RESOLUTION NO. 1302

A RESOLUTION REQUESTING CLACKAMAS COUNTY SURRENDER JURISDICTION OF S. FIR STREET BETWEEN THE CURRENT CANBY CITY LIMIT (MILE POINT 0.31) AND END OF S. FIR STREET (MILE POINT 0.37), BEING A TOTAL OF APPROXIMATELY 330 LINEAR FEET, 40 FEET IN WIDTH.

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, Clackamas County maintains jurisdictional control of S. Fir Street between current Canby city limit and end of S. Fir Street, approximately 330 linear feet; and

WHEREAS, portion of S. Fir Street is a County Road, as defined in ORS 368.001, lying outside, but adjacent to the boundaries of the City; and

WHEREAS, the City wishes to assume primary responsibility for maintenance and permitting of a stretch of S. Fir Street, approximately 13,200 square feet in area; and

WHEREAS, the City wishes to accept exclusive jurisdiction over the remaining portion of S. Fir Street lying within the corporate boundary of the City, the terms of which are addressed in a separate intergovernmental agreement between the Parties; and

WHEREAS, the City acknowledges that jurisdiction of S. Fir Street. should transfer to the City once annexed into the City's boundary, and that this Agreement will no longer be necessary once S. Fir Street is annexed into the City and jurisdiction over S. Fir Street has been transferred; and

WHEREAS, Clackamas County intent is to transfer as much of its responsibility under ORS 368 with regards to S. Fir Street as may be allowed under state law in order to grant the City control of S. Fir Street prior to the annexation and jurisdictional transfer of S. Fir Street.

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

1. The City agrees to assume full and absolute jurisdiction over Fir Street. between current Canby city limit and end of S. Fir Street, approximately 330 linear feet, or any portion thereof, and

2. The City acknowledges that jurisdiction of S. Fir Street should transfer to the City once annexed into the City's boundary, by approval of the INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND CLACKAMAS COUNTY RELATED TO ROAD MAINTENANCE AND PERMITTING AUTHORITY ON A PORTION OF S. FIR STREET, attached hereto as Exhibit "A".

This resolution shall 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 ROAD MAINTENANCE AND PERMITTING AUTHORITY ON 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 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, a portion of South Fir Street 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 a stretch of South Fir Street, approximately 13,200 square feet in area, as more particularly depicted on Exhibit "A" which is attached hereto and incorporated herein ("Fir St.").

WHEREAS, the City has agreed to accept exclusive jurisdiction over the remaining portion of South Fir Street lying within the corporate boundary of the City, the terms of which are addressed in a separate intergovernmental agreement between the Parties.

WHEREAS, transfer of responsibility with regards to Fir St. 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 Fir St., which primarily serves the residents of the City;

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

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

2. **Transfer of Authority.**

   A. Responsibility for Road Authority activities (as outlined in Section 3) for Fir St. shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The portion of Fir St. subject to this Agreement is approximately 13,200 square feet in area, as more particularly depicted on Exhibit "A" and more specifically described as follows:

      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 the current Canby city limit (mile point 0.31) and end of S Fir Street (mile point 0.37), being a total of approximately 330 feet long, 40 feet in width.

      Containing 13,200 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 Fir St., 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 Fir St.; and

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

4. **Maintenance Standard.** Any maintenance on Fir St. 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. **Fir St. Transfer**. After such time that Fir St., or any portion thereof, has been annexed into the corporate boundary of the City, the County may elect to initiate the following procedures:

   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., or any portion thereof.

   B. After the County has initiated the process to transfer jurisdiction of Fir St., or any portion thereof, 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 proposed transfer of Fir St., or any portion thereof, 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., or any portion thereof.

   C. The City agrees to assume full and absolute jurisdiction over Fir St., or any portion thereof, 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.

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

9-20-18 B.5.

