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DIRECTOR

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

June 22, 2023

BCC Agenda Date/Item: \_\_\_\_\_

Board of County Commissioners  
Clackamas County

Approval of an Intergovernmental Agreement between Clackamas County and the City of Estacada related to road maintenance, permitting authority and jurisdictional transfer of a portion of S River Mill Road. Total value \$9,303. Funding through Community Road Fund. No County General Funds are involved.

<b>Previous Board Action/Review</b>	06/20/2023: Request for Consent		
<b>Performance Clackamas</b>	1. Build trust with good government		
<b>Counsel Review</b>	Yes	<b>Procurement Review</b>	No
<b>Contact Person</b>	Rick Maxwell	<b>Contact Phone</b>	503-742-4671

**EXECUTIVE SUMMARY:**

There are certain County roads, such as S River Mill Road in Estacada that are wholly, mostly, or partially within various Cities throughout Clackamas County. Fragmented jurisdiction over these roads often results in differing road maintenance activities and confusion by the public as to which agency is responsible for the operation and maintenance of the roads. To eliminate confusion to the public and improve the efficiencies of maintenance and public service, a jurisdictional transfer is needed. The Intergovernmental Agreement (IGA) sets forth road maintenance, permitting authority and the process for the City to assume exclusive jurisdiction over S River Mill Road, which contains approximately 10,560 square feet of Right-of-Way. The proposed IGA also formalizes an agreement to provide funds to the City of Estacada in the amount of \$9,303 which is equal to the cost of a 2" asphalt overlay. Payment of these funds are contingent upon finalization of the jurisdictional transfer process. Once the jurisdiction is transferred, the City becomes the "Road Authority" responsible for all maintenance, permitting and road standard activities.

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County staff has been negotiating with the City of Estacada and they have reached this agreement for the transfer of an approximately 264-foot-long section of S River Mill Road.

**RECOMMENDATION:**

Staff respectfully requests that the Board approve the attached IGA between Clackamas County and the City of Estacada related to S River Mill Road.

Respectfully submitted,

*Dan Johnson*

Dan Johnson  
Director of Transportation & Development

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ESTACADA AND  
CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING  
AUTHORITY ON A PORTION OF SE RIVER MILL ROAD**

This agreement (the “Agreement”) is made on the date all required signatures have been obtained, between the City of Estacada (“CITY”), a municipal corporation, 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, portions of SE River Mill 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 a portion of SE River Mill Road, measuring approximately 264 feet in length and 10,560 square feet in area, as more particularly described in Exhibit “A” and depicted in Exhibit “B” which are attached hereto and incorporated herein (“SE River Mill”).

WHEREAS, transfer of responsibility with regards to SE River Mill 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 SE River Mill which primarily serves the residents of the City;

WHEREAS, the Parties agree that each will consider the full transfer of jurisdiction of SE River Mill to the City once SE River Mill is entirely annexed into the City’s boundary, and that this Agreement will no longer be necessary if SE River Mill is completely annexed into the City; and

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

**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. This Agreement shall expire automatically at the time SE River Mill is fully annexed into the City and the City assumes jurisdiction of SE River Mill pursuant to ORS 368 and ORS 373.

2. **Transfer of Authority.**
  - A. Responsibility for Road Authority activities (as outlined in Section 3) for SE River Mill shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The only portion of SE River Mill subject to this Agreement measures approximately 264 feet in length and 10,560 square feet in area, as more particularly described in Exhibit “A” and depicted in Exhibit “B”.
  - 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 SE River Mill, as described herein.
  - C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City as set forth in this Agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include those activities the City deems necessary in accordance with City standards, including but 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, streetlights and roadside barriers;
  - D. Timely repair or mitigation of known hazards to the road users;
  - E. Issuance of permits for work or the establishment of roadway standards on SE River Mill; and
  - F. All other responsibilities the County may have under ORS 368 with regards to SE River Mill which may be assumed by the City under state law.
4. **Maintenance Standard.** Any maintenance on SE River Mill 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. **County Responsibilities.**
  - A. After such time that SE River Mill has been fully annexed into the City, the County shall give notice and shall carry out those procedures set forth in ORS 373.270 to determine whether it is necessary, expedient or in the best interests of the County to surrender jurisdiction over SE River Mill.
  - B. The County shall provide to the City the sum of \$9,303, which is equivalent to the cost of the following improvement: a 2-inch asphalt overlay on the portion of SE River Mill identified in the exhibits attached to this Agreement. The sum of \$9,303 identified in this paragraph shall be payable to the City within 60 days of the effective date of this Agreement.
6. **City Responsibilities.**
  - A. After the County has initiated the process to transfer jurisdiction of SE River Mill, the City shall carry out any additional procedures necessary, as set forth in ORS 373.270, for purposes of finalizing the transfer. The City shall not unreasonably delay or withhold its consent to the transfer of SE River Mill and shall complete the process to finalize the transfer within 90 days

from the date that the County concludes its hearing and decision on the matter. This obligation shall terminate in the event the governing body of the City or County fails to find that it is necessary, expedient or in the best interests of the County to surrender jurisdiction over SE River Mill.

- B. The City agrees to assume full and absolute jurisdiction over the portion of SE River Mill identified in the exhibits attached to this Agreement, if the governing body of the City and the governing body of the County both determine that it is necessary, expedient or in the best interests of their respective jurisdictions to complete the transfer described herein.

