



DAN JOHNSON
DIRECTOR

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

September 4, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

**Approval of an Intergovernmental Agreement with the City of Canby to transfer storm drainage maintenance on portions of SE 1st Avenue, SE 13th Avenue and Mulino Road.
No fiscal impact. No County General Funds are involved.**

Previous Board Action/Review	NA		
Performance Clackamas	1. Build trust with good government		
Counsel Review	Yes	Procurement Review	No
Contact Person	Rick Maxwell	Contact Phone	503-742-4671

EXECUTIVE SUMMARY: There are certain County roads within Canby city limits that had recent development projects built to City standards. These developments each have previous informal agreements between the City and the County that include the City maintaining these new storm drainage systems. The intent of this IGA is to formalize and consolidate all of those previous agreements made over the past several years. The proposed IGA sets forth the process for the City to assume exclusive jurisdiction, maintenance and repair of those systems.

County staff have been negotiating with the City of Canby and they have reached this agreement for the transfer for an approximately 900 foot long section of storm drainage on SE 1st Avenue, an approximately 2,715 foot long section of storm drainage on SE 13th Avenue and an approximately 7,128 foot long section of storm drainage on Mulino Road.

There is no transfer of funds involved with this IGA.

RECOMMENDATION: Staff respectfully request that the Board approve the attached IGA between Clackamas County and the City of Canby related to the transfer of storm drainage maintenance on portions of SE 1st Avenue, SE 13th Avenue and Mulino Road.

Respectfully submitted,

Dan Johnson

Dan Johnson- Director of
Transportation & Development

For Filing Use Only

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CANBY AND
CLACKAMAS COUNTY RELATED TO STORM DRAINAGE MAINTENANCE ON
PORTIONS OF SE 1st AVE., SE 13th AVE., AND MULINO RD.**

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 "PARTIES" 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, SE 1st Ave., SE 13th Ave., and Mulino Rd. are all "county road," as defined in ORS 368.001, lying inside of the boundaries of the City;

WHEREAS, the City has approved development on portions of the above-referenced county roads, generally described in the attached Exhibits A-1, A-2, and A-3, that are attached hereto and incorporated herein (collectively, the "Subject County Roads");

WHEREAS, a condition of development approval requires property owners adjacent to the Subject County Roads to construct storm drainage systems to City standards that include the following improvements: sediment basins, dry wells, conveyance pipes, dispersion trenches, and catch basins (the "Storm Drainage Systems");

WHEREAS, the Parties acknowledge that the Storm Drainage Systems are a critical component of the safe and functional operation of the Subject County Roads;

WHEREAS, the Parties agree that the City is best suited to assume primary responsibility for maintenance of the Storm Drainage Systems, the location of which is more particularly depicted on Exhibits B-1, B-2, and B-3 that are attached hereto and incorporated herein, while County retains jurisdiction over the Subject County Roads;

WHEREAS, the Parties acknowledge that this Agreement becomes unnecessary when jurisdiction over the Subject County Roads is transferred from the County to the City; and

WHEREAS, it is the intent of the Parties that the County transfer any and all of its responsibility and potential liability with regards to the Storm Drainage Systems to the City such

that the City has exclusive control and responsibility of the Storm Drainage Systems, consistent with the provisions set forth herein.

