

FOURTH INTERGOVERNMENTAL AGREEMENT FOR LIBRARY SERVICES

This FOURTH INTERGOVERNMENTAL AGREEMENT FOR LIBRARY SERVICES (**Agreement**) is entered by the City of The Dalles, an Oregon municipal corporation (**City**), and Wasco County Library Service District, a library services district duly formed and organized under the provisions of ORS Chapters 198 and 451 (**District**), for the City's provision of library services to the District.

WHEREAS, ORS 190.010 provides units of local government may enter written agreements with any other unit of local government for the performance of any or all functions and activities a party to the agreement has authority to perform;

WHEREAS, on July 1, 2007, the Parties entered that certain *Intergovernmental Agreement between the Wasco County Library and the City of The Dalles for Library Services*;

WHEREAS, on July 1, 2008, the Parties entered that certain *Second Intergovernmental Agreement between Wasco County Library and City of The Dalles for Library Services*;

WHEREAS, on July 1, 2010, the Parties entered that certain *Third Intergovernmental Agreement between Wasco County Library and City of The Dalles for Library Services*; and

WHEREAS, the Parties' course of performance since July 1, 2007, informed them of best practices convenient to the furtherance of City's provision of library services to the District and intend this Agreement to establish the continuing terms and conditions of such library services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree:

A. CITY RESPONSIBILITIES.

1. General. The City agrees to make library facilities and services available to the public and work in coordination with other branches of the District, all as provided in this Agreement.
2. The Dalles Library. The Parties' primary library facility is currently located at 722 Court Street in The Dalles, Oregon (**The Dalles Library**), and the Parties agree they may change its location by mutual written agreement.
3. Capital Improvements and Maintenance.
 - (a) Capital Improvements.
 - (1) **Defined**. The Parties agree *capital improvements* are durable upgrades, adaptations, or enhancements of The Dalles Library that create a new asset and/or have a lifespan that is 15 years or longer, increasing its value and often including structural changes and major replacements; the Parties further agree examples of *capital improvements* include additions (e.g., constructing new deck or wing), whole-room renovations, major installations (e.g., installing central air

conditioning or new plumbing system), and replacing 30% or more of a building component (e.g., roof, windows, floors, electrical system, HVAC).

(2) **Responsibility.** The City agrees to procure or perform The Dalles Library's capital improvements; provided, however, the City agrees to be responsible for only 50% of The Dalles Library's capital improvement costs, which it will pay from City funds appropriated through the City's annual budget process. The Parties agree to develop and maintain a 5-10 year *Capital Improvement Plan (CIP)* within six (6) months from this Agreement's effective date and informing them of the necessary resources each Party must budget to meet the CIP's expectations.

(b) Maintenance.

(1) **Defined.** The Parties agree *maintenance* is generally an annual expense, that does not create a new asset and is incurred to keep The Dalles Library habitable and in proper working condition; the Parties further agree examples of *maintenance* include routine costs associated with painting, repairing existing HVAC units or toilets, maintaining parking lots, sidewalks, and landscaping and outdoor structural items, replacing shingles on a roof, floor covering installations, broken pipes, or broken or worn-out parts, and the costs associated with the inspection of such expenses.

(2) **Responsibility.** The City agrees to procure or perform The Dalles Library's maintenance by utilizing the District's annually budgeted financial resources marked for disbursement to the City for the express and limited purpose of this Agreement's performance (**Awarded Funds**).

4. Personnel.

(a) County Librarian. The City agrees to employ the County Librarian, a person agreed upon between the City and the District and responsible for the administration of the Wasco County Library system and designated as the District's Budget Officer. Since the County Librarian is a City employee, the City reserves the unilateral right to terminate their at-will employment like all other City employees. The City will conduct an annual performance evaluation of the County Librarian and shall solicit input from the Library Board.

