

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Sitting/Acting as (if applicable)

Policy Session Worksheet

Presentation Date: June 7, 2023 **Approx. Start Time:** 10:00 am **Approx. Length:** 30 Minutes

Presentation Title: Review of IGA, Purchase and Sale Agreement, and Temporary Construction Easement for the construction of the Oak Lodge Library at the NCPRD Concord property.

Department: County Counsel

Presenters: Jeffrey Munns, Assistant County Counsel

Other Invitees: Dan Johnson, Mike Bork, Mitzi Olson, Heather Koch, Jason Varga

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD? Approval of the process and overall agreement structure for the construction and operation of the Oak Lodge Library at the NCPRD Concord Property.

EXECUTIVE SUMMARY: On March 15, 2023 the NCPRD Board of Directors considered the options of leasing or selling land to Clackamas County for the construction of the new Oak Lodge Library. After consideration the NCPRD Board of Directors voted to approve a sale of the land necessary to construct the new Oak Lodge Library. The NCPRD Board of Directors directed staff to prepare both the purchase and sale agreement and an IGA for the construction and operation of the new Oak Lodge Library at the Concord property. The Board of County Commissioners then considered and approved the same on March 28, 2023.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? \$21.5M. What is the funding source? County General Fund, Lib. Dist. Revenue Capital Reserves, ARPA, State ARPA

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department's Strategic Business Plan goals?
- How does this item align with the County's Performance Clackamas goals? Building public trust through good government.

LEGAL/POLICY REQUIREMENTS: Because the land is owned by NCPRD and the County is constructing the library an IGA is necessary for library construction to begin. The process to condo plat the property will necessarily be done later in the process. This IGA sets the price per acre to be paid by the County for the land and coordinates shared use of the property during library, park, and the Concord Building construction.

PUBLIC/GOVERNMENTAL PARTICIPATION: The Board of County Commissioners and NCPRD Board of Directors have approved of this process following input from the public.

OPTIONS:

1. Approve Oak Lodge Library Construction IGA; or
2. Direct Staff to make revisions to the agreement.

RECOMMENDATION: Approve the Oak Lodge Library Construction IGA.

ATTACHMENTS: Draft Oak Lodge Library Construction IGA.

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Jeffrey Munns in the Office of County Counsel at 503-655-8362

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY
AND THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
RELATED TO CONSTRUCTION OF THE OAK LODGE LIBRARY**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the North Clackamas Parks and Recreation District ("NCPRD"), a county service district formed and organized under ORS Chapter 451, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

NCPRD owns property within the district located in unincorporated Clackamas County at 3811 SE Concord Rd., Milwaukie, Oregon 97267 known as and referred to in this Agreement as the "Concord Property" or "Property". A building known as the Concord School building ("Concord Building") is located on the Property. The Property will also have recreation facilities constructed and operated by NCPRD to be known collectively as "Concord Park".

The NCPRD Board of Directors and the Clackamas County Board of County Commissioners have both voted unanimously to approve purchasing the land necessary to construct the new Oak Lodge Library ("Library") on this property.

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:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall not expire so long as the Parties or their successors operate the Library and the Concord Building
2. **Rights and Obligations of the County.**
 - A. The County will build the Library building on the Property and agrees to purchase the property necessary for construction at the price of \$370,000 per acre. The purchase and sale will be completed through an additional agreement. The property sold to County is anticipated to be completed as part of a condominium plat;
 - B. The Oak Lodge Library will be constructed generally in the location shown in Exhibit "A";
 - C. The County is responsible for all design, permitting, engineering and construction associated with the Project; and,
 - D. The County agrees that activities on the Property consistent with operating a park, park district administration, and a community center are not nuisance activities.

3. **Rights and Obligations of NCPRD.**

- A. The County may enter the Property and begin construction of the Library;
- B. NCPRD agrees that the County may use all of the Property during the construction of the new Oak Lodge library except as follows:
 - i. Areas within the Concord School Building, except for classrooms designated by NCPRD for library construction offices;
 - ii. Parking lot areas designated for NCPRD or public use only;
- B. NCPRD will respond in a timely manner to the County's requests to execute applications or documents and to provide information or approval to the County specifically related to fulfilling the purpose of this Agreement, such as land use applications, joint permits, etc.
- C. NCPRD agrees that activities on the Property consistent with operating a Library are not nuisance activities.

4. **Representations and Warranties.**

- A. *NCPRD Representations and Warranties:* NCPRD represents and warrants to County that NCPRD has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of NCPRD enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to NCPRD that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. **Termination.**

- A. Either the County or NCPRD 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.
- B. The County or NCPRD 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.

- C. The County may terminate this Agreement in the event the County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to continue to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Project under this Agreement is prohibited or the County is prohibited from paying for such work from the planned funding source.
- D. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project. Each Party shall use best efforts to coordinate with the other to minimize conflicts.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend NCPRD, 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 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.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, NCPRD 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 arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of NCPRD or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which NCPRD has a right to control.

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

Should NCPRD or its successor no longer maintain self-insurance or an insurance fund, NCPRD agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and

property damage for the protection of Clackamas County, and their officers, elected officials, agents, 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 this Agreement.

9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Dan Johnson or his designee will act as liaison for the County for the Project.

Contact Information:

Dan Johnson
DTD Director
150 Beaver Creek Rd.
Oregon City, OR 97045
(503) 742-4325
danjoh@clackamas.us

Mike Bork or his designee will act as liaison for the Agency for the Project.

Contact Information:

Mike Bork
NCPRD Director
150 Beaver Creek Rd.
Oregon City, OR 97045
(971) 610-1036
mbork@clackamas.us

10. **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 Agency 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. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.

