



**DAN JOHNSON**  
DIRECTOR

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

February 20, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Resolution Delegating Authority to the Director of the Department of Transportation and Development to Approve Renewal Agreements with United States Department of Agriculture for the Purposes of Compliance with Migratory Bird Mitigation**

<b>Purpose/Outcomes</b>	To allow the Director of the Department of Transportation and Development to enter into annual contracts with the USDA, in accordance with the Cooperative Services Agreement signed in 2016
<b>Dollar Amount and Fiscal Impact</b>	The contract is paid for by individual Capital Improvement projects based on hours spent performing work
<b>Funding Source</b>	Road Fund
<b>Duration</b>	December 31, 2021
<b>Strategic Plan Alignment</b>	Build a strong infrastructure Build public trust through good government
<b>Counsel Review</b>	February 11, 2020
<b>Contact Person</b>	Mike Ward, Project Manager 503-742-4688

Clackamas County has been utilizing the US Department of Agriculture (USDA) to certify compliance with the Migratory Bird Act, most recently formalized by a Cooperative Service Agreement signed in 2016. The USDA is notified of which projects need inspection by County staff, and bill the County for the hours spent directly related to a project. Project budgets presented to the Board incorporate the funds necessary to cover USDA costs.

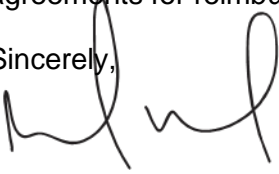
USDA has requested that the County formalize the agreement with signed renewal agreements each year. The total paid to USDA in 2019 over all projects was \$6,272.77. Since it is the practice of the County to have the board review all intergovernmental contracts which could result in expenditures greater than \$5,000, staff is requesting that the Board delegate its authority to the Director of Transportation and Development to sign the renewal agreements through the end of the term of the Cooperative Services Agreement, which expires on December 31, 2021 unless extended by written agreement of the parties, provided the renewal agreements are consistent with the Cooperative Services Agreement, and provided the renewal agreements are generally consistent with the form attached to this report.

Because funding is provided under specific project budgets, this agreement will have no additional impact to the County's budget.

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve a resolution delegating authority to the Director of the Department of Transportation and Development to sign annual renewal agreements for reimbursement with the United States Department of Agriculture.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Ward". The signature is fluid and cursive, with a large loop at the end.

Mike Ward, P.E.  
Project Manager

Attachment:  
Cooperative Service Agreement with USDA  
Renewal Agreement

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

A Resolution Delegating Authority to  
the Director of the Department of  
Transportation and Development  
Authority to Approve Renewal  
Agreements with the United States  
Department of Agriculture



Resolution No. \_\_\_\_\_  
*Page 1 of 1*

**WHEREAS**, Clackamas County has been utilizing the US Department of Agriculture (USDA) to certify compliance with the Migratory Bird Act, most recently formalized by a Cooperative Service Agreement signed in 2016; and

**WHEREAS**, the USDA is notified of which projects need inspection by County staff, and bill the County for the hours spent directly related to a project. Project budgets presented to the Board incorporate the funds necessary to cover USDA costs; and

**WHEREAS**, USDA has requested that the County formalize the agreement with signed renewal agreements each year; and

**WHEREAS**, staff believes it would be most efficient for the Board to delegate its authority to the Director of Transportation and Development to sign the renewal agreements through the end of the term of the Cooperative Services Agreement, which expires on December 31, 2021 unless extended by written agreement of the parties, provided the renewal agreements are consistent with the Cooperative Services Agreement, and provided the renewal agreements are generally consistent with the form historically used by the USDA; and

**NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby resolve:**

1. That the Clackamas County Board of County Commissioners hereby delegates its authority to the Director of Transportation and Development to sign renewal agreements associated with the Cooperative Services Agreement with the USDA, which expires on December 31, 2021, related to compliance with the Migratory Bird Act, provided the renewal agreements are consistent with the Cooperative Services Agreement, and provided the renewal agreements are generally consistent with the form that has traditionally been used by the USDA for such renewals.

