

Memorandum

To: Board of County Commissioners
Gary Schmidt, County Administrator

From: Nate Boderman, Assistant County Counsel
Gary Barth, Courthouse Project Manager

Date: February 15, 2021

Re: Courthouse Master Funding Agreement

The Oregon Courthouse Capital Construction Improvement Fund (OCCCIF) provides a path to assist the County with replacement of its current courthouse facility. The OCCCIF is funded through the sale of state bonds, the revenue from which may only be used for capital expenditures.

In 2019, the County entered into two separate agreements with the State of Oregon to facilitate the receipt of OCCCIF proceeds to assist in the planning, design and construction of the Courthouse facility. The first agreement is a Master Funding Agreement that establishes an outline of the general rights and responsibilities of both the State and the County with respect to the use of state and OCCCIF funds in connection with the County's Courthouse Project. The original Master Funding Agreement contemplated that the parties would enter into additional Phase Funding Agreements to further refine the parties' rights and obligations through the design and construction phases of the project. To that end, the second of the two agreements relates to Phase I of the project, which the parties executed to cover project planning activities in detail, and establishes a State reimbursement to the County of up to \$1.2 million for qualifying costs.

Since the time that the County approved the two intergovernmental agreements described above, the Board of County Commissioners has approved of, and the Oregon Judicial Department (OJD) has endorsed, the use of a Public-Private Partnership (P3) delivery approach to design, build, finance, operate and maintain (DBfOM) a new County courthouse.¹ As a result of this change, certain aspects of those existing agreements described above needed to be amended in order to proceed.

¹ At a Policy Session on May 5, 2021 a majority of the Board authorized staff to proceed with the P3 delivery approach for the new County courthouse. At a subsequent Business Meeting on May 20, 2021 a majority of the Board voted to adopt a Resolution authorizing the P3 procurement approach, providing staff with the approvals necessary to undertake the P3 procurement effort.

In addition, on June 23, 2021 the State Legislature authorized the issuance of \$94.5 million in state bonds to cover the State's contribution towards the projected capital costs of new courthouse (2021 House Bill 5006). A budget note to that legislation requested a report to the Interim Joint Committee on Ways and Means prior to the 2022 legislative session to produce information and respond to several questions related to the Legislature's authorization of the funding.² Among other things, the report was to include a draft of an updated Master Funding Agreement. The report was submitted to the committee on December 14, 2021, addressing each of the required elements and noting that negotiations related to the revised Master Funding Agreement were ongoing, but that a draft would be provided in time for consideration during the 2022 legislative session. Producing an updated draft of the Master Funding Agreement continues to be a prerequisite to the Legislature approving an increase in OJD's Other Fund limitation by \$94,499,999 to allow sale of the Article XI-Q bonds that provide state matching funds for the courthouse project.

On February 14, 2022, staff and outside consultant representatives from the County met with staff representatives of OJD and the Oregon Department of Justice (DOJ) and reached agreement on amended Master Funding Agreement provisions that have been incorporated into the draft attached to this memo. Consistent with the approach taken in the original Master Funding Agreement, the draft provided is intended to operate as an umbrella agreement that will be supplemented by specific phase agreements providing in greater detail how the OCCCIF funds will be distributed to the County. Since Phase I of the project is substantially complete, and because the deliverables in Phase I focused exclusively on preplanning and procurement activity, only minor technical revisions are needed to the Phase I agreement already in place between the State and County in order to ensure that the parties can close out this part of the project and move on to Phase II, which will cover the design and construction of the new Courthouse facility. Staff will bring revisions to the Phase I agreement to the Board separately for consideration. The County and State will begin negotiations on the Phase II Funding Agreement as soon as the attached Master Funding Agreement has been executed. The Board will need to separately review and approve the Phase II Funding Agreement, a draft of which is anticipated to be completed in the coming months. It is the Phase II Funding

² The report was required to provide or address the following:

- The legal sufficiency of the Clackamas County public-private partnership agreement(s), from the state's perspective, pertaining to funding agreement requirements;
- Estimated total cost of ownership to construct, occupy, and maintain the Clackamas County Courthouse;
- Affirmation of county ownership of the Clackamas County Courthouse building and property;
- A final master funding agreement; and
- A long-term flow-of-funds for state and local matching deposits into, and withdrawals from, the OCCCIF.

Agreement that will provide details on the manner in which the State will reimburse the County for its portion of the capital expenditures associated with the Courthouse project.

To be clear, staff will not recommend to the Board that it enter into a P3 Project Agreement for the design, construction, finance, operation and maintenance of the new Courthouse unless and until the County has an agreement in place with the State that obligates the State to contribute its portion of the capital costs associated with the project. It is staff's recommendation that the Board approve and execute the attached Amended and Restated Master Funding Agreement.

ATTACHMENTS:

Attachment A: Amended and Restated Master Funding Agreement

Attachment B: Executed Master Funding Agreement, dated February 28, 2019

**CLACKAMAS COUNTY COURTHOUSE
AMENDED AND RESTATED MASTER FUNDING AGREEMENT**

THIS CLACKAMAS COUNTY COURTHOUSE AMENDED AND RESTATED MASTER FUNDING AGREEMENT (this “Restated Agreement”) is made on [REDACTED], 2022 (the “Effective Date”), by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Clackamas County, Oregon (the “County”).

Project Summary and Contact Information

Project Title: Clackamas County Courthouse

County: Clackamas County

Estimated Project Completion Date: December 1, 2025

Anticipated State Funds:

Phase I:	\$1,200,000 – General Funds;
Phase II:	\$94,500,000 – Article XI-Q bonds (Spring 2023)

County Contact: Gary Barth, Courthouse Project Manager
Phone: (503) 754-2050
Email: gbarth@clackamas.us
Address: 2051 Kaen Rd.
Oregon City, OR 97045

DAS Contact: Rhonda Nelson, Capital Finance Analyst
Phone: (503) 378-8927
Email: Rhonda.Nelson@oregon.gov
Address: 155 Cottage Street NE
Salem, OR 97301

OJD Contact: David T. Moon, Director
Business and Fiscal Services Division
Phone: (503) 986-5150
Email: David.T.Moon@ojd.state.or.us
Address: 1133 Chemeketa Street
Salem, OR 97301

Presiding Judge: The Honorable Kathie F. Steele
Phone: (503) 655-8670
Email: Kathie.F.Steele@ojd.state.or.us
Address: 807 Main St.
Oregon City, OR 97045

Trial Court Administrator: Debbie Spradley
Phone: (503) 655-8670
Email: Debbie.D.Spradley@ojd.state.or.us
Address: 807 Main St.
Oregon City, OR 97045

State Project Monitor: Nick Larson
Oregon Judicial Department
Phone: (503) 986-5429
Email: Nicholas.C.Larson@state.or.us
Address: 1133 Chemeketa Street
Salem, OR 97301

Colocation Agency: Department of Human Services,
an agency of the State of Oregon

Colocation Contact: Glen Bason, Administrator
Office of Facilities Management
Phone: (503) 945-5817
Email: Glen.E.Bason@dhsosha.state.or.us
Address: 1410 Tandem Ave. NE
Salem, OR 97301

Colocation Agency: Office of Public Defense Services,
an agency of the State of Oregon

Colocation Contact: Eric J. Deitrick, General Counsel
Office of Public Defense Services
Phone: (503) 378-2750
Email: eric.j.deitrick@opds.state.or.us
Address: 1175 Court St. NE
Salem, OR 97301

Terms and Conditions

- 1. Effective Date and Term.** This Restated Agreement is effective as of the Effective Date, such date being the last date all required signatures and approvals were obtained. The term of this Restated Agreement shall be from the Effective Date through the date the parties fulfill their obligations under the Funding Agreement, , unless it is sooner terminated pursuant to the provisions of this Restated Agreement.
- 2. Agreement Documents.** This Restated Agreement consists of the following documents, which are listed in descending order of precedence: this Restated Agreement, less all Exhibits; and attached **Exhibit A** (Red Soils Parcel and Project Parcel Description); **Exhibit B** (Progress Report Contents); **Exhibit C** (Courthouse Design Criteria); and **Exhibit D** (Form of Disbursement Request). The foregoing Exhibits are incorporated herein by this reference.
- 3. Definitions: General.** Capitalized terms used in this Restated Agreement shall have the meanings defined for such terms in this Section 3, unless the context clearly requires otherwise.

 - (a)** “Act” means Article XI-Q of the Oregon Constitution; Or. Laws 2013, ch. 705; Or. Laws 2013, ch. 723; Or. Laws 2014, ch. 121; Or. Laws 2015, ch. 685; Or. Laws 2016, ch. 118; Or. Laws 2021, ch. 658; Or. Laws 2021, ch. 669; and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.
 - (b)** “Approved Amount” means either: (i) for Phase I or Phase II Non-Project Agreement Costs, the State’s Proportionate Share of any amount set forth in a Disbursement Request that the State Project Monitor determines represent Authorized Costs, pursuant to Section 12 below; or (ii) for Project Agreement Costs, the State’s Proportionate Share of the amount of Authorized Costs set forth in the Project Agreement and approved by State Project Monitor.
 - (c)** “Authorized Costs” means the County’s actual, reasonable and necessary capital costs relating to the Phase Work, as set forth more completely in Section 10 below and any Phase Funding Agreement.
 - (d)** “Authorized State Costs” means that part of the Project Financing that the State agrees to provide for a specific Phase of the Project, which obligation is limited to 50% of the Approved Amount, subject to the not-to-exceed amount of the State Funds.
 - (e)** “Business Days” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding federal or State of Oregon holidays and business closure days.
 - (f)** “Calendar Days” means contiguous days.
 - (g)** “Chief Justice” means the Chief Justice of the Oregon Supreme Court.
 - (h)** “Code” means the Internal Revenue Code of 1986, as amended.
 - (i)** “Colocation Agency(ies)” means collectively the Department of Human Services, an agency of the State of Oregon, and the Office of Public Defense Services, an agency of the State of Oregon.
 - (j)** “Colocation Contact” means each of the Colocation Agency employees named in the Project Summary and Contact Information above.
 - (k)** “Colocation Leases” means the long-term lease agreements for each of the Colocation

Premises that the applicable Colocation Agency and the County anticipate entering into pursuant to a Phase II Funding Agreement.

- (l) “Colocation Premises” means that certain portion of the Project, as generally described in the Initial **Technical Requirements**, that will be the subject of the Colocation Lease.
- (m) “County Default” means any of the occurrences set forth in **Section 25** below.
- (n) “Courthouse Design Criteria” means the “General Facilities Design Assessment Criteria” adopted by the Oregon Legislative Interim Committee on Court Facilities on December 17, 2007, and attached as **Exhibit C**.
- (o) “Defeasance Costs” means the amount sufficient to defease the then-outstanding State Bonds and any costs necessary for such defeasance, plus any principal and interest payments the State has made or will make before the State Bonds are defeased.
- (p) “Disbursement Request” means a request by the County for credit to the County Contribution and credit towards the Authorized State Costs, substantially in the form of **Exhibit D**.
- (q) “Estimated Project Completion Date” means December 1, 2025.
- (r) “Existing Courthouse” means the building located at 807 Main St., Oregon City, Oregon, in which the Clackamas County Circuit Court is located as of the Effective Date.
- (s) “Fund” means the Oregon Courthouse Capital Construction and Improvement Fund, commonly referred to as the “OCCCIF”.
- (t) “Funding Agreement” means collectively this Restated Agreement and any Phase Funding Agreements memorializing the parties’ obligations and understandings regarding the Project.
- (u) “General Funds” means funds appropriated by the Oregon Legislative Assembly.
- (v) “Independent Building Expert” means the independent third-party jointly appointed by a Project Company and the County (with input from the State) to make the decision pursuant to the Project Agreement as to if and when the Project has been completed in accordance with the Technical Requirements and is otherwise ready for occupancy and use by the Project Occupants.
- (w) “Initial Technical Requirements” means the requirements for the State Premises portion of the Project approved by OJD and intended by the parties to be distributed by County on March 3, 2022, as part of County’s solicitation for a Project Company. The Initial Technical Requirements shall be consistent with the minimum Courthouse Design Criteria.
- (x) “Mediator” means the individual chosen by the parties to mediate a dispute between them pursuant to Section 7(f) below.
- (y) “Misspent Funds” means any Project Financing spent by the County or the Project Company under the Project Agreement for any purpose other than paying for Authorized Costs, or otherwise in violation of this Restated Agreement.
- (z) “Non-Project Agreement Costs” means any Authorized Costs unrelated to the Project Agreement Costs that are incurred by the County during Phase II.
- (aa) “OJD Lease” means the long-term lease agreement for the OJD Premises that OJD and the County anticipate entering into pursuant to a Phase II Funding Agreement.
- (bb) “OJD Premises” means that certain portion of the Project, as generally described in the Initial Technical Requirements approved by OJD, which will be the subject of the OJD Lease.

- (cc) “Phase” means Phase I or Phase II as the context so requires.
- (dd) “Phase I” means the planning period for the Project.
- (ee) “Phase II” means the procurement, design and construction period for the Project.
- (ff) “Phase Funding Agreement” means any and all agreements the parties may enter into under this Restated Agreement, in order to memorialize their obligations and understandings regarding any specific Phase of the Project.
- (gg) “Phase I Funding Agreement” means the agreement entered into between the parties on February 28, 2019 and that was amended on June 27, 2019, June 30, 2020, and June 30, 2021 for Phase I of the Project.
- (hh) “Phase II Funding Agreement” means the agreement the parties may enter contemporaneously with or after this Restated Agreement for Phase II of the Project in order to carry out and implement the terms and conditions of this Restated Agreement. This Restated Agreement details certain obligations and understandings that the parties intend to include in the Phase II Funding Agreement.
- (ii) “Presiding Judge” means the Presiding Judge for the Clackamas County Circuit Court. The current Presiding Judge is named in the Project Summary and Contact Information above.
- (jj) “Progress Report” means the monthly report submitted by County to the State Project Monitor that describes the progress of the Phase II Project Work, which report shall meet the requirements set forth in **Exhibit B**.
- (kk) “Project” means the Clackamas County Courthouse to be constructed on the Project Parcel, in Oregon City, Clackamas County, Oregon, pursuant to the Funding Agreement, the Act, and as more particularly described in the Project Application and in the Initial Technical Requirements.
- (ll) “Project Agreement” means that certain contract awarded by County to a Project Company to furnish labor, materials, equipment, supervision and other incidentals, required to obtain permits, design, construct, commission, partially finance, operate and maintain the Project under a public-private partnership project delivery approach between the County and Project Company (“P3 Approach”).
- (mm) “Project Agreement Costs” means any Authorized Costs incurred by County during Phase II under the terms of the Project Agreement.
- (nn) “Project Application” means that certain application for monies from the Fund to be used for the Project, submitted by the County to the Chief Justice on February 7, 2017 Agreement, supplemented by the County as more particularly described in Section 5(e) to reflect the current P3 Approach, and approved by the Chief Justice pursuant to a letter dated **insert date**.
- (oo) “Project Budget” means the budget for the design and construction of the Project, as developed by the County and approved by the State pursuant to the Funding Agreement.
- (pp) “Project Common Areas” means the areas of the Project, as generally described in the Initial Technical Requirements, that will be available for common use by the Project Occupants.
- (qq) “Project Company” means the company with whom the County enters into a Project Agreement .
- (rr) “Project Financing” means the total of the State Funds and the County Contribution.
- (ss) “Project Occupants” means the County, OJD and the Colocation Agencies and their respective employees, agents, tenants, contractors, guests and invitees.

- (tt) “Project Parcel” means that certain real property that is a portion of a larger parcel commonly known as the Red Soils Property, as shown on **Exhibit A**, and any improvements constructed thereon pursuant to the Funding Agreement.
- (uu) “Project Schedule” means the schedule for the design and construction of the Project, as developed by the County and Project Company and approved by the State pursuant to the Funding Agreement.
- (vv) “Project Work” means all work associated with the Project, for any Phase.
- (ww) “Real Property Termination Interest” means an interest in the Project and the Project Parcel, or in other real property owned by the County and any improvements thereon, that the State may accept from the County in lieu of Defeasance Costs pursuant to **Section 29(b)** below.
- (xx) “State Bonds” means any Oregon Constitution Article XI-Q general obligation bonds issued by the State for the Project; and any bonds or other obligations issued by the State to refinance the State Bonds.
- (yy) “State Default” means any of the occurrences set forth in **Section 27(a)** below.
- (zz) “State Leases” means the Colocation Leases and the OJD Lease.
- (aaa) “State Premises” means the Colocation Premises and the OJD Premises.
- (bbb) “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of OJD who will monitor and review the Project Work and compliance with the Funding Agreement as set forth herein.
- (ccc) “State’s Occupancy Readiness Milestone Payment” means the one-time payment to be made by the State to the County, pursuant to the Phase II Funding Agreement, as further described in **Section 15** below.
- (ddd) “Technical Requirements” means the Initial Technical Requirements and any subsequent design and construction documents including all plans and specifications for the State Premises portion of the Project to be developed by a Project Company. Any subsequent design and construction documents including all plans and specifications shall be subject to approval by the County and State pursuant to the terms of the Phase II Funding Agreement. The Technical Requirements shall be consistent with the Initial Technical Requirements.
- (eee) “Trial Court Administrator” means the OJD employee named in the Project Summary and Contact Information above.
- (fff) “Unspent Funds” means any amounts of the Project Financing that the County fails to spend during a specific Phase.

4. Definitions: Phase-Specific. The following capitalized terms used in this Restated Agreement shall have Phase-specific meanings, to be set forth in any Phase Funding Agreement.