- B. **Compliance with Applicable Law.** Both Parties shall comply with all 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 shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. The Parties shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, the Parties shall permit the other Party's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Work Product.** All work performed under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the County. The County shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials produced in connection with this Agreement. On completion or termination of the Agreement, the Agency shall promptly deliver these materials to the County's Project Manager.
- F. **Hazard Communication.** Agency shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or items designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.

- G. **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.
- H. **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.
- I. **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.
- J. **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.
- K. **No Third-Party Beneficiary.** Agency 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.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (K), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- 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.
- O. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.

- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither NCPRD nor County shall be held responsible for delay or default caused by events outside of NCPRD's or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the Parties 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.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

[Signatures on Following Page]

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

Clackamas County

**North Clackamas Parks and
Recreation District**

Chair, Board of County Commissioners

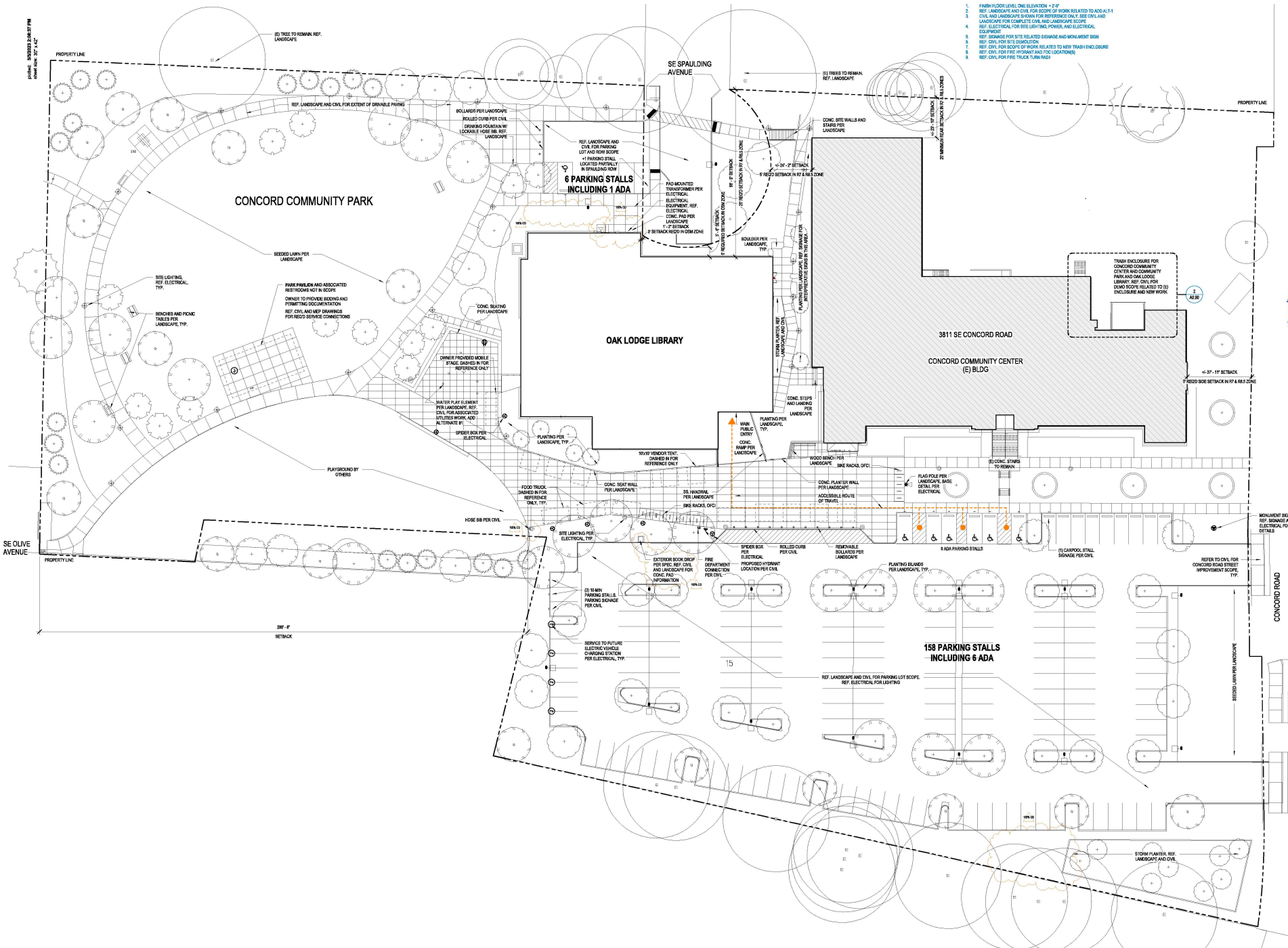
Chair, Board of Directors

Date

Date

SITE PLAN SHEET NOTES

1. FINISH FLOOR LEVEL ONE ELEVATION + 2'-0"
2. REF. LANDSCAPE AND CIVIL FOR SCOPE OF WORK RELATED TO ADDA-1
3. CIVIL AND LANDSCAPE SHOWN FOR REFERENCE ONLY. SEE CIVIL AND LANDSCAPE FOR COMPLETE CIVIL AND LANDSCAPE SCOPE.
4. REF. ELECTRICAL FOR SITE LIGHTING, POWER, AND ELECTRICAL EQUIPMENT.
5. REF. SIGNAGE FOR SITE RELATED SIGNAGE AND MONUMENT SIGN.
6. REF. CIVIL FOR SITE DEMOLITION.
7. REF. CIVIL FOR SCOPE OF WORK RELATED TO NEW TRASH ENCLOSURE.
8. REF. CIVIL FOR FIRE HYDRANT AND TTY LOCATIONS.
9. REF. CIVIL FOR FIRE TRUCK TURN PAD.



Revision to Sheet

Revision	Date
100% CD	05/09/2023