENTIALITY. Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the County desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11), shall be deemed to be confidential information of the County ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever (other than in the performance of this Contract), and to advise each of its employees and agents of their obligations to keep Confidential Information confidential.

Contractor agrees that, except as directed by the County, Contractor will not at any time during or after the term of this Contract, disclose, directly or indirectly, any Confidential Information to any person, and that upon termination or expiration of this Contract or the County's request, Contractor will turn over to the County all documents, papers, records and other materials in Contractor's possession which embody Confidential Information. Contractor acknowledges that breach of this Contract, including disclosure of any Confidential Information, or disclosure of other information that, at law or in good conscience or equity, ought to remain confidential, will give rise to irreparable injury to the County that cannot adequately be compensated in damages. Accordingly, the County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the County and are reasonable in scope and content.

Contractor agrees to comply with all reasonable requests by the County to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements, in a form approved by the County, from each of Contractor's employees and agents who are performing services, and providing copies of such agreements to the County; and (b) performing criminal background checks on each of Contractor's employees and agents who are performing services, and providing a copy of the results to the County.

Contractor shall report, either orally or in writing, to the County any use or disclosure of Confidential Information not authorized by this Contract or in writing by the County, including any reasonable belief that an unauthorized individual has accessed Confidential Information. Contractor shall make the report to the County immediately upon discovery of the unauthorized disclosure, but in no event more than two (2) business days after Contractor reasonably believes there has been such unauthorized use or disclosure. Contractor's report shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the Confidential Information used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall complete work as outlined in the Request for Proposal #2018-87, issued September 13, 2018, hereby included as **Exhibit D**, and the Vendor's response, hereby included as **Exhibit E**.

The County Contract administrator for this Contract is: Rick Winterhalter.

CONSIDERATION

- a. Consideration Rates – Time and Material as listed within **Exhibit F**.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total annual sum of \$45,000.00 and shall not exceed the total maximum sum including any optional renewal of \$270,000.00 Invoices shall be submitted to: Rick Winterhalter at 150 Beavercreek Rd, Oregon City, Oregon 97045 or via email at rickw@co.clackamas.or.us
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**EXHIBIT B
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by County Not required by County

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

3. Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to County acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- _____ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- _____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- _____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- _____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____

EXHIBIT D
RFP # 2018-87
Solid Waste Annual Financial Review Services
Issued on September 13, 2018

EXHIBIT E
VENDOR'S RESPONSE

**EXHIBIT F
FEE SCHEDULE**