



November 14, 2019

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Library Construction and Operation Intergovernmental Agreement Between Clackamas County and the City of Gladstone

Purpose/Outcomes	This Intergovernmental Agreement documents and clarifies various responsibilities of the City of Gladstone and the County pertaining to the transfer of Gladstone library operations and employees to the County, as well as the eventual construction of a new Gladstone Library facility.
Dollar Amount and Fiscal Impact	Clackamas County will receive the City of Gladstone's annual Library District distributions (prorated for FY 19/20), as well as a \$200,000 annual contribution from the City of Gladstone's general fund (prorated for FY19/20, and indexed in the future to the rate of increase of the City's permanent rate property tax revenue).
Funding Source	Gladstone Library District distributions and general fund contributions.
Duration	The IGA will commence on December 1, 2019 and automatically renew annually, unless otherwise terminated.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Ensure safe, healthy and secure communities
Previous Board Action	<ul style="list-style-type: none"> • <i>October 12, 2017 business meeting</i> - Approval of Settlement Agreement in the case City of Gladstone v. Clackamas County • <i>February 15, 2018 business meeting</i> - Approval of Amendment #1 to Settlement Agreement Between the City of Gladstone and Clackamas County • <i>November 12, 2019 policy session</i> - Gladstone Library Intergovernmental Agreements
Counsel Review	This agreement was reviewed and approved by County Counsel on November 5, 2019.
Contact Person	Laura Zentner, BCS Director, x4351 Greg Williams, BCS Deputy Director, x4399

BACKGROUND:

In October 2017, the County and the City of Gladstone entered into a Settlement Agreement which contemplates the construction and operation by the County of two new library facilities:

- A 6,000 square foot Gladstone Library located at the current site of Gladstone City Hall (525 Portland Avenue).
- A 19,500 square foot Oak Lodge Library located somewhere within the Oak Lodge Library service area.

The Settlement Agreement contemplates a “one library, two building” operational model, where both locations will be operated by Clackamas County to realize efficiencies and achieve economies of scale. The Settlement Agreement also contemplates certain other commitments by both parties, including financial responsibilities and a commitment to robust public engagement as plans for both new library facilities are developed.

The Settlement Agreement acknowledged that it outlined a general strategy, and that many details would need to be determined in order to fully implement the contemplated “one library, two building” solution. Accordingly, in April 2019, County staff (including representatives from BCS, HR, Facilities, and County Counsel) and City of Gladstone staff and legal counsel began working to develop two IGAs which would be necessary to finalize implementation of the Settlement Agreement. After seven months of regular meetings, discussions, negotiations, and refinement, staff from both the City and the County have finalized these IGAs.

The Library Construction and Operation Intergovernmental Agreement documents and clarifies various responsibilities of the City and the County pertaining to the transfer of Gladstone library operations and employees to the County, as well as the eventual construction of the new Gladstone Library facility. Major components of this IGA include:

- **Transfer of Gladstone Library operations to the County, and associated City financial commitment** – The IGA transfers responsibility for Gladstone Library operations to the County effective December 1, 2019. To support these operations, the City will transfer their annual Library District distribution (prorated for FY 19/20) to the County, and will also provide a \$200,000 annual contribution from the City’s General Fund (prorated for FY19/20, and indexed in the future to the rate of increase of the City’s permanent rate property tax revenue).
- **Combined Library Board** – A single Library Board of Trustees will be created to advise the Board on matters concerning library services, policies, and other library-related issues at both library locations. This combined Library Board of Trustees is required to include proportional representation from the Oak Lodge Library service area, the City of Gladstone, and the unincorporated portion of the City of Gladstone library service area. Other details regarding bylaws, membership, committees, and other issues will be finalized in collaboration with the existing Oak Lodge and Gladstone library boards, as well as the Gladstone Community Library Planning task force.
- **Construction Timeline for Gladstone Library** – The IGA outlines the anticipated timeline for the construction of the new Gladstone Library. The IGA contains a guarantee that, should selection of a final location for the Oak Lodge library be delayed, the County will “decouple” the Gladstone planning and construction process from the Concord process. The IGA also provides a mechanism by which the County may request extensions for completion of certain milestones, and by which the City will be compensated if those extensions result in unreasonable or prolonged delay.
- **Provision and preparation of the site for the new Gladstone Library** – The IGA establishes the current site of Gladstone City Hall as the site for the new Gladstone Library, memorializes the ground lease of \$1 per year, specifies how demolition costs will be shared, and memorializes the City’s commitment to cooperate with the County on land use or zoning changes.
- **Transfer of Gladstone employees** – The IGA outlines the transfer of Gladstone Library employees to the County, consistent with ORS 236.605-640.

- **Provisions for termination** – The IGA contemplates various scenarios under which the IGA could be terminated, and spells out how each party might be impacted under each. Specific provisions are provided for termination once the County has issued debt to pay for construction of the new Gladstone Library.

This IGAs were provided to the members of the Oak Lodge Library Board of Trustees and the Gladstone Library Board for review and feedback at special meetings on November 5, 2019. This IGA is scheduled to be presented to the Gladstone City Council on the evening of November 12, 2019.

RECOMMENDATION:

Staff recommends Board approval of the Library Construction and Operation Intergovernmental Agreement between Clackamas County and the City of Gladstone.

ATTACHMENTS:

- Library Construction and Operation Intergovernmental Agreement between Clackamas County and the City of Gladstone

Respectfully Submitted,

Laura Zentner
Director, Business & Community Services

LIBRARY CONSTRUCTION AND OPERATION
INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY AND THE
CITY OF GLADSTONE

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement"), is entered into by and between Clackamas County (the "County") a political subdivision of the State of Oregon, and the City of Gladstone, a municipal corporation (the "City").

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.

The City currently operates a library within the Gladstone Library Service Area of the Library District of Clackamas County. The County currently operates a library within the Oak Lodge Library Service Area of the Library District of Clackamas County.

The City and County are entering into this Intergovernmental Agreement for the County to operate both the Gladstone and Oak Lodge libraries, and to build two new libraries pursuant to a settlement agreement in the case Gladstone v. Clackamas County, Clackamas County Circuit Court Case No. 16CV27287.

The Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Member Cities ("Master IGA") allows for the use of reserves accumulated by the Oak Lodge Service Area, and held by the Library District, by Clackamas County for the construction of new library buildings to serve both the Oak Lodge Library Service Area and Gladstone Library Service Area, as shown on the attached maps as Exhibits 1 and 2.

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. Obligations of the County

- A. Oak Lodge Public Library. The County currently operates the Oak Lodge Library serving the Oak Lodge Library Service Area.
- B. Gladstone Public Library. The County shall assume operation and control of the Gladstone Public Library located at 135 E. Dartmouth St ("Gladstone Library") to serve the Gladstone Library Service Area as of December 1, 2019, subject to receiving the funding from City described in Section 2 below, and subject to entering into a facilities agreement as described in Section 2.C below. The County will operate the Gladstone Library as a branch of the Oak Lodge Public Library. The branch of the Oak Lodge

Library will be known as the Gladstone Public Library. The County as a Library City under the District IGA shall strive to operate the Gladstone Library in accordance with the Service Standards as defined in the District IGA. If a majority of the public use portion of the current Gladstone Library facility becomes unavailable due to the physical condition of the facility, the City shall make space available at another facility for a circulation desk to provide limited services for library material returns and the pick-up of reserved library materials for a period of up to six months ("Temporary Circulation Desk"). After six months the County shall provide a suitable facility for the same circulation desk services until the New Gladstone Library Branch as required by section 1.D.ii is completed.

