



March 3, 2022

Board of County Commissioners
Clackamas County

Approval of an Intergovernmental Agreement with the City of Gladstone for Gladstone Library site ground lease. No county general funds involved.

Purpose/Outcome	Approval of an Intergovernmental Agreement (IGA) with the City of Gladstone to lease the parcel of land (the site of the former Gladstone City Hall situated at 525 Portland Avenue, Gladstone) on which the County will construct the new Gladstone Library facility.
Dollar Amount and Fiscal Impact	Annual rate of \$1.00.
Funding Source	Gladstone Library budget; funded with Library District and City of Gladstone funds. No county general funds are involved.
Duration	The Library Ground Lease Agreement shall commence on January 1, 2022, and remain in effect as long as the County operates the Gladstone Public Library pursuant to the Library Construction and Operation Agreement.
Previous Board Action/Review	<ul style="list-style-type: none"> • 10/31/1985: Approval of Board Order 85-1221 which entitles the Library Board of Trustees to conduct studies to recommend to the BCC appropriate sites for the location of the library building or satellite facilities • 10/16/2017: Approval of a Settlement Agreement with the City of Gladstone which requires the County to construct and operate two library facilities, one in the City of Gladstone and one in unincorporated Clackamas County • 4/3/2018 and 6/26/2018 Policy Sessions: Concord Property and Library Task Force planning • 10/9/2018, Policy Session: Project update • 11/20/2018 and 1/8/2019 Issues/updates: Gladstone Library Task Force planning • 10/9/2019 Business Meeting: Approved contract with Opsis Architecture LLP to create a master plan and conduct public outreach • 11/12/2019 Policy Session: Project update • 11/14/2019 Business Meeting: Approval on Consent Agenda of the Library Construction and Operation Intergovernmental Agreement with the City of Gladstone • 11/24/2020: Policy Session: Acceptance of the Gladstone Library and Concord Master Plan Reports and approval of staff to move forward to work with the community and consultants to complete design and engineering for the Concord community center/library and the Gladstone library

	<ul style="list-style-type: none"> • 1/14/2021: Business Meeting: with the Community and Consultants to Complete Design and Engineering for the Concord Property and Gladstone Library • 11/23/2021: Policy Session: Requested approval from the Board to address a funding gap and to approve proceeding with construction of the Gladstone Library.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This agreement directly supports the BCS Gladstone Library Strategic Result: By 2024, residents of the Gladstone community will have access to a new library which provides library services and facilities at or above the “Essential” level recommended by the Oregon Library Association. 2. This agreement supports the siting and construction of the new Gladstone Library, which in turn supports the Board’s goal of Building Public Trust through Good Government. Proceeding with the project supports the goal: By 2024, County policies and decisions, service delivery, and Board deliberations will be equitable, inclusive and transparent.
Counsel Review	Date of Counsel review: 1/12/22, Jeff Munns
Procurement Review	(Please check yes or no for procurement review. If the answer is “no,” please provide an explanation.) <ol style="list-style-type: none"> 1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: Item is an IGA
Contact Person	Sarah Eckman, 503-894-3135; Jason Varga 503-351-4012
Contract No.	N/A

BACKGROUND:

Business and Community Services (BCS) is requesting that the Board of County Commissioners approve and sign the ‘Library Ground Lease Agreement’ IGA between Clackamas County and the City of Gladstone.

Per section 2.E. of the Library Construction and Operation IGA, the City of Gladstone shall lease a parcel of land to the annual rate of \$1 on which to construct the Gladstone Public Library building. The lease shall be in force as long as the County operates the Gladstone Public Library under this agreement.

The City of Gladstone approved and signed the agreement during their City Council meeting on February 8th, 2022.

RECOMMENDATION: Staff recommends approval of this IGA, and authorizes the Chair to sign on behalf of the County.

ATTACHMENT: 1. Intergovernmental Agreement with the City of Gladstone for Gladstone Library site ground lease.

Respectfully submitted,



Sarah Eckman
Interim Director, Business & Community Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY AND THE
CITY OF GLADSTONE**

THIS INTERGOVERNMENTAL AGREEMENT (this "Library Ground Lease 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 and County entered into this 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"). To the extent that any terms between this Agreement and the Library Construction and Operation Agreement conflict, or are ambiguous, the terms of the latter shall control.

As part of the Library Construction and Operation Agreement, the City agreed to lease a parcel of land ("City Parcel") to the County for the annual rate of \$1 on which the County will construct the new library facility. The lease shall be in force as long as the County operates the Gladstone Public Library under the Library Construction and Operation Agreement.

The city of Gladstone Charter requires voter approval before the City may lease City-owned park property, which includes the City Parcel. On May 15, 2018, Gladstone electors approved Ballot Measure 3-530, which included approving leasing the City Parcel to the County to be used for a new library at a rate of \$1 per year.

1. LIBRARY GROUND LEASE AGREEMENT TERM:

This Library Ground Lease Agreement shall commence on January 1, 2022. This Agreement shall remain in effect as long as the County operates the Gladstone Public Library pursuant to the Library Construction and Operation Agreement.