AGREEMENT

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

1. **Term.** This Agreement shall be effective upon execution, and shall expire automatically at the time the City assumes jurisdiction of the County Roads pursuant to ORS 368 or ORS 373.
2. **Transfer of Authority.**
 - A. Responsibility for maintenance of the Storm Drainage Systems (as outlined in Section 3) associated with the County Roads shall be surrendered to the City pursuant to the terms and conditions of this Agreement. The location of the Storm Drainage System subject to this Agreement is more particularly described in Exhibit "A" and more specifically depicted in Exhibit "B".
 - B. To facilitate the performance of responsibilities under this Agreement, the City hereby accepts responsibility for the Storm Drainage Systems (as outlined in Section 3) on the County Roads.
 - C. The City shall be solely responsible for all costs associated with the Storm Drainage Systems assumed by the City through this Agreement.
3. **Storm Drainage System Maintenance Obligations.** For purposes of this Agreement, the City's obligations related to maintenance of the Storm Drainage Systems include, but are not necessarily limited to, the following:
 - A. Construction and reconstruction. The City shall notify Clackamas County's Transportation Maintenance Division in writing in advance whenever construction or reconstruction of the Storm Drainage Systems are required;
 - B. Improvement or repair, and maintenance. The Storm Drainage Systems shall be maintained in good working order, clear of all debris, in a manner that safely and effectively conveys and treats storm water from the associated right of way in compliance with all applicable federal, state, and local rules, regulations, and guidelines;
 - C. Timely elimination or mitigation of known hazards to road users caused by issues related to the Storm Drainage Systems; and
 - D. Issuance of permits for work for modifications to the Storm Drainage Systems. The County shall retain responsibility for issuing permits for other work affecting the County Roads.
4. **Maintenance Standard.** Subject to the specific requirements in Section 3, any maintenance on the Storm Drainage Systems required by this Agreement shall be carried out in a manner

that is similar to other systems with similar features, function, and characteristics under the City's jurisdiction.

5. **Failure to Perform.** If the County, in its sole but reasonable discretion, determines that the City is not in compliance with its obligations described in Sections 3 and 4 in a manner that creates a risk to the travelling public using the associated right of way, or that violates any applicable federal, state, or local rule, regulation, or guideline, except in the case of an emergency, the County or its designee shall give the City written notice to perform the maintenance and/or repair work specified in the notice. If such work is not performed to the County's reasonable satisfaction within seven (7) days after the date of such notice, or such other time as the County may, in its sole discretion, determine, the County, its employees, independent contractors and designees may access the Storm Drainage Systems to perform any and all work required to bring the Storm Drainage Systems into compliance with this Agreement; provided, however, that if such work is not capable of reasonably being performed within such seven (7) day period, the County shall not perform any such work so long as the City promptly commences such work within such seven (7) day period following written notice from the County and is using commercially reasonable efforts to diligently prosecute such work to completion
6. **Emergency.** If the County, in its sole but reasonable discretion, determines that there exists or will likely exist an emergency with respect to the Storm Drainage System that creates an immediate risk to the travelling public using the associated right of way, the County, its employees, independent contractors and designees may immediately exercise their rights described in Section 5 of this Agreement to immediately access the Storm Drainage System to perform any and all work required to bring the Storm Drainage System into compliance with this Agreement, and in such case the County shall use reasonable efforts to notify the City prior to exercising its rights under this section. Notwithstanding the above, the work performed may consist only of avoiding or mitigating the emergency and/or cleaning and repairing the Storm Drainage System to its original condition and standard.
7. **County Under No Obligation.** The City agrees that the County, as well as its departments, elected officials, employees, independent contractors and/or designees shall have no obligation to exercise its rights under this Agreement, including the right under Sections 5 and 6 of this Agreement, to perform the work required of the City, or to perform any other maintenance or repair of the Storm Drainage Systems. Notwithstanding the terms and provisions of Section 10 of this Agreement, the City also agrees that the County, as well as its departments, elected officials, employees, independent contractors and/or designees shall have no liability to the City or third-parties for non-exercise of such rights, including any failure to maintain or repair of the Storm Drainage Systems.
8. **Reimbursement.** If City fails to perform the maintenance as described in Sections 3 and 4 above, the City shall reimburse the County for all of its reasonable and documented out-of-pocket costs and expenses incurred in exercising its right under Sections 5 and 6 within thirty (30) days after receipt of an invoice detailing such costs and expenses.
9. **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 seven (7) 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 seven (7) day period, this provision shall be complied with if the breaching Party begins correction of the default within the seven (7) 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.

10. 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.

11. General Provisions

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the

State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The Parties, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- 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 six 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 limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws 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 this Agreement. 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.** City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 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. **Force Majeure.** Neither City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. Each Party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

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.