- C. Library Board. The County agrees to create a new Library Board of Trustees, to institute a single committee or similar body (a "Library Board") to advise the Board of County Commissioners in matters concerning library services, policies, and general library-related issues at both library locations. The Library Board shall include proportionate membership for the unincorporated portion of the Oak Lodge Library Service Area, the unincorporated portion of the Gladstone Library Service Area, and the City of Gladstone. The County shall create the Library Board and appoint the new members to the Library Board as soon as reasonably practicable after this agreement is fully executed. Recruitments for the Library Board will be managed by the County, and appointments to this Library Board will be made by the Board of County Commissioners.
- D. Future New Library Buildings. The County will construct or renovate two library buildings to serve both the Oak Lodge Library Service Area and the Gladstone Library Service Area consistent with Concept Option A, attached hereto as Exhibit 3, as described in the Settlement Agreement between The City of Gladstone and Clackamas County as described below:
- i. County will construct and/or renovate a facility to house a new Oak Lodge Library of approximately 19,500 square feet to serve the Oak Lodge Library Service Area. The final size of the facility may be adjusted based on a feasibility study and community needs assessment.
 - ii. County will construct a library building of approximately 6,000 square feet to serve the Gladstone Library Service Area ("New Gladstone Library Branch"). The County may construct a larger library at its option.
 - iii. The design and programming of each facility will be informed by the recommendations of citizen advisory bodies, including but not limited to the Gladstone Community Library Planning Task Force and the Concord Property and Library Planning Task Force and their successors. The County may also undertake other public involvement/engagement efforts.

E. Gladstone Library Construction. Upon execution of this Agreement the County shall commence the planning and construction process. The County intends to follow the timeline outlined in the table below:

MILESTONE #	DESCRIPTION	DATE
1	Decision on location of Oak Lodge Library	7/30/2020
2	Project Master Plan finalized	11/30/2020
3	Design and construction documents finalized. All personal property removed from City Hall building in preparation for demolition	11/30/2021 (12 months after milestone #2)
4	Permits obtained. Contractor procurement finalized and contract approved by Board	5/30/2022 (6 months after milestone #3)
5	Various milestones for Gladstone Library construction.	Various, per contract

F. The County agrees that if the County has not selected a location for the Oak Lodge Library by July 30, 2020 the County will “decouple” the Oak Lodge Library construction process from the New Gladstone Library Branch construction process, so that construction of the New Gladstone Library Branch is not unreasonably delayed. The County shall continue the construction process as outlined in the table above. The County shall be allowed one (1) thirty (30) day extension; however, the County must provide notice to the City in writing (via email to the City contact designated in section 4.G below) at least ten (10) days prior to July 30, 2020 of its intent to use a thirty (30) day extension. The County may be allowed a second thirty (30) day extension with City written approval, which will not be unreasonably withheld. Extension(s) used pursuant to this Section will count toward the total extensions allowed pursuant to Section 1.G and 1.H.

- G. Extensions. The County will be allowed a total of six (6) thirty (30) day extensions that may be applied to milestones # 1 through #4 above. Before utilizing an extension, the County must provide notice to the City in writing (via email to the City contact designated in section 4.G below) at least ten (10) days prior to the milestone deadline of its intent to use a thirty (30) day extension. If the County requires more than six (6) thirty (30) day extensions, the County shall obtain the City’s written agreement (sent via email by the by the City contact designated in section 4.G below), which the City will not unreasonably withhold. The City may, at its discretion, impose a penalty for each additional extension beyond the initial six (6) as described in 1.H below. All requests for extension must be for thirty (30) day increments. Penalties for milestone #5 shall be incorporated into the eventual contract with a Contractor, and any contractual penalties imposed on Contractor related to missed milestones on the New Gladstone Library Branch construction schedule shall be split equally between the County and the City.
- H. Penalties for additional extensions. If the County requests more than a total of six (6) thirty (30) day extensions, the City may (at its discretion) impose a penalty according to the penalty schedule below.

<u>EXTENSION REQUESTED</u>	<u>PENALTY PER EXTENSION</u>
<u>Extension #1 through #6</u>	<u>No penalty (per 1.G)</u>
<u>Extension #7 through #9</u>	<u>\$5,000</u>
<u>Extension #10 through #12</u>	<u>\$7,500</u>
<u>Extension #13 and beyond</u>	<u>\$10,000</u>

- I. Additional Capital. Should organizations or individuals raise additional capital to increase the size of either library, enhance the service level of either library, or provide additional amenities at either library, the County will solicit recommendations from citizen advisory bodies, including but not limited to the Gladstone Community Library Planning Task Force, the Concord Property and Library Planning Task Force, and the single Library Board outlined in Section 1.C as to how to best utilize the funds raised. Funds raised may be spent by the County to enhance either facility, unless the gift specifies otherwise.
- J. City as Library City. County agrees that City is and shall continue to be considered a “Library City” under the Master IGA and specifically retains all rights and privileges associated with being a Library City related to nomination and appointment of a City of Gladstone representative to the Library District Advisory Committee (“LDAC”). The City’s LDAC representative shall be a member of the Library Board contemplated in 1.C drawn from the unincorporated portion of the Gladstone Library Service Area or the City of Gladstone.

- K. Reporting to Gladstone City Council. The Library Director for the Oak Lodge and Gladstone Libraries shall prepare a monthly written report on the operations, similar in nature as other reports provided by City department directors, of the Oak Lodge Library and the branch library known as the Gladstone Library. The report will be provided to the contact designated in this Agreement for the City. The County further agrees that the Library Director shall be available for one annual in-person presentation to the Gladstone City Council on a mutually agreeable date and time.

- L. Demolition of City Hall Building. The current location of Gladstone City Hall is the parcel of land provided by City to County for the construction of the library referenced in section 1.D.ii above. The City and County shall split equally costs associated with demolition, clearance of debris, disposal of all environmental pollutants and hazardous substances or materials on the City Hall demolition site in accordance with all applicable laws.

2. Obligations of the City

- A. Gladstone Library District Distributions. Upon execution of this agreement, the City authorizes the direct payment of the Gladstone Library Service Area's distributions from the Library Service District be paid directly to County. A copy of the distribution memos will be provided to the City of Gladstone when distributions are made. For FY 19/20, these payments will be prorated, based upon the number of months each party operates the Gladstone Library, with seven months' portion of the City's FY 19/20 Library District distributions paid to the County, and five months' portion paid directly to the City to pay for library operational expenses incurred by the City prior to execution of this agreement.

- B. City General Fund Contributions. Effective July 1, 2020 the City agrees to pay \$200,000 annually from the City General fund ("Base General Fund Contribution"). Starting with FY 21/22 (July 1, 2021). The City will add to the General Fund Contribution an amount equal to the rate of increase of the City's permanent rate property tax revenue from the previous fiscal year ("Indexed Increase"). The City's annual payment to the County ("General Fund Contribution") shall include both the Base General Fund Contribution and the Indexed Increase. The current year's total General Fund Contribution will become the next year's Base General Fund Contribution, to which the Indexed Increase will be added. A sample schedule showing 5 years' worth of hypothetical General Fund Contributions and Indexed Increases (based on an assumed annual 3% increase in City property tax revenues) is shown below for illustrative purposes.

<u>FISCAL YEAR</u>	<u>BASE GENERAL FUND CONTRIBUTION</u>	<u>ESTIMATED INDEXED INCREASE</u>	<u>ESTIMATED GENERAL FUND CONTRIBUTION</u>
FY 20/21	\$200,000	\$0	\$200,000
FY 21/22	\$200,000	\$6,000	\$206,000
FY 22/23	\$206,000	\$6,180	\$212,180
FY 23/24	\$212,180	\$6,365	\$218,545
FY 24/25	\$218,545	\$6,556	\$225,101

The payment of the General Fund Contribution shall be paid no later than December 31st each year. In the event payment is not received by December 31st, as a remedy for late payment, interest shall accrue at the interest rate of four percent (4%) per annum. In the event of a decrease in property tax revenues, the total annual General Fund Contribution payment shall not decrease to less than \$200,000. In addition, the City agrees to pay \$116,666 as the General Fund Contribution for FY 19/20. This payment shall be paid no later than 60 days after the execution of this Agreement.