**Dated** this \_\_\_\_\_ day of February, 2020

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Recording Secretary

**COOPERATIVE SERVICE AGREEMENT**  
**between**  
**CLACKAMAS COUNTY TRANSPORTATION DEPARTMENT, OREGON (COOPERATOR)**  
**MIGRATORY BIRD MITIGATION**  
**and**  
**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**ANIMAL AND PLANT HEALTH INSPECTION SERVICE**  
**WILDLIFE SERVICES (WS)**

**ARTICLE 1 – PURPOSE**

The purpose of this Agreement is to conduct wildlife damage management (WDM) activities to control birds, bats or any wildlife species posing a threat to the Clackamas County Transportation Department.

**ARTICLE 2 - AUTHORITY**

APHIS WS has statutory authority under the Act of March 2, 1931 (46 Stat. 1468; 7 U.S.C.426-426b) as amended, and the Act of December 22, 1987 (101 Stat. 1329-331, 7 U.S.C. 426c), for the Secretary of Agriculture to cooperate with States, individuals, public and private agencies, organizations, and institutions in the control of wild mammals and birds that are reservoirs for zoonotic diseases, or are injurious or a nuisance to, among other things, agriculture, horticulture, forestry, animal husbandry, wildlife, and public health and safety.

**ARTICLE 3 - MUTUAL RESPONSIBILITIES**

The Cooperator and WS agree:

- a. To confer and plan a WDM program that addresses the need for managing conflicts caused by migratory or nuisance birds, bats or other wildlife for the Transportation Department in Clackamas County. Based on this consultation, WS will formulate annually, in writing, the program work plan and associated budget and present them to the Cooperator for approval.
- b. Each year the Cooperator and APHIS-WS must agree to and sign the annual Work and Financial Plans, which upon execution are incorporated into this Agreement by reference.
- c. When either of the Cooperating parties address the media or incorporate information into reports and/or publications, both Cooperating parties must agree, in writing, to have their identities disclosed when receiving due credit related to the activities covered by this agreement.
- d. That APHIS-WS has advised the Cooperator that other private sector service providers may be available to provide wildlife management services and notwithstanding these other options, Cooperator requests that APHIS-WS provide wildlife management services as stated under the terms of this Agreement.

**ARTICLE 4 - COOPERATOR RESPONSIBILITIES**

The Cooperator agrees:

- a. To designate M. Barbara Cartmill, Director of DTD, Clackamas County, 150 Beaver creek Road, Oregon City, OR 97045, 503-742-4326 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;
- b. To reimburse APHIS-WS for costs, not to exceed the annually approved amount specified in the Work and Financial Plan. If costs are projected to exceed the amount reflected in the Financial Plan, the Work and Financial Plan shall be formally revised and signed by both parties before services resulting in additional costs are performed. The Cooperator agrees to pay all costs of service submitted via an invoice within 30 days of the date of the submitted invoice or invoices as submitted by APHIS-WS. Late payments are subject to interest, penalties, and administrative charges and costs as set forth under the Debt Collection Improvement Act of 1996. If the Cooperator is delinquent in paying the full amount

of the due service costs submitted by APHIS-WS, and/or is delinquent in paying the due late payments, and/or is delinquent in paying the interest, penalties, and/or administrative costs on any delinquent due service costs, APHIS-WS will immediately cease to provide the respective service associated with the submitted service costs. APHIS-WS will not reinstate or provide the respective service until all due service costs, and/or due late payments, and/or due interest, penalty, and/or administrative costs are first paid in full.

- c. To provide a Tax Identification Number or Social Security Number in compliance with the Debt Collection Improvement Act of 1996.
- d. As a condition of this Agreement, The Cooperator ensures and certifies that it is not currently debarred or suspended and is free of delinquent Federal debt.