CLACKAMAS COUNTY

Chair

Date

Recording Secretary

CITY OF CANBY

Kelvin Stein

Mayor

City Administrator

6-5-25

Date

Recording Secretary

Exhibit "A-1"

S.E. 1st Avenue Transfer of Jurisdiction

Clackamas County to City of Canby

Description

All that portion of S.E. 1st Avenue, County Road No. 687, Department of Transportation and Development maintenance No. 31079; Situated in the NE 1/4 of Section 34, T. 3 S., R. 1 E., W.M. as shown in Exhibit "B-1", attached hereto, lying west of the Southwestly Right-of-Way of S. Mulino Road (Mkt Rd. #25), County Road No. 1151, (mile point 0.00) and lying East of the Westerly Right-of-Way of S. Walnut Street (mile point 0.17), being approximately 900 feet long.

Contain 59,367 square feet, more or less.

Exhibit "A-2"

S.E. 13th Avenue Transfer of Jurisdiction

Clackamas County to City of Canby

Description

All that portion of S.E. 13th Avenue, County Road No. 562, Department of Transportation and Development maintenance No. 41002; Situated in the NW 1/4, NE 1/4 and the SE 1/4 of Section 03, T. 4 S., R. 1 E., W.M. as shown in Exhibit "B-2", attached hereto, lying west of the Westerly Right-of-Way of S. Mulino Road (Mkt Rd. #25), County Road No. 1151, (mile point 0.00) and lying East of the Westerly boundary line of Tax Lot 41E03 02600, as described in Document No. 2015-025122, Clackamas County deed records (mile point 0.52), being approximately 2,715 feet long.

Contain 131,565 square feet, more or less.

Exhibit "A-3"

S. Mulino Road Transfer of Jurisdiction

Clackamas County to City of Canby

Description

All that portion of S. Mulino Road , County Road No. 1151, also being Market Road 25, Department of Transportation and Development maintenance No. 31007; Situated between Sections 34 and 35, T. 3 S., R. 1 E., W.M. and Sections 2 and 3, T. 4 S., R. 1 E., W.M. as shown in Exhibit "B-3", attached hereto, lying south of the Southerly Right-of-Way of S.E. 1st Avenue, County Road No. 687, (mile point 0.00) and lying North of the Northerly Right-of-Way of S.E. 13th Avenue, County Road No. 562 (mile point 1.35), being approximately 7,128 feet long.

Contain 436,387 square feet, more or less.

EXHIBIT "B-1"



1"=200'

BEGIN MILE POINT 0.00
THE SOUTH RIGHT-OF-WAY
OF S. MULINO ROAD

S HAINES RD

S BREMER RD

CLACKAMAS
COUNTY

S.E. 1ST AVENUE

CR No. 687

CITY LIMITS

END MILE POINT 0.17
THE WEST RIGHT-OF-WAY
OF S. WALNUT ST.

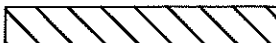
CITY OF
CANBY

31E34 00100
DOC. NO. 2019-017779
CANBY EAST ASSOCIATES, LLC.