- (a) “Benchmarks” means specific deliverables for a specific Phase relating to that Phase Work.
- (b) “County Contribution” means that part of the Project Financing that the County agrees to provide for a specific Phase of the Project, which obligation is limited to 50% of the Approved Amount.
- (c) “Phase Completion Date” means the date the parties anticipate that a specific Phase will be completed.

- (d) “Phase Work” means the Project Work associated with a specific Phase.
- (e) “State Funds” means the not-to-exceed monetary contribution provided or to be provided by the State for a specific Phase, as specified or will be specified in each Phase Funding Agreement.
- (f) “State’s Proportionate Share” means the portion of the Authorized Costs that are eligible for payment by State Funds, representing that portion of the costs of a specific Phase that the State Premises bears to that specific Phase.

5. Background.

- (a) Pursuant to ORS 1.185 and 1.187, OJD operates the State of Oregon’s circuit courts, and the counties in the State of Oregon provide courthouse facilities for the circuit courts.
- (b) The Oregon Legislative Assembly, through the Act, has authorized the sale of Article XI-Q bonds to finance costs related to the acquisition of land for and construction of courthouses if:
 - (i) the Chief Justice determines significant structural defects of a courthouse threaten human health and safety, the construction of a new building is more cost-effective than remodeling or repairing the courthouse, and the replacement of the Existing Courthouse creates an opportunity for the colocation of other state offices in the courthouse; and
 - (ii) DAS approves the courthouse construction project for which the Article XI-Q bonds will be sold.
- (c) The Act also established the Fund, to hold monies to be used for courthouse construction projects.
- (d) On February 7, 2017, the County submitted the initial Project Application which set forth the County’s need for the Project and basic Project information.
- (e) On February 28, 2019, the parties entered into the Clackamas County Courthouse Master Funding Agreement, and the Clackamas County Courthouse Phase I Funding Agreement. The parties amended the Clackamas County Courthouse Phase I Funding Agreement on June 27, 2019, on June 30, 2020, and on June 30, 2021. Since the execution of the Clackamas County Courthouse Master Funding Agreement and the Clackamas County Courthouse Phase I Funding Agreement, the structure of the project delivery method for the Project has changed from a traditional design-bid-build to the use of a public-private partnership project delivery approach to design, construct, partially finance, and maintain the Project. On May 20, 2021, the Clackamas County Board of County Commissioners adopted Resolution 2021-27 that approved an exemption from the low-bid competitive bidding process for the Project and authorized the use of a public-private partnership delivery approach based on a competitive proposal process. To reflect the changes in the project delivery approach as well as to make other required updates, the parties now enter this Restated Agreement.
- (f) On [], the Chief Justice issued a letter to the County making the determinations required by Section 5(b)(i); the cost-effectiveness determination made in the letter was subject to an estimated not-to-exceed \$95,700,000 State Funds amount for the Project.
- (g) The parties anticipate that the Project will be developed, funded, and built in two phases: Phase I (the Planning Phase) and Phase II (the Procurement, Design and Construction Phase).
- (h) As of the Effective Date of this Restated Agreement, the parties are completing Phase I and will be commencing Phase II Funding Agreement negotiations.

(i) The State is contributing the State Funds as a portion of the consideration for the leasehold interest in the State Premises that the County will convey to OJD and the Colocation Agencies pursuant to the State Leases.

(j) The Project will be constructed on the Project Parcel and will be designed and constructed in accordance with the Technical Requirements, as agreed to by the parties.

(k) The parties anticipate that the State Funds for the Phases will be as follows:

	Phase I	Phase II
Amount	\$ 1,200,000	\$94,500,000
Funding Source	General Funds	Article XI-Q bonds
Estimated Timeline	Fall 2018-Fall 2021	Spring 2023-2025

(l) The Legislative Assembly authorized State Bonds to fund the State’s Proportionate Share of the Phase II Authorized Costs in Senate Bill 5505 (Or. Laws 2021, ch. 658, effective July 27, 2021). However, the Legislative Assembly provided OJD with an expenditure limitation of \$1.00 for the Project in Section 61 of HB 5006 (Or. Laws 2021, ch. 669, effective August 6, 2021), i.e., providing only a placeholder for funding until further progress on Project documentation is completed.

(m) Notwithstanding **Section 5(k)** above, a condition precedent to the State’s obligation to contribute any State Funds to the Project is the execution of a Phase II Funding Agreement by the parties and expenditure limitation authorization by the Legislative Assembly.

(n) The parties estimate that, if they enter into Phase II Funding Agreement, the Project will be fully constructed and ready for occupancy and use by the Project Occupants on or before July 1, 2025 (the “Phase II Completion Date”), and otherwise complete by the Estimated Project Completion Date.

(o) In the event State Funds for any Phase derive from General Funds rather than from State Bonds, certain provisions set forth below in this Restated Agreement may not apply to those State Funds. In such event, the respective Phase Funding Agreement will set forth any particular provisions relating to such State Funds derived from General Funds.

6. Representations, Warranties and Covenants of the State and County.

(a) The State represents, warrants and covenants as follows:

This Restated Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Restated Agreement, constitutes a valid and binding agreement of the State that is enforceable against the State in accordance with its terms.

(b) The County represents, warrants and covenants as follows:

(i) This Restated Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County in accordance with its terms.

(ii) As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the Project Parcel or the development,

construction or use of the Project. The County shall promptly provide OJD with notice of any litigation or claims (environmental or otherwise) filed during the term of this Restated Agreement against the County regarding the Project or the Project Parcel.

(iii) The County's current employees are not eligible for, and the County has not hired, contracted with or made any award to any of its current employees for, any work or materials directly connected to the Project. During the term of this Restated Agreement, the County's then-current employees shall not be eligible for, and the County shall not hire, contract with or make any award to any of its then-current employees for, any work or materials that are directly connected to the Project. Notwithstanding the foregoing, the parties may identify in any Phase Funding Agreement an individual employed by the County who may be eligible for any work or materials directly connected to the Project. The conditions under which the County may claim any work or materials directly connected to the Project by such an employee of the County as an Authorized Cost shall be set forth in the applicable Phase Funding Agreement.

(iv) The State will have no obligation to contribute any State Funds to the Project, except as specifically set forth in a Phase Funding Agreement and as authorized by the Legislative Assembly.

(v) The Project and Project Parcel shall be owned by the County at all times.

(vi) County shall keep the Project and the Project Parcel free from any liens, mortgages, security interests, charges, judgments, judicial awards, attachments or encumbrances of any kind (collectively "Encumbrances"). If any such Encumbrance shall at any time be filed against the Project or Project Parcel, or any portion thereof, County shall cause the same to be discharged of record or bonded off, as permitted by statute, within 30 days after County's receipt of written notice of same.

(vii) County shall ensure the above prohibition on Encumbrances is included in the Project Agreement and that Project Company is subject to same requirement as County.

7. Collaboration and Cooperation between Parties; Meetings and Documents; Resolution of Disputes

(a) **Generally.** All matters related to the Project will be subject to good-faith collaboration between the parties and, with regard to the Colocation Premises, the Colocation Agencies. The parties shall use their best efforts to cooperate with each other and the Colocation Agencies in order to accomplish the timely completion of the Project Work. All matters related to the Project which may affect OJD or the Colocation Agencies operations or State Premises, including but not limited to changes affecting Project Budget, Project Schedule, and Technical Requirements, shall be subject to OJD approval, which approval requirements will be set forth in the Phase II Funding Agreement.

(b) **Meetings and Documents.** The County shall give OJD and the Colocation Agencies advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve material decisions related to the Project. If such material decision is related to the Project Budget or other Project financing matters, County also shall give DAS advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences). For the purposes of this Section 7(b), such notice to OJD shall be delivered to the Trial Court Administrator, and such notice to the Colocation Agencies shall be delivered to the

Colocation Contacts, in accordance with the notice provisions of **Section 35 below**. The parties acknowledge and agree that this subsection is not intended to apply to all Project discussions involving County staff that occur on a day-to-day basis; provided, however, the County shall keep OJD and Colocation Agencies staff reasonably informed and provide reasonable opportunity for OJD and Colocation Agencies staff to participate in material Project discussions throughout the Project.

(c) Resolutions of Disputes by the Parties. In the event of a dispute under this Section 7, the parties shall attempt in good faith to resolve the dispute within 15 Business Days after one party gives notice to the other party of such dispute.

(d) Resolution of Disputes by Chair of County Commissioners and Chief Justice. If the parties do not timely resolve a dispute pursuant to Section 7(c) above, then the dispute shall be submitted to the Chair of the Clackamas County Board of Commissioners and the Chief Justice, or their respective designee, to be resolved within 30 Calendar Days after submission.

(e) Resolution by Mediator.

(i) If a dispute is not timely resolved pursuant to Section 7(d) above, then, if both parties agree to non-binding mediation, it may be heard by the Mediator, who will be chosen by the parties as follows: within 10 Business Days after the expiration of the 30 – day period set forth in Section 7(e) above, the County shall deliver to the State a list of at least three independent and experienced mediators, and within 10 Business Days after such delivery, the State shall notify the County of its choice of the Mediator from said list. Notwithstanding the foregoing, if the County fails to timely deliver the list to the State, then the State’s choice of a mediator shall be deemed the Mediator; and if the County does timely deliver the list to the State, and the State fails to timely respond, then the County’s choice of a mediator will be deemed the Mediator.

(ii) Within 10 Calendar Days after the selection of the Mediator pursuant to Section 7(e)(i) above, both parties shall submit position statements regarding the dispute to the Mediator; and within 30 Calendar Days after submission of the position statements, the Mediator shall issue a decision regarding the dispute.

(iii) The parties shall equally share all costs and expenses of the Mediator.

(iv) Any decision by the Mediator shall be non-binding.

8. Overview of Application of State Funds. As set forth in **Sections 12, 13, 14, and 15** below, the State’s monetary contribution for a specific Phase (i.e., the State Funds) will be calculated by taking the costs approved by the State Project Monitor (i.e., the Authorized Costs) and multiplying such amount by the State’s Proportionate Share to establish the Approved Amount. The Approved Amount shall be then multiplied by 50% to determine the amount of Authorized State Costs, such amount not to exceed the amount of the State Funds.

9. Overview of Application of County Contribution Deposit Requirement; County Contribution Calculation.

As set forth more fully in **Sections 11 – 14** below, for each specific Phase:

(a) The County shall “deposit” the full amount of the County Contribution, through the direct transfer of funds to OJD into the Fund. Except as allowed under Phase II, such deposits shall be made before the State disburses State Funds to the County for the Authorized State Costs.

- (b) In calculating and applying the County Contribution, the following provisions apply to Phase I and any Non-Project Agreement Costs in Phase II:
- (i) The full amount of the County Contribution must be “credited” to the County, through disbursements of State Funds from the State for Authorized State Costs incurred by the County.
 - (ii) For every Disbursement Request approved by the State Project Monitor, 50% of the Approved Amount shall be credited to the County Contribution, and 50% of the Approved Amount shall be disbursed to the County and credited to the State Funds
 - (iii) Notwithstanding the amount of the County Contribution, the County shall pay for any and all costs of the Phase Work that exceed any amounts applied from the State Funds. Without limiting the prior sentence, the parties agree the County shall have no claim against the State for any amount that exceeds the State Funds.
- (c) In calculating and applying the County Contribution, the following provisions apply to all Project Agreement Costs incurred during Phase II:
- (i) County Contributions will be “credited” to the County under **Section 11(c)** below, based on approval of the Project Agreement amount by the State for Authorized State Costs incurred by the County.
 - (ii) Subject to the terms of **Sections 11(c), Section 13 and 15** below, 50% of the Approved Amount from the Project Agreement shall be credited to the County Contribution, and 50% shall be credited to the Authorized State Costs. Payment of such Authorized State Costs with State Funds shall be in the form of the State’s Occupancy Readiness Milestone Payment.
 - (iii) Notwithstanding the amount of the County Contribution, the County shall pay for any and all costs of the Phase Work that exceed any amounts applied from the State Funds. Without limiting the prior sentence, the parties agree the County shall have no claim against the State for any amount that exceeds the State Funds.

10. Authorized Costs.

- (a) **Generally.** Authorized Costs are the County’s actual, reasonable and necessary capital costs of the Phase Work, which are:
- (i) authorized under the Act and the laws pertaining to tax-exempt bond financings;
 - (ii) permitted by generally accepted accounting principles, consistently applied, as established by the Governmental Accounting Standards Board, as reasonably interpreted by DAS, to be capitalized to an asset that is part of the Project; and
 - (iii) eligible for financing with obligations bearing interest that is excludable from gross income under the Code.
- (b) **General Funds Exception.** If the State Funds for a specific Phase come from General Funds instead of State Bonds, the limitations in Section 10(a) above related to tax-exempt bond financings and financings with obligations bearing interest shall not apply to Authorized Costs.
- (c) **Specific Inclusions.**
- (i) Authorized Costs during Phase I and Authorized Costs comprising Non-Project Agreement Costs during Phase II include the following costs incurred by the parties, without limitation:

- (a) capital costs related to the Phase Work;
- (b) costs of the OJD attorneys, technical advisors, and legal professionals including but not limited to attorneys employed by the Oregon Department of Justice and the State’s bond counsel, and the State Project Monitor;
- (c) costs related to the Phase Work by project consultants, including technical advisors, financial advisors, legal advisors and the Independent Building Expert, for the County;
- (d) time spent working on the Project by any employees of the County who may be identified in a Phase Funding Agreement, provided that such time is charged to the Project on a time-spent basis, rather than as a percentage of such employee’s total work for the County; that such charges do not include the County’s overhead (but may include fringe benefits); and that such charges may be capitalized pursuant to **Section 10(a)(ii)** above.

(ii) Authorized Costs comprising Project Agreement Costs during Phase II include only those capital costs related to the Phase Work incurred by the Project Company under the Project Agreement for which County is legally committed to reimburse Project Company.

(d) Specific Exclusions. For the avoidance of doubt, Authorized Costs do not include internal costs charged to the Project by the County, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties.

11. County Contribution: Deposits.

(a) Generally. To comply with **Section 9(a)**, the County shall deposit the County Contribution as a direct transfer of funds as provided in **Section 11(b)** below, or through the execution of a Project Agreement with a Project Company committing the County to pay the full amount of the County Contribution as more particularly provided in **Section 11(c)** below. The County may deposit the full amount of the County Contribution in one or more installments and using any combination of deposits allowed under **Sections 11(b) and 11(c)** below.

(b) Direct Transfer of Funds.

- (i)** The County may transfer to OJD for deposit in the Fund any amount of the County Contribution, in one or more installments.
- (ii)** Within two Business Days after OJD’s receipt of any amount of the County Contribution transferred by the County into the Fund, OJD shall transfer such amount into the County’s account in the Local Government Investment Pool.
- (iii)** Any and all funds that the County transfers to OJD for deposit in the Fund pursuant to this **Section 11(b)** shall be “original” funds—in other words, the County shall not transfer the same funds to the Fund more than once.

(c) Phase II - Execution of Project Agreement – Project Agreement Costs.

- (i)** The execution of a Project Agreement creating a legally binding commitment for the County to pay a Project Company to design and construct the Project may be used to trigger calculation of the amount of Authorized Costs comprising Project Agreement Costs for Phase II as detailed in **Subsections 11(c)(iii) and (iv)** below.
- (ii)** If the County wishes to use the execution of the Project Agreement to establish calculation of such Project Agreement Costs, the County shall submit the following documents to OJD:

- (a) an executed copy of the Project Agreement;
- (b) written representation by County that the Project Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County, by the Project Company, in accordance with its terms; and
- (c) written representation by the Project Company that the Project Agreement has been duly authorized by the Project Company and constitutes a valid and binding agreement of the Project Company that is enforceable against the Project Company, by the County, in accordance with its terms.
- (iii) Upon receipt of the documents in **Subsection 11(c)(ii)** above, the parties agree that the State Project Monitor shall calculate the Project Agreement Costs.
- (iv) Notwithstanding **Section 9(a)**, the County's receipt of a credit for Project Agreement Costs will permit disbursement of the State's Occupancy Readiness Milestone as provided below before the County's actual deposit of the entire County Contribution is made into the Fund. Instead, the County agrees to make the required deposits and transfer of the entire amount of the County's Contribution to OJD for deposit in the Fund (and thereby making the credit permanent rather than provisional) for accounting and crediting purposes over the course of an estimated 30 years (unless and until the Act is amended to make such transfer no longer required).
- (v) Unless and until the Act is amended to no longer require the County to deposit all funds comprising its County Contribution with OJD, for all portions of County's payments to the Project Company under the Project Agreement that comprise part of County's Contribution, County shall first deposit such funds intended as payments to the Project Company with OJD for accounting and crediting purposes.
- (vi) Within two Business Days after OJD's receipt of any deposits into the Fund by the County constituting County Contribution pursuant to this **Section 11(c)**, OJD shall transfer such amount into the County's account in the Local Government Investment Pool for purposes of making payment within five Business Days to the Project Company for the Project.
- (vii) Any and all funds that the County deposits with OJD into the Fund pursuant to this **Section 11(c)** shall be "original" funds—in other words, the County shall not transfer the same funds to OJD more than once.

12. County Contribution: Credits Phase I and Phase II Non-Project Agreement Costs.

- (a) **Generally.** In order to receive credits toward the County Contribution during Phase I and credits toward County Contribution for Non-Project Agreement Costs during Phase II, the County shall submit Disbursement Requests pursuant to this **Section 12**. The amounts that the County requests pursuant to Disbursements Requests shall be:
 - (i) used to reimburse the County for payments that the County has previously made for Authorized State Costs of the Project; or
 - (ii) used by the County to pay to unrelated third parties no later than 5 Business Days after OJD makes the disbursement, as set forth in **Section 12(e)** below for Authorized State Costs of the Project that the County has incurred.