#### **ARTICLE 5 – WS RESPONSIBILITIES**

WS agrees:

- a. To designate David E. Williams, WS Oregon State Director, 6135 NE 80<sup>th</sup> Suite A-8, Portland, OR 97218, [david.e.williams@aphis.usda.gov](mailto:david.e.williams@aphis.usda.gov), 503-326-2346 as the authorized representative who shall be responsible for collaboratively administering the activities conducted in this Agreement;
- b. The performance of wildlife damage management actions by WS under this agreement is contingent upon a determination by WS that such actions are in compliance with the National Environmental Policy Act, Endangered Species Act, and any other applicable environmental statutes. WS will not make a final decision to conduct requested wildlife damage management actions until it has made the determination of such compliance;
- c. To provide qualified personnel and other resources necessary to implement the approved WDM activities delineated in the Work and Financial Plan referenced in 3.a of this Agreement.
- d. To bill the Cooperator for costs incurred in performing WDM activities as authorized in the approved annual Work and Financial Plan as may be amended.
- e. To notify the Cooperator if costs are projected to exceed the amounts estimated and agreed upon in the Financial Plan. WS will cease providing goods or services until a revision to the Work and Financial Plan, as appropriate, have been agreed to and signed by both parties to this Agreement.
- f. Authorized auditing representatives of the Cooperator shall be accorded reasonable opportunity to inspect the accounts and records of WS pertaining to such claims for reimbursement to the extent permitted by Federal laws and regulations.

#### **ARTICLE 6 – WS CONDITIONS**

For costs borne by WS, this agreement is contingent upon the passage of the Agriculture, Rural Development, and Related Agencies Appropriation Act for the current fiscal year from which expenditures may be legally met and shall not obligate APHIS upon failure of Congress to so appropriate. This Agreement also may be reduced or terminated if Congress provides APHIS funds only for a finite period under a Continuing Resolution.

#### **ARTICLE 7 – ASSURANCES**

Nothing in this agreement shall prevent any other State, agency, organization or individual from entering into separate agreements with WS the Cooperator for the purpose of managing wildlife damage.

#### **ARTICLE 8 – CONGRESSIONAL RESTRICTIONS**

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this agreement or to any benefit to arise therefrom.

**ARTICLE 9 – APPLICABLE REGULATIONS**

All WDM activities will be conducted in accordance with applicable Federal, State, and local laws and regulations.

This agreement is not a procurement contract (31 U.S.C. 6303), nor is it considered a grant (31 U.S.C. 6304). In this agreement, APHIS provides goods or services on a cost recovery basis to nonfederal recipients.

**ARTICLE 10 – LIABILITY**

APHIS assumes no liability for any actions or activities conducted under this agreement except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1346(b), 2401(b), 2671-2680).

**ARTICLE 11 – AGREEMENT EFFECTIVE DATE**

This agreement shall become January 1, 2016 and continue through December 31, 2021. This agreement may be amended at any time by mutual agreement of the parties in writing. It may be terminated by either party upon 60 days written notice to the other party. Further, in the event the Cooperator does not for any reason reimburse expended funds, WS is relieved of the obligation to continue any operations under this agreement.

**AUTHORIZATION:**

Clackamas County Transportation Department  
93-6002286:

M. Barbara Cartmill

M. Barbara Cartmill

Dec. 10, 2015

Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WILDLIFE SERVICES  
Tax Identification Number: 41-0696271

David P. Williams

State Director, WS Oregon

12/15/15

Date

Bryce A. Latta  
Director, Western Region

1/25/16  
Date



# United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE  
Pacific Region Migratory Bird Permit Office  
911 NE 11<sup>th</sup> Avenue  
Portland, Oregon 97232



December 2, 2019

Your Federal Migratory Bird **SPECIAL PURPOSE MISCELLANEOUS PERMIT**, expires on **MARCH 31, 2020**.

Please complete the following through question 4 and sign, **even if you do not wish to renew**. Submit the signed, complete form to [PermitsR1MB@fws.gov](mailto:PermitsR1MB@fws.gov) or the address above.

1. Permit Number: MB
2. Name on Permit:
3. Current Mailing Address:
4. Do you wish to renew your permit:                                Yes                                No

## **RENEWAL PROCEDURES:**

You must provide the following for renewal of your permit. Be as thorough and specific as possible in your response. Incomplete requests will be returned, delayed or abandoned.

5. The fee for this permit is **\$100**. Have you:

Mailed this application form hard-copy and enclosed a check  
Submitted this application electronically and mailed a check with coversheet  
Not submitted a fee, fee exempt (permit is issued to government agency)

6. Are you requesting a change in activities (i.e. new species, increased number, new location)?  
Yes                                No

7. Principal Officer (if organization, person responsible) Change from 2019?                                Yes                                No  
Name:                                Title:

If change, why?