(b) Support Personnel. With respect to The Dalles Library, the City agrees to employ others as it deems necessary, including support staff to provide general patron services, maintenance services, library collection services, information services, and youth and adult services expressly as City employees. Since support staff are City employees, the City reserves the unilateral right to terminate their at-will employment like all other City employees.

(c) Workers' Compensation. The City agrees to provide all required workers' compensation coverages for all City employees and volunteers contemplated by this Agreement.

5. Indirect Administrative and Overhead Costs. Since The Dalles Library is a City facility and its personnel are City employees, as part of the City budget process the City agrees

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to provide District a copy of the City's General Fund Transfers report detailing the City's methodology for calculating its costs for indirect administrative services and The Dalles Library operational overhead, including its costs for Finance Department staff time, Legal Department staff time, and all other administrative or personnel costs. This methodology is based on the total administrative costs of City departments that provide services to the Library broken out by use. Calculations take into account usages such as invoices, number of employees, agenda items, hours for legal services, facility services, or IT time. For each fiscal year during this Agreement's term, the City (through its City Manager and Finance Director) agrees to meet and provide the District Board with a yearly forecast and breakdown of its costs annually by April 1st to discuss that methodology as applied to the given fiscal year. The Parties agree the City's expenses for its indirect administrative and overhead costs contemplated by this Agreement are true and actual costs to the City and do not reflect a profit. The Parties agree the City reserves the discretion to reduce the amount it transfers to the District's pecuniary benefit.

6. Use of Awarded Funds. The City agrees to use Awarded Funds exclusively for its provision of library services to the District, including the costs detailed in Section B(1)(a) and the costs for maintenance, personnel, and indirect administration and overhead described by Sections A(3)(b) – A(5) of this Agreement.
7. Hours of Operation. The City agrees to maintain reasonable hours of operation for the public's use of The Dalles Library based on the City's operational needs. The Parties agree the District's Library Board may recommend changes to the hours of operation to the City, which the City agrees to reasonably consider.
8. Annual Reporting. The City agrees to provide the District an annual audit report and (upon District's written request) make and deliver a presentation at a Wasco County Board of County Commissioners regular meeting on its activities under this Agreement for the year at the time the audit report is presented to the District's governing body.
9. Public Contracting. The City agrees to comply with all applicable Oregon Public Contracting Code requirements and its Local Contract Review Board Rules for all procurements or contracting relating to this Agreement's performance.
10. Insurance and Indemnity.
 - (a) Required Policies. The City agrees to carry and maintain in effect throughout this Agreement's term statutory **Workers' Compensation** coverage, **Comprehensive General Liability** insurance in the amount of \$1,000,000 (*per occurrence*) and \$2,000,000 (*in aggregate*), and **Commercial Automobile Liability** insurance (including coverage for all owned, hired, and non-owned vehicles) with a *combined single limit per occurrence* of \$1,000,000.
 - (b) Certificates. The City agrees to provide the District with certificates of insurance naming the *Wasco County Library Service District* as an additional insured prior to its performance of this Agreement and to further provide the District thirty (30) days' notice before cancelling or reducing any insurance policy contemplated by this Agreement.

- (c) Indemnity. In accordance with the Oregon Tort Claims Act and the Oregon Constitution, the City agrees to indemnify, defend, and hold harmless the District (including its officers, agents, and employees) against all liability, loss, and costs arising from actions, suits, claims, or demands for the City's acts or omissions in its performance of this Agreement.

B. DISTRICT RESPONSIBILITIES.

1. Authorize Funds. For each year of this Agreement's term, the District agrees to authorize funding in accordance with its adopted budget and Oregon Local Budget Law to provide library services in Wasco County. The District further agrees to allocate, at least, a portion of those authorized funds as Awarded Funds sufficient to cover both:
 - (a) 50% of The Dalles Library's capital improvement costs scheduled for that fiscal year (pursuant to the CIP); and
 - (b) the City's indirect administrative and overhead costs for that fiscal year.
2. Indemnity. In accordance with the Oregon Tort Claims Act and the Oregon Constitution, the District agrees to indemnify, defend, and hold harmless the City (including its officers, agents, and employees) against all liability, loss, and costs arising from actions, suits, claims, or demands for the District's acts or omissions in its performance of this Agreement.