- (b) Credits Not to Exceed Deposits.** The total credits to the County for the County Contribution may not at any time exceed the total amount that the County has deposited with OJD into the Fund pursuant to **Section 11(a)** above.
- (c) Form and Frequency of Disbursement Requests.** The County shall submit Disbursement Requests to the State Project Monitor, in the form shown in **Exhibit D**, or as otherwise established in the applicable Phase Funding Agreement. Disbursement Requests shall include clear reference to the Project and itemize and explain all expenses in sufficient detail to allow the State Project Monitor to determine whether such expenses represent Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every 14 Calendar Days, and no less frequently than every 90 Calendar Days.
- (d) Review.** The State Project Monitor shall review each Disbursement Request to determine whether:
- (i)** the Disbursement Request complies with **Sections 12(a) - (c)** above; and
 - (ii)** the expenses set forth in the Disbursement Request represent Authorized Costs.
- (e) Approved Amounts.** For any amount set forth in a Disbursement Request that the State Project Monitor deems to be Authorized Costs pursuant to Section 12(d) above, then, after multiplying such amount by the State's Proportionate Share to establish the Approved Amount:
- (i)** 50% of the Approved Amount shall be credited toward the County Contribution.
 - (ii)** 50% of the Approved Amount shall be disbursed to the County from the State Funds, pursuant to **Section 14** below, and such amount shall be credited toward the State Funds.
- (f) Tracking Credits and Disbursements.** OJD shall keep current and accurate calculations of the credits to the County Contribution, County Contribution deposits into the Fund, credits towards the Authorized State Costs, and the disbursements from the State Funds.
- (g) Disapproved Amounts.** If the State Project Monitor determines that any cost shown on a Disbursement Request is not an Authorized Cost, including whether it represented Misspent Funds, the State Project Monitor shall promptly notify the County of such determination, and none of the disapproved amount shall be credited toward the County Contribution, credited toward the Authorized State Costs, or disbursed to the County from State Funds. In the event the County objects to exclusion of any cost shown on a Disbursement Request, the parties will cooperate to resolve the objection as provided in **Section 7** above.
- (h) Nonpayment for Work and Materials Accrued.** In the event of a disbursement of State Funds for an Approved Amount for work or materials already received or performed, the County shall, within 5 Business Days, pay the supplier or Project Company such Approved Amount. Any amounts that the County fails to promptly pay such supplier or Project Company constitute Unspent Funds.
- (i) Retainage: Phase I and Phase II Non-Project Agreement Costs.** OJD shall retain 5% of the Approved Amounts from the State Funds provided for in the Phase I Funding Agreement and from the State Funds provided for in the Phase II Funding Agreement for Non-Project Agreement Costs. This retainage for Phase I shall not be disbursed to the County until the County has met the Benchmarks for Phase I, has deposited the full amount of the County Contribution for Phase I, and any mechanics' and materialmen's liens filed against the Project or

the Project Parcel have been discharged of record or bonded off. This retainage for Phase II shall not be disbursed to the County until the County has met the Benchmarks for Phase II, has deposited the full amount of the County Contribution comprising Non-Project Agreement Costs for Phase II, and any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off.

13. County Contribution: Credits Phase II Project Agreement Costs.

(a) Generally –Phase II Project Agreement Costs. As more particularly to be detailed in the Phase II Funding Agreement, the credit toward the County Contribution for Project Agreement Costs will occur upon the approval by the State Project Monitor of the Authorized Costs under the Project Agreement.

(b) Credits Not to Exceed Deposits. Except as provided in **Section 11(c)** above and **Section 15 below** with respect to credits related to payment authorization of the State's Occupancy Readiness Milestone Payment, the total credits to the County for the County Contribution may not at any time exceed the total amount that the County has deposited with OJD into the Fund pursuant to **Section 11(a)** above.

(c) Form and Frequency of Progress Reports. While not directly related to credits toward its County Contribution or Authorized State Costs, the County shall submit to the State Project Monitor, with the details outlined in **Exhibit B**, or as otherwise established in the applicable Phase II Funding Agreement monthly Progress Reports within 10 Business Days after the end of each month. The State Project Monitor review of each Progress Report shall be detailed in the Phase II Funding Agreement.

(d) Approved Amounts. For any amount that the State Project Monitor deems to be Authorized Costs pursuant to **Section 13(a)** above, then, after multiplying such amount by the State's Proportionate Share to establish the Approved Amount:

- (i)** 50% of the Approved Amount shall be credited toward the County Contribution.
- (ii)** 50% of the Approved Amount shall be credited toward the State Authorized Costs, not to exceed the State Funds. However, State Funds for the Authorized State Costs will not be disbursed prior to the State's Occupancy Readiness Milestone Payment and then only in accordance with **Section 9(b)** above and **Section 15** below.

(f) Tracking Credits and Disbursements. OJD shall keep current and accurate calculations of the credits to the County Contribution, County Contribution deposits into the Fund, credits toward the required deposit of the County Contribution into the Fund, credits towards the Authorized State Costs, and the disbursements from the State Funds.

(j) Retainage: Phase II Project Agreement Costs. Pursuant to the P3 Approach in any Project Agreement, no disbursement of State Funds related to Project Agreement Costs under Phase II shall occur prior to State's Occupancy Readiness Milestone Payment, therefore, retainage for this portion of State Funds is not required for Phase II.

14. Disbursement of State Funds.

(a) Generally.

(i) For Phase I and for Phase II Non-Project Agreement Costs, the disbursement of State Funds to the County pursuant to **Section 12(e)** above is subject to the provisions of this **Section 14**.

(ii) For Phase II Project Agreement Costs, the disbursement of any State Funds for credited Authorized State Costs to the County pursuant to **Section 13** above is subject to the provisions of this **Section 14** and **Section 15** below.

(b) **Maximum State Funds.** Unless the amount of the State Funds under any Phase Funding Agreement is increased after the effective date of that Phase Funding Agreement, the State's maximum monetary obligation for that Phase of the Project shall not exceed the State Funds. If the costs of a specific Phase of the Project exceed the Project Financing for that Phase, the County shall be responsible for all additional costs, and the County shall have no claim against the State for any amount that exceeds the amount of the State Funds for that Phase.

(c) **Sufficient Appropriations.** The disbursement of State Funds under **Section 12(e)** above or **Section 15** below is contingent on OJD receiving sufficient appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly.

(d) **Conditions Precedent.** OJD's obligation to disburse State Funds to the County (calculated at 50% for any Approved Amount) is subject to satisfaction of each of the following conditions precedent, with respect to each disbursement:

(i) OJD has received sufficient expenditure authorizations to allow OJD, in the exercise of its reasonable administrative discretion, to make the disbursement.

(ii) No County Default has occurred and is continuing.

(iii) The County's representations and warranties set forth in **Section 6** above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

15. State's Occupancy Readiness Milestone Payment.

As shall be further described and detailed in a Phase II Funding Agreement, the parties understand that a Project Company is anticipated to finance the entirety of the Project's capital costs pursuant to a Project Agreement during the design and construction phases and under such a P3 Approach no payments shall be made to the Project Company until all applicable Phase II Funding Agreement requirements and Benchmarks have been met, which requirements shall include both the State and the Independent Building Expert determinations concluding that the Project has been completed in accordance with the Technical Requirements and is ready for occupancy and use by the Project Occupants. Upon such determinations, the County will be subject to a valid, binding and enforceable obligation to commence payments to the Project Company. It is the parties' expectation that pursuant to the Phase II Funding Agreement and following the State's and the Independent Building Expert's determination described above, the State will make the single one-time payment to the County of the State's Occupancy Readiness Milestone Payment, which is estimated to be an amount not to exceed \$90,000,000. Upon the State's payment to the County of the State's Occupancy Readiness Milestone Payment, County shall promptly pay such amount to the Project Company. Notwithstanding the prior sentences, the actual amount of the State's Occupancy Readiness Milestone Payment shall be determined pursuant to **Section 13** above. It is the parties' expectation that the County Contribution related to the Project Agreement Costs, will have already been incurred and financed by the Project Company and shall have been determined by State's Project Monitor pursuant to **Sections 9 – 11**, and **Section 13** prior to the determination of occupancy readiness. County's payment of County Contribution for the financing to the Project Company is estimated to be made over time,

estimated as a 30 year term beginning after the State's Occupancy Readiness Milestone Payment is paid. The parties acknowledge and agree that such payments of the County Contribution shall, as and to the extent required by **Section 11** above, be deposited by the County with OJD into the Fund from time to time over the 30 year payment term on a schedule mutually agreed upon by the parties. The State shall use reasonable efforts to determine all applicable Phase II Funding Agreement requirements and Benchmarks have been met, which requirements shall include the Project has been completed in accordance with the Technical Requirements and is ready for occupancy and use by the Project Occupants, so as to permit the State's Occupancy Readiness Milestone Payment to be disbursed to the County in a timely manner with the intent to be consistent with the Project Agreement.

16. Payment of State Professional Expenses.

(a) The OJD's attorneys and legal professionals, technical advisors, and the State Project Monitor shall charge their time to the Project on a time-spent basis, rather than as a percentage of the individual's total work for OJD, and such charges do not include OJD's overhead (but may include fringe benefits). Other State technical consultants and attorneys will be charged at their customary hourly rates. OJD shall deliver invoices to the County for State professional expenses at least quarterly to the extent there are any expenses to be invoiced to the County, and the County shall pay the amount due to OJD within 30 Calendar Days after delivery thereof. The parties acknowledge and agree the State will not invoice the County for any State professional expenses incurred prior to July 1, 2021.

(b) The County shall then submit a Disbursement Request to the State Project Monitor pursuant to **Section 12(c)** above, and the Authorized Costs from the OJD invoice amount shall be multiplied by the State's Proportionate Share to establish the Approved Amount, and:

(i) 50% thereof shall be credited toward the County Contribution; and

(ii) 50% thereof shall be disbursed to the County from the State Funds, pursuant to **Section 14** above, and such amount shall be credited toward the State Funds.

17. Project Work.

(a) The County shall undertake the Project Work in accordance with Oregon law and for the purposes described in the Act and this Restated Agreement, including but not limited to the following:

(i) in accordance with OAR 330-135-0010 through 330-135-0055, pertaining to expenditures for solar technology, as applicable to the Project. The County shall provide OJD with copies of all reports required by OAR 330-135-0055 as applicable to the Project and as required by the Oregon Department of Energy; and

(ii) all statutes and administrative rules relating to Public Works, if the Project is a Public Works as defined in ORS 279C.800(6).

(b) The County shall contract with competent professionals for all Project Work and shall require all such professionals to possess and maintain all licenses, registrations, insurance, and bonds required by Oregon law.

(c) The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the Project Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, and 279C, and other applicable law and local contracting procedures. The

County shall document all solicitations, selection and award processes used for contracting the Project Work.

- (d)** The County shall be responsible for:
 - (i)** awarding and managing all contracts and property acquisitions necessary to complete the Project Work in accordance with the Project Application, as supplemented, approved by the Chief Justice and the Technical Requirements; and
 - (ii)** awarding and managing any Project Agreement with terms sufficient to ensure completion of the Project Work in accordance with the Project Application approved by the Chief Justice and the Technical Requirements.
- (e)** All subagreements that the County may enter into which are funded wholly or in part with Project Financing shall be subcontractual in nature, with the other party engaged in the role of a contractor. The County shall:
 - (i)** actively administer all subcontracts with contractors to ensure that the terms of the subcontract are consistent with the terms of this Restated Agreement to ensure compliance with the terms of the subcontract, and to ensure the contractor's support for the intended purposes of this Restated Agreement and the Act; and
 - (ii)** actively administer any Project Agreement with terms sufficient to ensure that the terms of any subcontract are consistent with the terms of this Restated Agreement, and to ensure any contractor working on the Project supports the intended purposes of this Restated Agreement and the Act.
- (f)** The Project Work shall be performed in compliance with all applicable federal, state and local laws and ordinances.
- (g)** Neither execution of this Restated Agreement nor approval of the Technical Requirements by OJD or DAS shall be construed as a representation or warranty by the State that the Technical Requirements are in compliance with any building or other code or other applicable governmental requirements.
- (h)** The State and the Colocation Agencies and their employees, agents and representatives (including, without limitation, the State Project Monitor, the Presiding Judge, the Trial Court Administrator and the Colocation Contact) shall have access to the Project, the Project Parcel and Project documentation and records at all times throughout the term of this Restated Agreement, and as otherwise required under this Restated Agreement, to inspect the work, operation and accounting records related to the Project.
- (i)** The County shall promptly provide notice to OJD of any credible evidence that a principal, employee, agent, contractor, subcontractor, supplier or other person has submitted a false claim under the False Claims Act, ORS 180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving the Project Financing.
- (j)** During the term of this Restated Agreement, the County shall:
 - (i)** invite the State to participate in any meetings with proposers during the project procurement process;
 - (ii)** deliver any interim proposals, final proposals, and proposal clarifications received from proposers during the procurement process;

- (iii) invite the State and Colocation Agencies to participate in any meetings with the Project Company regarding the Project and the status of the Project Work;
 - (iv) deliver to the State any interim drafts of any Project Agreement, final Project Agreement, and any proposed revisions or amendments to any Project Agreement;
 - (v) deliver to the State any reports received from its technical advisor, WT Partnership, or from any Project Company regarding the status of the Project Work;
 - (vi) deliver to the State any reports received from the Independent Building Expert, regarding the status of the Project Work; and
 - (vii) promptly upon request, deliver to the State Project Monitor any additional requested information related to the Project Work in sufficient detail to enable the State Project Monitor to determine whether the Project Work is proceeding in a correct and timely fashion.
- (k) The County shall pay when due all claims for work performed on the Project Work by or through the County for services rendered or materials furnished to the Project. Where the County has entered into a Project Agreement to perform the Project Work, the County shall pay when due any applicable payment when due under the terms of the Project Agreement or this Restated Agreement. The County shall keep the Project and the Project Parcel free from any liens arising by or through the County or Project Company. If any such lien shall at any time be filed against the Project or the Project Parcel, or any portion thereof, the County shall cause the same to be discharged of record or bonded off, as permitted by statute, within 30 Calendar Days after the County's receipt of notice of same.
- (l) The Project will not be enrolled in the State Energy Efficiency Design (SEED) program.

18. Phase Funding Agreements. In order to memorialize the State's contribution of State Funds for Phases of the Project, and the parties' other obligations and understandings regarding those Phases, the parties shall enter into Phase Funding Agreements.

19. Terms and Conditions of Leases.

- (a) **Generally.** In the event the parties enter into the Phase II Funding Agreement, then during Phase II the parties shall finalize and enter into the OJD Lease, and the County shall enter into the Colocation Leases, in accordance with the provisions of this **Section 19**.
- (b) **Lease Terms.** The State Leases shall contain the following general terms and conditions:
- (i) The initial term of the State Leases shall last until the State Bonds mature or full payment of the Defeasance Costs of the State Bonds, whichever occurs first.
 - (ii) The State Leases shall grant OJD and to each Colocation Agency, as applicable, a full leasehold interest including the exclusive right to control and use the applicable portion of the State Premises.
 - (ii) During the initial term of the State Leases, OJD and the Colocation Agencies shall not pay any rent to the County.
 - (iii) During the initial term of the State Leases, in the event any portion of the Project outside of the State Premises becomes available for rent, OJD or the Colocation Agencies shall have the unrestricted first option to lease such portion, rent free, from the County.
 - (iv) OJD and the Colocation Agencies have the right, but not the obligation, to each

extend the term of the State Leases. During any extension term, OJD shall not pay any rent, however the Colocation Agencies may be charged fair market rent for the Colocation Premises during any extension term.

(v) OJD and the Colocation Agencies shall, at their own expense, provide supplies, materials, equipment and other personal property necessary for their business operations (except for any furniture, fixtures and equipment that are part of the Technical Requirements).

(vi) The County shall, at its own expense, maintain, repair and replace the Project including, without limitation, the State Premises such as to provide for suitable and sufficient premises for OJD and the Colocation Agencies.

(vii) The County shall provide, at its own expense, all utilities and services, including, without limitation, maintenance and janitorial services, to the Project including, without limitation, the State Premises.

(viii) The OJD and Colocation Agencies shall not be granted access to the Project in the event the State fails to pay the State's Occupancy Readiness Milestone, unless such failure to pay is subject to a legitimate dispute between the parties.

20. Misspent Funds and Unspent Funds.

(a) **Notice.** If the State Project Monitor determines that there are Misspent Funds or Unspent Funds by the County, including pursuant to Section 12(g) or 12(h) or Section 15 above, the State Project Monitor shall provide notice to the County describing the amount and nature of such Misspent Funds or Unspent Funds.

(b) **Cure.** Within 30 Calendar Days after receipt of the notice described in Section 20(a) above, or such longer period as the State Project Monitor may (but is not obligated to) approve at the County's request:

(i) with regard to Misspent Funds: the County shall pay OJD the amount of the Misspent Funds, and OJD shall reverse the credits to the County Contribution and the Authorized State Costs for such amounts.

(ii) with regard to Unspent Funds, the County shall provide evidence satisfactory to the State Project Monitor that the County has spent the Unspent Funds for Authorized Costs.

A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 20(b) shall constitute a County Default.