8. Name of Primary Contact (person FWS should contact):

9. Contact Phone Number:

10. Contact Email Address:

11. Address where records are kept:  
Same as mailing address

Please provide the information requested below. This application form is used for activities that are not addressed in existing permit types. Please do your best to answer the questions as relevant to your situation and include any information you think may be relevant, even if not specifically asked for. If additional information needs to be provided that does not fit in the designated spaces, add additional sheets to your application submission.

**The Permittee or Principal Officer must sign at the bottom of the application. Unsigned applications will be returned.**

**Be sure to submit your Annual Report form.**

### **Questions**

1) What is the purpose of your activity? Provide a detailed description of the proposed project or activity. Include how your activity (a) benefits the migratory bird resource, (b) addresses an important research reason, (c) addresses human concerns for individual birds, or (d) other compelling justification. Include copies of supporting documentation that may be useful for evaluating your request.



2) What activity are you requesting?

- a) Species (scientific and common name).
- b) Quantity of each species.
- c) Live migratory bird(s) or type specimen (mount, parts, nests, and/or eggs).
- d) Source (wild-caught, captive-raised) .
- e) Take activity (i.e. kill, trap-release, trap-retain, salvage, possess, etc.).

3) Explain why you chose these species, collection location, and number of birds requested.

- 4) Describe your methods. Include the information below as applicable.
- a) Trapping: explain your choice of trap, frequency of trap checks, and what, if any, lure you will use.
  - b) Lethal Collection: type of gun and ammunition; explain why nonlethal methods do not meet your objectives.
  - c) Euthanasia: describe your euthanasia method. For more information see the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals (<https://www.avma.org/KB/Policies/Pages/Euthanasia-Guidelines.aspx>).
  - d) Invasive Procedures: describe your methods and how you will minimize pain and stress.
  - e) Captivity: describe where and how long birds will be kept in captivity. Include a description, dimensions, and/or photographs of permanent and transport enclosures. Include the diet and enrichment you will provide.
  - f) Release to the Wild: describe your choice of release location(s). Provide State authorization, if required. If held longer than 24 hours, describe how birds will be evaluated for release and, if needed, conditioned for release.

5) Provide the exact location of the property or properties where the activity (where bird(s) will be collected, held in captivity, released to the wild, etc.) would be conducted including state, county, and physical address, and latitude/longitude in decimal degrees (e.g. 36.87998/-88.3435). If available, provide a copy of any authorizations for access to State, Federal, or Tribal land. For assistance determining the latitude/longitude for a specific location in decimal degrees, please visit <https://earthexplorer.usgs.gov/>.

6) Indicate the intended disposition of the birds and/or specimens. If applicable, include the federal permit number, name, and address of the public, scientific, or educational institution to which all specimens ultimately will be donated upon completion of activity. You must include an official letter from this entity indicating their willingness to accept these donations. The letter must be on their letterhead and list their federal migratory bird permit number or indicate how they meet the federal permit exemption under 50 CFR 21.12.

7) Subpermittees: List anyone who will be assisting you with the permitted activities that you want identified on your permit.

8) For activities that include kill, trap-retain, and/or trap-relocate birds from the wild: to assist us in complying with the National Environmental Policy Act (NEPA), as much as possible describe any anticipated effects (positive or negative) to:

- a) Breeding birds or other seasonality concerns.
- b) Populations of Birds of Conservation Concern and bird species with small local populations.
- c) Potential disease transmission.
- d) Non-target species.
- e) Threatened or endangered species.
- f) Spread of invasive species.
- g) Other natural resources including natural lands and waters.
- h) Cultural resources including historical sites.
- i) Low income, minority and/or Native American populations.
- j) Public health and safety.

9) Any permit issued as a result of this application is not valid unless you also have any required State or tribal permits or approvals associated with the activity. Have you obtained all required State or tribal permits or approvals to conduct this activity?

Yes, Have Attached

None Required

Have Applied, Will Provide Upon Request

**All Applicants:**

If this written request for renewal of your permit is **postmarked or received electronically by March 1, 2020**, you may continue activities authorized by your expired permit until the Service has acted on your request for renewal. (See 50 CFR 13.22) Please allow 30 days for processing. You may be required to submit a new application if you allow your current permit to expire.