- C. Current Library Building. The City and County agree to enter into in a separate Intergovernmental Agreement (IGA) pursuant to ORS Chapter 190, to set forth the terms relating to the operation of the current Gladstone Library facility. The IGA shall continue until the County completely moves Gladstone Library operations to the New Gladstone Library Branch building as described above in section 1.D.ii.
- D. Demolition of City Hall Building. The current location of Gladstone City Hall is the parcel of land provided by City to County for the construction of the library referenced in section 1.D.ii above. The City and County shall split equally all costs associated with demolition, clearance of debris, disposal of all environmental pollutants and hazardous substances or materials on the City Hall demolition site in accordance with all applicable laws. City will prepare the building for demolition by removing all personal property necessary for demolition contractor to start work before the completion of milestone 3 in section 1.E above.
- E. Ground Lease for new Library Building. The City shall lease a parcel of land ("City Parcel") to the County for the annual rate of \$1 on which to construct the library building described above in section 1.D.ii above. The lease described above shall be in force as long as the County operates the Gladstone Public Library under this Agreement.
- F. City Cooperation with Land Use and Zoning. City staff will cooperate with County on all land use or zoning changes, permits, applications or other actions necessary to construct or renovate a library building and to provide

adequate parking for said building to accommodate the building of a new Gladstone library as described in Exhibit 3, and section 1.D.ii herein. Both parties understand that this section shall not be construed as an obligation or guarantee regarding approval of any required land use decisions.

- G. Transfer of Operations. The Parties hereto acknowledge that City currently operates the Gladstone Library for the benefit of residents in the Gladstone Library Service Area as defined in the District IGA. The City by this Agreement assigns this responsibility to the County effective December 1, 2019.
- H. Gladstone Library Board. Effective upon the creation of the Library Board as described in section 1.C. and upon the Gladstone City Council implementing the necessary changes to the Gladstone Municipal Code, the Gladstone Library Board will be dissolved. Gladstone City Council shall complete the dissolution of the Gladstone Library Board within one year of signing this agreement. Gladstone representatives on the new Library Board will report to the Gladstone City Council on a quarterly basis, as requested by the City.
- I. Transfer of Assets. In consideration of the County's agreement to assume operation of the Gladstone Library, the City shall and hereby does transfer and/or assign, as appropriate, to the County as of December 1, 2019, all assets related to the operation of the Gladstone Library, with the exception of items listed in Exhibit 5.
- J. Transfer of Contracts. Effective December 1, 2019, the City shall assign, transfer, or otherwise convey to the County all contracts, and the County may accept, agreements, and other arrangements regarding the Gladstone Public Library, including but not limited to all performer contracts. County is only obligated to accept assignment or transfer of contracts to the extent contracts and agreements comply with County codes and State laws applicable to public contracts. Further, the City and the County shall arrange for all utility bills such as phone, water, electricity, garbage service, recycling, sewer and others to be transferred into the name of the County as of December 1, 2019. The City shall remain solely liable for all amounts owed on the foregoing for services through November 30, 2019. This transfer does not include a transfer of any collective bargaining agreements that the City has entered into with respect to any Gladstone Library employees.
- K. City Facilities. City will not unreasonably deny County requests to use other City facilities and resources to support programming and promotion of the Gladstone Library branch of the Oak Lodge Library. This will include but is not limited to the use of meeting rooms, presentation equipment, display spaces in City-owned facilities, and advertising/promotion on City websites

and in City publications.

3. Transfer of Employees

The City's employees of the Gladstone Library as of November 30, 2019 ("Transferring Employees") shall be transferred to the employ of the County pursuant to ORS 236.605-640 on December 1, 2019, as further agreed to between the City, AFSCME Council 75, Local 350.03 and the County, attached as Exhibit 4.

4. General Provisions

A. Term. This Agreement shall commence on December 1, 2019 and automatically renew annually thereafter, unless otherwise terminated as set forth herein.

B. Termination.

- i. Either the City or the County may terminate this Agreement at any time with One Hundred Eighty (180) days written notice to the other party.
- ii. If City or County terminates the Agreement, or the County ceases to operate the New Gladstone Library Branch, payment of Gladstone's annual Library District Distribution and General Fund Contribution to the County will be prorated based on the final date of transfer of operations from the County to the City, and after such time General Fund Contributions will cease and the Library District Distribution will be distributed according to this Section.
- iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
- iv. 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.
- v. Unless otherwise provided in this Agreement, a defaulting party shall be

treated as if that party terminated this Agreement.

- vi. If this Agreement is terminated prior to the County closing on any debt incurred for the purposes of constructing the New Gladstone Library Branch (“Construction Debt” as defined below):
 - a. Service Area and District Revenue. The City will resume operational control of the Gladstone Library and providing service for the existing Gladstone Library Service Area population under the Master IGA and continue to receive the Library District revenue for the existing Gladstone Library Service Area, subject to proration of Library District Distributions through the final date of transfer of operations per 4.B.ii above.
 - b. Library Employees. The County will transfer employees back to the City pursuant to its obligations under ORS 236.605-640.
 - c. Library Assets. The County will transfer to the City all assets related to the operation of the Gladstone Library excluding any assets provided by County internal service providers in the provision of required/cost-allocated services, for example, a county Technology Services Department owned switch for telephones or computers, or any assets mutually agreed upon by parties.
 - d. Facilities IGA. The “Facilities” IGA drafted pursuant to Section 2.C of this Agreement terminates pursuant to the terms of that agreement.
 - e. General Fund Contributions. The City’s obligation to make General Fund Contributions pursuant to Section 2.B terminates, subject to proration through the final date of transfer of operations per 4.B.ii above.
 - f. County Terminates. If the County terminates pursuant to this Section 4.B.vi, County agrees to pay the City Three Hundred and Sixty Thousand Dollars (\$360,000) and such payment shall be considered satisfaction of the Settlement Agreement, this Agreement, and allow the County to remove the restrictions on the Capital Contribution under the Settlement Agreement.
 - g. City Terminates. If the City terminates pursuant to this Section 4.B.vi, the County is not obligated under the Settlement Agreement or any other agreement to fund or provide for the construction and operation of a new library in Gladstone, and the restrictions on the Capital Contribution under the Settlement Agreement shall be removed.

- vii. If this Agreement is terminated after the County closes on Construction Debt:
- a. Service Area and District Revenue. Current year District Distributions will be prorated through the final date of transfer of operations as per 4.ii.b above. After the transfer of operations, the City will provide library services for the then existing City of Gladstone population only and will transfer the percentage of the Library District revenue distribution for the then existing unincorporated area of the Gladstone Library Service Area to the County. In such a situation, City will also support the amendment of the Master IGA to redefine the boundaries of the Oak Lodge Library Service Area to include any unincorporated areas located in the Gladstone Library Service Area, and to redefine the boundaries of the Gladstone Library Service Area to be the then existing City of Gladstone population only. In the event the Master IGA is not amended as stated above, the City agrees to continue transferring the portion of its annual Library District revenue distributions attributed to the then existing unincorporated area of the Gladstone Library Service Area to the County and to continue serving the then existing City of Gladstone population only.
 - b. Library Employees. City is obligated pursuant to ORS 236.605-.640 to accept the transfer of the number of County employees necessary for the operation of the New Gladstone Library Branch. This percentage is to be determined as the percentage that the then population of the City of Gladstone as compared to the entire population of the combined Oak Lodge Library Service Area and the Gladstone Library Service Area. That same percentage of County library employees shall be transferred to the City as further agreed by the County, the City and any applicable unions.
 - c. General Fund Contributions. The City's obligation to make General Fund Contributions pursuant to Section 2.B terminates, subject to proration through the final date of transfer per 4.B.ii above.
 - d. County Terminates. If the County terminates pursuant to this Section 4.B.vii:
 - i. Construction Debt Existing at Termination: County shall transfer the operation of the New Gladstone Library Branch, to the City and lease the building to the City for \$1 per year until such time as the outstanding balance of the Construction Debt has been retired by the County. Once the County retires the Construction Debt, the County shall transfer ownership of the New Gladstone Library Branch to

City free and clear of any debt or encumbrances.

