

RESOLUTION NO. 1301

A RESOLUTION REQUESTING CLACKAMAS COUNTY TO SURRENDER JURISDICTION OF S. FIR STREET BETWEEN 13TH AVENUE (MILE POINT 0.00) AND THE CURRENT CANBY CITY LIMIT (MILE POINT 0.31), BEING A TOTAL OF APPROXIMATELY 1,609 LINEAR FEET.

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; and

WHEREAS, Clackamas County maintains jurisdictional control of S. Fir Street between 13th Avenue and the current Canby city limit; and

WHEREAS, the portion of S. Fir Street located entirely within the boundaries of the City is a County Road, as defined in ORS 368.001 ("Fir St."); and

WHEREAS, the City wishes to assume jurisdictional control of S. Fir Street between 13th Avenue (mile point 0.00) and the current Canby city limit (mile point 0.31), being a total of approximately 1,609 Linear feet; and

WHEREAS, Clackamas County shall provide to the City the sum of \$56,000, which is equivalent to the cost of a 2-inch asphalt overlay on the portions of S. Fir Street; and

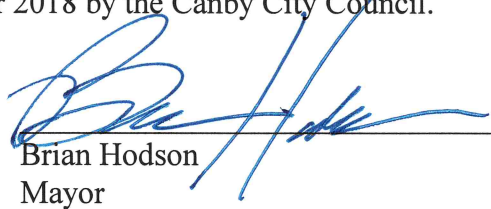
WHEREAS, pursuant to ORS 373.270, the City Council may accept and finalize the surrender of county jurisdiction of S. Fir Street to the City by passage of appropriate municipal legislation.

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

1. The City agrees to assume full and absolute jurisdiction over S. Fir Street and carry out those procedures set forth in ORS 373.270 for purposes of finalizing the transfer, 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 by approval of the INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO THE TRANSFER OF A PORTION OF S. FIR STREET, attached hereto as Exhibit "A".

This resolution will take effect on October 17, 2018.

ADOPTED this 17th day of October 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 THE TRANSFER OF A PORTION OF SOUTH
FIR STREET**

This agreement (the "Agreement") is made on the date all required signatures have been obtained, between the City of Canby ("CITY"), a municipal corporation 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;

WHEREAS, the portion of S. Fir St. located entirely within the boundaries of the City is a County Road, as defined in ORS 368.001 ("Fir St.");

WHEREAS, Fir St. is depicted in Exhibit "A" and more particularly described in Exhibit "B," all of which are attached hereto and incorporated herein;

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance and permitting of Fir St.;

WHEREAS, ORS 373.270 provides a procedure whereby a county may transfer jurisdiction over any county roads within a city to the City, and the Parties desire to pursue a transfer of jurisdiction of Fir St. pursuant to the terms of this Agreement; and

WHEREAS, the Parties agree that Fir St. should be improved, or the City should be compensated, consistent with the terms of this Agreement at, or 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 the City assumes jurisdiction of Fir St. pursuant to ORS 373.270, and the County has paid the amount of money set forth herein.
2. **County Responsibilities.**
 - A. 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 for the best interests of the County to surrender jurisdiction over Fir St.

B. In the event the governing body of the County determines that it is necessary, expedient or for the best interests of the County to surrender jurisdiction over Fir St., the County shall provide to the City the sum of \$56,000, which is equivalent to the cost of a 2-inch asphalt overlay on the portions of Fir St. identified in the exhibits attached to this Agreement, in addition to a portion of S. Fir St. approximately 13,200 square feet in area laying outside, but adjacent to the City's corporate limits. The sum of \$56,000 identified in this paragraph shall be payable to the City within 30 days of the date that full and absolute jurisdiction over Fir St. is surrendered by the County and accepted by the City as described below, but only after the City executes a separate intergovernmental agreement with the County accepting "Road Authority" obligations over adjacent portions of S. Fir St. that are situated outside of the boundaries of the City.

3. City Responsibilities.

- A. After the County has initiated the process to transfer jurisdiction of Fir St., the City shall carry out those procedures 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 Fir St., 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 County fails to find that it is necessary, expedient or for the best interests of the County to surrender jurisdiction over Fir St.
- B. The City agrees to assume full and absolute jurisdiction over Fir St. in the event the governing body of the City and the governing body of the County both determine that it is necessary, expedient or for the best interests of their respective jurisdictions to complete the transfers described herein.

4. 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.

5. **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.

6. **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.