C. FINANCIAL OBLIGATIONS AND BUDGETARY CONSIDERATIONS.

1. Fees. The Parties agree all library fees, fines, or interest collected by the City are solely for the District's benefit and the City agrees to utilize them only for The Dalles Library operation. The City agrees to report all such amounts in its annual audit and report.
2. Annual Operating and CIP Budget. The Parties agree the County Librarian will draft the annual operating and CIP budget of The Dalles Library for review by the City and District. The City agrees to consider for approval the proposed annual operating and CIP budget for The Dalles Library (including the County Librarian's compensation) through the City's annual budget process for each year of this Agreement's term.
3. Unappropriated Ending Fund Balance. The Parties agree The Dalles Library will follow best practices budgetary and financial rules of the City, including but not limited to maintaining an unappropriated ending fund balance equal to four months' net operating expenses.
4. Revenue Discrepancies. The City agrees to carry-over any non-budgeted surplus revenue (resulting from The Dalles Library operating costs being less than projected) to be used for The Dalles Library services and operations under this agreement. The District agrees any revenue shortage resulting from its lack of tax collection provides the City with a discretionary, partial, and proportional excuse for the City's non-performance of this Agreement.
5. Assets. The Parties agree any City-owned assets currently in the The Dalles Library are the City's property for those assets' remaining life. The Parties further agree, as the City

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expends Awarded Funds to replace those assets or purchases new materials (including circulation materials), those items are considered City property for use at The Dalles Library. The Parties agree the District has sole oversight over assets procured by the District.

6. Fund Availability. The Parties agree the District is expected to receive sufficient funds to cover its annual costs under this Agreement from each year's tax receipts. The Parties further agree the District's ability to make payments to the City under this Agreement are contingent on the District's actual tax receipts, budgetary limitations, and other expenditure authority sufficient to allow the District (in the exercise of its reasonable administrative discretion) to actually make those payments. If the District determines there are insufficient funds available to make payments under this Agreement, the Parties agree either Party may terminate this Agreement by providing thirty (30) days' notice of termination to the non-terminating Party; provided, however, the District agrees any shortage in its payments to the City under this Agreement provides the City with a discretionary, partial, and proportional excuse for the City's non-performance of this Agreement.
7. Audit. The Parties agree the District may review and audit the City's financial records relating to this Agreement and the City agrees to reasonably make such records available for the District's inspection.

D. GENERAL PROVISIONS.

1. Term. The Parties agree this Agreement commences July 1, 2024, for an initial three (3) year term and automatically extends by two successive three (3) year terms (all under the same provisions as herein contained).
2. Termination. The Parties agree either Party may terminate this Agreement at any time by providing written notice of intent to terminate by January 1 of any given fiscal year during this Agreement's term, in which case the Parties agree this Agreement terminates at the end of that fiscal year. The Parties further agree this Agreement may be terminated at any time by mutual written agreement.
3. General Role of the Parties. The Parties agree the District is primarily a funding mechanism of Wasco County established to support and operate library services within county limits and relies on the City and other entities to provide those services to the public.
4. No Employer-Employee Relationship. The Parties expressly agree they do not intend this Agreement or the course of its performance to implicate an employer-employee relationship between them. The City expressly warrants its exclusive agency free from the District's direction and control over the means and day-to-day manner of performing its obligations under this Agreement. To the maximum extent allowed by law, the Parties agree the City is an independent contractor as defined by ORS 670.600(2) and as interpreted by regulations promulgated by the Oregon Bureau of Labor and Industries.
5. Nondiscrimination. The Parties agree neither Party will discriminate on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, disability, or

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veteran's status in any activity or operation carried out in the performance of this Agreement.