- ii. No Construction Debt Existing at Termination: County shall transfer the operation and ownership of the New Gladstone Library Branch to the City free and clear of any debt or encumbrances.
- e. City Terminates. If the City terminates pursuant to this Section 4.B.vii:
- i. Construction Debt Existing at Termination: City shall pay to the County the outstanding balance of the Construction Debt existing on the date of termination (“Outstanding Construction Debt.”). Construction debt includes: money borrowed by County specifically for the construction of the New Gladstone Library Branch, bond funds received by County specifically for the New Gladstone Library Branch, costs incurred during debt issuance, and any bondholder guarantee, arbitrage, prepayment penalty specifically related to the New Gladstone Library Branch and/or the City’s termination pursuant to this section. The City will assume operational control of the Gladstone Library Branch upon payment which shall be due to the County within one hundred eighty (180) days after the notice of termination. . The City may request one (1), one hundred eighty (180) day, extension of the transfer of ownership to secure funding to complete the payment. During any extension, during which the County is operating the New Gladstone Library Branch, the City shall continue the General Fund Contribution and Gladstone Library District distributions. During any extension the City may at its’ option request the transfer of operations from the County so long as the City makes payment to County during any extension period for all debt service County incurs during any extension period. Once the City makes the payment for all of the Outstanding Construction Debt to the County, the County shall transfer ownership and operation of the New Gladstone Library Branch to the City free and clear of any debt or encumbrances of County.
 - ii. No Construction Debt Existing at Termination: County shall transfer the operation and ownership of the New Gladstone Library Branch to the City free and clear of any debt or encumbrances.
- f. If the Agreement is terminated pursuant to this Section 4.B.vii and construction on the New Gladstone Library Branch has not been

completed, the County shall complete construction, and transfer operational control of the New Gladstone Library Branch to the City upon issuance of the later of the certificate of occupancy or the end of the period described above in paragraph 4B.vii.e.i as appropriate. Construction Debt will be retired pursuant to Section 4.B.vii.d or e.

- g. Library Assets. The County will transfer to the City all assets related to the operation of the New Gladstone Library Branch, excluding any assets provided by County internal service providers in the provision of required/cost-allocated services, for example, a county Technology Services Department owned switch for telephones or computers, or any assets mutually agreed upon by parties.
- viii. 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.

C. Representations and Warranties.

- i. City Representations and Warranties: City represents and warrants to County that City 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 City enforceable in accordance with its terms.
- ii. County Representations and Warranties: County represents and warrants to City it 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.
- iii. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

D. Indemnification.

- i. 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, (excluding attorney's fees), 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 acts or omissions under this Agreement 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. The exclusion of attorney's fees does not negate the obligation to defend.

ii. 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, (excluding attorney's fees), 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 acts or omissions under this Agreement 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. The exclusion of attorney's fees does not negate the obligation to defend.

E. Insurance. Both Parties agree to furnish the other Party with evidence of commercial general liability insurance with a combined single limit of not less than the applicable tort claim limit for bodily injury and property damage for the protection of the other Party, 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. If self-insured, the Party shall provide documentation to the other Party of their self-insured status.

F. Notices; Contacts. Legal notice provided under this Agreement shall be delivered personally, by email, by certified mail or any other manner mutually agreed by the parties 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.

i. The Director of Clackamas County's Business and Community Services (BCS) department, acting as the County Administrator's designee, will act as liaison for the County.

Contact Information:

Laura Zentner
Director, Business and Community Services
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(503) 742-4351
lzentner@clackamas.us

Gary Schmidt
County Administrator
2051 Kaen Rd.
Oregon City, OR 97045
(503) 655-8581
Bcc@clackamas.us

- ii. City Administrator, or their designee will act as liaison for the City.

Contact Information:
Jacque Betz
City Administrator
525 Portland Avenue
Gladstone, OR 97027
(503) 557-2769
betz@ci.gladstone.or.us

- G. 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 either Party 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.
- H. 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.
- I. 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.

- J. Access to Records. Both 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. Both 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, each Party shall permit the other Party’s authorized representatives’ access to the Records at reasonable times and places for purposes of examining and copying.
- K. 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.
- L. 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.
- M. Integration, Amendment and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties. 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.
- N. 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.
- O. Relationship of Parties. 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.

- P. 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.
- Q. 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.
- R. Survival. All provisions in section 4 shall survive the termination of this Agreement.
- S. 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.
- T. Time is of the Essence. City and County agree that time is of the essence in the performance this Agreement.
- U. 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.
- V. 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. However, City 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.
- W. 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.

[Signature Page Follows]

