

RESOLUTION NO. 915

A RESOLUTION ADOPTING AN INTERGOVERNMENTAL AGREEMENT WITH CLACKAMAS COUNTY REGARDING THE SE 2nd AVENUE STREET IMPROVEMENT PROJECT.

WHEREAS, the City has applied for, and received, Community Development Block Grant funding for the realignment of SE 2nd Avenue at S. Ivy Street and road improvements on SE 2nd Avenue; and

WHEREAS, Clackamas County administers the Community Development Block Grant funds and the City of Canby will provide matching funds; and

WHEREAS, a cooperative working agreement is desired to establish roles and responsibilities for this project;

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

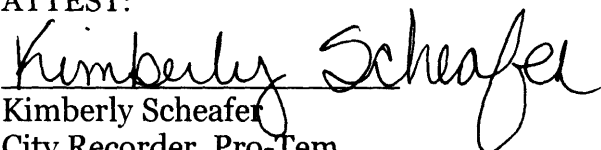
- (1) The City Administrator is authorized to sign an intergovernmental agreement between Clackamas County Department of Human Resources Community Development Division and the City of Canby, attached hereto as Exhibit "A."

This resolution will take effect on January 18, 2006.

ADOPTED this 18th day of January, 2006 by the Canby City Council.


Melody Thompson, Mayor

ATTEST:


Kimberly Scheafer
City Recorder, Pro-Tem

INTERGOVERNMENTAL AGREEMENT

BETWEEN

**CLACKAMAS COUNTY DEPARTMENT OF HUMAN RESOURCES
COMMUNITY DEVELOPMENT DIVISION**

AND

THE CITY OF CANBY

I. Purpose

- A. This Agreement is entered into between the Clackamas County Community Development Division (COUNTY) and the City of Canby (CITY) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship for the reconstruction of road surface on SE 2nd Avenue and construction of new curbs, ramps and sidewalks east of S. Juniper Street. The project will realign the intersection of 2nd Ave. and Ivy Street to enhance safety within the City of Canby, herein referred to as the PROJECT.

II. Scope of Cooperation

- A. Under this agreement the responsibilities of the CITY shall be as follows:
 - 1. The CITY shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
 - 2. The CITY shall obtain any easements or approvals necessary to allow access onto private property. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
 - 3. The CITY shall provide engineering services for the design and construction oversight of the PROJECT. Such services shall be provided at no cost to the COUNTY. The CITY shall assume responsibility for ensuring the following:
 - a. The CITY shall hire a registered professional engineer (herein after referred to as Engineer) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight.

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- b. The Engineer hired by the CITY must maintain comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to Engineer's or any of Engineer's subcontractor's performance of this Agreement.
- c. The Engineer hired by the CITY must maintain professional liability insurance in an amount of not less than \$500,000 per claim. Such insurance shall include limited contractual liability coverage and shall provide for thirty days prior written notice to the COUNTY in event of cancellation. The Engineer shall endeavor to use good faith in order to maintain in force such coverage for not less than three (3) years following completion of the PROJECT. The COUNTY, at its option, may require a complete copy of the above policy and evidence of required coverage.
- d. The insurance outlined in II.A.3 (b) shall include the County as an additional insured and refer to and support the Engineer's obligation to hold harmless the County, its officers, commissioners and employees. Such insurance shall provide 30 days' written notice to the COUNTY in the event of cancellation, nonrenewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the COUNTY within thirty (30) days after any reduction on the general annual aggregate limit.
- e. The CITY agrees to require the Engineer to furnish the COUNTY evidence of the insurance required in II.A.3 (b) and (c).
- f. Responsibilities of the Engineer shall include, but not be limited to, the following:
 - (i) During construction the Engineer shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
 - (ii) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The

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COUNTY agrees that no decisions affecting construction shall be made without CITY approval.

- (iii) In the event modifications to the construction contract, which result in an increase in the contract amount, are made without the prior approval of the COUNTY, CITY shall be solely responsible for these modifications.

- 4. The CITY shall operate and maintain the improvements for public purposes for their useful life subject to the limitations on the expenditure of funds by the CITY as provided by Oregon Statute.

B. Under this agreement the responsibilities of the COUNTY will be as follows:

- 1. The COUNTY will appropriately bid and contract for construction of the PROJECT and with the advice of the CITY, will approve changes, modifications, or amendments as necessary to serve the public interest.
- 2. In such contract the COUNTY will assume the rights and responsibilities of the owner of the project.
- 3. The COUNTY agrees to provide and administer available Community Development Block Grant (CDBG) funds granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
- 4. The COUNTY shall conduct necessary environmental reviews described in 570.604 of the CDBG regulations for compliance with requirements of the CDBG program.
- 5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.

C. The COUNTY and CITY agree to jointly review all design, material selection, and contract documents for the PROJECT.

III. Budget and Financial

- A. The COUNTY will apply CDBG funds in an amount not to exceed \$250,000 to the PROJECT. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.