(c) **Resolution.** If the County disputes a determination made by the State Project Monitor under this Section 20, the County may utilize the dispute resolution procedures in Section 7 above to assist in resolving the dispute. Notwithstanding Section 20(b) above, during the period in which the State and the County are pursuing resolution of the dispute pursuant to Section 7 above, failure by the County to cure the Misspent Funds or the Unspent Funds shall not constitute a County Default.

21. Taxes and Assessments; Utilities. During the Project Work, the County shall pay all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or the Project Parcel. If any

governmental charges may lawfully be paid in installments over a period of years, the County may pay those charges in installments. The County may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the Project or the Project Parcel to loss or forfeiture.

22. Tax Covenants. The following covenants by the County apply to any State Funds that arise from State Bonds:

(a) **Generally.** The County covenants for the benefit of the State and the owners of the State Bonds that it shall comply with all provisions of the Code which are required for interest on the State Bonds to be excluded from gross income for federal taxation purposes. In determining what actions are required to comply, the County and the Project Company, if necessary, may rely on an opinion of the State's bond counsel.

(b) **Specific Covenants.** The County makes the following specific covenants with respect to the Code:

(i) The County shall not take any action or omit any action that would cause the State Bonds to become "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

(ii) The County shall, at the request of DAS, cooperate with DAS to provide information DAS may need to compute any arbitrage rebate payments which may be due from DAS in connection with the State Bonds.

(c) The County shall ensure that the Project Agreement shall include the terms of this **Section 22**. The County shall make reasonable efforts to ensure that the Project Company shall comply with the terms of this **Section 22**.

23. County Not a State Officer, Employee or Agent. The County is not an "officer," "employee" or "agent" of the State, as those terms are used in ORS 30.265.

24. Insurance. Upon the commencement of any Project work upon the Project Parcel, and through the remainder of the term of this Restated Agreement, the County shall maintain, or cause the Project Company to maintain with the County named as an additional insured party, in full force and effect throughout the entire term of this Restated Agreement, property insurance for the perils of all risks of direct physical loss or damage including earthquake and flood covering the Project and the Project Parcel in an amount at least equal to the amount of the Project Financing. Insurance proceeds from an insured loss affecting the Project or the Project Parcel shall be exclusively used to rebuild, repair and restore the Project and the Project Parcel in a manner consistent with the terms of this Restated Agreement. The County shall consult with OJD regarding the plans for rebuilding, repairing and restoring the Project and the Project Parcel and such plans shall be subject to OJD's approval, which shall not be unreasonably withheld. OJD shall be provided notice of any cancellation or material modification to the policy at least 30 Calendar Days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to OJD on or before the effective date, and thereafter at least 30 Calendar Days prior to the effective date of any renewal or replacement policy. The policy shall be issued by companies licensed

or authorized to provide insurance in the State of Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. Notwithstanding the foregoing, the County may satisfy its commercial general liability insurance obligations through its existing self-insurance program, provided such self-insurance program is at the same level, and under the same conditions, as if the above commercial general liability insurance had been procured. The County's self-insured deductible for such commercial general liability insurance shall not exceed \$100,000 for each loss. Self-insurance is not allowed for other required insurance coverages.

25. County Default. Any of the following shall constitute a County Default:

- (a) The County fails to meet the Benchmarks by the Phase Completion Date.
- (b) The County fails to perform, observe or discharge any of its other duties or obligations under this Restated Agreement (except for curing Misspent Funds or Unspent Funds as set forth in **Section 25(c)** below) within 30 Calendar Days after notice from the State specifying the nature of the failure with reasonable particularity; or, if such failure cannot reasonably be completely remedied within such 30-day period, then within such longer times as the failure can reasonably be remedied, in the State's reasonable discretion and as set forth in the notice to the County.
- (c) The County fails to cure any Misspent Funds or Unspent Funds as required by **Section 20(b)** above.
- (d) Any representation or statement made by the County in this Restated Agreement or in any document or report relied upon by the State or the State Project Monitor, as the case may be, to approve a Disbursement Request, monitor the Project as provided herein, or disburse Project Financing, is untrue in any material respect when made.
- (e) The County declares itself or is adjudicated insolvent or bankrupt, applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial part of its assets, or a proceeding or case is commenced, without the application or consent of the County, in any court of competent jurisdiction, seeking: (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of the County; or (2) the appointment of a trustee, receiver, custodian, liquidator or the like for the County or of all or any substantial part of its assets.

26. State's Remedies for County Default. Upon a County Default, the State, may, at its option, pursue any or all of the remedies available under this Restated Agreement and at law or in equity, including but not limited to:

- (a) ceasing disbursement of State Funds;
- (b) terminating this Restated Agreement and/or any applicable Phase Funding Agreement;
- (c) recovering from the County any State Funds disbursed to the County from General Funds, or the Defeasance Costs for any State Funds disbursed to the County from State Bonds, within 60 Calendar Days after the termination;
- (d) bringing an action at law to recover damages incurred as a result of the County Default, in order to recover all State Funds disbursed to the County hereunder, with interest thereon; and
- (e) seeking any equitable remedies, including specific performance, which may be available to the State.

27. State Default and County's Remedies for State Default.

(a) Default by State. Any of the following shall constitute a State Default:

(i) The State fails to pay the County any undisputed amount as required by any applicable Phase Funding Agreement, and OJD fails to cure such failure within 30 Calendar Days after the County's notice or such longer period as the County may specify in such notice; or

(ii) The State commits any material breach or default of any covenant, warranty or obligation under this Restated Agreement other than one described in **Section 27(a)(i)** above, and such breach or default is not cured within 30 Calendar Days after the County's notice specifying the nature of the material breach or default with reasonable particularity; or, if such material breach or default cannot reasonably be completely remedied within such 30-day period, then within such longer times as the material breach or default can reasonably be remedied, in the County's reasonable discretion and as set forth in the notice to the State.

(b) County's Remedies for State Default. In the event of a State Default, the County may, at its option:

(i) terminate as applicable this Restated Agreement, and/or any or all Phase Funding Agreements;

(ii) bring an action at law to recover damages incurred as a result of the State Default;

(iii) bring an action at law in order to recover all County Contributions actually paid by County to State, not just provisionally credited, hereunder; and

(iv) pursue any or all of the remedies available to it under this Restated Agreement and at law or in equity.

28. Termination by State or County.

(a) In the event OJD fails to receive sufficient appropriations, expenditure limitations and other state authorizations to permit OJD in the reasonable exercise of its administrative discretion to continue making payments under the Funding Agreement, OJD may immediately terminate this Restated Agreement without penalty or liability, effective upon the delivery of notice to the County.

(b) In the event the County fails to receive sufficient appropriations, expenditure limitations and other authorizations to permit the County in the reasonable exercise of its administrative discretion to continue making payments under the Funding Agreement, the County may immediately terminate this Restated Agreement without penalty or liability, effective upon the delivery of notice to the State, except that in such event the Defeasance Costs shall be due pursuant to **Section 28(c)** below.

(c) In the event the County terminates this Restated Agreement and/or any applicable Funding Agreement for any reason, County shall repay to the State the Defeasance Costs for any State Funds disbursed to the County from State Bonds under the Funding Agreement within 60 Calendar Days after the termination.

29. Defeasance Costs.

(a) Generally.

(i) The County has no obligation to pay Defeasance Costs except where specifically provided for in this Restated Agreement.

(ii) Upon the request of the County, the State shall promptly provide to the County a calculation of the Defeasance Costs as of a specific date.

(iii) In the event the amount of Defeasance Costs paid by the County hereunder exceeds the State's actual Defeasance Costs, the State shall refund the excess to the County within 30 Calendar Days after the defeasance is accomplished. If the amount of Defeasance Costs paid by the County to the State is less than the State's actual Defeasance Costs, the State shall so notify the County and the County shall pay the deficiency to the State within 30 Calendar Days after the State notifies the County.

(b) Real Property Termination Interest. If the County, in its reasonable discretion, is not able to directly pay the State the Defeasance Costs or any portion thereof as maybe required herein, the County may convey to the State a Real Property Termination Interest in accordance with this **Section 29(b)**. The proposed Real Property Termination Interest that the County proposes to convey shall be equal to or greater than the unpaid Defeasance Costs, and must be acceptable to the State, in the State's sole discretion. If acceptable to the State, the County shall convey the Real Property Termination Interest to the State pursuant to a Statutory Warranty Deed under ORS 93.850. Such Real Property Termination Interest shall be conveyed free of any and all Encumbrances. County shall be responsible for all costs related to conveying the Real Property Termination Interest to the State including, without limitation, all closing costs and title insurance. Further, the County shall provide to the State any documentation requested by the State to substantiate the value of the Real Property Termination Interest or to otherwise affirm the condition of the Real Property Termination Interest.

30. Parties' Contribution for Third Party Claims; Indemnification.

(a) Generally. If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third-Party Claim") against a party (the "Notified Party") with respect to which the other party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party of the Third-Party Claim and deliver to the Other Party, along with the notice, a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim that have been received by the Notified Party. Each 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 **Section 30(a)**, and a 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 contribution obligation under this **Section 30(a)** with respect to the Third-Party Claim.

(b) State Contribution. With respect to a Third-Party Claim for which State is jointly liable with the County (or would be if joined in the Third-Party Claim), State shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of the County on the other hand in connection with the events

that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of 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. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

(c) County Contribution. With respect to a Third-Party Claim for which County is jointly liable with the State (or would be if joined in the Third-Party Claim), County shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of County on the one hand and of the State on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of the State 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. 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.

(d) All Other Claims. The parties shall take all reasonable steps to cause their contractor(s) that are not units of County or the State as defined in ORS 190.003, if any, to indemnify, defend and hold harmless the other party and their officers, employees and agents (the "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) to the extent caused, or alleged to be caused, by the negligent or willful acts or omissions of that contractor or any of the officers, agents, employees or subcontractors of the contractor. The parties specifically intend that the Indemnitee shall, subject to ORS 30.140 with regard to Third Party Claims, in all instances, except for claims arising from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all claims to the extent the damages are caused by their fault.

31. Independent Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties. Any agreement entered into by the County relating to the Project is not an obligation of the State. The County shall not represent that it has the power or authority to obligate the State.

32. Parties; No Third-Party Beneficiaries. DAS, OJD and the County are the only parties to this Restated Agreement and are the only parties entitled to enforce its terms. Nothing in this Restated 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 Restated Agreement. Colocation Agencies are not parties or third-party beneficiaries to this Restated Agreement. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Restated Agreement.

33. Subcontracts, Successors and Assignments. The County's entry into any subcontracts for any portion of the Project shall not relieve the County of any of its duties or obligations under this Restated Agreement. The provisions of this Restated Agreement shall be binding upon and shall inure to the benefit of the parties, and their respective successors and permitted assigns, if any.

34. Compliance with Applicable Law.

(a) The County shall comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this Restated Agreement and the Project. Without limiting the generality of the foregoing, the County expressly agrees to comply with the following, and all regulations and administrative rules established pursuant thereto:

- (i) Workers' Compensation Laws (ORS Chapter 656);
- (ii) Wages, Hours and Records Laws (ORS Chapter 652);
- (iii) Conditions of Employment Laws (ORS Chapter 653);
- (iv) Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657);
- (v) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
- (vi) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (vii) the Americans with Disabilities Act of 1990, as amended;
- (viii) the Health Insurance Portability and Accountability Act of 1996;
- (ix) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (x) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (xi) Discrimination against disabled persons (ORS 659A.142);
- (xii) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (xiii) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (xiv) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-2 , as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
- (xvii) the requirements of any other nondiscrimination statute(s) which may apply to the application; and
- (xviii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this **Section 34(a)**.

(b) The County shall ensure that any architectural or engineering services contract, Project Agreement, construction or CM/GC contract and all of the first-tier subcontracts for Project

Work or materials resulting from this Restated Agreement shall include the terms of this **Section 34**. The County shall make reasonable efforts to ensure that all contractors, including the subcontractors of the Project Company, performing Project work or providing materials under contracts resulting from this Restated Agreement shall comply with the terms of this **Section 34**.

35. Records Maintenance; Review and Audit.

(a) The County shall maintain all financial records relating to this Restated Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to this Restated Agreement in such a manner as to clearly document the County’s performance. The County acknowledges and agrees that DAS, OJD, the Oregon Secretary of State’s Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County that are pertinent to this Restated Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts, for the period of time set forth in **Section 35(c)** below.

(b) Upon request, the County shall promptly provide the State with any other such information regarding the Project as the State may require.

(c) The County shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings until the later of three years after maturity of the State Bonds, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Restated Agreement.

(d) The County shall ensure that any architectural or engineering services contract, Project Agreement, construction or CM/GC contract and all of the first-tier subcontracts for Project Work or materials resulting from this Restated Agreement shall include the terms of this **Section 35**. The County shall make reasonable efforts to ensure that all contractors, including the subcontractors of the Project Company, performing Project work or providing materials under contracts resulting from this Restated Agreement shall comply with the terms of this **Section 35**.

36. Notice.

(a) **Generally.** Any notices, demands, deliveries or other communications required under this Restated Agreement shall be made in writing and delivered by one of the methods set forth in **Section 36(b)** below to the address of the parties or the State Project Monitor, as set forth in the Project Summary and Contact Information above, unless a party or the State Project Monitor modifies its address by notice to the other parties and the State Project Monitor, as applicable. The phone numbers listed in the Project Summary and Contact Information are for convenience only, and any information delivered by phone to a party or the State Project Monitor shall not constitute notice under this Restated Agreement.

(b) **Delivery.**

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email shall be deemed sent

	the following Business Day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt, or 3 Business Days after the mailing date if delivery is refused
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Restated Agreement for delivery of a notice is not a Business Day, such deadline shall be deemed extended to the next Business Day.

37. Severability; Waiver.

(a) **Severability.** If any term or provision of this Restated Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Restated Agreement did not contain the particular term or provisions held to be invalid.

(b) **Waiver.** The failure by a party to enforce any provision of this Restated Agreement shall not constitute a waiver of that or any other provision.

38. Governing Law; Venue; Consent to Jurisdiction. This Restated Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between the State of Oregon and the County that arises from or relates to this Restated Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. In no event shall this **Section 38** be construed as a waiver by the State of Oregon 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, action suit or proceeding or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

39. Attachments. All attachments, addenda, schedules and exhibits which are referred to in this Restated Agreement are incorporated in this Restated Agreement.

40. Ambiguities. Each party has participated fully in the review and revision of this Contract and neither party shall be considered the “drafter” for the purposes of any rule of construction that might cause any provision to be construed against the drafter of the Contract.

41. Time is of the Essence. Time is of the essence in the performance of the terms of this Restated Agreement.

42. Survival. All provisions of this Restated Agreement set forth under the following Section headings shall survive expiration or termination of this Restated Agreement:

(a) 17 – Project Work;

- (b) 22 – Tax Covenants;
- (c) 25 – County Default;
- (d) 26 – State’s Remedies for County Default;
- (e) 27 – State Default and County’s Remedies for State Default;
- (f) 29 – Defeasance Costs
- (g) 30 – Parties’ Contribution for Third-Party Claims; Indemnification;
- (h) 32 – No Third-Party Beneficiaries;
- (i) 33 – Subcontracts, Successors and Assignments;
- (j) 35 – Records Maintenance; Review and Audit;
- (k) 36 – Severability; Waiver;
- (l) 38 – Governing Law; Venue; Consent to Jurisdiction; and
- (m) Any other provision of this Restated Agreement that by its terms is intended to survive.

43. Entire Agreement; Amendments.

(a) **Entire Agreement.** This Restated Agreement constitutes the entire agreement between the parties on the subject matter hereof, except that this Restated Agreement is intended to be interpreted consistent with Phase Funding Agreements entered into between the parties regarding the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Restated Agreement.

(b) **Amendments.** No amendment, waiver, consent, modification or change of terms of this Restated Agreement shall bind a party unless in writing and signed by both parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

[remainder of page intentionally left blank]

The State and the County, by execution of this Restated Agreement, each hereby acknowledge that each has read this Restated Agreement, understands it and agrees to be bound by its terms and conditions.

**The State of Oregon,
acting by and through its Department of Administrative Services (DAS):**

Print Name: _____

Title: _____

Signature: _____

**The State of Oregon,
acting by and through its Judicial Department (OJD):**

Print Name: _____

Title: _____

Signature: _____

*Approved as to Legal Sufficiency for the
State:*

By: _____
Wendy Johnson, Sr. Assistant Attorney General

*Approved as to all provisions relating to the Department of Human Services, as Colocation
Agency hereunder:*

**The State of Oregon,
acting by and through the Department of Human Services (Colocation Agency):**

Print Name: _____

Title: _____

Signature: _____

*Approved as to all provisions relating to the Office of Public Defense Services, as Colocation
Agency hereunder:*

**The State of Oregon,
acting by and through the Office of Public Defense Services (Colocation Agency):**

Print Name: _____

Title: _____

Signature: _____

Clackamas County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

_____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
_____, Assistant County Counsel

DRAFT

Exhibit A

Red Soils Parcel and Project Parcel Description

DRAFT

Exhibit B

Progress Report Contents

Each Progress Report shall at a minimum:

- a. describe the progress for the ongoing phases of the Project Work;
- b. include any Project Schedule reports;
- c. identify schedule activities planned for the upcoming period;
- d. identify critical path issues and proposed resolution;
- e. identify problems and issues that arose during the period from the submission of the previous month's Progress Report and the submission of the current month Progress Report, including their status;
- f. summarize resolution or mitigation raised in previous Progress Reports and their status;
- g. include a monthly quality report;
- h. include any environmental noncompliance and remediating or mitigating actions;
- i. identify any unexpected environmental occurrences during the period from the submission of the previous month's Progress Report and the submission of the current Progress Report, including a summary of their resolution, mitigation and/or status;
- j. include a list of change orders or amendments identified or executed during the period from the submission of the previous month's Progress Report and the submission of the current Progress Report, including their status;
- k. identify any events that have resulted in an amendment to the Project Agreement during the period from the submission of the previous month's Progress Report and the submission of the current month's Progress Report, and describe status; and
- l. identify requested and/or required actions by the State for the next month.