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

Clackamas County

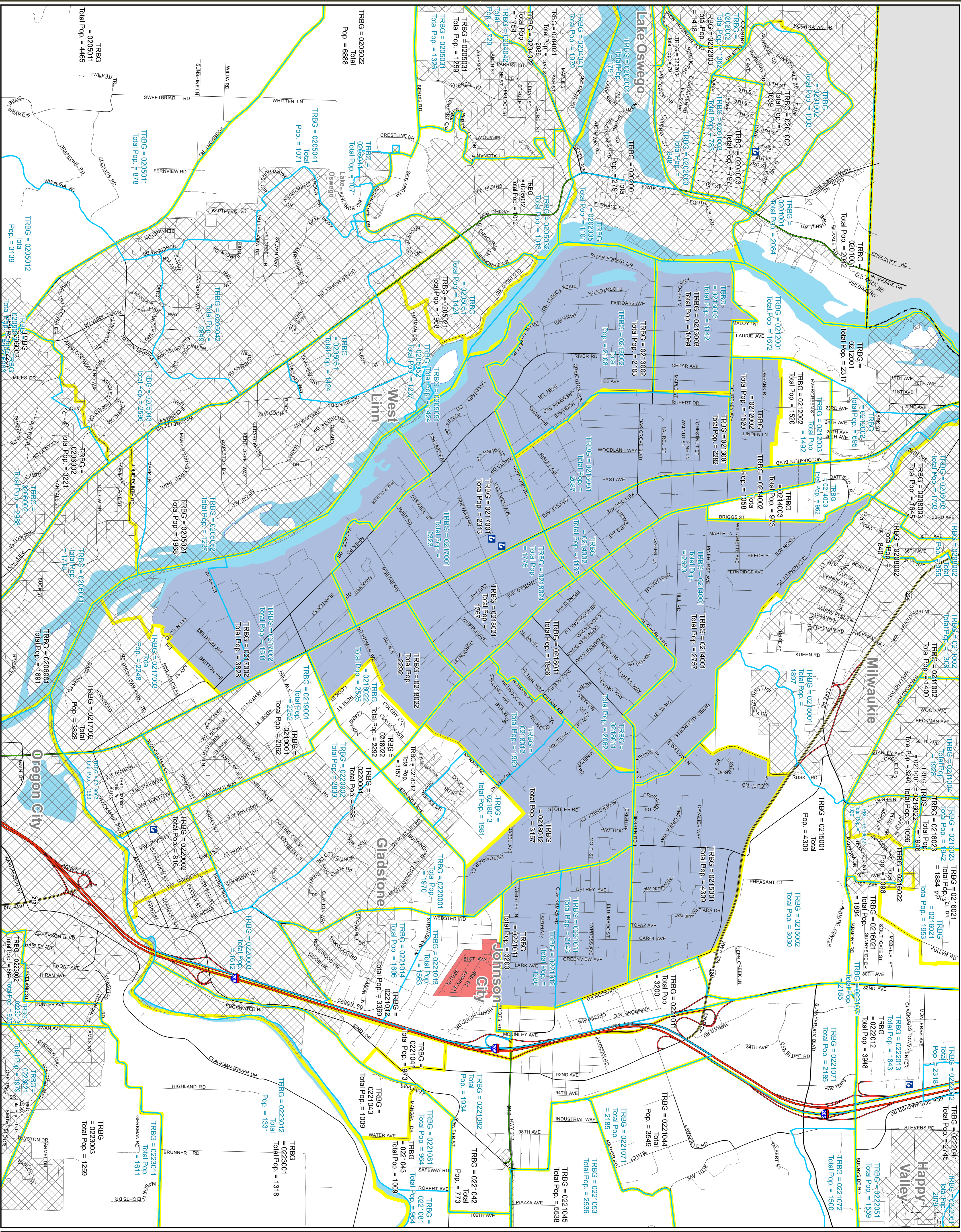
City of Gladstone

Chair, Board of County Commissioners

Mayor

Date

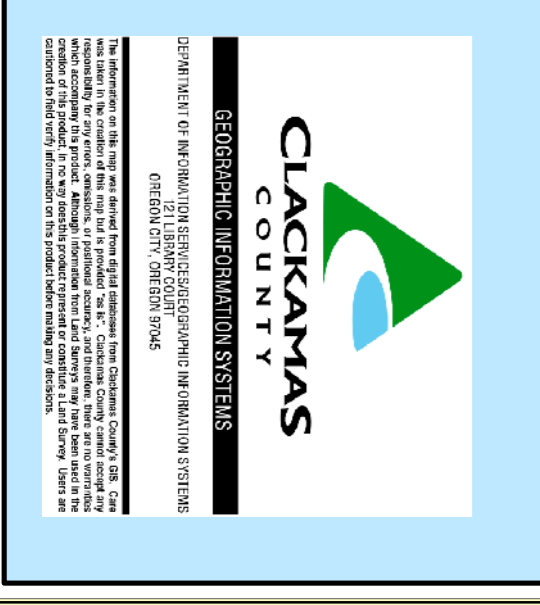
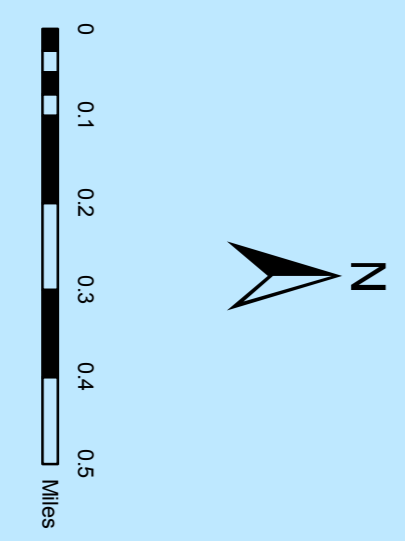
Date

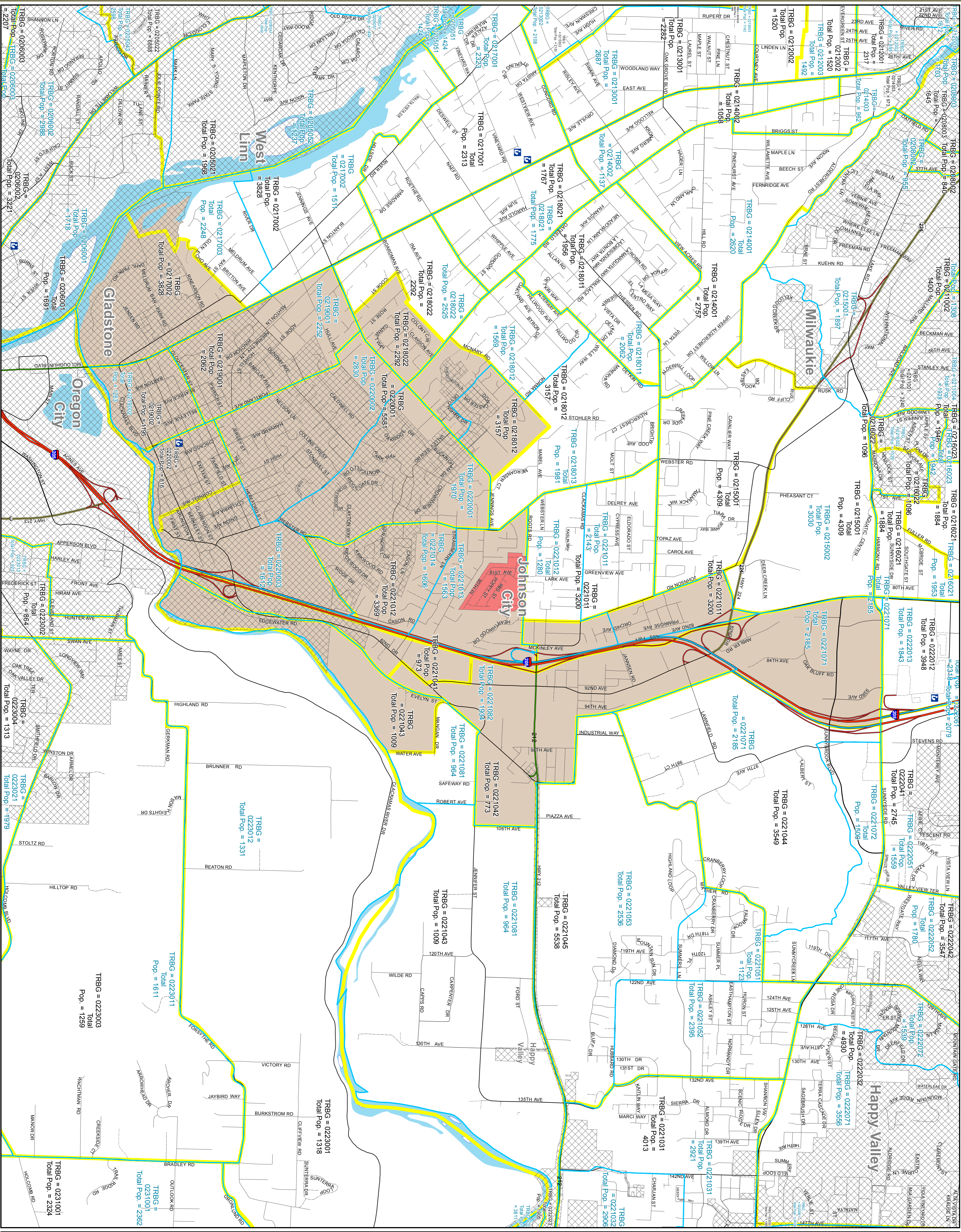


Oak Lodge Library Service Area (Library District) - No New GL Built

Legend

- Places**
 - County Courthouse
 - City Hall
 - Hospital
 - Airport
 - Park / Recreation
 - Golf Course
 - Boat Launch
 - Winter Recreation
 - Cemetery
 - Library
 - Ferry Crossing
 - Swimming
 - Oregon Trail Interp. Center
- Boundaries**
 - City Not Included
 - City Boundary
 - Year 2000 Tract Block Groups
 - Year 2010 Tract Block Groups

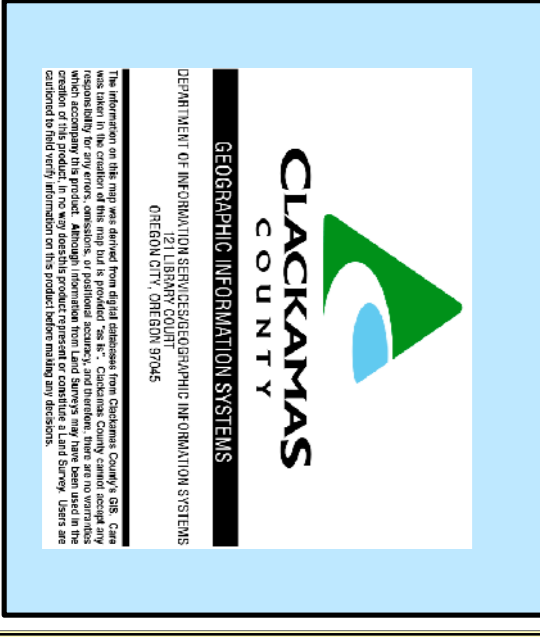
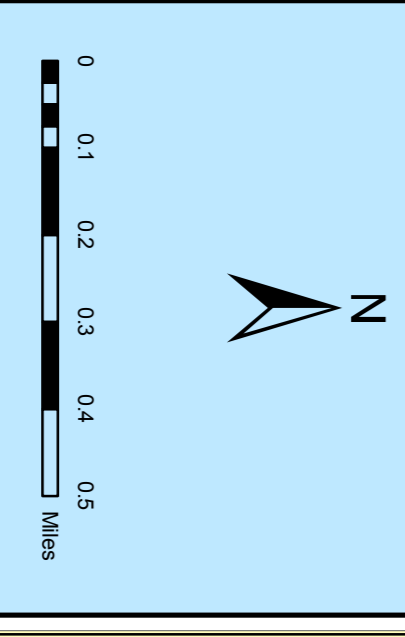