Date

Mary Raethke

Recording Secretary

CITY OF CANBY

Mayor

10-17-18

Date

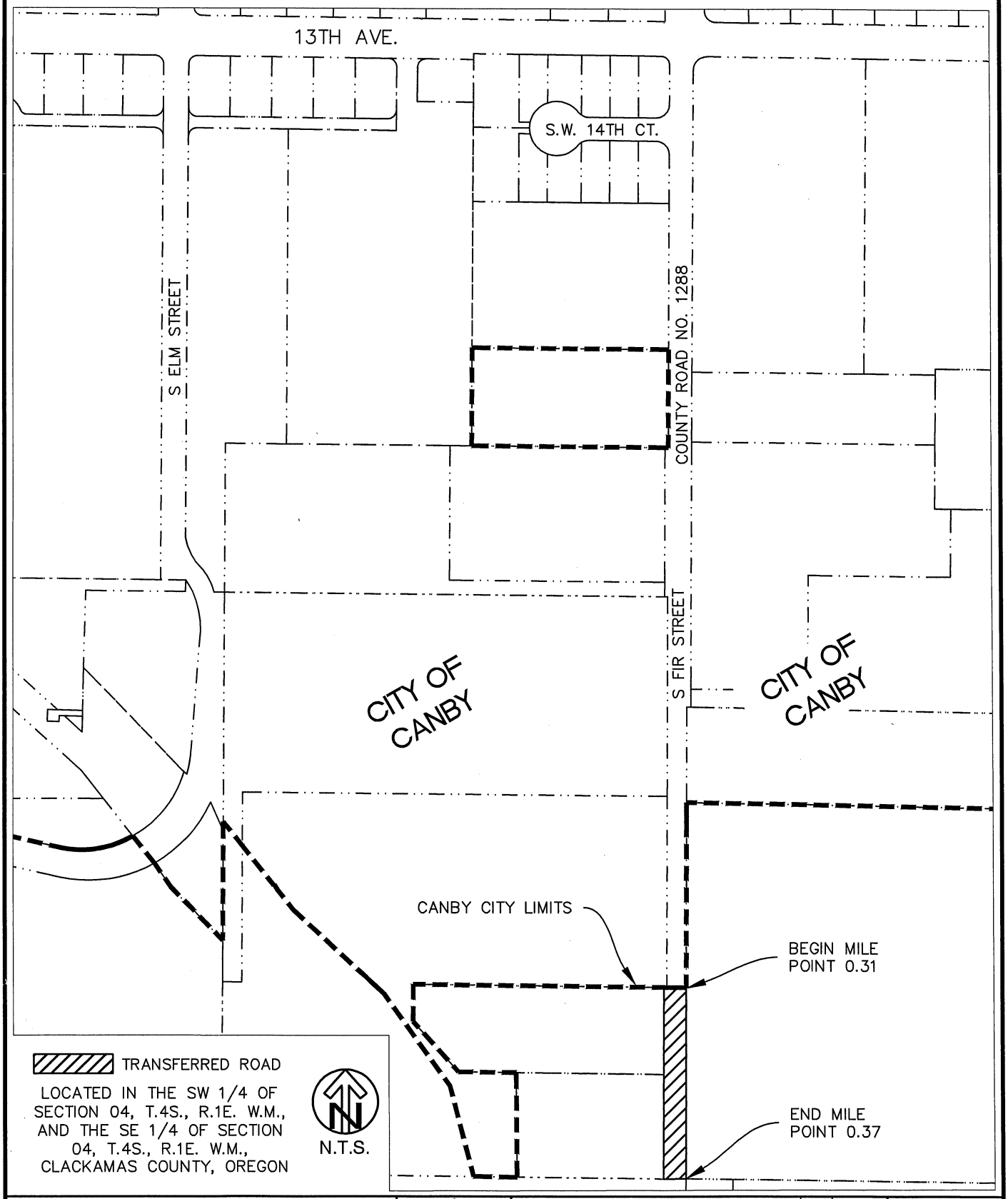
Kimberly Scheafer

~~Recording Secretary~~

City Recorder

Exhibit A

EXHIBIT "A"



DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT 150 BEAVERCREEK ROAD OREGON CITY, OR 97045	CLACKAMAS COUNTY	BY: R. MAXWELL DATE: 7/24/2018 TRANSFER OF ROAD AUTHRORITY S FIR STREET COUNTY ROAD NO. 1288	SHEET 1 OF 1