If you have any questions, please contact this office at the address above, [PermitsR1MB@fws.gov](mailto:PermitsR1MB@fws.gov), or call 503-872-2715. Information, regulations and forms may be obtained by visiting our website at [www.fws.gov/permits](http://www.fws.gov/permits).

Please note that the Service revised the list of species protected under the Migratory Bird Treaty Act on November 1, 2013. Please visit <http://www.fws.gov/migratorybirds/mbpermits.html> for more information.

***I hereby certify that all information submitted in support of my original application remains current and correct except as changed previously or with this form. I understand any false statement may subject me to the criminal penalties of 18 USC 1001.***

Signature \_\_\_\_\_ Date \_\_\_\_\_

Signature of permittee/principal officer

Date of signature (mm/dd/yyyy)



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

February 20, 2020

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 South Ivy Street (Market Road #10, DTD #61012) to the City**

<b>Purpose/Outcomes</b>	Transfers permitting authority and maintenance responsibility for construction on portions of S. Ivy Street to the City of Canby.
<b>Dollar Amount and Fiscal Impact</b>	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway.
<b>Funding Source</b>	Road Fund
<b>Duration</b>	Upon execution; permanent
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	Build a strong infrastructure Build public trust through good government
<b>Counsel Review</b>	February 11, 2020
<b>Contact Person</b>	Michael Bays, Survey Cadd Supervisor; 503-742-46667

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards and maintenance responsibility of S. Ivy Street (also known as the Canby-Marquam Highway per County maintenance records). An approximately 1/2 mile long section of S. Ivy Street, currently within the City of Canby, is part of an existing agreement with the City for future jurisdictional transfer. This section of S. Ivy Street undergoing extensive development and it is agreed that the City is best suited to exercise primary authority. 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 S. Ivy Street.

Transferring the rights and duties as road authority for this portion of S. Ivy Street 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 requests jurisdictional transfer as outlined in the previous agreement with the County.

This agreement has been reviewed signed by the Canby City Mayor. The Agreement signed by the city contained a Scribner's error in the description of the section of S. Ivy Street to be transferred by this intergovernmental agreement. The City has been made aware of this error and agrees that the error it can be struck from the agreement presented this day.

**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 S. Ivy Street to the City.

Respectfully submitted,

Michael Bays, Survey Cadd Supervisor  
Attachments: IGA, Exhibit

**RESOLUTION NO. 1326**

**A RESOLUTION REQUESTING AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO  
ROAD MAINTENANCE AND PERMITTING AUTHORITY OF A PORTION OF S IVY  
STREET BETWEEN 13<sup>TH</sup> AVENUE AND THE SOUTHERLY URBAN GROWTH  
BOUNDARY**

**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**, S. Ivy Street is a County Road, as defined in ORS 368.001, lying inside and 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 S. Ivy Street, approximately 200,660 square feet in area, as more particularly depicted in Exhibit “A” of the intergovernmental agreement, which is attached hereto and incorporated herein (“S. Ivy Street”).

**WHEREAS**, transfer of responsibility with regards to S. Ivy Street 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 S. Ivy Street, which primarily serves the residents of the City; and

**WHEREAS**, the Parties acknowledge that jurisdiction of S. Ivy Street should transfer to the City once annexed into the City’s boundary, and that this Agreement will no longer be necessary once S. Ivy Street is annexed into the City and jurisdiction over S Ivy Street 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 S. Ivy Street as may be allowed under state law in order to grant the City control of S. Ivy Street prior to the annexation and jurisdictional transfer of S. Ivy Street.

**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 S. Ivy Street and shall be surrendered to the City pursuant to the terms and conditions of the Agreement. The portion of S. Ivy Street subject to the Agreement is approximately 200,660 square feet in area, as more particularly depicted and specifically described in Exhibit “A” to the intergovernmental agreement. 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 S. IVY STREET BETWEEN 13<sup>TH</sup> AVENUE AND THE SOUTHERLY URBAN GROWTH BOUNDARY.**



This resolution will take effect on September 18, 2019.

