

**RESOLUTION NO. 1308**

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

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

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

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

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

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

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

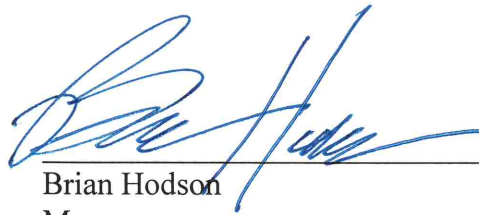
**WHEREAS**, the County desires to perform the work on behalf of the City.

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

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

This resolution will take effect on January 16, 2019.

ADOPTED this 16<sup>th</sup> day of January 2019 by the Canby City Council.



\_\_\_\_\_  
Brian Hodson  
Mayor

ATTEST:



\_\_\_\_\_  
Kimberly Scheafer, MMC  
City Recorder

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

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

**RECITALS**

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

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

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

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

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

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

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

**AGREEMENT**

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

1. **Term.** This Agreement shall be effective upon execution, and shall continue until final payment is made under this Agreement, or ten (10) calendar years following the date all required signatures are obtained on this Agreement, whichever is sooner.

2. **Rights and Obligations of the County.**

A. The County shall administer the Project on behalf of City and shall perform the work associated with the Ivy St. Improvements, all within the Project limits described in Exhibit "A." To complete the Project, the County agrees to the following:

1. The County will facilitate and coordinate design work, permitting and land use entitlements. Additionally, the County will develop and approve any design exceptions for the project including any ADA design exceptions.
2. The County will develop bid specifications and advertise the bid for construction.
3. The County will acquire the right of way necessary to complete the Project.
4. The County will enter into a contract for construction and the County will provide construction management services.

B. **Project Invoicing and Payment.**

1. The County shall submit invoices to ODOT for reimbursement of costs billed to the Project and paid by the County, including, but not limited to costs associated with design, right of way acquisition and construction. The County shall submit invoices to ODOT within six (6) months from the date that costs are incurred.

2. In the event, the total Project cost exceeds the estimated total, County has committed to donating staff time to the project for managing the design and right-of-way phases of the project and for the construction management and inspection phase of the project (up to \$250,000 in staff time). In the event the total cost exceeds the estimated total and County-donated staff time, the County shall provide up to \$156,918 in funding. In the event the Project cost exceeds the estimated total and exceeds the County's additional contribution of \$250,000 in staff time and \$156,918 in funding, the County shall submit invoices to the City for reimbursement of costs billed to the Project which are not reimbursed by ODOT, including, but not limited to costs associated with design, right of way acquisition and construction. The County shall submit invoices to the City within six (6) months from the date that costs are incurred.

3. Project overruns and non-participating costs shall be the responsibility of the City. "Project Overruns" means the final cost estimate at contract award exceeds the estimated total Project cost estimate in this Agreement in addition to the County's additional contribution of \$250,000 in staff time and \$156,918 in funding, or the final actual project costs exceed the final cost estimate at contract award in addition to the County's additional contribution of \$250,000 in staff time and \$156,918 in funding.

C. Upon substantial completion of the Project, the County will relinquish jurisdiction of S. Ivy St. within the entire City limits to the City.

D. Clackamas County is self-insured for workers' compensation, and general, auto and professional liability, in accordance with the provisions of ORS 30.272 (Tort Claims Act) and ORS 656.403 (Workers' Compensation). The County maintains an insurance fund from which to pay all costs and expenses relating to claims for which it is self-insured. The County's exposure for general, auto and professional liability is limited by ORS 30.272.

### 3. Rights and Obligations of the City.

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

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

#### B. Project Payment

1. CITY shall pay to COUNTY amounts invoiced to the City for reimbursement of costs billed to the Project which are not reimbursed by ODOT, including, but not limited to costs associated with design, right of way acquisition and construction. Payment shall be made to the COUNTY within forty-five (45) days of receipt of the invoice by the CITY.
3. The CITY guarantees the availability of CITY funding in an amount required to fully fund CITY's share of the Project.
4. CITY shall submit payment to the COUNTY at the following address:  
Clackamas County Engineering  
Attention: Joel Howie  
150 Beaver Creek Road  
Oregon City, OR 97045

#### C. Transfer and Maintenance

1. Upon substantial completion of the Project, the CITY shall participate in a jurisdictional transfer of S. Ivy St. from the COUNTY.
2. As a condition of jurisdiction transfer, the County agrees to pay to the City a sum of money equal to the cost of a two-inch asphaltic overlay from the start of SE 16<sup>th</sup> Avenue to the end of Tax Lot 41E04D02000, as shown in Exhibit B, over the width of the then-existing pavement; however, if the width of pavement is less than twenty feet, the sum shall be calculated for an overlay twenty feet wide. The cost of asphaltic concrete overlay to be used in the calculation shall be the average of the most current asphaltic concrete overlay projects performed by each of the City and County.
3. Upon transfer of jurisdiction of S. Ivy St. from the COUNTY, the City shall be responsible for ongoing maintenance and shall maintain S. Ivy St. in a manner that is similar to other CITY roads with similar features, function, and characteristics. The City shall, at its own expense, maintain, operate, and provide power as needed upon Project completion at a

minimum level that is consistent with normal depreciation and/or service demand and throughout the useful life of the Project. County and City agree that the useful life of this Project is defined as 20 years.

