# RECORDING MEMO

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| X | New Agreement/Contract |
| | Amendment/Change Order Original Number _____ |
| | Policy, Reports, |

ORIGINATING COUNTY
DEPARTMENT: Business and Community Services, Library

PURCHASING FOR: N/A

OTHER PARTY TO
CONTRACT/AGREEMENT: The City of Gladstone

BOARD AGENDA DATE: April 7, 2011

AGENDA ITEM NUMBER: D.1.

PURPOSE: Intergovernmental Agreement (IGA) between Clackamas County and the City of Gladstone for Capital Contribution.

Clackamas County Official Records
Sherry Hall, County Clerk
Commissioners' Journals
Agreements & Contracts

2011-3400

04/12/2011 03:52:28 PM

Please return to County Library, Debbie Smith after recording.
Thank you.

# COOPERATIVE INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF GLADSTONE

THIS COOPERATIVE INTERGOVERNMENTAL AGREEMENT (this "Agreement"), is entered into this 7 day of April, 2011, by and between the Clackamas County (the "County") a political subdivision of the State of Oregon, and the City of Gladstone, a municipal corporation (the "City").

WHEREAS, the County has formed the Library District of Clackamas County (the "District"), a county service district dedicated to supporting the provision of library services within its boundaries; and

WHEREAS, as part of the preparatory process for the formation of the District, the Board of County Commissioners proposed a one-time contribution from the County general fund to each city providing library services in the District for the sole purpose of capital improvements to the libraries therein (the "Capital Contribution"); and

WHEREAS, the City and other cities within the District have entered into a separate intergovernmental agreement dated August 20, 2009 with the District for the distribution of District funds for the purposes of operating, maintaining and enhancing services at the libraries within the District (the "District IGA"); and

WHEREAS, the County is entering into similar intergovernmental agreements with city library service providers ("Library Cities") for their respective Capital Contributions; and

WHEREAS, the parties desire to enter into this Agreement to reflect the terms of the Capital Contribution by the County;

NOW, THEREFORE, the County and City each covenant and agree to the following:

**Section 1 Obligations of the County**

1.1 County Capital Contribution. The County shall provide a one-time capital contribution of Two Million Five Hundred Thousand and No/100 Dollars ($2,500,000.00) to the City for the purposes set forth in Section 2.2 (the "Capital Contribution"), which will be distributed in one or more distributions pursuant to Section 1.3 hereof. The goal of distributing such capital funds is to assist libraries in meeting the Service Standards as defined in the District IGA. The Capital Contribution shall consist of $1 million from the County general fund as with all other Library Cities as defined in the District IGA, $1 million

from the County Library Capital Fund originally intended for capital improvements to County-operated libraries, and $500,000 from anticipated savings in County Library operations.

1.2 Library Capital Trust Fund. The County shall allocate a guaranteed amount per fiscal year to a County-managed dedicated library capital trust fund (the "Capital Fund") as scheduled and set forth in Exhibit A (the "Disbursement Schedule").

1.3 Capital Fund Distribution. The County shall disburse the Capital Contribution from the Capital Fund to the City and other Library Cities based on the Disbursement Schedule. The County shall make distributions up to the maximum available amount for that fiscal year. Such distribution will be made by the County no earlier than January of such fiscal year and no later than 60 days after the City submits to the County a capital plan identifying how the City will use the Capital Contribution. If requests for distributions in a given fiscal year are for a total amount less than the total amount in the Capital Fund, the County shall carry forward such balance to the next fiscal year for distribution as requested. The Parties intend that City shall receive its disbursement in February 2011.

1.4 Changes In Capital Fund Disbursement Schedule. To the extent the City desires a change in the schedule of disbursement, the City shall meet with representatives of the other Library Cities as constituted by the Library District Advisory Committee or otherwise and arrive at a mutually agreeable reordering of the Disbursement Schedule, which shall then be presented to the County Board for its approval. The City hereby consents to an alteration of the Disbursement Schedule without requiring the adoption of a specific amendment upon presentation of a resolution agreed to by a majority of the representatives of the Library Cities consenting to such change and upon approval of the requested change by the Board of County Commissioners.