The OJD's receipt and review of the monthly Progress Reports shall not imply OJD approval or consent to any of the matters set forth therein. Without limiting the prior sentence, OJD receipt and review of the monthly Progress Reports shall not in any way limit OJD's rights to review and approve that the Project has been completed in accordance with the Technical Requirements and is ready for occupancy and use by the Project Occupants and that the Occupancy Readiness Milestone Payment is due.

Exhibit C

Courthouse Design Criteria

I. General Facilities Design Assessment Criteria

1. Building Configuration

- High public contact functions are located on lower floors.
- Functions not requiring substantial public contact are located on upper or below ground floors.
- Functions requiring higher security levels are located on upper or below ground floors.
- Internal circulation patterns for in-custody cases are located in three separate and distinct zones: public; private (for court staff); and secured circulation for in-custody persons. (See Section IX)

2. Public Service Requirements (including Fire, Life, Safety)

- Main public entrance accommodates anticipated public traffic.
- Public waiting areas:
 - Include sufficient comfortable seating.
 - Located close to areas of highest public use.
 - Have easy access to restrooms, water fountains and telephones.
 - Sized in proportion to the population to be served.
 - Configured to minimize noise transmission to courtrooms.
- Signs, Directions:
 - Directional and informational content is incorporated into the design of all public areas.
 - A building directory is located near each public entrance.
 - A building directory features a diagram that lists all the building's major components.
 - Informational signs are multi-lingual, as appropriate.
 - Braille lettering and audio signals are provided at elevators.
- Information kiosk or counter:
 - Located in a highly visible place near the main entrance.
 - Provides direction and basic information.
 - Provides an automated system using touch screen technology connected to the Local area network.
- Court calendar information:
 - Posted in the information area.
 - Video monitors used (large court facilities).

3. General Office and Workstation

- General Office Guideline (in square feet)
Per staff member; includes work space, files, office equipment, conference; training and reception areas. 250 - 280
- Workstation Sizes (in square feet)

(Type)	(Workstation)	(Private Office)
Staff/Technical	50-80	
Supervisory	80-100	100-120
Management		120-250
Executive		200-250

4. Provisions for Persons with Disabilities

- All areas of the court facility meet all state and federal ADA requirements (The courts have completed extensive ADA Assessment surveys evaluating compliance with applicable requirements).

5. Security and Public Safety

- Building security (See Section VIII)
 - External video surveillance cameras positioned at each pedestrian and vehicular entrance.
 - Building entrances configured with unobtrusive security barriers.
 - Grounds configured to inhibit access of unauthorized vehicles.
 - No public parking adjacent to structures containing courtrooms or court support areas, if allowed by City.
 - At least one courtroom is equipped for high risk trials.
 - Air intake vents for the HVAC system are secured from public access.
- Public Safety
 - Building complies with all relevant fire codes (adequate fire protection and fire alarms).
 - Emergency power and lighting capacity are provided.

6. Seismic Safety

- The structure of the building complies with relevant seismic safety codes.
(A full-scale evaluation is outside the scope of this assessment).

7 Heating, Ventilating and Air Conditioning (HVAC)

- HVAC system meets all code requirements.
- Systems are able to maintain temperatures between 66 and 78 degrees Fahrenheit.
- Each courtroom has an individual thermostatic control for its heating and cooling provided by the buildings central HVAC control system.
- Adequate fresh air and exhaust ventilation in areas subject to dense occupation (i.e., courtrooms).
- HVAC system sound transmissions have been minimized.
- HVAC system ductwork incorporates sound deadening technology between rooms that require private conversations (jury rooms, judges' chambers, and attorney client conference rooms).

8. Plumbing and Electrical

- Plumbing
 - All restroom facilities and drinking fountains meet building codes.
 - Separate restroom facilities are provided for the public, judicial staff, and in-custody defendants.
- Electrical
 - Electrical systems meet building codes.
 - Sufficient electrical capacity and quality are provided to accommodate anticipated future needs.
 - Electrical capacity meets total connected load requirements plus 25 percent for future load growth.

9. Information Systems and Communications

- Also See Section X
- Designated computer or telecommunications rooms (Larger Court facilities) with increased cooling capacity, separate or redundant power and located to reduce the risk of flooding
- Designated room has sufficient cooling not to exceed 82 degrees Fahrenheit.
- Designated room has controlled access including access controls.

10. Lighting

- Sufficient lighting in all building areas to conduct business.

11. Acoustics

- Minimizes intrusive noise.
- Allows accurate hearing and recording of proceedings.
- Allows access to the court by the hearing impaired.

12. Parking; Vehicular and Pedestrian Access

- Provides secured parking for judges and supervisory court staff.
- Passenger loading and short term parking areas are provided near to but at a safe distance from courthouse entrances.
- Loading zone area provided for delivery vehicles that do not need to use the loading dock, if allowed by City.
- All deliveries to courts required to go through x-ray screening.
- Access to the courthouse meets ADA requirements.
- Building provides a single primary public entrance to the courts area.
- Lobby is large enough to accommodate all visitors during peak periods.
- Metal detectors and x-ray equipment are placed in the circulation path from the entrance.

13. Building Support Services

- Court facility incorporates space for the following functions:
 - First aid station
 - Food services or vending
 - Loading dock
 - Supplies and equipment storage
 - Maintenance shops and office
 - Custodial supplies and storage and
 - File shredding area

II. Courtroom Assessment Criteria

1. General criteria

- Courthouse has at least one large courtroom to accommodate large trials and other kinds of public functions.
- Courtrooms sized and configured to accommodate the type of proceedings assigned to the room.
- Courtroom is composed of 2 components: the litigation area; and the spectator seating area
- The parties in any proceeding are able to clearly see and hear the witness, jury, judicial officer and counsel
- Courtroom is configured to protect witnesses and jurors from intimidation.
- Courtroom is configured to ensure appropriate confidentiality for attorneys and judicial officers.

2. Courtroom Size Criteria (NSF is net square feet)

- Ceiling heights are proportional to the size of the room.
- The size of the courtrooms:

Type	Litigation area			Seating	spectator area			Total Square Feet
	NSF	Width	Length		NSF	Width	Length	
Non-jury civil/juvenile/family	840	30	28	20-40	260-360	30	varies	1,100-1,200
1 2-person jury	1,152	36	32	30-60	348-648	36	Varies.	1,500-1,800
High volume/multitligant	1,360	40	34	100-150	840-1040	40	varies	2,200-2,400

3. Courtroom areas

- Judicial officers bench:
 - Has an unobstructed view of the entire courtroom.
 - Is elevated so that the occupant's seated eye level is higher than anyone standing.
 - Accommodates computer (including sufficient space for multiple monitors), telephone, data transmission equipment, and writing desk.

- Courtroom clerk's station:
 - Is adjacent to the bench and accessible to counsel.
 - Has adequate space for placement of in-process forms, exhibits and other essential materials.
 - Is cable-ready for computer terminals, has telephone, electrical outlets and audio controls.
- Witness stand:
 - Witness has clear facial view of the judge, jury, parties, court reporter and counsel
 - The chair is height adjustable and easily removable to accommodate wheelchair access.
 - The stand is on a level between the floor of the litigation area and the judge's bench.
 - The stand is large enough to accommodate an interpreter.
- Jury box:
 - Each juror has clear sight lines to the witness, counsel, judge and evidence display areas.
 - Has physical separation from the spectator and counsel areas.
 - Is large enough to comfortably seat the full number of jurors needed for trial.
- Counsel area:
 - Has at least two tables positioned so attorneys can be seen and heard by other attorneys, the judge, the witness and the jury.
 - Tables placed far enough apart to allow private conversations between attorneys and clients.
 - Tables provide electrical outlets and connections to accommodate computers and internet.
 - Tables and table areas are large enough to accommodate interpreters.
- Spectator area:
 - Provides seating for witnesses, family and the public.
 - The area is separated from the litigation area in a manner that controls movement.
 - The area is sized to accommodate the jury panel during jury selection.
 - Space is reserved for wheelchairs.
- Other Areas and Features:
 - Court reporter area is situated so that anything said by participants can be heard; reporter has access to electrical outlets.
 - Bailiff's station is situated to enable the occupant to see all persons in the courtroom.
 - Exhibit display and equipment is located to be clearly visible for all court participants.
 - Silent duress alarms are located in the judges' bench, courtroom clerk and bailiff areas.
 - Assisted listening devices are available.

III. Judicial Offices and Support Space

1. Judicial offices

- Accessible only from a private corridor.
- Chambers, either clustered or adjacent to courtrooms, are provided to each judicial officer.
- Each chamber is equipped with a silent duress alarm.
- Chambers are a minimum of 350 net sq. ft. (not including restroom).
- Chambers have adequate sound insulation
- Judicial offices have access to non-public restrooms.

2. Support Space

- Support staff workstations/reception/waiting areas are adjacent to chambers.
- Work areas for court reporters, law research clerks, bailiffs are provided.

IV. Jury Assembly and Deliberation

1. Jury Assembly

- Jury assembly room/information presentation area
 - Sufficient seating for all prospective jurors:
 - a. 8 to 12 square feet per person for -theater style seating;
 - b. 15 to 20 square feet for accommodate lounge-type seating.
 - Areas for reading, studying, working and watching television are provided.

- Working areas are provided with data connections and electric power for computers.
- Public telephones, restroom facilities, and coatrooms are adjacent to the jury assembly room.
- Movement of jurors minimizes contact with attorneys and litigants.
- Jury reception/check-in area
 - A silent duress alarm is provided at the desk.

2. Jury deliberation room

- Ratio of jury deliberation rooms to courtrooms is one to two.
- Located on restricted corridors.
- Can comfortably accommodate 14 jurors.
- Allows use of charts, exhibits, and video monitors.
- At least 350 net sq. ft., exclusive of restroom and refreshment areas.
- Acoustically designed so that conversations cannot be heard outside the room.

V. Court Administration

1. General Considerations

- The court administration area is designed to ensure the efficient flow and processing of work.
- Court administrative offices are connected to both public and private corridors.
- Duress security alarms are in appropriate sites.

2. Court Administration Area

- General work area and miscellaneous support
 - Includes a work area for sorting mail and for copying equipment.
 - Work space is provided for all appropriate staff and for records that are in use.
- Public service counters
 - General office areas are separated from public areas.
 - Counters are designed for efficient exchange of public documents.
 - Counters are capable of accepting and electronically processing documents via electronic scanning.
 - The public area outside the counter provides at least 10 feet between the counter and the entrance for queuing.
 - A public area for viewing records is provided adjacent to the counter; secure and visible to staff.
 - Public area has a controlled access terminal or workstation capable of providing service to the public for research and general court functions.
 - Security glass, or other methods for insuring that the public remains outside of office area, is in place at service counters.
 - Duress security alarms are placed in appropriate sites and integrated into the courthouse security system.
- Records storage
 - Sufficient space is provided for records storage and retrieval.
- Exhibit/evidence storage
 - Secure areas are provided for storage of exhibits.
 - Separate secure area is provided for storage of evidence.

VI. Court Support

1. Children waiting area.

- Area includes adequate storage for toys, games and books, easy access to restrooms with diaper changing stations, and space for staff or volunteers.
- Area has electrical capacity and power for VCR/DVD viewing

2. Court facilitator services area

- Court program areas (i.e. for prose litigants) are located in areas convenient to the public.

- Areas have space adequate to fulfill functions.
3. **Attorney client conference rooms**
 - One conference room per two courtrooms is provided for attorney use.
 - The rooms accommodate a table and four chairs.
 4. **Waiting areas for adverse parties**
 - Areas are divided so that adverse parties are separate from one another.

VII. Alternative Dispute Resolution

Note: With the exception of Marion County, dedicated space for provision of these services is not a part of the courthouse facilities provided in Oregon. However, for courts with increasing family court, small claims, domestic relations and FED mediations, adequate dedicated space is a consideration.

1. Mediation Services

- Mediator offices accommodate up to six individuals, and have sound absorbent walls.
- Reception/waiting areas provide separate areas for different parties.
- Large mediation room accommodates larger family groups and allows involvement of additional staff.
- Mediation area provides a waiting area for children, located in a secure place, and an equipment storage area.
- Mediation area includes some kind of duress alarm system.

VIII. Court Security

1. Building perimeter, site and parking assessments:

- Architectural barriers to protect entrances.
- Surveillance cameras at entrances and exits.
- Illuminated circulation around building and parking lot.
- Illuminated parking lots.
- Tamper resistant utility connections to building
- Low height landscaping
- Secured parking for judges
- Surveillance cameras in parking lots

2. Building entrances assessments:

- Surveillance cameras
- Security weapons screening
- Intrusion detection alarms
- High security door locks
- Intercom system at entry door
- Visual monitoring of entrance
- Controlled access to loading dock
- Screening equipment for incoming packages
- Key car or other electronic device for non-public access doors.

3. Public waiting areas assessments:

- Limited ability to hide contraband
- Controlled public access to secured rooms
- Surveillance cameras

IX. In-Custody Defendant Areas

1. Remote Video Communication.

- Facility is equipped with remote video connections between the court facility and the detention facility.

2. In-Custody Receiving, Holding and Transportation components:

- Vehicle sallyport
- Security vehicle parking
- Pedestrian sallyport
- Initial holding cell and search area
- Control center
- Central holding cell
- Lunchroom or access to eating area
- Dress-out, property and clothing storage
- Attorney interview space
- Secure elevators and corridors
- Courtroom holding cells

X. Facilities Technology Recommendations

1. Power

- Individual electrical receptacles for each technology component without the use of extenders
- Backup power supplies (UPS) sufficient to provide 15 minutes of battery power in the event of power interruption to critical technology components
- Electrical power to computer server rooms capable of supporting a minimum of 10 individual components
- All power used for technology resources should be properly conditioned and filtered to allow for the highest level of efficiency.
- Rack-mounted backup power (UPS) sufficient to provide 30 minutes of battery power in the event of power interruption to all critical network components such as switches and routers, video units, electronic recording and media or file servers.
- Dedicated electrical circuits for computer and technology components at a minimum of 20 amps per circuit.

2. Voice/Data

- Minimum of 2 recessed data-ports on separate circuits, for each workstation or laptop computer
- Minimum of 2 recessed voice-ports capable of supporting both analog and digital voice circuits at each individual work area
- Network cable to support 100mb/s certified data thru-put adhering to current standards for low-voltage cable installation.
- Minimum network switch capacity to handle total number of required connections plus twenty percent additional load.
- Network switch and routers capable of up to 1Gb/s loads.
- Provisioning of cable pathways to allow easier cable changeover to accommodate improvements in data technology
- Network switches operating at 1Gb-10Gb speed and cabling capable of supporting Power Over Ethernet (POE)
- Isolated data circuits in each courtroom and conference room dedicated for video streaming and video conferencing with voice.
- Ceiling oriented network data-ports and power capable of supporting wireless network access components

Exhibit D
Form of Disbursement Request

[For use with the Phase I and Phase II Non-Project Agreement Costs only.]

Disbursement Request Number: _____
[number Requests sequentially for ease of tracking]

Dated: _____

Project Title: Clackamas County Courthouse

Phase: _____

Funding Source: _____

Funding Agreement: Clackamas County Courthouse Phase ____ Funding Agreement
between OJD, DAS and Clackamas County dated
_____ (the "Agreement")

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Agreement and the Clackamas County Courthouse Amended and Restated Master Funding Agreement ("Restated Agreement").

On behalf of Clackamas County (the "County"), I hereby request a total disbursement of \$ _____ pursuant to the Phase ____ Agreement, 50% of such amount to be credited to the County Contribution for the Phase set forth above, and the other 50% of such amount to be disbursed to County from State Funds.

I hereby make the following certifications in connection with this Disbursement Request:

1. On behalf of the County, I have reviewed the attached invoice(s) and any other documents attached to this Disbursement Request, and I have determined that the invoiced work or materials represent Authorized Costs for the Phase set forth above, pursuant to the Phase ____ Funding Agreement.
2. The County will use the disbursement amount requested by this Disbursement Request either:
 - (a) to reimburse the County for amounts that the County has previously paid for Authorized State Costs of the Project; or
 - (b) to pay to unrelated third parties no later than 5 Business Days after OJD makes the disbursement, for Authorized State Costs of the Project that the County has incurred.
3. The parties agree that the total amount credited to the County Contribution pursuant to Section 12 of the Restated Agreement must be equal to or greater than the total State Funds disbursed to date plus the amount of this Disbursement Request.
4. The certifications in this Disbursement Request are true to the best of my knowledge and belief.

By: _____
Authorized Signature

RECORDING MEMO

X New Agreement/Contract (IGA)
Amendment/Change/Extension
Policy, Plan, Reports
Other

ORIGINATING COUNTY
DEPARTMENT:
County Administrator

PURCHASING FOR:
N/A

OTHER PARTIES TO
CONTRACT/AGREEMENT:
State of Oregon

BOARD AGENDA DATE: 2-21-19
AGENDA ITEM NUMBER: C.1

PURPOSE:
Approval of Clackamas County Courthouse Master Funding
Agreement

If you want the item returned to you after recording indicate here.