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

**4. Work Plan and Project Schedule.**

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

**5. Termination.**

- A. The County and the City, by mutual written agreement, may terminate this Agreement at any time.
- B. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the City shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.

E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination

**6. Indemnification.**

A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute and Article 11 Section 10 of the Oregon Constitution, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

B. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute and Article 11 Section 10 of the Oregon Constitution, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

**7. Party Contacts**

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

**Contact Information:**

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

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

**Contact Information:**

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

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

**8. General Provisions**

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

- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved
- E. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- F. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

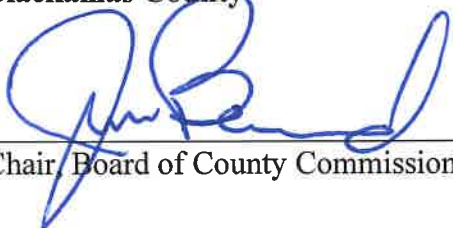


- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- K. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the City.
- L. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
- M. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- N. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

**[Signatures on Following Page]**

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

**Clackamas County**



Chair, Board of County Commissioners

1/24/19 B.S

Date

**City of Canby**



Richard Robinson  
City Administrator

1/16/2019

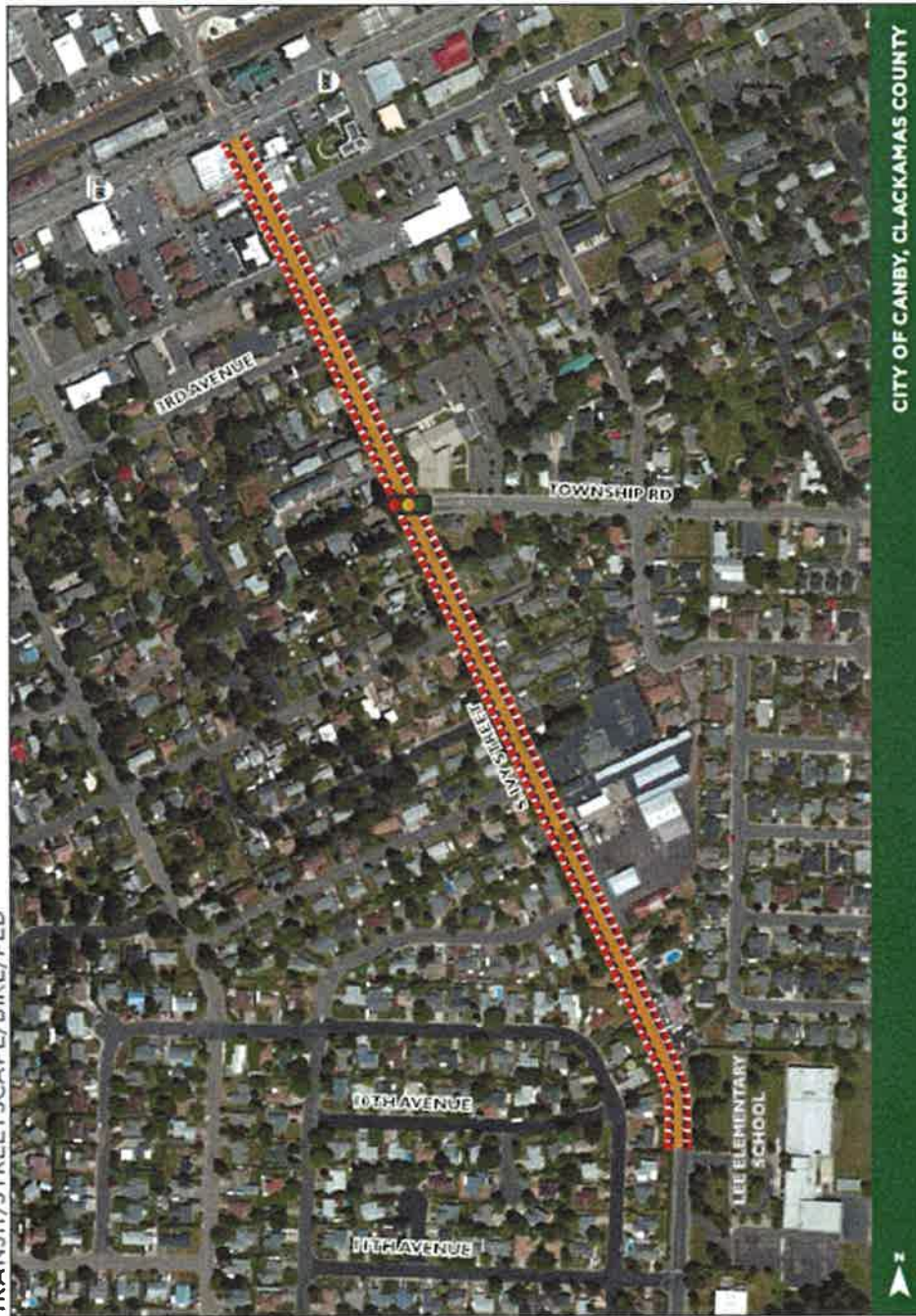
Date

Exhibit A – Project Location Map



2016-2018 STIP

**S. IVY STREET PEDESTRIAN & INTERSECTION IMPROVEMENTS**  
TRANSIT/STREETSCAPE/BIKE/PED



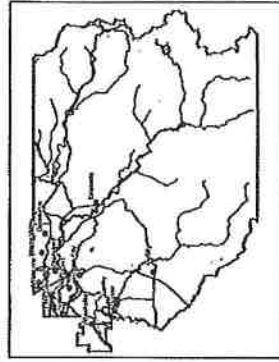
CITY OF CANBY, CLACKAMAS COUNTY



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

Consolidated Zones  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309

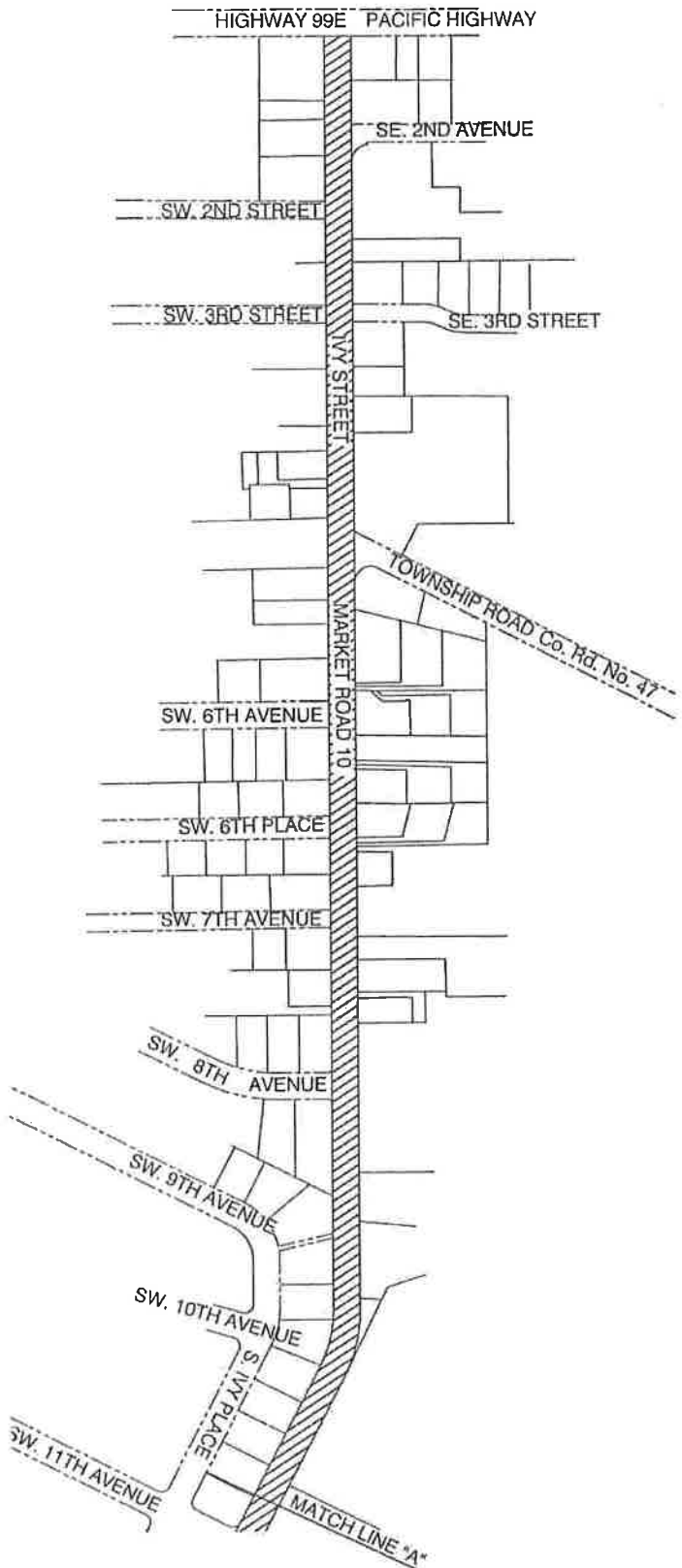
- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- Tin Code Lines
- Map Index
- Water Lines
- Land Use Zoning
- Plat
- Water
- Corner
- Section Corner
- 1/8th Line
- Grid Lot Line
- CLG Line
- Monitor Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY



# EXHIBIT "B"



**LEGEND**

TRANSFERRED STREET

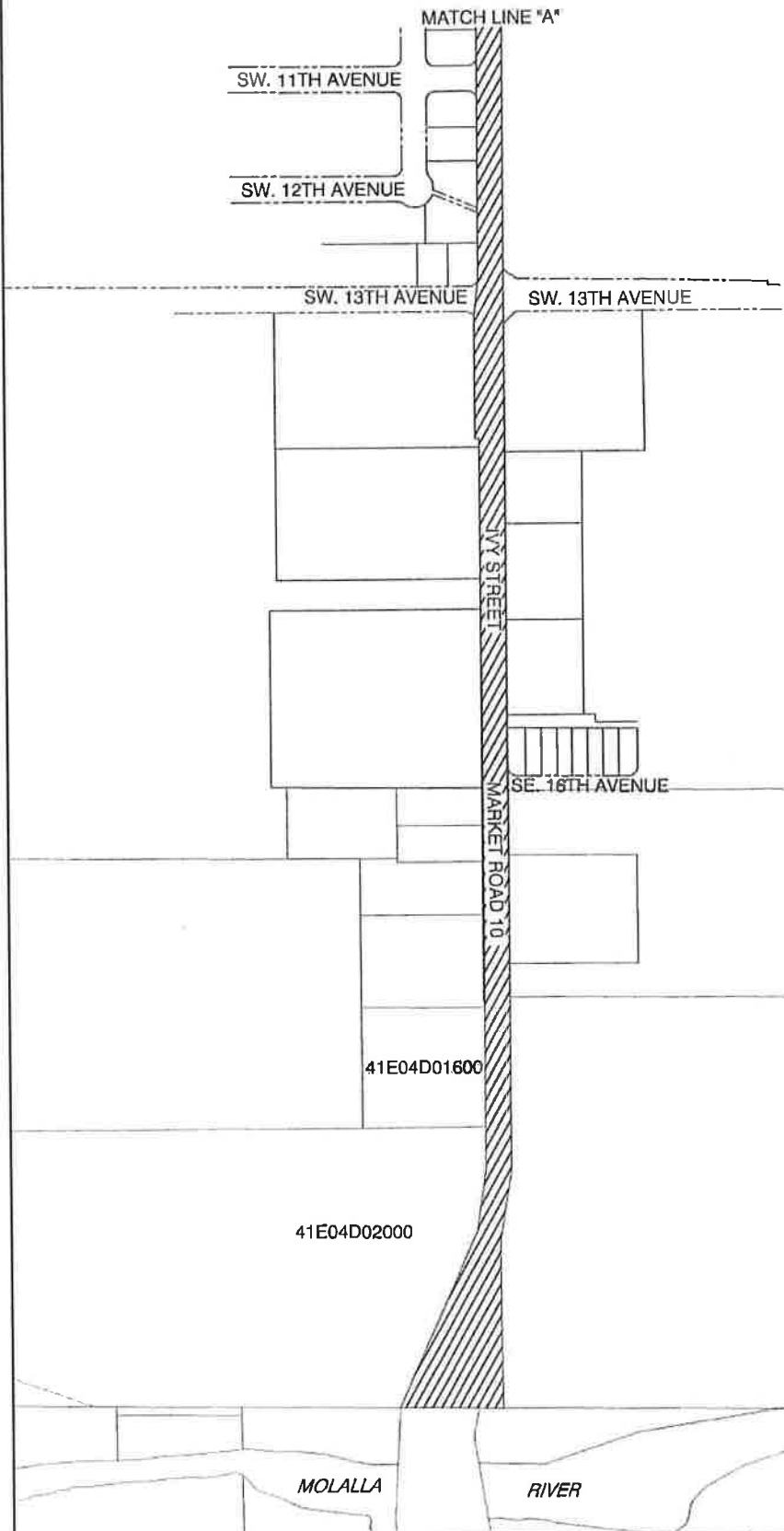
STREET R-O-W LINES

TAX LOT LINES




IVY STREET LENGTH 6,650'±

IVY STREET AREA 441,260 Sq. Ft.±

# EXHIBIT "B"



## LEGEND

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

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

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



CUTSHALL/BAYS

08/16/2018

JURISDICTIONAL TRANSFER OF  
 IVY STREET - MARKET ROAD 10

SHEET

2 OF 2