1.5 Library Network. The County currently funds and operates the Library Network of Clackamas County (the "Network") to support the provision of services by the libraries in Clackamas County. The County shall fund the Network to provide the following services at an overall service level at least equal to that being provided by Network in fiscal year 2008/2009:

1.5.1 Automated library system and related telecommunications and technical support;
1.5.2 Courier services;
1.5.3 Administration;
1.5.4 Database management services including creating/acquiring MARC format bibliographic records;
1.5.5 Inter-library loan services;
1.5.6 Inter and intra-regional cooperative library planning;

1.5.7 Shared online databases for public use; and
1.5.8 Internet Service Provider for member libraries.

The County shall not be financially or otherwise responsible for the provision of new services requested or added to Network at the request of the City. To the extent the City or Library Cities generally request new or additional services, such requesting provider(s) will be billed back on separate contracts initiated as services are added. Such agreements shall not modify or restrict the covenants and agreements of the parties hereto.

Section 2 **Obligations of the City**

2.1 Capital Fund Disbursement. The City shall receive its Capital Contribution pursuant to Sections 1.3 and 1.4 hereof.

2.2 Use of Funds. The City shall expend the Capital Contribution solely for library purposes such as library construction, remodel, expansion, building and site improvements, library construction bonded debt service, and/or collection development.

2.3 Proof of Use. After distribution, the County may monitor the use of the Capital Contribution to ensure that these County general funds are used for purposes permitted by Section 2.2. Upon request of the County the City shall provide a certification that the Capital Contribution has been so used to the head of the Business and Community Services Department of Clackamas County or his or her designee.

2.4 Library Board Representation. The City shall provide for fair representation of served library patrons on the City's Library Board, including patrons from unincorporated Clackamas County.

**Section 3 Term and Termination**

3.1 Term. This Agreement shall commence on July 1, 2010 and automatically renew annually thereafter, unless otherwise terminated as set forth herein.

3.2 Termination. This Agreement shall terminate upon the agreement of both parties, or upon one hundred eighty (180) days prior written notice from one party to the other.

3.3 Amendment. This Agreement may be amended at any time upon the agreement of both parties.

3.4 Failure of the City to use Capital Contribution for Library Purpose. If the City at any time uses the Capital Contribution other than for purposes permitted in Section 2.2., the City will be in material breach of this Agreement and shall promptly repay to the County that portion of the Capital Contribution not so used plus accrued interest on such sum calculated from the date of disbursement to the date of repayment at a rate of 6% per annum.

**Section 4 General Provisions**

4.1 Indemnification. Each party shall release, defend, indemnify and/or hold harmless the other, its officers, commissioners, councilors, elected officials, employees, and agents, from and against all damages, claims, injuries, costs, or judgments that may in any manner arise as a result of the party's performance under this contract, subject to Oregon Tort claims limitations.

4.2 Governing Law. This Agreement shall be construed and governed in all respects in accordance with laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

4.3 Savings. Should any portion of this Agreement or amendment thereto be adjudged by a Court of appropriate final jurisdiction to be in violation of any local, state or federal law, then such portion or portions shall become null and void, and the balance of the Agreement shall remain in effect. Both parties shall immediately renegotiate any part of this Agreement found to be in such violation by the Court and to bring it into compliance with said laws.

4.4 Reasonable Attorney's Fees. In the event any action is brought to enforce, modify or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees and costs incurred in connection with such action or on appeal or review; said amount to be set by the court before which the matter is heard.

4.5 Notices. Formal notices, demands and communications between the Parties shall be deemed given three (3) business days after being sent by registered or certified mail, postage prepaid, return receipt requested to the principal offices of the Agency and the City as designated herein. Such written notices, demands and communication may be sent in the same manner to such other addresses and to such other persons and entities as either party may from time to time designate by mail as provided in this section. Notices shall be sent to the addresses shown below and to the attention of the person indicated.

The principal offices and mailing address of the Parties are:

Clackamas County
Attn: Board of County Commissioners

2051 Kaen Road
Oregon City, Oregon 97045

With a copy to:
Clackamas County Libraries
Atten: Doris Grolbert, Library Director
150 Beavercreek Road, 4th Floor
Oregon City, OR 97045

City of Gladstone
Attn: Pete Boyce, City Administrator
525 Portland Avenue
Gladstone, Oregon 97027

4.6 No Personal Liability. No member, official, agent, or employee of the County or any City shall be personally liable to the other or any successor-in-interest thereto in the event of any default or breach by such entity.

4.7 No Agency. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

4.8 Entire Agreement. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the party granting such waiver.

4.9 Further Action. The parties hereto shall, without additional consideration, acknowledge, execute, and deliver from time to time such further instruments as a requesting party may reasonably require to accomplish the purposes of this Agreement.