**ADOPTED** this 18<sup>th</sup> day of September, 2019 by the Canby City Council.

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Brian Hodson  
Mayor

ATTEST:



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Rick Robinson  
City Recorder Pro-Tem

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

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 "PARTIES" 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, S. Ivy St. 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 S. Ivy St., approximately 200,660 square feet in area, as more particularly depicted on Exhibit "A" which is attached hereto and incorporated herein ("Ivy").

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

WHEREAS, the Parties acknowledge that jurisdiction of Ivy should transfer to the City once annexed into the City's boundary, and that this Agreement will no longer be necessary once Ivy is annexed into the City and jurisdiction over Ivy 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 Ivy as may be allowed under state law in order to grant the City control of Ivy prior to the annexation and jurisdictional transfer of Ivy.

**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 Ivy has been annexed into the City and the City assumes jurisdiction of Ivy pursuant to ORS 368 and/or ORS 373.

2. **Transfer of Authority.**

- A. Responsibility for Road Authority activities (as outlined in Section 3) for Ivy shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The portion of Ivy subject to this Agreement is approximately 200,660 square feet in area, as more particularly depicted on Exhibit "A" and more specifically described as follows:

All that portion of S Canby-Marquam Highway, Market Road No. 10, Department of Transportation and Development maintenance No. 61012; Situated in Section 04, T. 4S., R. 1E., W.M. and ~~Section 33, T. 3S., R. 1E., W.M.~~, as depicted on Exhibit A, attached hereto, lying North of and between the Southerly Canby city limit, also the South line of Section 04, T. 4S., R. 1E., W.M. (mile point 6.67) and the Southerly right of way line of SW 13<sup>th</sup> Avenue (mile point 7.17), being a total of approximately 2,620 feet long, varying in width.

Containing 200,660 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 Ivy, as described herein.
- C. The City shall be solely responsible for all costs associated with the Road Authority activities assumed by the City through this Agreement.
3. **Road Authority Obligations.** For purposes of this Agreement, the Road Authority activities include, but are not necessarily limited to, the following:
- A. Construction and reconstruction;
- B. Improvement or repair, and maintenance;
- C. Maintenance and repair of related facilities within the roadway, including but not limited to storm water drainage facilities, traffic control devices, street lights and roadside barriers, except that the County shall retain responsibility for all maintenance associated with the traffic control device located at the intersection of Ivy and SE 13<sup>th</sup> Ave.;
- 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 Ivy; and
- F. All other responsibilities the County may have under ORS 368 with regards to Ivy which may be assumed by the City under state law.
4. **Maintenance Standard.** Any maintenance on Ivy 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.