Nate Boderman – County Counsel

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

2019-0259
03/14/2019 9:30:09 AM

**CLACKAMAS COUNTY COURTHOUSE
MASTER FUNDING AGREEMENT**

THIS CLACKAMAS COUNTY COURTHOUSE MASTER FUNDING AGREEMENT (this “Agreement”) is made on February 28, 2019 (the “Effective Date”), by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Clackamas County, Oregon (the “County”).

Project Summary and Contact Information

Project Title: Clackamas County Courthouse

County: Clackamas County

Estimated Project Completion Date: February 1, 2024

Anticipated State Funds:

Phase I:	\$ 1,200,000 – General Funds (Fall 2018)
Phase II:	\$31,500,000 – Article XI-Q bonds (Spring 2021)
Phase III:	\$63,000,000 – Article XI-Q bonds (Spring 2023)

County Contact: Gary Barth, Barth Consultants, LLC
Phone: (503) 754-2050
Email: gbarth@barthconsultants.com
Address: 10117 SE Sunnyside Road
Suite F703
Happy Valley, OR 97086

DAS Contact: Rhonda Nelson, Capital Finance Analyst
Phone: (503) 378-8927
Email: Rhonda.Nelson@oregon.gov
Address: 155 Cottage Street NE
Salem, OR 97301

OJD Contact: David T. Moon, Director
Business and Fiscal Services Division
Phone: (503) 986-5150
Email: David.T.Moon@ojd.state.or.us
Address: Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Presiding Judge: The Honorable Kathie F. Steele
Phone: (503) 655-8670
Email: Kathie.F.Steele@ojd.state.or.us
Address: 807 Main St.
Oregon City, OR 97045

**Trial Court
Administrator:** Debbie Spradley
Phone: (503) 655-8670
Email: Debbie.D.Spradley@ojd.state.or.us
Address: 807 Main St.
Oregon City, OR 97045

State Project Monitor: Nick Larson
Construction Project Monitor
Oregon Judicial Department
Phone: (503) 986-5429
Email: Nicholas.C.Larson@state.or.us
Address: Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Colocation Agency: Department of Human Services,
an agency of the State of Oregon

Colocation Contact: Glen Bason, Administrator
Office of Facilities Management
Phone: (503) 945-5817
Email: Glen.E.Bason@dhsosha.state.or.us
Address: 1410 Tandem Ave. NE
Salem, OR 97301

Colocation Agency: Office of Public Defense Services,
an agency of the State of Oregon

Colocation Contact: Eric J. Deitrick, General Counsel
Office of Public Defense Services
Phone: (503) 378-2750
Email: eric.j.deitrick@opds.state.or.us
Address: 1175 Court St. NE
Salem, OR 97301

Terms and Conditions

1. Effective Date and Term. This Agreement is effective as of the Effective Date, such date being the last date all required signatures and approvals were obtained. The term of this Agreement shall be from the Effective Date through the date the parties fulfill their obligations under the final Funding Agreement, be it the Funding Agreement for Phase I, Phase II or Phase III, unless it is sooner terminated pursuant to the provisions of this Agreement.

2. Agreement Documents. This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, less all Exhibits; and attached Exhibit A (Red Soils Parcel and Project Parcel); Exhibit B (Initial Plans); Exhibit C (Courthouse Design Criteria); and Exhibit D (Form of Disbursement Request). The foregoing Exhibits are incorporated herein by this reference.

3. Definitions: General. Capitalized terms used in this Agreement shall have the meanings defined for such terms in this Section 3, unless the context clearly requires otherwise.

(a) “Act” means Article XI-Q of the Oregon Constitution; Or. Laws 2013, ch. 705; Or. Laws 2013, ch. 723; Or. Laws 2014, ch. 121; Or. Laws 2015, ch. 675; Or. Laws 2016, ch. 118; and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.

(b) “Approved Amount” means the State’s Proportionate Share of any amount set forth in a Disbursement Request that the State Project Monitor determines represent Authorized Costs, pursuant to Section 12 below.

(c) “Authorized Costs” means the County’s actual, reasonable and necessary capital costs relating to the Phase Work, as set forth more completely in Section 10 below and any Funding Agreement.

(d) “Authorized State Costs” means the State’s Proportionate Share of the Authorized Costs.

(e) “Chief Justice” means the Chief Justice of the Oregon Supreme Court.

(f) “Code” means the Internal Revenue Code of 1986, as amended.

(g) “Colocation Agency” means collectively the Department of Human Services, an agency of the State of Oregon, and the Office of Public Defense Services, an agency of the State of Oregon.

(h) “Colocation Contact” means each of the Colocation Agency employees named in

the Project Summary and Contact Information above.

- (i) “Colocation Lease” means the long-term lease agreement for the Colocation Premises that the Colocation Agency and the County anticipate entering into pursuant to a Funding Agreement, if any, for Phase III.
- (j) “Colocation Premises” means that certain portion of the Project, as generally described in the Initial Plans, that will be the subject of the Colocation Lease.
- (k) “County Default” means any of the occurrences set forth in Section 23 below.
- (l) “Courthouse Design Criteria” means OJD’s “General Facilities Design Assessment Criteria” dated December 2007 and attached as Exhibit C.
- (m) “Defeasance Costs” means the amount sufficient to defease the then-outstanding State Bonds and any costs necessary for such defeasance, plus any principal and interest payments the State has made or will make before the State Bonds are defeased.
- (n) “Disbursement Request” means a request by the County for credit to the County Contribution and disbursement of State Funds, substantially in the form of Exhibit D.
- (o) “Estimated Project Completion Date” means February 1, 2024.
- (p) “Existing Courthouse” means the building located at 807 Main St., Oregon City, Oregon, in which the Clackamas County Circuit Court is located as of the Effective Date.
- (q) “Fund” means the Oregon Courthouse Capital Construction and Improvement Fund.
- (r) “Funding Agreement” means any agreement the parties may enter into under this Agreement, in order to memorialize their obligations and understandings regarding any specific Phase of the Project.
- (s) “General Funds” means funds appropriated by the Oregon Legislative Assembly.
- (t) “Initial Plans” means the plans for the Project as of the Effective Date, as described on Exhibit B.
- (u) “Mediator” means the individual chosen by the parties to mediate a dispute between them pursuant to Section 7(e) below.
- (v) “Misspent Funds” means any Project Financing spent by the County for any purpose other than paying for Authorized Costs, or otherwise in violation of this Agreement.
- (w) “OJD Lease” means the long-term lease agreement for the OJD Premises that OJD and the County anticipate entering into pursuant to a Funding Agreement, if any, for Phase III.
- (x) “OJD Premises” means that certain portion of the Project, as generally described in the Initial Plans, which will be the subject of the OJD Lease.
- (y) “Phase” means Phase I, Phase II, or Phase III, as the context so requires.
- (z) “Phase I” means the planning period for the Project.
- (aa) “Phase II” means the design and initial construction period for the Project.
- (bb) “Phase III” means the final construction period for the Project.
- (cc) “Presiding Judge” means the Presiding Judge for the Clackamas County Circuit Court. The current Presiding Judge is named in the Project Summary and Contact Information above.

- (dd)** “Project” means the Clackamas County Courthouse to be constructed on the Project Parcel, in Oregon City, Clackamas County, Oregon, pursuant to this Agreement and, as applicable, the Act, as such Project is described in the Project Application and in the Initial Plans.
- (ee)** “Project Application” means that certain application for monies from the Fund to be used for the Project, submitted by the County to the Chief Justice on February 7, 2017.
- (ff)** “Project Budget” means the budget for the construction of the Project, as developed by the County and approved by the State pursuant to a Funding Agreement.
- (gg)** “Project Common Areas” means the areas of the Project, as generally described in the Initial Plans, that will be available for common use by the Project Occupants.
- (hh)** “Project Financing” means the total of the State Funds and the County Contribution.
- (ii)** “Project Occupants” means the County, OJD and the Colocation Agency and their respective employees, agents, tenants, contractors, guests and invitees.
- (jj)** “Project Parcel” means that certain real property that is a portion of a larger parcel commonly known as the Red Soils Property, as shown on Exhibit A, and any improvements constructed thereon pursuant to this Agreement.
- (kk)** “Project Plans and Specifications” means design development documents for the Project, as developed by the County and approved by the State pursuant to a Funding Agreement.
- (ll)** “Project Schedule” means the schedule for the construction of the Project, as developed by the County and approved by the State pursuant to a Funding Agreement.
- (mm)** “Project Work” means all work associated with the Project, for any Phase.
- (nn)** “Real Property Termination Interest” means an interest in the Project and the Project Parcel, or in other real property owned by the County and any improvements thereon, that the State may accept from the County in lieu of Defeasance Costs pursuant to Section 27(b) below.
- (oo)** “State Bonds” means any Oregon Constitution Article XI-Q general obligation bonds issued by the State for the Project; and any bonds or other obligations issued by the State to refinance the State Bonds.
- (pp)** “State Default” means any of the occurrences set forth in Section 25(a) below.
- (qq)** “State Leases” means the Colocation Lease and the OJD Lease.
- (rr)** “State Premises” means the Colocation Premises and the OJD Premises.
- (ss)** “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of OJD who will monitor and review the County’s Project activities and compliance with this Agreement as set forth herein.
- (tt)** “Trial Court Administrator” means the OJD employee named in the Project Summary and Contact Information above.
- (uu)** “Unspent Funds” means any amounts of the Project Financing that the County fails to spend during a specific Phase.

4. Definitions: Phase-Specific. The following capitalized terms used in this Agreement shall have Phase-specific meanings, to be set forth in any Funding Agreement.

- (a) “Benchmarks” means specific deliverables for a specific Phase relating to that Phase Work.
- (b) “County Contribution” means funding the County agrees to provide for all Authorized State Costs for a specific Phase.
- (c) “Phase Completion Date” means the date the parties anticipate that a specific Phase will be completed.
- (d) “Phase Work” means the Project Work associated with a specific Phase.
- (e) “State Funds” means the funding to be provided by the State for a specific Phase.
- (f) “State’s Proportionate Share” means the portion of the Authorized Costs that are applicable to the State Funds, representing that portion of a specific Phase that the State Premises bears to that specific Phase.

5. Recitals. The parties recite:

- (a) Pursuant to ORS 1.185 and 1.187, OJD operates the State of Oregon’s circuit courts, and the counties in the State of Oregon provide courthouse facilities for the circuit courts.
- (b) The Oregon Legislative Assembly, through the Act, has authorized the sale of Article XI-Q bonds to finance costs related to the acquisition of land for and construction of courthouses if:
 - (i) the Chief Justice determines significant structural defects of a courthouse threaten human health and safety, the construction of a new building is more cost-effective than remodeling or repairing the courthouse, and the replacement of the existing courthouse creates an opportunity for the colocation of other state offices in the courthouse; and
 - (ii) DAS approves the courthouse construction project for which the Article XI-Q bonds will be sold.
- (c) The Act also established the Fund, to hold monies to be used for courthouse construction projects.
- (d) On February 7, 2017, the County submitted the Project Application, which set forth the County’s need for the Project and basic Project information.
- (e) After the Effective Date, the County intends to submit an amended and updated version of the Project Application.
- (f) The parties anticipate that the Project will be developed and built in three Phases: Phase I (the Planning Phase); Phase II (the Design and Initial Construction Phase); and Phase III (the Final Construction Phase).
- (g) The State is contributing the State Funds as a portion of the consideration for the leasehold interest in the State Premises that the County will convey to OJD and the Colocation Agency pursuant to the State Leases.
- (h) The Project will be constructed on the Project Parcel and will be designed in accordance with the Initial Plans and the Courthouse Design Criteria, except as

specifically agreed by the parties.

(i) The parties anticipate that the State Funds for the Phases will be as follows:

	Phase I	Phase II	Phase III
Amount	\$ 1,200,000	\$31,500,000	\$63,000,000
Funding Source	General Funds	Article XI-Q bonds	Article XI-Q bonds
Estimated Timeline	Fall 2018	Spring 2021	Spring 2023

(j) Notwithstanding Section 5(g) above, the State has no obligation to contribute any State Funds to the Project except as specifically set forth in a Funding Agreement.

(k) The parties expect to execute the State Leases during Phase III, if they enter into a Funding Agreement for Phase III.

(l) The parties estimate that, if they enter into Funding Agreements for Phase I, Phase II and Phase III, the Project will be fully constructed on or before February 1, 2024 (the Estimated Project Completion Date).

(m) In the event State Funds for any Phase derive from General Funds rather than from State Bonds, certain provisions set forth below in this Agreement may not apply to those State Funds. In such event, the Funding Agreement for that specific Phase will set forth any particular provisions relating to such State Funds derived from General Funds.

6. Representations, Warranties and Covenants of the State and County.

(a) The State represents, warrants and covenants, as applicable, as follows:

(i) This Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Agreement, constitutes a valid and binding agreement of the State that is enforceable against the State in accordance with its terms.

(ii) Because of the State's anticipated contribution of State Funds, and the resulting leasehold interests for OJD and the Colocation Agency in the OJD Premises and the Colocation Premises, respectively, the State will collaborate and cooperate with the County, as an equal partner, regarding any and all matters relating to the Project.

(b) The County represents, warrants and covenants, as applicable, as follows:

(i) This Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County in accordance with its terms.

(ii) Because of the State's anticipated contribution of State Funds, and the resulting leasehold interests for OJD and the Colocation Agency in the OJD Premises and the Colocation Premises, respectively, the County will collaborate and cooperate with the State, as an equal partner, regarding any and all matters relating to the Project.

(iii) As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the Project Parcel

or the development, construction or use of the Project. The County shall promptly provide OJD with notice of any litigation or claims (environmental or otherwise) filed during the term of this Agreement against the County regarding the Project or the Project Parcel.

(iv) The County's current employees are not eligible for, and the County has not hired, contracted with or made any award to any of its current employees for, any work or materials directly connected to the Project. During the term of this Agreement, the County's then-current employees shall not be eligible for, and the County shall not hire, contract with or make any award to any of its then-current employees for, any work or materials that are directly connected to the Project. Notwithstanding the foregoing, the parties may identify in any Funding Agreement an individual employed by the County who may be eligible for any work or materials directly connected to the Project. The conditions under which the County may claim any work or materials directly connected to the Project by such an employee of the County as an Authorized Cost shall be set forth in the applicable Funding Agreement.

(v) The State will have no obligation to contribute any State Funds to the Project except as specifically set forth in a Funding Agreement.

7. Collaboration and Cooperation between Parties; Meetings and Documents; Resolution of Disputes

(a) **Generally.** All matters related to the Project will be subject to good-faith collaboration between the parties and, with regard to the Colocation Premises, the Colocation Agency. The parties shall use their best efforts to cooperate with each other and the Colocation Agency in order to accomplish the timely completion of the Project Work.

(b) **Meetings and Documents.** The County shall give OJD and the Colocation Agency advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve discussions of the Project. For the purposes of this Section 7(b), such notice to OJD shall be delivered to the Trial Court Administrator, and such notice to the Colocation Agency shall be delivered to the Colocation Contact, in accordance with the notice provisions of Section 34 below.

(c) **Resolutions of Disputes by the Parties.** In the event of a dispute under this Section 7, the parties shall attempt in good faith to resolve the dispute within fifteen (15) business days after one party gives notice to the other party of such dispute.

(d) **Resolution of Disputes by Chair of County Commissioners and Chief Justice.** If the parties do not timely resolve a dispute pursuant to Section 7(c) above, then the dispute shall be submitted to the Chair of the Clackamas County Board of Commissioners and the Chief Justice, or their respective designee, to be resolved within thirty (30) days after submission.

(e) **Resolution by Mediator.**

(i) If a dispute is not timely resolved pursuant to Section 7(d) above, then it may be resolved by the Mediator, who will be chosen by the parties as follows: within ten (10) business days after the expiration of the 30 –day period set forth in Section 7(d) above, the County shall deliver to the State a list of at least three (3)

independent and experienced mediators, and within ten (10) business days after such delivery, the State shall notify the County of its choice of the Mediator from said list. Notwithstanding the foregoing, if the County fails to timely deliver the list to the State, then the State's choice of a mediator shall be deemed the Mediator; and if the County does timely deliver the list to the State, and the State fails to timely respond, then the County's choice of a mediator will be deemed the Mediator.

(ii) Within ten (10) days after the selection of the Mediator pursuant to Section 7(e)(i) above, both parties shall submit position statements regarding the dispute to the Mediator; and within thirty (30) days after submission of the position statements, the Mediator shall issue a decision regarding the dispute.

(iii) The parties share equally share all costs and expenses of the Mediator.

8. Overview of Application of State Funds. As set forth in Sections 12 and 13 below, the State's monetary contribution for a specific Phase (i.e., the State Funds) will be fifty percent (50%) of a certain share (i.e., the State's Proportionate Share) of certain capital costs (i.e., the Authorized Costs), in an amount not to exceed the amount of the State Funds.

9. Overview of Application of Country Contribution. As set forth more fully in Sections 11 – 13 below, for any specific Phase:

(a) The County shall "deposit" the full amount of the County Contribution, either through the direct transfer of funds or the application of the value of the Project Parcel (if applicable).

(b) The full amount of the County Contribution must be "credited" to the County, through disbursements from the State for Authorized State Costs incurred by the County.

(c) For every Disbursement Request approved by the State Project Monitor, fifty (50%) shall be credited to the County Contribution, and fifty percent (50%) shall be reimbursed to the County and credited to the State Funds.