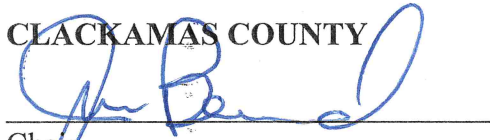
- E. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative 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

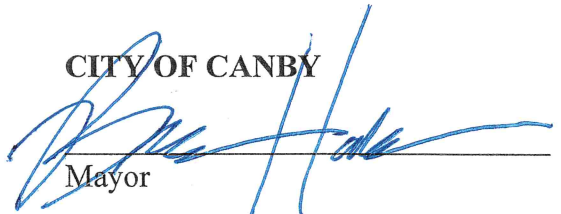


Chair

9-20-18
Date

Mary Raethke B. b.
Recording Secretary

CITY OF CANBY



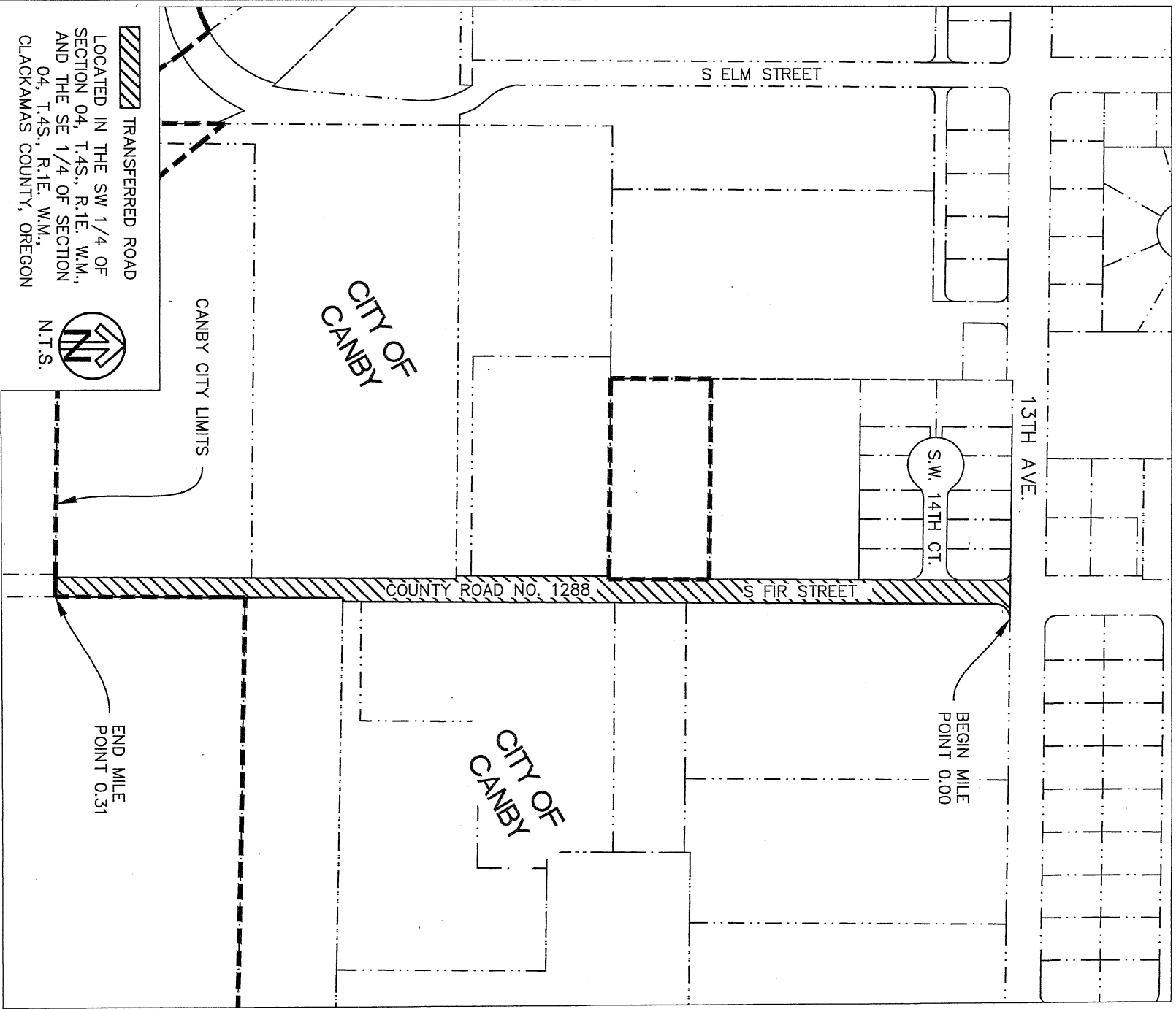
Mayor

10-17-18
Date

Kimberly Schaeffer
Recording Secretary
City Recorder

Exhibit A

EXHIBIT "A"



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



BY: R. MAXWELL
JURISDICTIONAL TRANSFER
S FIR STREET
COUNTY ROAD NO. 1288

DATE: 7/24/2018

SHEET
1 OF 1

Exhibit B
South Fir Street Description
Inside City Limits

All that portion of S Fir Street, County Road No. 1288, Department of Transportation and Development maintenance No. 41003; Situated in the southwest 1/4 of Section 04, T. 4S., R. 1E., W.M. and the southeast 1/4 of Section 04, T. 4S., R. 1E., W.M., as depicted on Exhibit A, attached hereto, lying south of and between 13th Avenue (mile point 0.00) and the current Canby city limit (mile point 0.31), being a total of approximately 1,609 feet long, varying in width.

Containing 62,630 square feet, more or less.