S. WALNUT ST.

S. MULINO ROAD (MKT RD. No. 25)

CR No. 1151



59,367± SF

TRANSFERED ROAD

LOCATED IN THE NE 1/4 OF SECTION 34,
T. 3 S., R. 1 E., W.M.
CLACKAMAS COUNTY, OREGON

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



04/28/2022

A. REITER

JURISDICTIONAL TRANSFER
S.E. 1st AVENUE
COUNTY ROAD NO. 687

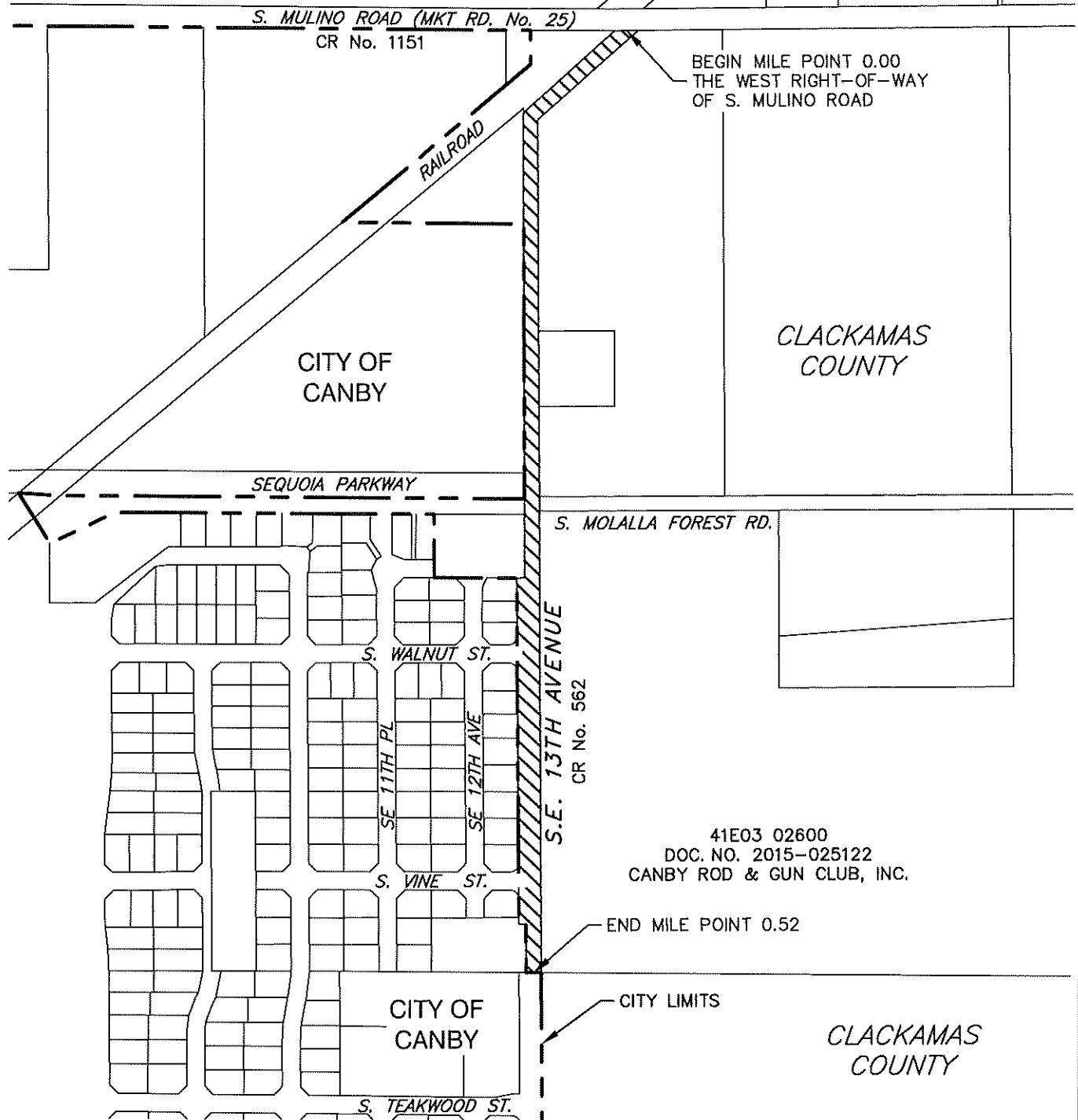
SHEET

1 OF 1

EXHIBIT "B-2"



1"=400'