2. PREMISES:

The premises subject to this Library Ground Lease is the site of the former Gladstone City Hall, situated at 525 Portland Ave, Gladstone, OR 97027 ("Premises"), the legal description of which is included as Exhibit A and incorporated into this Agreement. The former City Hall facility will be demolished pursuant to Sections 1(L) and 2(D) of the Library Construction and Operation Agreement, included as Exhibit B and incorporated into this Agreement.

3. USE:

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

4. NO WASTE:

The 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 for property it leases 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 assessed on the Premises.

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 (Utilities) used by County on the Premises as they become due, from and after the Commencement Date. In no event will the City be liable for payment of any Utilities due and owing for the Premises.

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. CONSTRUCTION AND ALTERATIONS:

County accepts premises in an "as is" condition. County will construct a new library facility on the Premise pursuant to the terms agreed upon in the Library Construction and Operation Agreement. Any alternations to the Premise not contemplated by the Library Construction and Operation Agreement require the express written consent of City which shall not be unreasonably withheld.

All construction and 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 Ground Lease Agreement. Ownership and control of the new library facility upon termination will be determined pursuant to Section 4(b) of the Library Construction and Operation Agreement.

9. RENT:

County shall remit \$1 annually to the City, payable in January of each year.

10. MAINTENANCE:

County shall maintain Premises in a neat condition, free of trash and debris, in good order and repair.

11. PLACE OF NOTICE:

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

Jacque Betz
City Administrator
18505 Portland Avenue
Gladstone, OR 97027
(503) 557-2767
betz@ci.gladstone.or.us

Notice for County shall be mailed to:

Sara Eckman
Interim 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. RELEASE

County will be in exclusive control of the Premises and City will not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or any injury or damage to the Premises or to any property, whether belonging to County or to any other person, caused by any fire, breakage, leakage, defect, or bad condition on any part of the Premises or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Premises, or from any kind of injury that may arise from any other

cause whatsoever on the Premises. County hereby releases City from and against any and all liabilities resulting from any such injuries and damages. Notwithstanding the immediately preceding, City acknowledges that it remains responsible for liability to the extent that the liability arises from City's own gross negligence or willful misconduct.

13. INDEMNIFICATION:

To the extent permitted under Oregon law, County agrees to indemnify, defend, and hold harmless the City, their officers, agents, elected officials, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands, arising from performance of this Library Ground Lease Agreement and any activity on and use of the Premises except when due to City's sole negligence,.

To the extent permitted under Oregon law, City agrees to indemnify, defend, and hold harmless the County, their officers, agents, elected officials, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands, arising from performance of this Library Ground Lease Agreement except when due to County's sole negligence.

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

14. INSURANCE:

Liability: County shall procure and maintain during the term of the Library Ground Lease Agreement the following insurance at County's cost: commercial general liability policy (occurrence version) in a responsible company with coverage for bodily injury and property damage liability, personal and advertising injury liability, and medical payment with a general aggregate limit of not less than two million dollars (\$2,000,000) and a per occurrence limit of not less than one million dollars (\$1,000,000). Such insurance shall cover all risks arising directly or indirectly out of County's activities on or any condition of the Property whether or not related to an occurrence caused or contributed to by City's negligence. Such insurance shall protect County against the claims of City on account of the obligations assumed by County under Indemnification, and shall name City as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to City before any change or cancellation shall be furnished to City before County's occupancy of the Property. The City of Gladstone, its director's, 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 Cities favor for Worker's Compensation.

Workers' Compensation: County certifies that they have qualified for State of Oregon Worker's Compensation coverage for all employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. The coverage will offer the City with a waiver of subrogation in their favor and will include Employer Benefits Liability of at least \$500,000. This shall be evidenced with a Certificate of Insurance or a copy of the certificate of self-insurance issued by the State. The evidence shall be given to the City within ten (10) days of execution of this Agreement.

15. 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.

16. ASSIGNMENT AND SUBLETTING

County may not sell, assign, or transfer any rights under this Agreement without the prior written consent of the City which consent is in City's sole and absolute discretion.

17. APPLICABLE LAW

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

18. 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.

19. TERMINATION AND DEFAULT:

- (1) This Agreement automatically terminates if the Library Construction and Operation Agreement terminates, with the County permitted to continue operations until any mutually-agreed-upon date of final transfer of operations.
- (2) If County defaults in performing its obligations under this Library Ground Lease 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.

- (3) If City defaults in performing its obligations under this Library Ground Lease 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.

20. SURRENDER:

On expiration or early termination of this Library Ground Lease Agreement, County shall deliver all keys to City and surrender the Premises. 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.

21. GENERAL PROVISIONS:

A. Compliance with Applicable Law. Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. This includes, but is not limited to, compliance with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, sexual orientation, gender identity, marital status, race, color, religion, national origin, familial status, or the presence of any mental or physical disability, as set forth in ORS Chapter 659A; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

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.

B. 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.

C. Access to Records. Both Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of ten (10) 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. All Records shall be maintained to the extent necessary to clearly reflect actions taken.

D. 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.

E. Integration, Amendment and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Ground Lease and Premises. 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.

F. 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.

G. Independent Contractor. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

H. 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.

I. 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.

J. 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.

K. **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.

L. **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, both 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 their obligations under this Agreement.

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Clackamas County

City of Gladstone

Chair, Board of County Commissioners



Mayor

Date

2/8/2022

Date