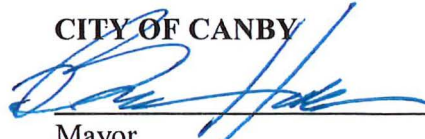
**CLACKAMAS COUNTY**

\_\_\_\_\_  
Chair


\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

**CITY OF CANBY**

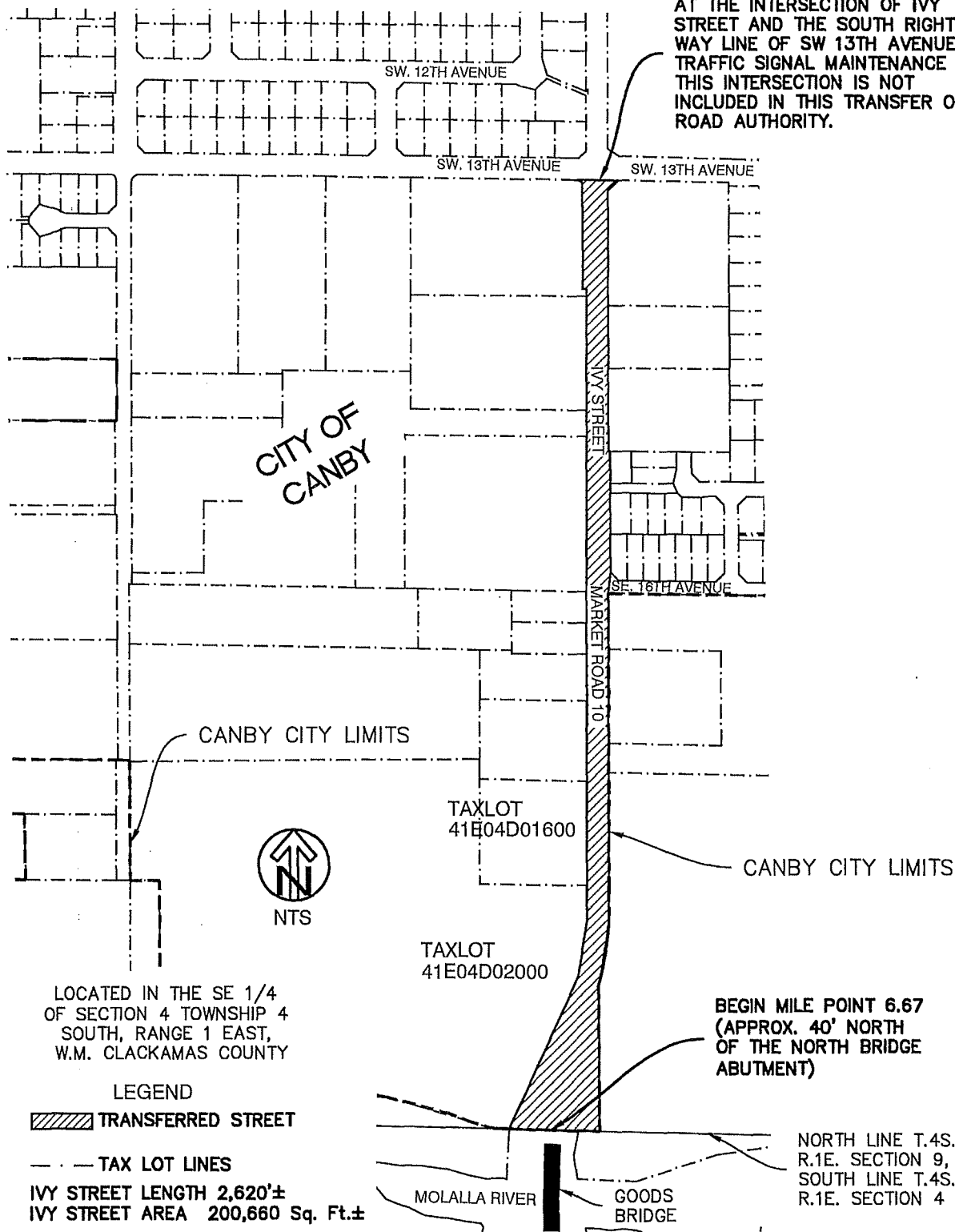
  
\_\_\_\_\_  
Mayor

9/18/19  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Recording Secretary

# EXHIBIT "A"

END MILE POINT 7.17  
 AT THE INTERSECTION OF IVY STREET AND THE SOUTH RIGHT OF WAY LINE OF SW 13TH AVENUE.  
 TRAFFIC SIGNAL MAINTENANCE AT THIS INTERSECTION IS NOT INCLUDED IN THIS TRANSFER OF ROAD AUTHORITY.



LOCATED IN THE SE 1/4  
 OF SECTION 4 TOWNSHIP 4  
 SOUTH, RANGE 1 EAST,  
 W.M. CLACKAMAS COUNTY

**LEGEND**

TRANSFERRED STREET

TAX LOT LINES

IVY STREET LENGTH 2,620'±  
 IVY STREET AREA 200,660 Sq. Ft.±

BEGIN MILE POINT 6.67  
 (APPROX. 40' NORTH  
 OF THE NORTH BRIDGE  
 ABUTMENT)

NORTH LINE T.4S.  
 R.1E. SECTION 9,  
 SOUTH LINE T.4S.  
 R.1E. SECTION 4

DEPARTMENT OF TRANSPORTATION  
 AND DEVELOPMENT

150 BEAVERCREEK ROAD  
 OREGON CITY, OR 97045



RM

TRANSFER OF ROAD AUTHORITY  
 IVY STREET - MARKET ROAD 10

08/27/2019

SHEET

1 of 1