131,565± SF

TRANSFERED ROAD

LOCATED IN THE NW 1/4, NE 1/4 AND SE 1/4
OF SECTION 03, T. 4 S., R. 1 E., W.M.
CLACKAMAS COUNTY, OREGON

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



04/28/2022

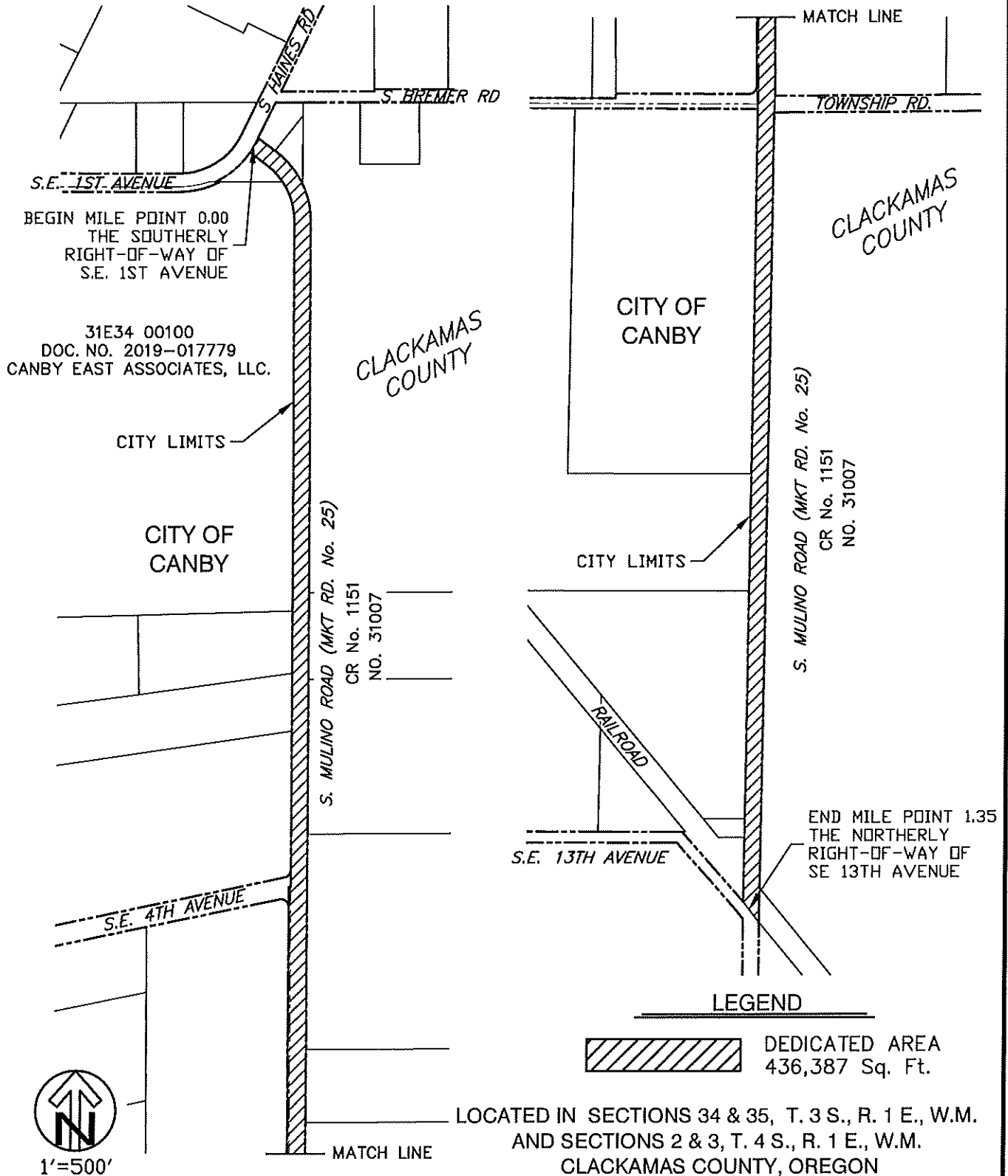
A. REITER

JURISDICTIONAL TRANSFER
S. 13th AVENUE
COUNTY ROAD NO. 562

SHEET

1 OF 1

EXHIBIT "B-3"



DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

150 BEAVERCREEK ROAD
OREGON CITY, OR 97045



BY: R. MAXWELL DATE: 9/16/2022

JURISDICTIONAL TRANSFER
S. MULINO ROAD
COUNTY ROAD NO. 1151

SHEET
1 OF 1