Gladstone Library Service Area (Library District) - No New GL Built

Legend

- Places**
- County Courthouse
 - City Hall
 - Hospital
 - Airport
 - Park / Recreation
 - Golf Course
 - Boat Launch
 - Winter Recreation
 - Cemetery
 - Library
 - Ferry Crossing
 - Swimming
 - Oregon Trail Interp. Center
- Boundaries**
- City Not Included
 - City Boundary
- Year 2000**
- Tract Block Groups
 - Year 2010
 - Tract Block Groups



CONCEPT OPTION A - JOINT GLADSTONE/OAK LODGE LIBRARY OPERATION (one service area with uniform services) – debt paid from operating cash and use of \$3.5 reserves		
	Oak Lodge	Gladstone
Population	38,998	11,505
Building Square Feet (.5 per capita)	19,500	6,000 (rounded up)
Estimated Building Cost @ \$300/Square Foot	\$5.9 Million	\$1.8 Million
Estimated Annual Debt – \$4.2 Million Bond Issuance	\$310,000 20 year bond (to be paid from operating revenue) 3.5% Interest Rate	
Revenue Bond Rate	No impact to citizens (debt paid from operating cash)	
Annual Operating Revenue –	\$1,281,502 – Oak Lodge \$700,159 – Gladstone \$200,000 – Gladstone General Fund	
Per Capita before debt = \$43.20	\$2,181,661	
Per Capita after debt = \$37.06	(\$310,000) – Annual Debt \$1,871,661 Operating Revenue for both facilities	

Assumptions:

- Build two new Libraries
 - Gladstone
 - Oak Lodge
- **Change Master Order – \$3.5 Million Reserve to be used for capital construction**
- **\$4.2 Revenue Bond – capital construction**
- No change in service boundary
- IGA for County to manage operations of both facilities
 - More efficient operations; staff sharing; economies of scale
 - Need to forecast operating costs of jointly running both libraries
 - Gladstone employees to become County employees?
- Joint construction of both buildings
 - IGA for construction/ownership/citizen involvement
 - Use of same contractor
 - Use of same Design/Landscape Architect firm
- Communication Plan/PGA to assist
 - Citizens
 - OL Library Advisory Group
 - Gladstone Advisory Group
- Gladstone – Measure to repeal current GF restrictions

**Exhibit 4 - TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY AND THE CITY OF GLADSTONE, AND
AFSCME COUNCIL 75, LOCAL 350-03 (GLADSTONE)**

EMPLOYEE TRANSFER AGREEMENT

This Employee Transfer Agreement ("Agreement") is entered into by and between Clackamas County ("County"), the City of Gladstone ("City"), and AFSCME Council 75, Local 350-03 (Gladstone).

Section 1: Transfer of Employees

- A. The City's employees of the Gladstone Library as of November 30, 2019 ("Transferring Employees") shall be transferred to the employ of the County pursuant to ORS 236.605-640 on December 1, 2019 ("Date of Transfer")
- B. No later than seven (7) days before the Date of Transfer, the City will provide to County an electronic version of each Transferring Employees' personnel file/employment records, as maintained by the City's Human Resources Department.

Section 2: Wages

- A. County agrees to maintain the Transferring Employees' salary or hourly wage rate as of the Date of Transfer for a period of twelve (12) months immediately following the Date of Transfer, as long as the Transferring Employee remains employed by County.
- B. After the first twelve (12) months of employment with County following the Date of Transfer have passed, County agrees to place the Transferring Employee(s) who remains employed by the County at the closest salary or hourly wage for the position, as designated under County's then current classification and salary schedule.

Section 3: Accrued Leaves

- A. At the option of the Transferring Employee, which must be made on or before November 22, 2019 ("Election Date"), the Transferring Employee may elect to transfer any accrued and unused sick leave and may retain accrued vacation leave up to a maximum of eighty (80) hours. Between the Election Date above and the Date of Transfer, any vacation leave hours or sick leave hours used by a Transferring Employee will result in a reduction of the transferred balance by an equivalent number of hours. During that period between the Election Date and the Date of Transfer,

an employee will not be permitted to exceed the number of accrued and unused vacation leave hours and/or accrued and unused sick leave hours; in such a circumstance, the employee will be in a leave without pay status for any vacation leave hours and/or sick leave hours that go beyond the accrued amount.

- B. On the Date of Transfer, the City will liquidate and pay out to the Transferring Employee any accrued and unused compensatory time or vacation time that the Transferring Employee has elected for payout, consistent with any applicable statute and/or applicable Clackamas County Employees Association collective bargaining agreement.
- C. At the time of transfer, the City agrees to pay to County, by December 31, 2019 a sum equal to the number of hours of retained sick leave and vacation leave by each transferred employee times the employee's hourly rate of pay as of December 31, 2019.

Section 4: Seniority

- A. Seniority of Transferring Employees will be in accordance with ORS 236.620(1)(c). Transferring Employees shall retain the seniority they accrued while employed by City. Effective on the Date of Transfer and pursuant to ORS 236.620 (1), Transferring Employees will be placed on the County's employee roster and the roster shall be consolidated into a single seniority list. Subject to other provisions of this Agreement, the crediting of seniority shall apply for all purposes, under the Clackamas County collective bargaining agreement.
- B. If a Transferring Employee and a current County employee have the same classification seniority, seniority shall be determined by each employee's date of hire. If the dates of hire are the same, seniority shall be determined by the date of job offer. If the job offer dates are the same, the Transferring Employee shall be placed below the Clackamas County employee on the seniority list.

Section 5: Retirement

- A. The parties agree that both entities participate in PERS, and that pursuant to ORS 236.620, all Transferring Employees are able to participate in the same retirement system at the County that they are at the City. Therefore no election need be made regarding participation in a retirement system.
- B. The parties agree that all PERS employer assets and liabilities based on PERS-covered service of the Transferring Employees from their date of hire with the City through November 30, 2019, shall be attributable to and

the responsibility of the City, and all PERS employer assets and liabilities based on PERS-covered service of the Transferring Employees on and after December 1, 2019, shall be attributable to the County.

Section 6: Health Insurance Other Benefits

- A. County agrees to provide to Transferring Employees on the Date of Transfer, the health insurance and benefits, hours, conditions, and privileges, as its other similarly classified employees, subject to the same collective bargaining agreement.
- B. Nothing contained herein, either expressly or implied, shall confer upon any Transferred Employee or any other employee or legal representatives thereof any contractual rights of continued employment.

Section 7: Other Terms

- A. This Agreement represents the entire agreement of the parties and supersedes all prior oral or written understandings, statements, representations, or promises regarding the impact of the transfer of City employees to the County. The parties expressly represent that there are no other understandings, representations, or agreements between them relative to the subject matter of this Agreement, except as set forth in the Intergovernmental Agreement referenced above. This Agreement may be amended by the written consent of the parties.
- B. The parties agree that the transfer of employees from the City to the County, which is governed by ORS 236.605 through ORS 236.640, is fulfilled by the terms of this Agreement. The parties further agree that they understand all of the provisions of this Agreement and execute it voluntarily with full knowledge of its significance and consequences.