(d) Notwithstanding the amount of the County Contribution, the County shall pay for any and all costs of the Phase Work that exceed any amounts applied from the State Funds.

10. Authorized Costs.

(a) **Generally.** Authorized Costs are the County's actual, reasonable and necessary capital costs of the Phase Work, which are:

(i) authorized under the Act and the laws pertaining to tax-exempt bond financings;

(ii) permitted by generally accepted accounting principles, consistently applied, as established by the Governmental Accounting Standards Board, as reasonably interpreted by DAS, to be capitalized to an asset that is part of the Project; and

(iii) eligible for financing with obligations bearing interest that is excludable from gross income under the Code.

(b) **General Funds Exception.** If the State Funds for a specific Phase come from

General Funds instead of State Bonds, the limitations in Section 10(a)(i) and (iii) above shall not apply to Authorized Costs.

(c) **Specific Inclusions.** Authorized Costs include, without limitation, the following:

- (i) capital costs related to the Phase Work;
- (ii) costs of the State Project Monitor;
- (iii) costs related to the Phase Work by project consultants for the County; and
- (iv) time spent working on the Project by any employees of the County who may be identified in a Funding Agreement, provided that such time is charged to the Project on a time-spent basis, rather than as a percentage of such employee's total work for the County; that such charges do not include the County's overhead (but may include fringe benefits); and that such charges may be capitalized pursuant to Section 10(a)(ii) above.

(d) **Specific Exclusions.** For the avoidance of doubt, Authorized Costs do not include internal costs charged to the Project by the County, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties.

11. County Contribution: Deposits.

(a) **Generally.** In order to receive credits toward the County Contribution pursuant to Section 12 below, and disbursements from the State Funds pursuant to Section 13 below, the County shall deposit with OJD the full amount of the County Contribution for the specific Phase, pursuant to the applicable Funding Agreement. The County shall deposit the County Contribution as a direct transfer of funds, pursuant to Section 11(b) below, or as a credit for the value of the Project Parcel as provided in ORS chapter 705 and in Section 11(c) below. The County may deposit the full amount of the County Contribution in one or more installments and using any combination of deposits allowed under Sections 11(b) and 11(c) below.

(b) **Direct Transfer of Funds.**

- (i) The County may transfer to OJD any amount of the County Contribution, in one or more installments.
- (ii) Within two (2) business days after OJD's receipt of any amount of the County Contribution transferred by the County, OJD shall transfer such amount into the County's account in the Local Government Investment Pool.
- (iii) Any and all funds that the County transfers to OJD pursuant to this Section 11(b) shall be "original" funds—in other words, the County shall not transfer the same funds to OJD more than once.

(c) **Value of Project Parcel.**

- (i) As of the Effective Date, the Act does not allow the County to apply the value of the Project Parcel as a deposit toward the County Contribution, because the Project Parcel, which has been owned by the County since 1930, was not purchased by the County as the site for the Project.
- (ii) If the Act is amended to allow the value of the Project Parcel as a deposit toward the County Contribution, and the County wishes to do so, the County shall submit the following documents to OJD within one hundred eighty (180) days

after the Effective Date, in accordance with the Act:

- (a) an appraisal that is satisfactory to OJD, in terms of content and timeliness, representing the current value of the Project Parcel; and
- (b) the sale documents representing the actual purchase price of the Project Parcel by the County.

Upon receipt of such documents, OJD shall apply the higher of the appraised value or the purchase price as a deposit to the County Contribution.

12. County Contribution: Credits.

(a) **Generally.** In order to receive credits toward the County Contribution, the County shall submit Disbursement Requests pursuant to this Section 12. The amounts that the County requests pursuant to Disbursements Requests shall be either:

- (i) to reimburse the County for payments that the County has previously made for Authorized State Costs of the Project; or
- (ii) for Authorized State Costs of the Project that the County has incurred and will pay to unrelated third parties no later than five (5) business days after OJD makes the disbursement, as set forth in Section 12(e) below.

(b) **Credits Not to Exceed Deposits.** The total credits to the County for the County Contribution may not at any time exceed the total amount that the County has deposited with OJD pursuant to Section 11 above.

(c) **Form and Frequency of Disbursement Requests.** The County shall submit Disbursement Requests to the State Project Monitor, in the form shown in Exhibit D. Disbursement Requests shall include clear reference to the Project and itemize and explain all expenses in sufficient detail to allow the State Project Monitor to determine whether such expenses represent Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every fourteen (14) days, and no less frequently than every one hundred twenty (120) days.

(d) **Review.** The State Project Monitor shall review each Disbursement Request to determine whether:

- (i) the Disbursement Request is in the form shown in Exhibit D and otherwise complies with Section 12(c) above; and
- (ii) the expenses set forth in the Disbursement Request represent Authorized Costs.

(e) **Approved Amounts.** For any amount set forth in a Disbursement Request that the State Project Monitor deems to be Authorized Costs pursuant to Section 12(d) above, then, after multiplying such amount by the State's Proportionate Share to establish the "Approved Amount":

- (i) fifty percent (50%) of the Approved Amount shall be credited toward the County Contribution; and
- (ii) fifty percent (50%) of the Approved Amount shall be disbursed to the County from the State Funds, pursuant to Section 13 below, and such amount shall be credited toward the State Funds.

(f) Tracking Credits and Disbursements. OJD shall keep current and accurate calculations of the credits to the County Contribution and the disbursements from the State Funds, pursuant to Section 12(e) above.

(g) Disapproved Amounts. If the State Project Monitor determines that any cost shown on a Disbursement Request is not an Authorized Cost, including whether it represented Misspent Funds, the State Project Monitor shall promptly notify the County of such determination, and none of the disapproved amount shall be credited toward the County Contribution or disbursed to the County from the State Funds. In the event the County reasonably objects to exclusion of any cost shown on a Disbursement Request, the parties will cooperate to resolve the objection as provided in Section 7 above.

(h) Nonpayment for Work and Materials Accrued. In the event of a disbursement of State Funds for an Approved Amount for work or materials already received or performed, the County shall, within five (5) business days, pay the supplier such Approved Amount. Any amounts that the County fails to promptly pay such supplier constitute Unspent Funds.

(i) Retainage: Phase I. OJD shall retain five percent (5%) of the Approved Amounts from the State Funds. This retainage shall not be disbursed to the County until the County has met the Benchmarks and has contributed the full amount of the County Contribution, and until any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off.

(j) Retainage: Phases II and III. OJD shall retain five percent (5%) of the Approved Amounts from either the Phase II State Funds or the Phase III State Funds. This retainage shall be released to the County as follows:

(i) Interim releases. If the County represents in writing that any work on the Project paid as an Approved Amount in either Phase II or Phase III has been satisfactorily completed and that neither the Contractor nor any subcontractors or suppliers on the Project have any valid, unpaid claims or liens against the County, the State or the Project for such Phase Work, and the County provides the State with reasonable documentation substantiating the foregoing, then the State shall release such 5% retainage for the related Phase Work. Notwithstanding the foregoing, 1% of the State Funds associated with either the Phase II Work or the Phase III Work, as the case may be, will be held in retainage until the final release conditions set forth in Section 12(j)(ii) below are met.

(ii) Final release. The retainage not released pursuant to Section 12(j)(i) above shall not be disbursed to the County until the County has met the Benchmarks set forth in the applicable Funding Agreement, has contributed the full amount of the applicable County Contribution, and any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off.

13. Disbursement of State Funds.

(a) Generally. The disbursement of State Funds to the County pursuant to Section 12(e) above is subject to the provisions of this Section 13.

(b) Maximum State Contribution. Unless the amount of the State Funds under any Funding Agreement is increased after the effective date of that Funding Agreement, the

State's maximum monetary obligation for that Phase of the Project shall not exceed the State Funds. If the costs of a specific Phase of the Project exceed the Project Financing for that Phase, the County shall be responsible for all additional costs, and the County shall have no claim against the State for any amount that exceeds the amount of the State Funds for that Phase.

(c) Sufficient Appropriations. The disbursement of State Funds under Section 12(e) above, and of the Security Disbursement (as defined in and pursuant to Section 13(e) below), are contingent on OJD receiving sufficient appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly.

(d) Conditions Precedent. OJD's obligation to disburse the State Funds to the County for any Approved Amount is subject to satisfaction of each of the following conditions precedent, with respect to each disbursement:

- (i)** OJD has received sufficient expenditure authorizations to allow OJD, in the exercise of its reasonable administrative discretion, to make the disbursement.
- (ii)** No County Default has occurred and is continuing.
- (iii)** The County's representations and warranties set forth in Section 6 above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

(e) Security Disbursement.

(i) The parties anticipate that, in addition to any State Funds, OJD will disburse to the County, during Phase III, a certain amount to be determined by OJD (the "Security Disbursement") from OJD's State Court Facilities Account, for expenditure by the County on certain security equipment for the Project. As a condition to disbursement of the Security Disbursement, the County shall submit invoices or other assurance acceptable to OJD that the Security Disbursement has been or will be spent only on security equipment for the OJD Premises.

(ii) The Security Disbursement is not part of the State Funds and shall not be credited towards the County Contribution. The County's spending of the Security Disbursement for purposes other than as set forth in this Section 13(e) shall constitute Misspent Funds, and the County's failure to spend the Security Disbursement shall constitute Unspent Funds.

14. Payment of State Project Monitor.

(a) The State Project Monitor shall charge his time to the Project on a time-spent basis, rather than as a percentage of the State Project Monitor's total work for OJD, and such charges do not include OJD's overhead (but may include fringe benefits). For each Phase, total costs incurred for the services of the State Project Monitor shall not exceed such amount that may be agreed on by the parties pursuant to a Funding Agreement. OJD shall deliver invoices to the County for the State Project Monitor's services, and the County shall pay the amount due to OJD within thirty (30) days after delivery thereof.

(b) The County shall then submit a Disbursement Request to the State pursuant to Section 12(c) above, and the amount paid thereon by the County shall be multiplied by the State's Proportionate Share treated as an Approved Amount, and:

- (i) fifty percent (50%) thereof shall be credited toward the County Contribution; and
- (ii) fifty percent (50%) thereof shall be disbursed to the County from the State Funds, pursuant to Section 13 above, and such amount shall be credited toward the State Funds.

15. Project Work.

(a) The County shall undertake the Project Work in accordance with Oregon law and for the purposes described in the Act and this Agreement, including but not limited to the following:

(i) in accordance with OAR 330-135-0010 through 330-135-0055, pertaining to expenditures for solar technology, as applicable to the Project. The County shall provide OJD with copies of all reports required by OAR 330-135-0055 as applicable to the Project and as required by the Oregon Department of Energy; and

(ii) all statutes and administrative rules relating to Public Works, if the Project is a Public Works as defined in ORS 279C.800(6).

(b) The County shall contract with competent professionals for all Project Work, and shall require all such professionals to possess and maintain all licenses, registrations, insurance, and bonds required by Oregon law.

(c) The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the Project Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, and 279C, other applicable law and local contracting procedures; and in compliance with Oregon Laws 2014, chapter 66 (HB 4111). The County shall document all solicitations, selection and award processes used for contracting the Project Work.

(d) The County shall be responsible for awarding and managing all contracts and property acquisitions necessary to complete the Project Work in accordance with the Project Application and the Initial Plans.

(e) All subagreements that the County may enter into which are funded wholly or in part with Project Financing shall be subcontractual in nature, with the other party engaged in the role of a contractor. The County shall actively administer all subcontracts with contractors to ensure that the terms of the subcontract are consistent with the terms of this Agreement to ensure compliance with the terms of the subcontract, and to ensure the contractor's support for the intended purposes of this Agreement and the Act.

(f) The Project Work shall be performed in compliance with all applicable federal, state and local laws and ordinances.

(g) Neither execution of this Agreement nor approval of the Project Plans and Specifications by OJD or DAS shall be construed as a representation or warranty by the State that the Project Plans and Specifications are in compliance with any building or other code or other applicable governmental requirements.

(h) The State and the Colocation Agency and their employees, agents and representatives (including, without limitation, the State Project Monitor, the Presiding Judge, the Trial Court Administrator and the Colocation Contact) shall have access to the

Project, the Project Parcel and Project documentation and records at all times throughout the term of this Agreement, and as otherwise required under this Agreement, to inspect the work, operation and accounting records related to the Project.

(i) The County shall promptly provide notice to OJD of any credible evidence that a principal, employee, agent, contractor, subcontractor, supplier or other person has submitted a false claim under the False Claims Act, ORS 180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving the Project Financing.

(j) During the term of this Agreement, the County shall, promptly upon request, deliver to the State Project Monitor any requested information relating to the Project Work, in sufficient detail to enable the State Project Monitor to determine whether the Project Work is proceeding in a timely fashion.

(k) The County shall pay when due all claims for work performed on the Project Work by or through County for services rendered or materials furnished to the Project, and shall keep the Project and the Project Parcel free from any liens arising by or through the County. If any such lien shall at any time be filed against the Project or the Project Parcel, or any portion thereof, the County shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after the County's receipt of notice of same.

(l) The Project will not be enrolled in the State Energy Efficiency Design (SEED) program.

16. Funding Agreements. In order to memorialize the State's contribution of State Funds for Phases of the Project, and the parties' other obligations and understandings regarding those Phases, the parties shall enter into Funding Agreements.

17. Terms and Conditions of Leases.

(a) **Generally.** In the event the parties enter into the Phase III Funding Agreement, then during Phase III the parties shall finalize and enter into the OJD Lease, and the County shall enter into the Colocation Lease, in accordance with the provisions of this Section 17.

(b) **Lease Terms.** The State Leases shall contain the following general terms and conditions:

(i) The initial term of the State Leases shall last until the State Bonds mature or full payment of the Defeasance Costs of the State Bonds, whichever occurs first.

(ii) During the initial term of the State Leases, OJD and the Colocation Agency shall not pay any rent to the County.

(iii) OJD and the Colocation Agency may each extend the initial term of the State Leases, at a monthly fair market rent.

(iv) OJD and the Colocation Agency shall, at their own expense, provide consumables (e.g., toilet paper, paper towels, etc.).

(v) The County shall, at its own expense, maintain, repair and replace the

State Premises.

(vi) The County shall provide, at its own expense, all utilities and services, including janitorial services, to the State Premises.

(vii) During the term of the State Leases, in the event any portion of the Project outside of the State Premises becomes available for rent, OJD or the Colocation Agency can rent such portion from the County at fair market value.

18. Misspent Funds and Unspent Funds.

(a) **Notice.** If the State Project Monitor determines that there are Misspent Funds or Unspent Funds by the County, including pursuant to Section 12(g) or 12(h) above, the State Project Monitor shall provide notice to the County describing the amount and nature of such Misspent Funds or Unspent Funds.

(b) **Cure.** Within thirty (30) days after receipt of the notice described in Section 18(a) above, or such longer period as the State Project Monitor may (but is not obligated to) approve at the County's request:

(i) with regard to Misspent Funds: the County shall pay OJD the amount of the Misspent Funds, and OJD shall reverse the credits to the County Contribution and the State Funds for such amounts.

(ii) with regard to Unspent Funds, the County shall provide evidence satisfactory to the State Project Monitor that the County has spent the Unspent Funds for Authorized Costs.

A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 18(b) shall constitute a County Default.

(c) **Resolution.** If the County disputes a determination made by the State Project Monitor under this Section 18, the County may utilize the dispute resolution procedures in Section 7 above to assist in resolving the dispute. Notwithstanding Section 18(b) above, during the period in which the State and the County are pursuing resolution of the dispute pursuant to Section 7 above, failure by the County to cure the Misspent Funds or the Unspent Funds shall not constitute a County Default.

19. Taxes and Assessments; Utilities. During the Project Work, the County shall pay all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or the Project Parcel. If any governmental charges may lawfully be paid in installments over a period of years, the County may pay those charges in installments. The County may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the Project or the Project Parcel to loss or forfeiture.

20. Tax Covenants. The following covenants by the County apply to any State Funds that arise from State Bonds:

(a) **Generally.** The County covenants for the benefit of the State and the owners of the State Bonds that it shall comply with all provisions of the Code which are required for interest on the State Bonds to be excluded from gross income for federal taxation

purposes. In determining what actions are required to comply, the County may rely on an opinion of the State's bond counsel.

(b) Specific Covenants. The County makes the following specific covenants with respect to the Code:

(i) The County shall not take any action or omit any action that would cause the State Bonds to become "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

(ii) The County shall, at the request of DAS, cooperate with DAS to provide information DAS may need to compute any arbitrage rebate payments which may be due from DAS in connection with the State Bonds.

21. County Not a State Officer, Employee or Agent. The County is not an "officer," "employee" or "agent" of the State, as those terms are used in ORS 30.265.

22. Insurance. Upon the commencement of any Project work upon the Project Parcel, and through the remainder of the term of this Agreement, the County shall maintain in full force and effect throughout the entire term of this Agreement, property insurance for the perils of all risks of direct physical loss or damage including earthquake and flood covering the Project and the Project Parcel in an amount at least equal to the amount of the Project Financing. Insurance proceeds from an insured loss affecting the Project or the Project Parcel shall be exclusively used by the County to rebuild, repair and restore the Project and the Project Parcel in a manner consistent with the terms of this Agreement. The County shall consult with OJD regarding the plans for rebuilding, repairing and restoring the Project and the Project Parcel and such plans shall be subject to OJD's approval, which shall not be unreasonably withheld. OJD shall be provided notice of any cancellation or material modification to the policy at least thirty (30) days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to OJD on or before the Effective Date, and thereafter at least thirty (30) days prior to the effective date of any renewal or replacement policy. The policy shall be issued by companies licensed or authorized to provide insurance in the State of Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. Notwithstanding the foregoing, the County may satisfy its insurance obligations through its existing self-insurance program, provided that the Project Parcel shall be insured at the same level, and under the same conditions, as if the above insurance had been procured. The County's self-insured deductible shall not exceed \$100,000 each loss, except the earthquake and flood deductible shall not exceed five percent (5%) of each loss or \$100,000, whichever is more, without prior consent of OJD.