4.10 Non-Waiver of Rights. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right, power or remedy upon a breach of any provision of this Agreement shall not constitute a waiver of any provision of this Agreement or limit the party's right thereafter to enforce any provision or exercise any right.

4.11 Time is of the Essence. A material consideration of the parties entering into this Agreement is that the parties will perform all obligations under this Agreement

in a timely manner. Time is of the essence as to each and every provision of this Agreement.

4.12 Restricted Assignment. No party hereto may assign its rights, responsibilities or obligations hereunder to another party, by operation of law or otherwise, without (i) seeking and receiving an amendment of this Agreement and (ii) having said party join this Agreement on the terms, conditions and covenants herewith.

4.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

4.14 Library Authority. Clackamas County operates public libraries pursuant to a board order creating public libraries for all Clackamas County residents dated July 9, 1938, as amended and updated pursuant to Board Order 85-1221 dated October 31, 1985. The Library Cities operate or in future plan to operate public libraries under state law within their boundaries. Under the District IGA, the Library Cities have agreed to provide public library services in unincorporated areas of the County as well as within City boundaries. Clackamas County nonexclusively delegates the authority to operate public libraries for the benefit of incorporated and unincorporated residents of Clackamas County to the City.

Section 5 **Transition of Oak Lodge Library**

5.1 Transfer of Operations. The County currently operates the Oak Lodge Public Library for the benefit of unincorporated residents in the Oak Lodge Service Area as defined in the District IGA. The City operates the Gladstone Public Library for the benefit of its citizens and a number of unincorporated residents in the surrounding area. Upon completion of a new Public Library located at 18235 Webster Road, the Oak Lodge Library will close and the City's service population will change as specified in the District IGA to include areas of the Oak Lodge service population. The City shall provide for fair representation of served library patrons on the City's library board, including patrons from unincorporated Clackamas County to comply with Section 2. .4.

5.2 Transfer of Employees. County employees of the Oak Lodge Public Library may be transferred to the employ of the City pursuant to ORS 236.605-640. No later than ninety (90) days before the opening of the new public library both parties agree to enter into a separate agreement regarding the transition of materials, resources and labor from the Oak Lodge Public Library to the new Public Library.

5.3 Transfer of Assets. The County will transfer or assign, as appropriate, to the City all assets of the Oak Lodge Public Library desired by the City as agreed by

the parties. No later than ninety (90) days before the opening of the new public library both parties agree to enter into a separate agreement regarding the transition of materials, resources and labor from the Oak Lodge Public Library to the new Public Library.

*[Signature Page Follows]*

Exhibit A

**Disbursement Schedule**

| | **Year 1** 2009/10 | **Year 2** 2010/11 | **Year 3** 2011/12 | **Year 4** 2012/13 | **Year 5** 2013/14 | **TOTAL** |
|---|---|---|---|---|---|---|
| Annual Distribution | 3,500,000 | 3,000,000 | 2,500,000 | 2,000,000 | 1,250,000 | 12,250,000 |
| Prior Year Carryover | -- | 1,350,000 | 350,000 | 850,000 | -- | |
| Total Funds Available | 3,500,000 | 4,350,000 | 2,850,000 | 2,850,000 | 1,250,000 | |
| | | | | | | |
| Library Cities: | | | | | | |
| *Canby* | | | | 1,000,000 | | 1,000,000 |
| *Estacada* | 1,000,000 | | | | | 1,000,000 |
| *Gladstone* | | 2,500,000 | | | | 2,500,000 |
| *Happy Valley* | | 2,000,000 | | | | 2,000,000 |
| *Lake Oswego* | | | 1,000,000 | | | 1,000,000 |
| *Milwaukie* | | | | 1,000,000 | | 1,000,000 |
| *Molalla* | 150,000 | | | 850,000 | | 1,000,000 |
| *Oregon City* | | 1,000,000 | | | | 1,000,000 |
| *Sandy* | | | 1,000,000 | | 250,000 | 1,250,000 |
| *West Linn* | 1,000,000 | | | | | 1,000,000 |
| *Wilsonville* | | | | | 1,000,000 | 1,000,000 |
| **Total** | | | | | | 13,750,000 |
| **Carryover:** | 1,350,000 | 350,000 | 850,000 | -- | -- | |

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

| THE CITY OF GLADSTONE | CLACKAMAS COUNTY |
|---|---|
| By: Wade Byers | By: Charlotte Lehan |
| Title: Mayor | Title: Chair |
| ATTEST: | ATTEST: Mary Raethke 4-7-11 D.1 |