AFSCME Council 75, Local 350-03

By: _____

Date: _____

CITY OF GLADSTONE

By: _____

Date: _____

CLACKAMAS COUNTY

By: _____

Date: _____

EXHIBIT 5 - Property Description

(Need list of City property, or classes of property, in library to be retained)



November 14, 2019

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Library Facility Intergovernmental Agreement Between Clackamas County and
the City of Gladstone

Purpose/Outcomes	This Intergovernmental Agreement permits the County to utilize the current Gladstone Library Facility (located at 135 E. Dartmouth) for the provision of library services until such time as the newly-constructed Gladstone Library is complete.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Until the County vacates the premises to relocate Gladstone Public Library to a newly-constructed Gladstone Library, unless terminated earlier pursuant to the agreement.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Ensure safe, healthy and secure communities
Previous Board Action	<ul style="list-style-type: none"> • <i>October 12, 2017 business meeting</i> - Approval of Settlement Agreement in the case City of Gladstone v. Clackamas County • <i>February 15, 2018 business meeting</i> - Approval of Amendment #1 to Settlement Agreement Between the City of Gladstone and Clackamas County • <i>November 12, 2019 policy session</i> - Gladstone Library Intergovernmental Agreements
Counsel Review	This agreement was reviewed and approved by County Counsel on November 5, 2019.
Contact Person	Laura Zentner, BCS Director, x4351 Greg Williams, BCS Deputy Director, x4399

BACKGROUND:

In October 2017, the County and the City of Gladstone entered into a Settlement Agreement which contemplates the construction and operation by the County of two new library facilities:

- A 6,000 square foot Gladstone Library located at the current site of Gladstone City Hall (525 Portland Avenue).
- A 19,500 square foot Oak Lodge Library located somewhere within the Oak Lodge Library service area.

The Settlement Agreement contemplates a “one library, two building” operational model, where both locations will be operated by Clackamas County to realize efficiencies and achieve economies of scale. The Settlement Agreement also contemplates certain other commitments

by both parties, including financial responsibilities and a commitment to robust public engagement as plans for both new library facilities are developed.

The Settlement Agreement acknowledged that it outlined a general strategy, and that many details would need to be determined in order to fully implement the contemplated “one library, two building” solution. Accordingly, in April 2019, County staff (including representatives from BCS, HR, Facilities, and County Counsel) and City of Gladstone staff and legal counsel began working to develop two IGAs which would be necessary to finalize implementation of the Settlement Agreement. After seven months of regular meetings, discussions, negotiations, and refinement, staff from both the City and the County have finalized these IGAs.

The Library Facility Intergovernmental Agreement permits the County to utilize the current Gladstone Library Facility (located at 135 E. Dartmouth) for the provision of library services until such time as the newly-constructed Gladstone Library is complete. This IGA also contains provisions clarifying how library service will be provided to Gladstone residents, in case the current library facility is damaged or becomes unusable.

This IGAs were provided to the members of the Oak Lodge Library Board of Trustees and the Gladstone Library Board for review and feedback at special meetings on November 5, 2019. This IGA is scheduled to be presented to the Gladstone City Council on the evening of November 12, 2019.

RECOMMENDATION:

Staff recommends Board approval of the Library Facility Intergovernmental Agreement between Clackamas County and the City of Gladstone.

ATTACHMENTS:

- Library Facility Intergovernmental Agreement between Clackamas County and the City of Gladstone

Respectfully Submitted,

Laura Zentner
Director, Business & Community Services

LIBRARY FACILITY INTERGOVERNMENTAL
AGREEMENT BETWEEN CLACKAMAS COUNTY
AND THE CITY OF GLADSTONE

THIS INTERGOVERNMENTAL AGREEMENT (this "Library Facility Agreement" or "Agreement"), is entered into by and between Clackamas County (the "County") a political subdivision of the State of Oregon, and the City of Gladstone, a municipal corporation (the "City").

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.

The City currently operates the Gladstone Public Library within the Gladstone Library Service Area. The County currently operates a library within the Oak Lodge Service Area.

The City and County entered into an Intergovernmental Agreement for the County to serve both the Gladstone and Oak Lodge Service Areas, and to build two new libraries pursuant to a settlement agreement in the case Gladstone v. Clackamas County, Clackamas County Circuit Court Case No. 16CV27287 ("Library Construction and Operation Agreement").

As part of the Library Construction and Operation Agreement, the County agreed to assume operation and control of the Gladstone Public Library, commencing on December 1, 2019, while the County constructs a new approximately 6,000 square foot Gladstone Public Library facility ("New Library").

Except as otherwise provided in the Library Construction and Operation Agreement, during the period from December 1, 2019 until the New Library is complete and occupied, the County shall operate the Gladstone Public Library out of the current Gladstone Public Library facility, located at 135 E Dartmouth St, Gladstone, OR 97027.

During the term of this Library Facility Agreement, the County does not assume any property interest in the current Gladstone Public Library facility or underlying property. The parties intend for this Agreement to grant the County a license to use the City's facility for a limited purpose.

1. LIBRARY FACILITY AGREEMENT TERM:

This Library Facility Agreement shall commence simultaneously with the transfer of operation and control of the Gladstone Public Library from the City to the County under the Library Construction and Operation Agreement, currently slated for December 1, 2019 ("Commencement Date"). This Agreement shall remain in effect until the County vacates the Premises to relocate the Gladstone Public Library to the New Library location, unless terminated earlier pursuant to this Agreement.

2. PREMISES:

The premises subject to this Library Facility Agreement is situated at 135 E Dartmouth St, Gladstone, OR 97027 (“Premises”)

3. USE:

The County shall only use the Premises for the operation of the Gladstone Public Library and no other purpose.

4. NO WASTE:

County will not cause or permit any waste, damage, disfigurement, or injury to the Premises.

5. PROPERTY TAXES:

It is understood that County is a qualified Government Entity and, therefore, is entitled to an exemption of property taxes upon timely application and approval by the Clackamas County Assessor and Tax Collector’s Office. If an exemption from property taxes is not allowed, County is solely responsible for payment of property taxes.

6. UTILITIES AND SERVICES

County will pay, directly to the appropriate supplier, for all water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by County on the Premises as they become due, from and after the Commencement Date.

7. INSPECTION:

City shall have the right personally and through City’s agents and workmen to enter into and upon the Premises at any reasonable time to inspect the Premises, and examine the condition thereof.

8. ALTERATIONS:

County accepts Premises in an “as is” condition. County will make no alterations to the Premises without express written consent of City which shall not be unreasonably withheld.

All alterations undertaken by County shall be at County’s sole expense. Any alterations or improvements by County that cannot reasonably be removed by County without damaging the Premises shall become the property of the City upon termination of this Library Facility Agreement.

9. SIGNS:

No signs, awnings, antennas, or other apparatus shall be painted on or attached to the building, nor any thing placed on the exterior of the Premises without City’s written approval, which shall not be unreasonably withheld. All signs installed by County shall comply with City’s standards for signs and all applicable codes and ordinances, and all signs and sign hardware shall be

removed upon termination of this Library Facility Agreement, with the sign location restored to its former state unless City elects to retain all or any portion thereof.

10. MAINTENANCE:

County shall maintain Premises in a neat condition, free of trash and debris, in good order and repair. County's obligations extend to both structural and non-structural items and to all maintenance, repair, landscaping and replacement work. This obligation includes, but is not limited to, maintaining the roof, walls, ceilings, doors, windows, and related hardware; light fixtures, switches, and wiring; parking lot; heating and air conditioning system, fire suppression system; plumbing from the point of entry to the Gladstone Library area; access and security systems for Gladstone Library space, and all structural components within the Gladstone Library area.

However, if total maintenance costs for the roof, exterior structural walls, parking lots, heating and air conditioning system, fire suppression system, and exterior common areas exceed \$75,000 at any point during the duration of this Agreement, the County may ask for City contributions to make the repairs. If the City declines to contribute, the County at its option may establish and operate a temporary circulation desk until such time as the new Gladstone Library branch is completed.