7. **Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. 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.
- C. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

8. **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. Without limiting the foregoing, the Parties intend that the County shall incur no liability with regards to the City's actions or omissions in carrying out the Road Authority activities on SE River Mill and the City agrees that its obligation to indemnify, save harmless and defend the County specifically applies to the Road Authority activities outlined in Section 3.

9. **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. **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.
- E. **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.
- 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 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.
- 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.** 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.

- 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. **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.
- N. **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 ESTACADA**

*Melanie K Wagner*  
\_\_\_\_\_  
City Manager

*5/24/2023*  
\_\_\_\_\_  
Date

*Smaun*  
\_\_\_\_\_  
Recording Secretary

## Exhibit "A"

### SE River Mill Road Transfer of Jurisdiction

### Clackamas County to City of Estacada

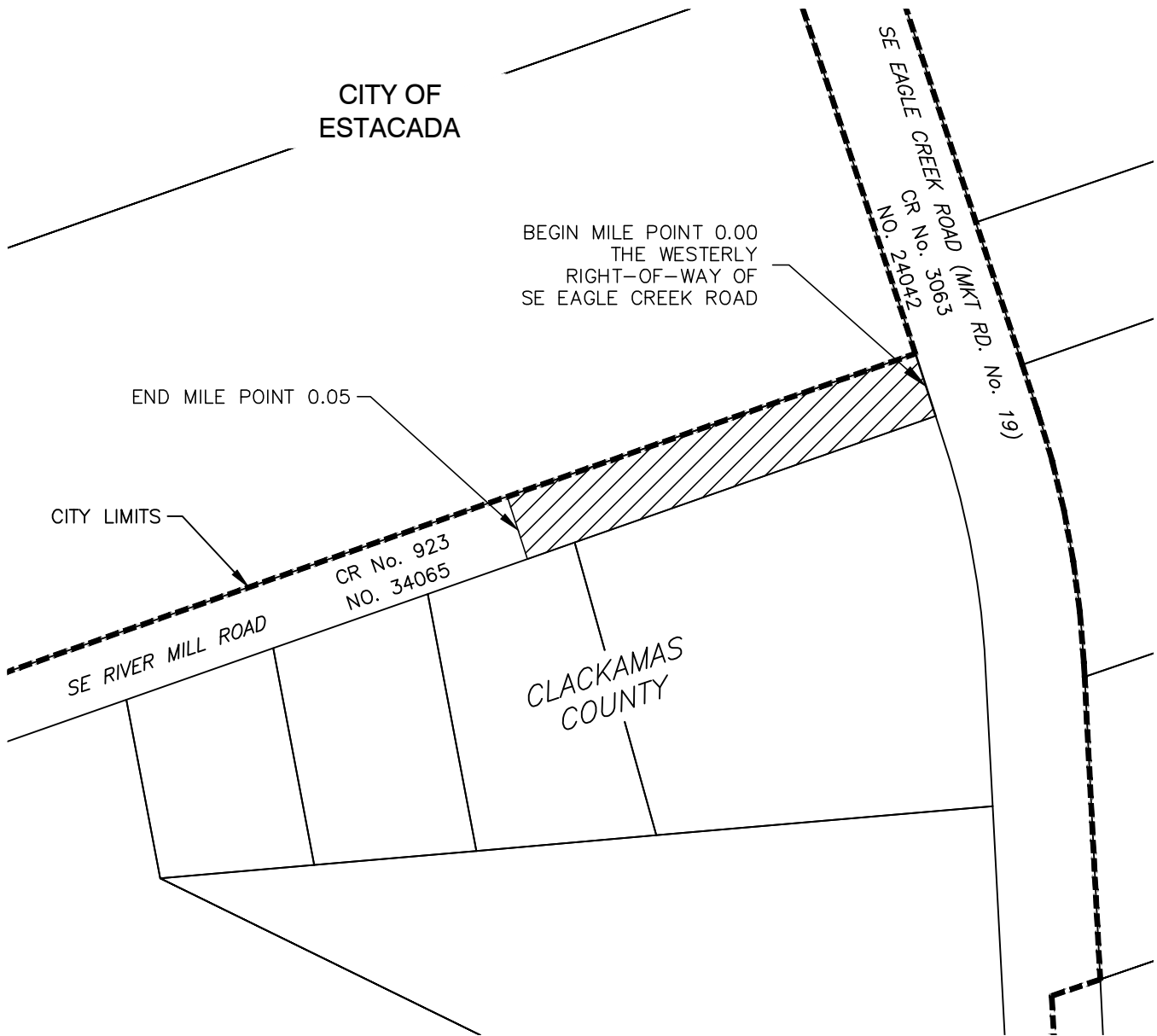
#### Description

All that portion of SE River Mill Road, County Road No. 923, Department of Transportation and Development maintenance No. 34065; Situated in Section in the SE 1/4 of Section 17, T. 3 S., R. 4 E., W.M., as shown in Exhibit "B", attached hereto, lying west of the Westerly Right-of-Way of SE Eagle Creek Road, County Road No. 3063, also being Market Road 19, (mile point 0.00) and lying East of (mile point 0.05), being approximately 264 feet long.

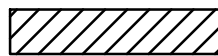
Contains 10,560 square feet, more or less.



# EXHIBIT "B"



## LEGEND



DEDICATED AREA  
10,560 Sq. Ft.

LOCATED IN SECTION IN THE SE 1/4 OF  
SECTION 17, T. 3 S., R. 4 E., W.M.  
CLACKAMAS COUNTY, OREGON

