

February 11, 2016

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the City of Canby and the Housing and Community Development Division for the North Cedar Street Improvements Project

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| <b>Purpose/ Outcome</b>                | The Agreement will allow for the Housing and Community Development Division to work with the City of Canby and their hired engineer to construct an estimated 700 lineal feet of sidewalk along N. Cedar Street as well as curb as needed, new solar powered signal crossings will be provided at the intersection of N.W. 5 <sup>th</sup> Avenue. |
| <b>Dollar Amount and Fiscal Impact</b> | Community Development Block Grant Funds in the amount of \$185,000. The City of Canby will provide an estimated \$37,000 dollars for the project. No County General Funds will be used for this project.   |
| <b>Funding Source</b>                  | U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds.   |
| <b>Duration</b>                        | February to July 2016  |
| <b>Previous Board Action/ Review</b>   | CDBG Action Plan approved April 30, 2015   |
| <b>Strategic Plan Alignment</b>        | Provide sustainable and affordable housing.<br>Ensure safe, healthy and sure communities.  |
| <b>Contact Person</b>                  | Steve Kelly – Housing and Community Development: 503-650-5665  |
| <b>Contract No.</b>                    | H3S 7559   |

**BACKGROUND:** The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of this Intergovernmental Agreement with the City of Canby for the N. Cedar Street Improvements Project. The Agreement determines the roles of Canby and the County regarding contract administration, project management as well as the duties of the hired engineer during project construction. The Agreement was reviewed and approved by County Counsel on January 20, 2016.

**RECOMMENDATION:** We recommend the approval of this Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

# **INTERGOVERNMENTAL AGREEMENT**

**BETWEEN**

**CLACKAMAS COUNTY DEPARTMENT OF  
HEALTH, HOUSING AND HUMAN RESOURCES,  
HOUSING AND COMMUNITY DEVELOPMENT DIVISION**

**AND**

**THE CITY OF CANBY**

## **I. Purpose**

- A. This Intergovernmental Agreement (this “Agreement”) is entered into between Clackamas County, acting by and through its Housing and 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 for the construction of an estimated 700 lineal feet of new pedestrian sidewalk along North Cedar Street and curb as needed, new solar powered signal crossings will be provided at the intersection of NW 5<sup>th</sup> Avenue and North Cedar Street in both directions and a curb bump-out as these improvements will raise awareness of pedestrians. This Agreement further provides for a minimal amount of demolition of existing materials currently in place. The project is located in the City of Canby. These improvements are herein referred to as the “PROJECT.”
- C. The COUNTY has determined that the PROJECT is made up of two components. First component being new concrete sidewalks across the street on the west side of Eccles Elementary School. Second component being new solar powered signal crossings for pedestrians to get to the school safely. The COUNTY reviewed the Census Tract and Block Group for the PROJECT. The entire area around Eccles Elementary School is within a 58.9% Low-Mod Income Area, based on the 2010 Census Data. This area has 1,699 residents that will benefit from the improvements along North Cedar Street. Therefore, the COUNTY qualifies this PROJECT eligible for Community Development Block Grant (“CDBG”) funds as a Low-Mod Area Benefit Activity, because the targeted PROJECT areas for the City of Canby are within the 43.44% Low-Mod Income Level required by HUD. The COUNTY will review the City’s most current Census Tract and Block Group information, as attached as ATTACHMENT A (1) and ATTACHMENT A (2) and incorporated by reference for the PROJECT Area Maps, provided by the CITY.

## **II. Scope of Responsibilities**

- 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 through the course of the PROJECT. 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”). If assistance is needed for URA guidance, the COUNTY has a Right-Of-Way Acquisition Specialist.
3. The CITY shall provide Engineering services internally or externally 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 including staking and surveying of the PROJECT. The Engineer firm may donate staff time as well as donate materials for the PROJECT.
  - b. The CITY shall require the Engineer to maintain comprehensive general (including contractual liability) and automobile liability insurance 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 under the following provisions listed in the matrix below.

Minimum Insurance Requirements for Contracts with Government, Architect or Engineer:

| Reason for Contract:                 | Commercial General Liability: | Automobile Liability Commercial: | Professional Liability:     |
|--------------------------------------|-------------------------------|----------------------------------|-----------------------------|
| Consulting Services/<br>Professional | \$1,000,000/<br>\$2,000,000   | \$1,000,000                      | \$1,000,000/<br>\$2,000,000 |
| Design Services                      | \$1,000,000/<br>\$2,000,000   | \$1,000,000                      | \$1,000,000/<br>\$2,000,000 |
| Engineers                            | \$1,000,000/<br>\$2,000,000   | \$1,000,000                      | \$1,000,000/<br>\$2,000,000 |
| Professional Services                | \$1,000,000/<br>\$2,000,000   | \$1,000,000                      | \$1,000,000/<br>\$2,000,000 |

- c. 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 CITY shall require the Engineer to 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, non-renewal, 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.
- d. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the Engineer's insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the contract.
- e. The CITY shall require the Engineer to furnish the COUNTY evidence of professional liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence / \$2,000,000 general annual aggregate for malpractice or errors and omissions coverage 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, and damages

because of negligent acts, errors and omissions in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

- f. The insurance, other than the professional liability insurance, shall include the COUNTY as an expressly scheduled additional insured. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation 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. This policy(s) shall be primary insurance with respect to the COUNTY. Any insurance or self-insurance maintained by the COUNTY shall be excess and shall not contribute to it.
- g. The CITY shall ensure that the Responsibilities of the Engineer 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 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.
  - (iv) Notify the County Surveyor of the PROJECT and provide CITY, design Engineer, surveyor and contractor contacts.
  - (v) File a "Pre-Construction Record of Survey" with the County Surveyor prior to the PROJECT final award of the construction contract in order to identify and preserve the locations of survey monuments that may be disturbed or removed during the construction as described in ORS 209.150.
  - (vi) File a "Post-Construction Record of Survey" with the County Surveyor after the construction PROJECT is completed. The Engineer is responsible to replace any property corner monuments that were disturbed or removed during construction as described in ORS 209.150.