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- B. The CITY agrees to contribute the greater of:
1. Twenty percent (20%) of the total cost of the PROJECT or;
 2. All costs for the PROJECT which exceed available CDBG funds budgeted for the PROJECT.
- C. In the event the PROJECT can not be completed with available funds the COUNTY and CITY will jointly determine the priorities of the improvements to be made within funding limits.
- D. The CITY agrees to provide funds for the PROJECT to the COUNTY in the following manner:
1. In the event a contractor is entitled to payments for work completed on the PROJECT after \$250,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the CITY for the amount necessary to make such payments. The CITY shall transfer funds which exceed available CDBG funds and are owed to a contractor to the COUNTY within thirty (30) consecutive calendar days of a written request.
 2. Upon receipt of written notification from the COUNTY the CITY shall provide payment within thirty (30) consecutive calendar days to the COUNTY the funds necessary to meet the matching contribution requirement in Part III. B.1. All checks shall be made payable to Clackamas County, include "Project No. 05520-52742", and be mailed to the following address:

Attn: Toni Hessevick
Clackamas County Finance Dept.
2051 Kaen Road
Oregon City, OR 97045
 3. In the event that unforeseeable conditions arise which necessitate the execution of a change in the amount of the construction contract, the CITY and the COUNTY will jointly evaluate the circumstances surrounding the conditions. Upon approval by the CITY and the COUNTY, the COUNTY shall instruct the Engineer to execute a change order.
 4. Funds for the change order shall be split evenly between the COUNTY and the CITY subject to the limitations described above.

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IV. Liaison Responsibility

John Williams will act as liaison from the CITY for the PROJECT.

Mark Sirois will act as liaison from the COUNTY.

V. Special Requirements

- A. Law and Regulations. COUNTY and CITY agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 are incorporated by this reference as though fully set forth.
- C. Relationship of Parties. Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. Indemnification. Subject to the limits of the Oregon Tort Claims Act, each of the parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees provided however, that once the CITY accepts the Project following the design and construction phases, it will assume all responsibility for claims made thereafter against the COUNTY or its officers, agents or employees pertaining to the design and construction of the Project, and will indemnify and defend them therefore.
- E. Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. 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 shall 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.
- G. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to

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the Agreement for the purpose of making audit, examination, excerpts, and transcripts.

- H. Debt Limitation. This Agreement is expressly subject to the debt limitation of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. Conflict of Interest. No officer, employee, or agent of the CITY or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. Insurance. CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. CITY will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, CITY shall be required to maintain flood insurance. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- K. Nondiscrimination. CITY and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed, color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.
- L. Handicapped Accessibility. CITY agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and

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the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.

- M. Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by the CITY to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. Evaluation. CITY agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. Audits and Inspections. CITY will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- P. Acquisition. If completion of the project requires acquisition of any real property the parties agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- Q. Change of Use. CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment A).
- R. Reversion of Assets. Upon expiration or termination of this Agreement, CITY shall transfer to County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under CITY'S control that was acquired or improved in whole or in part with CDBG funds(including CDBG funds provided to CITY in the form of a loan) in excess of \$25,000 shall ensure said real property is either:
 - 1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or
 - 2. Not used to meet on the National Objectives for the term of this Agreement, in which event CITY shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

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VI. Amendment

This Agreement may be amended at any time with the concurrence of both Parties. Amendments become a part of this Agreement only after the written amendment has been signed by both Parties.

VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by both Parties.
- B. The term of this Agreement is a period beginning when it becomes effective and ending five (5) years after close-out of the COUNTY's participation in the entitlement CDBG program.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 - 1. Written notice provided to the COUNTY from the CITY before any materials or services for improvements are procured, or;
 - 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as Attachment A, resulting from material failure by the CITY to comply with any term of this Agreement, or;
 - 3. Mutual agreement by the COUNTY and CITY in accordance with 24 CFR 85.44.
- D. Upon completion of improvements or upon termination of this Agreement, any unexpended balances of CDBG funds shall remain with the COUNTY.

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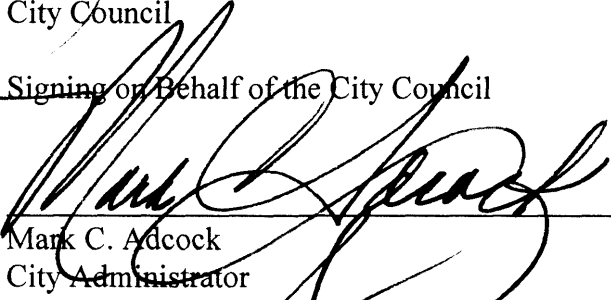
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CITY OF CANBY

Mayor Melody Thompson
Council President Teresa Blackwell
City Council

Signing on Behalf of the City Council

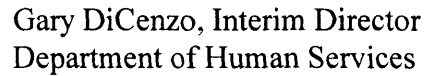

Mark C. Adcock
City Administrator

Date

CLACKAMAS COUNTY

Chair: Martha Schrader
Vice Chair: Bill Kennemer
Commissioner: Larry Sowa

Signing on Behalf of the Board


Gary DiCenzo, Interim Director
Department of Human Services

Date

ATTACHMENT A

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after

termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.