11. PLACE OF NOTICE:

Any notice to which City shall be entitled under this Library Facility Agreement shall be delivered or sent to:

Jacque Betz
City Administrator
525 Portland Avenue
Gladstone, OR 97027
(503) 557-2769
betz@ci.gladstone.or.us

Notice for County shall be mailed to:

Laura Zentner
Director, Business and Community Services
150 Beaver Creek Rd., #419
Oregon City, OR 97045
(503) 742-4399
lzentner@clackamas.us

Gary Schmidt
County Administrator
2051 Kaen Rd.
Oregon City, OR 97045

(503) 655-8581
Bcc@clackamas.us

12. CONTRIBUTION:

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the City is jointly liable with the County (or would be if joined in the Third Party Claim), the City shall contribute to the amount of expenses (excluding attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the City on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the City on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The City's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the City had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the City (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (excluding attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the City in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the City on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the City on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

13. ARBITRATION:

Any controversy or claim arising out of or relating to this Agreement shall be settled by arbitration in accordance with the following provisions:

Disputes Covered. The parties agree to arbitrate disputes regarding interpretation of provisions of this Agreement.

Forum. The forum for the arbitration shall be Clackamas County, Oregon.

Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of laws provisions.

Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, County shall select one arbitrator and City shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the Arbitration Service of Portland. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties.

Administration. The arbitration shall be administered by the Arbitration Service of Portland.

Rules. The rules of arbitration shall be the rules of the Arbitration Service of Portland, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the provisions of this section, the provisions of this section shall prevail.

Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages.

Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators.

Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by

arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

14. INDEMNIFICATION:

To the extent permitted under Oregon law, County agrees to indemnify, defend, and hold harmless the City, their officers, agents, and employees against all liability, loss, and costs, (except for attorney's fees) arising from actions, suits, claims, or demands, except when due to City's acts or omissions, arising from performance of this Library Facility Agreement and the use of the Premises. The exclusion of attorney's fees does not negate the obligation to defend.

To the extent permitted under Oregon law, City agrees to indemnify, defend, and hold harmless the County, their officers, agents, and employees against all liability, loss, and costs (except for attorney's fees,) arising from actions, suits, claims, or demands, except when due to County's act or omissions,, arising from performance of this Library Facility Agreement and the use of the Premises. The exclusion of attorney's fees does not negate the obligation to defend.

County shall be responsible for insuring its personal property and trade fixtures located on the Premises and any alterations or improvements it has made to the Premises.

15. INSURANCE:

Liability and Workers' Compensation: 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(4) and ORS 30.273(3) for property damage. The City of Gladstone, its directors, officers, employees and agents are added as additionally insured on the General/Auto liability coverages. Clackamas County will provide the City of Gladstone with a waiver of subrogation in City's favor for Worker's Compensation.

Personal Property: County, will at its sole expense, procure and maintain insurance covering County's personal property, including but not limited to inventory, fixtures, and equipment, located at the Premises, providing coverage on an all-risk basis, including coverage (as available), for the perils of fire, earthquake, flood, and windstorm.

Real Property: City agrees to insure the building on the premises against all losses with extended coverage. So long as this provision does not invalidate or limit the extent of City's coverage under such insurance policies.

If the building on the premises which is the subject of this Agreement so insured shall be damaged by some cause covered by such insurance to the extent that it is feasible to repair/rebuild the building to provide basic library service, City may, at its option, promptly remove all debris therefrom and repair and rebuild the same, restoring the Premises to the minimum extent necessary to provide basic library service to the extent the repairs/rebuilding are covered by the City's insurance.

If the structure shall be damaged to the extent that it is not feasible to repair/rebuild the building to provide basic library service, City shall not be required to build but may do so at City's option. Otherwise, County shall establish and operate a Temporary Circulation Desk until such time as the New Gladstone Library Branch is completed, with costs shared as outlined in section 1.B of the Library Construction and Operation IGA

16. TOTAL OR PARTIAL DESTRUCTION:

If the Gladstone Library property is damaged due to the County's use, and it is feasible to repair/rebuild the building to provide basic library service prior to the completion of milestone 4 in the Library Construction and Operation IGA, County shall promptly remove all debris therefrom and repair and rebuild the same, restoring the premises to the minimum extent necessary to provide basic library service. It is agreed that the feasibility of any repair/rebuild of the building is contingent upon insurance resources being available to cover the costs necessary to enable the Gladstone Library to function consistent with Section 1.B of the Library IGA.

If the structure is damaged by County's use to the extent that it is not feasible to repair/rebuild the building to provide basic library service, County shall move the Gladstone Library operations until the New Gladstone Library Branch is completed if insurance sufficient coverages or proceeds are available to the City and County to open a temporary library branch in Gladstone that provides at least public use space equivalent to a majority of the public use space available in the current Gladstone Library building ("Temporary Library Branch"). If, however, construction on the New Gladstone Library Branch has progressed to such a point that the City and County mutually agree it is imprudent or unfeasible to open a Temporary Library Branch, the County shall instead establish and operate a Temporary Circulation Desk at its sole expense until such time as the New Gladstone Library Branch is completed.

If insurance coverages or proceeds are unavailable County shall establish and operate a Temporary Circulation Desk at its sole expense until such time as the New Gladstone Library Branch is completed.

17. HAZARDOUS SUBSTANCES:

County shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed or, or otherwise released on or under the Premises. County may use or otherwise handle on the Premises only those Hazardous Substances typically used in the prudent and safe operation of the Library. County may store such Hazardous Substances on the Premises only in quantities necessary to satisfy County's reasonably anticipated needs. County shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. The term *Environmental Law* shall mean any federal, state, or local statute, regulation, or ordinance, or any judicial or other governmental order pertaining to the protection of health, safety, or the environment. The term *Hazardous Substance* shall mean any hazardous, toxic, infectious, or

radioactive substance, waste, or material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

18. ASSIGNMENT

County may not sell, assign, or transfer any rights under this Agreement without the prior written consent of the City.

19. WAIVER:

Any waiver of any breach of covenants herein contained to be kept and performed by County or City shall not be deemed or considered to be a continuing waiver, and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising any other rights as to any succeeding breach, either of the same condition or covenant or otherwise.

20. APPLICABLE LAW

This Agreement will be governed by, and construed in accordance with, the laws of the State of Oregon.

21. BINDING EFFECT; AUTHORITY

The covenants and agreements contained in this Agreement are binding on and inure to the benefit of the City and County. Each Party warrants that the below signatory is authorized to enter into this agreement and bind that Party.

22. TERMINATION AND DEFAULT:

- (1) This Library Facility Agreement can be terminated by mutual agreement of the parties with thirty (30) days' written notice.
- (2) This Agreement automatically terminates if the Library Construction and Operation Agreement terminates, with the County permitted to continue operations until the mutually-agreed-upon date of final transfer of operations.
- (3) If County defaults in performing its obligations under this Library Facility Agreement City may make any payment or perform any obligation which County has failed to perform after not less than ten (10) days' written notice to County of City's intention to pursue this remedy (except in cases of emergency, where no such prior notice shall be required), in which case City shall be entitled to recover from County upon demand all amounts so expended.
- (4) If City defaults in performing its obligations under this Library Facility Agreement County may make any payment or perform any obligation which City has failed to perform after not less than ten (10) days' written notice to City of County's intention to pursue this remedy (except in cases of emergency, where no such prior notice shall be

required), in which case County shall be entitled to recover from City upon demand all amounts so expended.

23. PROPERTY AT EXPIRATION OR TERMINATION:

On expiration or early termination of this Library Facility Agreement, County shall deliver all keys to City and turnover the Premises clean and in the same condition as at the commencement of the term subject only to reasonable wear and tear from ordinary use. County shall remove all of its furnishings and trade fixtures that remain its property and restore all damage resulting from such removal. Failure to remove shall be an abandonment of the property, and City may dispose of it in any manner without liability.

24. NO ATTORNEY’S 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.

Clackamas County

City of Gladstone

Chair, Board of County Commissioners

Mayor

Date

Date