6. Delegation and Assignment. The Parties agree neither Party will delegate, assign, or otherwise transfer any of their interests in this Agreement without the other Party's prior written consent, which consent will not be unreasonably withheld. The Parties agree all provisions of this Agreement are binding upon and inure to the benefit of the Parties and their respective and permitted successors and assigns, if any.
7. Third-Party Beneficiaries. The Parties agree they 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 will be construed to give or provide any benefit or right, whether directly or otherwise, to any third-party.
8. Representations and Warranties. The Parties each represent and warrant they each have the power and authority necessary to enter and perform this Agreement and this Agreement (when duly executed) is a valid and binding obligation of each Party.
9. Dispute Resolution. The Parties agree any dispute, claim, action, suit, or proceeding (**Claim**) between them and arising from or relating to this Agreement will first be attempted to be resolved informally commencing with one Party noticing the Claim in writing to the other Party, in which case the Parties agree to negotiate to resolve the Claim for at least forty-five (45) days from the date of notice. If the Claim is reasonably unresolved after those forty-five (45) days, the Parties agree to submit themselves and the matter to mediation or agree to extend the time for informal resolution in successive fifteen (15) day increments. If the Claim remains reasonably unresolved after at least sixteen (16) hours of mediation, the Parties agree to submit themselves and the matter to binding arbitration or agree to extend the time for mediation in successive eight (8) hour increments of mediation. In all instances, the Parties agree to negotiate in good faith towards resolving the Claim. The Parties agree to split the costs of mediation and binding arbitration equally. The Parties expressly agree to waive their respective rights to litigating Claims connected with this Agreement or its performance. The Parties further agree the arbitrator's decision will be final and binding and a judgement may be entered thereon. The Party submitting any Claim to mediation or binding arbitration agrees to notify the other Party and the Parties agree to select a mediator or binding arbitrator within thirty (30) days of such notice. If the Parties are unable to agree on a mediator or arbitrator within those thirty (30) days, the Parties agree to submit the matter of determining a mediator or arbitrator to the Presiding Judge of the Wasco County Circuit Court and agree to abide the Presiding Judge's recommendation or order.
10. Severability. If any provision of this Agreement is declared unenforceable or in conflict with any law, the Parties agree the validity of the remaining provisions will not be impacted and their rights will be construed and enforced as if this Agreement did not contain that particular invalid provision.
11. Waiver. The Parties agree any Party's failure to enforce any provision of this Agreement does not constitute that Party's waiver of that or any other provision.
12. Integration and Amendment. The Parties agree this Agreement represents their full and final agreement and supersedes all prior or contemporaneous negotiations and

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arrangements regarding this matter between them, including the provisions of the July 1, 2010, *Third Intergovernmental Agreement between Wasco County Library and City of The Dalles for Library Services*. The Parties Agree this Agreement may be amended by mutual written agreement at any time.

13. Notices. The Parties agree all notices required or permitted to be given under this Agreement shall be deemed given and received two (2) days after deposit in the United States Mail, certified or registered form, postage prepaid, return receipt requested, and addressed:


To the City: City Manager
 City of The Dalles
 313 Court Street
 The Dalles, OR 97058

To the District: Chair
 Wasco County Library Service District
 511 Washington Street, Suite 302
 The Dalles, OR 97058

Continues on next.

IN WITNESS WHEREOF, the Parties duly execute this **FOURTH INTERGOVERNMENTAL AGREEMENT FOR LIBRARY SERVICES** this 15th day of May, 2024.

CITY OF THE DALLES,
an Oregon municipal corporation


Matthew B. Klebes, City Manager

WASCO COUNTY LIBRARY SERVICE DISTRICT,
an Oregon library services district


Steve Kramer, Chair


Scott Hege, Vice-Chair


Phil Brady, County Commissioner

5/16/24
Date

May 15, 2024
Date

ATTEST:


Amie Ell, City Clerk

ATTEST:


Kathy Clark, Executive Assistant

Approved as to form:


Jonathan Kara, City Attorney

Approved as to form:


Kristen Campbell, County Counsel