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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF CLACKAMAS

CITY OF GLADSTONE, an Oregon  
municipal corporation,

Plaintiff,

v.

CLACKAMAS COUNTY, a political  
subdivision of the State of Oregon,

Defendant.

Case No.

COMPLAINT (Breach of Contract)  
CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION

Claim for Relief: \$1,500,000

**ORS 20.140 – City fees deferred at filing**

Plaintiff City of Gladstone alleges:

**PARTIES**

1.

Plaintiff, the City of Gladstone (hereinafter “Plaintiff”), is a lawfully formed and existing municipal corporation in the State of Oregon located in Clackamas County.

2.

Defendant, Clackamas County (hereinafter “Defendant”), is a lawfully formed and existing political subdivision of the State of Oregon.

**FACTUAL ALLEGATIONS**

3.

On or about April 7, 2011, Plaintiff and Defendant entered into a contract (a “Cooperative Intergovernmental Agreement” and referred to herein as the “Capital IGA”) to reflect the terms of a monetary contribution (the “Capital Contribution”) from Defendant to

1 Plaintiff for the sole purpose of making capital improvements to Plaintiff’s library. See the  
2 Capital IGA, a copy of which is attached hereto as Exhibit 1.

3 4.

4 Pursuant to Section 1.1 of the Capital IGA, Defendant is obligated to provide \$2.5  
5 million to Plaintiff for the purposes set forth in Section 2.2 – Use of Funds, which will be  
6 distributed in one of more distributions pursuant to Section 1.3 – Capital Fund Distribution.

7 5.

8 Section 1.3 of the Capital IGA compels the Defendant to:

9 . . . disburse the Capital Contribution from the Capital Fund to the [Plaintiff] and  
10 other Library Cities based on the Disbursement Schedule. The [Defendant] shall  
11 make distributions up to the maximum available amount for that fiscal year. Such  
12 distribution will be made by [Defendant] no earlier than January of such fiscal  
year and no later than 60 days after the [Plaintiff] submits to [Defendant] a capital  
plan identifying how the [Plaintiff] will use the Capital Contribution.

13 Neither Section 1.3 nor any other section of the Capital IGA defines “capital plan” or conditions  
14 Defendant’s obligation to disburse the funds on Defendant approving the submitted capital plan.

15 6.

16 On or about January 12, 2016, Defendant requested Plaintiff submit a construction  
17 timeline and capital plan.

18 7.

19 On or about February 22, 2016, Gladstone City Administrator Eric Swanson emailed  
20 County Administrator Don Krupp attaching a construction timeline, a capital plan, and a letter  
21 from the Gladstone City Council to the Board of County Commissioners officially requesting  
22 defendant disburse the funds per Section 1.3 of the Capital IGA without further delay or new  
23 conditions. See Plaintiff’s E-mail dated February 22, 2016, a copy of which is attached hereto as  
24 Exhibit 2.

25 8.

26

1 Section 1.3 of the Capital IGA requires Defendant to distribute any Capital Contribution  
2 related to the capital plan “no later than 60 days after the City submits to the County a capital  
3 plan identifying how the City will use the Capital Contribution.” The 60-day period for  
4 Plaintiff’s February 22, 2016 capital plan ended April 22, 2016.

5 9.

6 On or about March 8, 2016, Defendant responded to Plaintiff’s exercise of its right under  
7 the Capital IGA by demanding Plaintiff submit supplemental information not required by the  
8 Capital IGA prior to distribution of the Capital Contribution and giving the Plaintiff notice of its  
9 intent to terminate the Capital IGA pursuant to Section 3.2. See Defendant’s Letter dated March  
10 8, 2016, a copy of which is attached hereto as Exhibit 3. Under Section 3.2, the Capital IGA  
11 terminates 180 days from the date of notice.

12 10.

13 On or about June 21, 2016, Plaintiff sent Gary Barth, Director of the Clackamas County  
14 Business and Community Services, a letter again requesting Defendant distribute the funds  
15 within 60 days as required by Section 1.3 of the Capital IGA and attached a supplemented capital  
16 plan. See Plaintiff’s Letter dated June 21, 2016, a copy of which is attached hereto as Exhibit 4.  
17 The 60-day period for the supplemental capital plan expired on August 20, 2016.

18 11.

19 On or about August 10, 2016, Defendant responded to Plaintiff’s request for distribution  
20 by asserting, contrary to the terms of the Capital IGA, that the revised capital plan was  
21 insufficient and refusing to disburse the funds. See Defendant’s Letter dated August 10, 2016, a  
22 copy of which is attached hereto as Exhibit 5.

23 12.

24 Defendant has not disbursed the funds in violation of the Capital IGA Section 1.3.

25 **FIRST CLAIM FOR RELIEF**

26 **(Breach of Contract)**

1 13.

2 Plaintiff realleges paragraphs 1-13.

3 14.

4 Defendant entered into a contract to provide \$2.5 million in Capital Contribution to  
5 Plaintiff within 60 days of Plaintiff's submission of a capital plan to Defendant.

6 15.

7 Plaintiff submitted a capital plan to Defendant on or about February 22, 2016 and thus  
8 satisfied all conditions precedent to the receipt of the County's obligations to distribute the funds  
9 to Plaintiff.

10 16.

11 More than 60 days has elapsed since Plaintiff submitted its capital plan to Defendant, but  
12 Defendant has only disbursed \$1 million of the agreed upon and required \$2.5 million Capital  
13 Contribution to Plaintiff.

14 17.

15 Defendant is in breach of the Capital IGA, to wit: by failing to distribute the remaining  
16 \$1.5 million to Plaintiff.

17 **PRAYER**

18 WHEREFORE, Plaintiff City of Gladstone prays for judgment as follows

- 19 1. For an order declaring Defendant in breach of the Capital IGA;  
20 2. For an award of damages in the sum of \$1.5 million with pre- and post-judgment  
21 interest thereon at the rate of nine percent (9%) per annum;  
22 3. For its costs and disbursements;  
23 4. For an award of its reasonable attorney fees as required by Section 4.4 of the Capital  
24 IGA; and  
25 5. For such other relief as the Court deems just and proper.

26 DATED this 22<sup>nd</sup> day of August, 2016.

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BEERY, ELSNER & HAMMOND, LLP

*s/ Ashley B. Driscoll*

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