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.
5. The CITY shall complete and submit a Performance Measures Report following completion of the PROJECT, attached as ATTACHMENT A and incorporated by reference.
6. The CITY shall complete and submit a Matching Funds Report following completion of the PROJECT, attached as ATTACHMENT B and incorporated by reference.
7. Upon completion of the PROJECT, the CITY:
  - a. Agrees to accept the improvements and take ownership, including responsibility for any claims against the PROJECT from that point forward; and
  - b. Agrees to become the successor of the PROJECT construction contract and assume all of the corresponding rights and responsibilities.
8. The CITY agrees to maintain ownership of the property for the life of the PROJECT.

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 contracts, the COUNTY will assume the rights and responsibilities of the owner of the PROJECT. Moreover, the COUNTY will assign a Project Coordinator to perform the following duties:
  - a. Provide PROJECT Manual Documents and Bid the PROJECT;
  - b. Award the PROJECT;
  - c. Hire the lowest responsive/ responsible General Contractor;
  - d. Issue the Notice to Proceed to General Contractor;
  - e. Process Pay Request using CDBG funds and CITY funds;
  - f. Conduct on-site interviews of workers for Federal Prevailing Wage Rates for Davis-Bacon as well as review submitted Payroll Forms for the Project;
  - g. Collect all HUD required PROJECT Close-Out Documents;
  - h. Release Retainage to Contractor will occur only after hired Engineer and the CITY approve and sign-off on PROJECT after the scope of work has been completed; and
  - i. Relinquish ownership of PROJECT to the CITY upon completion.

3. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (“CDBG”) funds (CFDA 14.218) 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 prior to the start of construction.
  5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT.
- C. The COUNTY and CITY agree to jointly review and approve all design, material selection, and contract documents for the PROJECT.
  - D. The COUNTY and CITY agree in order for this PROJECT to occur, HUD has to release CDBG funds to bid and construct the PROJECT as stated in Section I (B), Purpose.
  - E. The COUNTY and CITY agree to work together to schedule the PROJECT start and completion between March 2016 and November 2016.

### **III. Budget & Financial**

- A. The COUNTY will apply CDBG funds received in the amount not to exceed **\$185,000** 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.
- B. The CITY agrees to contribute the greater of:
  1. Twenty percent (20%) of the total design and construction cost of the PROJECT, or
  2. All costs for design and construction which exceed available CDBG funds budgeted (\$185,000) for the PROJECT.
  3. Match credit(s) for this PROJECT must be approved by the COUNTY, and will not be a reimbursable expense. If match credit(s) items are approved by the COUNTY, the COUNTY will not reimburse the CITY in the form of a check (\$).
- C. The CITY may be credited towards the matching requirements stated in Part III. B. an amount equal to 15% of the final construction cost for Engineering services as detailed in Part II. A. 3. a.
- D. 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.

- E. 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 above and beyond the amount of CDBG funds received from HUD for the PROJECT, 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. All checks shall be made payable to Clackamas County, include a Project Number and be mailed to the following address:

Attn: Toni Hessevick  
Clackamas County - Finance Office  
Public Services Building  
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(s) shall be funded primarily by the CITY. The COUNTY will provide CDBG funds for change order(s) if there are still those funds available to use as outlined in Section III, A.

#### **IV. Liaison Responsibility**

Matilda Deas, will act as liaison from the CITY for the PROJECT. Steve Kelly will act as liaison from the COUNTY.

#### **V. Special Requirements**

- A. Law and Regulations. The 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 limitations of the Oregon Tort Claims Act and the Oregon Constitution, the CITY agrees to indemnify, defend and hold harmless the COUNTY, its officers, commissioners, agents and employees from and against all liability, loss and costs arising from actions, suits, claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CITY or its employees or agents, in performance of this Agreement.

Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, the COUNTY agrees to indemnify, defend and hold harmless the CITY, its officers, commissioners, agents and employees from and against all liability, loss costs arising from actions, suits, claims and actions, and all expenses incidental to the investigation and defense thereof (including attorney's fees), arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the COUNTY or its employees or agents, in performance of this Agreement.

- E. Notice. 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 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 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. 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. The CITY will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected CITY property. The 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, the 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 30.272.
  
- K. Nondiscrimination. The 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. The 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 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. The 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. The 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. The CITY agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to Attachment C).
- 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 or less based on the CDBG amount 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, the 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.

## **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 fifteen (15) years after completion of the PROJECT.
- 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 D, 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.

### **VIII. Integration**

This Agreement contains the entire agreement between the CITY and the COUNTY and supersedes all prior written or oral discussions.

### **IX. 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.

### **X. 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 laws provisions thereof.

### **XI. Waiver**

The CITY and COUNTY 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 be of the same nature as that waived.

### **XII. Third Party Beneficiary.**

Each Party intends that this Agreement does not benefit, or create any right or cause of action in or on behalf of, any person or entity other than CITY or COUNTY.

*[Signature Page Follows]*

**CITY OF CANBY**

Address  
PO Box 930  
Canby, Oregon 97013

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XXXX, Mayor

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Date

**CLACKAMAS COUNTY**

Chair John Ludlow  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith

Signing on Behalf of the Board.

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Richard Swift, Director  
Health, Housing & Human Services  
Department

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Date