



**DAN JOHNSON**  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

December 6, 2018

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement between Clackamas County and the City of Molalla to Transfer Permitting Authority and Maintenance Responsibility for a Portion of S. Ona Way (County Road #1303, DTD #52003) to the City**

<b>Purpose/Outcomes</b>	To transfer permitting authority and maintenance responsibility for construction on portions of S. Ona Way to the City of Molalla
<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>Contact Person</b>	Michael Bays, Survey/CADD Supervisor; 503-742-4667

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards, and maintenance responsibility of S. Ona Way. An approximately 1/4 mile long section of S. Ona Way lies within the boundary of the City of Molalla. The City has agreed that they are best suited to exercise primary authority over this section of S. Ona Way. 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. Ona Way.

Transferring rights and duties as road authority for this portion of S. Ona Way to the City of Molalla 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 Molalla requests a transfer of jurisdiction of this portion of S. Ona Way as defined in this Intergovernmental Agreement.

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

**RECOMMENDATION:**

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Molalla to transfer rights and duties as road authority for a portion of S. Ona Way to the City.

Respectfully submitted,

Michael Bays - Survey/CADD Supervisor  
Attachments: IGA, Exhibit

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF MOLALLA AND  
CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING  
AUTHORITY ON S. ONA WAY**

This agreement (the "Agreement") is made on the date all required signatures have been obtained, between the City of Molalla ("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, S. Ona Way is a County Road, as defined in ORS 368.001, lying entirely within 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 stretch of S. Ona Way, approximately 1,320 feet in length, as more particularly depicted on Exhibit "A" which is attached hereto and incorporated herein ("S. ONA WAY").

WHEREAS, transfer of responsibility with regards to S. Ona Way 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. Ona Way, which primarily serves the residents of the City;

WHEREAS, the Parties acknowledge that the City and County desire to pursue a transfer of jurisdiction of S. Ona Way pursuant to ORS 373.270 once the County completes the reconstruction and paving of S. Ona Way, and that this Agreement will no longer be necessary once the process set forth in ORS 373.270 has been completed; 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. Ona Way as may be allowed under state law in order to grant the City control of S. Ona Way prior to the completion of the full transfer pursuant to ORS 373.270.

**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 S. Ona Way is transferred to the City and the City assumes jurisdiction of S. Ona Way pursuant to ORS 373.270.

2. **Transfer of Authority.**

A. Responsibility for Road Authority activities (as outlined in Section 3) for S. Ona Way shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The portion of S. Ona Way subject to this Agreement is approximately 1,320 feet in length, as more particularly depicted on Exhibit "A" and more specifically described as follows:

All that portion of S. Ona Way, County Road No. 1303, as shown on Exhibit "A", attached hereto and by this reference a part hereof, said road lying south of and between the southerly right of way line of State Highway 211 (mile point 0.00) and the southerly right of way line of South Molalla Forest road (mile point 0.25), said road being approximately 1320' long and primarily 35' wide.

Containing 49,900 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 S. Ona Way, 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 S. Ona Way; and

F. All other responsibilities the County may have under ORS 368 with regards to S. Ona Way which may be assumed by the City under state law.

4. **Maintenance Standard.** Any maintenance on S. Ona Way 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. **Future Acceptance.** Provided the County completes the reconstruction and paving of the portion of S. Ona Way that is subject to this Agreement, which includes grinding the existing surface, treating with concrete and overlaying with four inches of high modulus asphalt concrete (HMAC), and provided the County initiates a transfer of S. Ona Way pursuant to the process set forth in ORS 373.270, the City shall not object to the transfer and shall take action on any transfer request within 60 days of receipt.

6. **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

7. **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.

## 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. **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 MOLAILLA**

  
\_\_\_\_\_  
City Manager

11-15-18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
City Recorder



HIGHWAY 211

# EXHIBIT "A"

BEGIN MILE POINT 0.00

S. MOLALLA FOREST RD.

(CO. RD. NO. 1303)

CITY OF MOLALLA

CITY OF MOLALLA

SOUTH ONA WAY

MOLALLA CITY LIMITS

S. LOWE ROAD

S. MOLALLA FOREST RD.



 TRANSFERRED ROAD

LOCATED IN THE S.W.  
1/4 OF SECTION 08,  
T.5S. R.2E. W.M.  
CLACKAMAS COUNTY,  
OREGON

END MILE POINT 0.25

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



BY: R. MAXWELL DATE: 1/05/2018  
JURISDICTIONAL TRANSFER OF A  
PORTION OF S. ONA WAY  
COUNTY ROAD NO. 1303

SHEET  
1 OF 1