23. County Default. Any of the following shall constitute a County Default:

(a) The County fails to meet the Benchmarks by the Phase Completion Date.

(b) The County fails to perform, observe or discharge any of its other duties or obligations under this Agreement (except for curing Misspent Funds or Unspent Funds as set forth in Section 23(c) below) within thirty (30) days after notice from the State

specifying the nature of the failure with reasonable particularity; or, if such failure cannot reasonably be completely remedied within such 30-day period, then within such longer times as the failure can reasonably be remedied, in the State's reasonable discretion and as set forth in the notice to the County.

(c) The County fails to cure any Misspent Funds or Unspent Funds as required by Section 18(b) above.

(d) Any representation or statement made by the County in this Agreement or in any document or report relied upon by the State or the State Project Monitor, as the case may be, to approve a Disbursement Request, monitor the Project as provided herein or disburse Project Financing, is untrue in any material respect when made.

(e) The County declares itself or is adjudicated insolvent or bankrupt, applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial part of its assets, or a proceeding or case is commenced, without the application or consent of the County, in any court of competent jurisdiction, seeking: (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of the County; or (2) the appointment of a trustee, receiver, custodian, liquidator or the like for the County or of all or any substantial part of its assets.

24. State's Remedies for County Default. Upon a County Default, the State, may, at its option, pursue any or all of the remedies available under this Agreement and at law or in equity, including but not limited to:

(a) ceasing disbursement of State Funds;

(b) terminating this Agreement and/or any applicable Funding Agreement;

(c) recovering from the County any State Funds disbursed to the County from General Funds, or the Defeasance Costs for any State Funds disbursed to the County from State Bonds, within sixty (60) days after the termination;

(d) bringing an action at law to recover damages incurred as a result of the County Default, in order to recover all State Funds disbursed to the County hereunder, with interest thereon; and

(e) seeking any equitable remedies, including specific performance, which may be available to the State.

25. State Default and County's Remedies for State Default.

(a) **Default by State.** Any of the following shall constitute a State Default:

(i) The State fails to pay the County any amount as required by any applicable Funding Agreement, and OJD fails to cure such failure within thirty (30) days after the County's notice or such longer period as the County may specify in such notice; or

(ii) The State commits any material breach or default of any covenant, warranty or obligation under this Agreement other than one described in Section 25(a)(i) above, and such breach or default is not cured within thirty (30) days after the County's notice or such longer period as the County may specify in such notice.

- (b) County's Remedies for State Default.** In the event of a State Default, the County may, at its option:
- (i)** terminate this Agreement and/or any applicable Funding Agreement;
 - (ii)** bring an action at law to recover damages incurred as a result of the State Default;
 - (iii)** bring an action at law in order to recover all County Contributions hereunder, with interest thereon; and
 - (iv)** pursue any or all of the remedies available to it under this Agreement and at law or in equity.

26. Termination by State or County.

- (a)** In the event OJD fails to receive sufficient appropriations, expenditure limitations and other state authorizations to permit OJD in the reasonable exercise of its administrative discretion to continue making payments under this Agreement, OJD may immediately terminate this Agreement without penalty or liability, effective upon the delivery of notice to the County.
- (b)** In the event the County fails to receive sufficient appropriations, expenditure limitations and other authorizations to permit the County in the reasonable exercise of its administrative discretion to continue making payments under this Agreement, the County may immediately terminate this Agreement without penalty or liability, effective upon the delivery of notice to the State, except that in such event the Defeasance Costs for any State Funds disbursed to the County from State Bonds, within sixty (60) days after the termination.

27. Defeasance Costs.

- (a) Generally.**
- (i)** The County has no obligation to pay Defeasance Costs except where specifically provided for in this Agreement.
 - (ii)** Upon the request of the County, the State shall promptly provide to the County a calculation of the Defeasance Costs as of a specific date.
 - (iii)** In the event the amount of Defeasance Costs paid by the County hereunder exceeds the State's actual Defeasance Costs, the State shall refund the excess to the County within thirty (30) days after the defeasance is accomplished. If the amount of Defeasance Costs paid by the County to the State is less than the State's actual Defeasance Costs, the State shall so notify the County and the County shall pay the deficiency to the State within thirty (30) days after the State notifies the County.
- (b) Real Property Termination Interest.** If the County, in its reasonable discretion, is not able to directly pay the State the Defeasance Costs or any portion thereof as maybe required herein, the County may convey to the State a Real Property Termination Interest in accordance with this Section 27(b). The proposed Real Property Termination Interest that the County proposes to convey shall be equal to or greater than the unpaid Defeasance Costs, and must be acceptable to the State, in the State's sole discretion. The County shall provide to the State any documentation requested by the State to

substantiate the value of the Real Property Termination Interest or to otherwise affirm the condition of the Real Property Termination Interest.

28. Parties' Contribution for Third Party Claims; Indemnification.

(a) **Generally.** If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "Third Party Claim") against a party (the "Notified Party") with respect to which the other party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party of the Third Party Claim and deliver to the Other Party, along with the notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each 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 Section 28, and a 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 contribution obligation under this Section 28 with respect to the Third Party Claim.

(b) **State Contribution.** With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including reasonable 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 State on the one hand and of the County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State 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 State contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

(c) **County Contribution.** With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events that 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 State 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.

(d) All Other Claims. For any other claim, suit, class action suit, or proceeding alleging discriminatory, unconstitutional, or otherwise unlawful conduct with respect to either party's acts or refusal to act under this Agreement, each party shall indemnify and defend the other, and their elected officials, officers, employees, and other agencies from and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to their acts or omissions or the acts or omissions of their elected officials, officers, employees, subcontractors or agents under this Agreement.

29. Independent Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties. Any agreement entered into by the County relating to the Project is not an obligation of the State. The County shall not represent that it has the power or authority to obligate the State.

30. No Third-Party Beneficiaries. DAS, OJD and the 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. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Agreement.

31. Subcontracts, Successors and Assignments. The County's entry into any subcontracts for any portion of the Project shall not relieve the County of any of its duties or obligations under this Agreement. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties, and their respective successors and permitted assigns, if any.

32. Compliance with Applicable Law.

(a) The County shall comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this Agreement and the Project. Without limiting the generality of the foregoing, the County expressly agrees to comply with the following, and all regulations and administrative rules established pursuant thereto:

- (i)** Workers' Compensation Laws (ORS Chapter 656);
- (ii)** Wages, Hours and Records Laws (ORS Chapter 652);
- (iii)** Conditions of Employment Laws (ORS Chapter 653);
- (iv)** Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657);
- (v)** Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
- (vi)** Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (vii)** the Americans with Disabilities Act of 1990, as amended;

- (viii) the Health Insurance Portability and Accountability Act of 1996;
- (ix) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (x) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (xi) Discrimination against disabled persons (ORS 659A.142);
- (xii) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (xiii) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (xiv) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
- (xvii) the requirements of any other nondiscrimination statute(s) which may apply to the application; and
- (xviii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this Section 32(a).

(b) The County shall ensure that any architectural or engineering services contract, construction or CM/GC contract and all of the first-tier subcontracts for Project Work or materials resulting from this Agreement shall include the terms of this Section 32. The County shall make reasonable efforts to ensure that all contractors performing Project work or providing materials under contracts resulting from this Agreement shall comply with the terms of this Section 32.

33. Records Maintenance; Review and Audit.

- (a) The County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County acknowledges and agrees that DAS, OJD, the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts, for the period of time set forth in Section 33(c) below.
- (b) Upon request, the County shall promptly provide the State with any other such information regarding the Project as the State may require.
- (c) The County shall retain and keep accessible all such financial records, books,

documents, papers, plans, records of shipments and payments and writings until the later of six (6) years after the completion of the Project Work, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

34. Notice.

(a) **Generally.** Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 34(b) below to the address of the parties or the State Project Monitor, as set forth in the Project Summary and Contact Information above, unless a party or the State Project Monitor modifies its address by notice to the other parties and the State Project Monitor, as applicable. The phone numbers listed in the Project Summary and Contact Information are for convenience only, and any information delivered by phone to a party or the State Project Monitor shall not constitute notice under this Agreement.

(b) **Delivery.**

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt, or three (3) days after the mailing date if delivery is refused
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Friday, Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

35. Severability; Waiver.

(a) **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

(b) **Waiver.** The failure by a party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

36. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between the State of Oregon and the County that arises from or relates to this Agreement shall be

brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. In no event shall this Section 36 be construed as a waiver by the State of Oregon 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, action suit or proceeding or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

37. Entire Agreement; Amendments.

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof, except that this Agreement is intended to be interpreted consistent with any separate Funding Agreements entered into between the parties regarding the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

(b) **Amendments.** No amendment, waiver, consent, modification or change of terms of this Agreement shall bind a party unless in writing and signed by both parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

38. Time is of the Essence. Time is of the essence in the performance of the terms of this Agreement.

39. Survival. All provisions of this Agreement set forth under the following Section headings shall survive expiration or termination of this Agreement:

- (a) 15 – Project Work;
- (b) 20 – Tax Covenants;
- (c) 23 – County Default;
- (d) 24 – State’s Remedies for County Default;
- (e) 25 – State Default and County’s Remedies for State Default;
- (f) 27 – Defeasance Costs
- (g) 28 – Parties’ Contribution for Third-Party Claims; Indemnification;
- (h) 30 – No Third-Party Beneficiaries;
- (i) 31 – Subcontracts, Successors and Assignments;
- (j) 33 – Records Maintenance; Review and Audit;
- (k) 35 – Severability; Waiver;
- (l) 36 – Governing Law; Venue; Consent to Jurisdiction; and
- (m) Any other provision of this Agreement that by its terms is intended to survive.

[remainder of page intentionally left blank]

The State and the County, by execution of this Agreement, each hereby acknowledge that each has read this Agreement, understands it and agrees to be bound by its terms and conditions.

The State of Oregon,
acting by and through its Department of Administrative Services (DAS):

Print Name: Kate Nass
Title: Deputy Chief Financial Officer
Signature: Kate Nass

The State of Oregon,
acting by and through its Judicial Department (OJD):

Print Name: Nancy J. Cozine
Title: State Court Administrator
Signature: Nancy J. Cozine

Approved as to Legal Sufficiency for the State:

By: Shelby E. Robinson
Shelby E. Robinson, Assistant Attorney General

Approved as to all provisions relating to the Department of Human Services, as Colocation Agency hereunder:

The State of Oregon,
acting by and through the Department of Human Services (Colocation Agency):

Print Name: GLEN BASON
Title: ADMINISTRATOR
Signature: Glen Bason

Approved as to all provisions relating to the Office of Public Defense Services, as Colocation Agency hereunder:

The State of Oregon,
acting by and through the Office of Public Defense Services (Colocation Agency):

Print Name: ETC
Title: General Counsel

The State and the County, by execution of this Agreement, each hereby acknowledge that each has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**The State of Oregon,
acting by and through its Department of Administrative Services (DAS):**

Print Name: _____

Title: _____

Signature: _____

**The State of Oregon,
acting by and through its Judicial Department (OJD):**

Print Name: _____

Title: _____

Signature: _____

*Approved as to Legal Sufficiency for the
State:*

By: _____
Shelby E. Robinson, Assistant Attorney General

*Approved as to all provisions relating to the Department of Human Services, as
Colocation Agency hereunder:*

**The State of Oregon,
acting by and through the Department of Human Services (Colocation Agency):**

Print Name: _____

Title: _____


Signature: _____

*Approved as to all provisions relating to the Office of Public Defense Services, as
Colocation Agency hereunder:*

**The State of Oregon,
acting by and through the Office of Public Defense Services (Colocation Agency):**

Print Name: _____

Title: _____

Signature:  _____

Clackamas County, Oregon (County):

Print Name: Jim Bernard

Title: Commission Chair

Signature: _____ C.I.

Reviewed for the County:

 _____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: NATHAN BOSEMAN
_____, Assistant County Counsel

#9156434v10

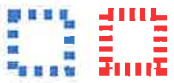
Exhibit A

Red Soils Parcel and Project Parcel

DEFECTS IN

ORIGINAL

DOCUMENT



PROJECT PARCEL

POTENTIAL ADDITIONAL PROJECT PARCEL AREA



- 1. Development Services (existing)
- 2. Public Services (existing)
- 3. Central Utility Plant (existing)
- 4. Adult Detention Facility (future, not shown)
- 5. Central Communications (future)
- 6. Juvenile Building (future)
- 7. Parking Lot (temporary, future ADF site)
- 8. Courthouse (proposed)
- 9. County Office Building 1 (future)
- 10. Health, Housing, & Human Services
- 11. OSU Extension (future)
- 12. Retail and Office (future)
- 13. Shaver Building (existing)
- 14. Silver Oak (existing)



Exhibit B

Initial Plans

Exhibit B - Initial Plans

Clackamas County, Oregon, Circuit Court
New Courthouse Space Programming

1.00 Public Facilities & Building Support Spaces									
	2050 proposed additional staff	2050 proposed staff total	full or part time	or enclosed (E) staff office		Area		2050 subtotal	notes
				2050 quantity	2050 unit area	open (O) or enclosed (E) staff office quantity	2050 unit area		
Staff									
Area									
1.1 Main Entrance and Lobby									
Building Entrance Vestibule				2	250			500	
Security Public Queuing				2	270			540	Energy code req'd into main lobby, could be combined with screening station. Space for 30 people at 9 sf/ person. Wide & shallow space.
Security Screening Station				2	180			360	2 magnetometers, one at west and east entrance
Screening Staff Work Room				1	120			120	
Screening Staff Break/ Locker Room				1	300			300	provide 8-10 half height lockers, break time food storage/prep
Staff Entry Screening Station				1	150			150	1 magnetometer. Also use for delivery screenings, CCSO entry.
Staff Entry Queuing				1	100			100	
Facility Security Officer (FSO) Public Desk				1	150			150	Space for 2 people and security monitoring equipment.
Main Lobby				1	1,500			1,500	Include stand-up stations for completion of forms, seating
Information Desk				1	200			200	Room with bullet-proof glass. Accommodate 2 staff.
Information Kiosk/ Monitors				1	-			-	In Main Lobby and on upper floors.
Total FTE/Net Square Footage Total								3,920	
Circulation Factor								5%	196
Departmental Gross Square Footage Total								4,116	
1.2 Building Amenities and General Support									
Restrooms									
Public Restrooms				8	280			2,240	Quantity based on two per floor, four floors. No doors preferred.
Family Restrooms (individual stall)				4	64			256	One per floor
Lactation Room-jury use				1	100			100	One per floor, placed with ability to be accessed by all jury members
Lactation Room-public use				1	100			100	Placed near 'Court Care'
Lactation & Wellness Room-staff use				2	120			240	Lactation & wellness, 1/per 75 employees per ORS-839-020-0051

Exhibit B - Initial Plans

Clackamas County, Oregon, Circuit Court
New Courthouse Space Programming

1.00 Public Facilities & Building Support Spaces									
Staff Elevator Machine Room					1	100	100		
Service Elevator					1	120	120	Includes vestibule	
In Custody Elevators					1	100	100		
In-Custody Elevator Machine Room					2	100	200	Assumes that central holding and distribution is stacked vertically. Size for gurney.	
In-Custody Stair					2	200	400		
Courts Staff Secure Stair					1	260	260	Assumes that central holding and distribution is stacked vertically	
Public Stair					2	260	520	As needed for exiting, allows secure stair travel in lieu of elevator	
Data/Network Support Areas					2	260	520	As needed for exiting	
Telecom Entrance Facility					1	200	200		
Main Distribution Frame (MDF)					1	700	700	Needs independent and backup 24/7 cooling	
Floor Intermediate Distribution Frame (IDF) Room					1	700	700	One Per floor. County requires them stacked vertically and horizontally, entering electrical from hallway, accessing IDF through electrical room	
Courts Server Room					4	200	800		
Courts Floor IDF Room					1	400	400		
Electrical Support Areas					4	200	800		
Floor Electrical Room					4	250	1,000	One Per floor. See Floor IDF Room	
Generator					1	600	600	Needs to be placed by exterior wall for intake and exhaust	
Green Power Inverter					1	36	36	Needs ventilation, can be located on roof/penthouse area or basement	
Media Areas					1	200	200		
Central Switching Room					1	150	150		
Gear room for information monitors/kiosk					1	150	150		
Primary Mechanical								Evaluate size/ location for future courthouse expansion.	
Central Utility Plant (CUP) Connection					1	900	900		
AHU Shafts					2	100	200	Stacked vertically, do place near elec or IDF rooms or near conference spaces	
Plumbing Support Areas									
Fire Control Center					1	100	100	Will also need annunciator panel visible from an entry door	
Rainwater Storage Tank + Pumps					1	3,000	3,000	Could be divided in half to serve landscaping on both sides of the building, targeting 20,000 cubic feet total-similar to system at DSB Facility	
Total FTE/ Net Square Footage Total		0	0	0%			12,206		
Circulation Factor						1.5%	1,831		
Departmental Gross Square Footage Total							14,037		

2.2. Courtrooms and Ancillary Support - Criminal Chambers												
2.2. Criminal Circuit Courtrooms and Ancillary Support	2025 staff total	Staff		fall or part time	or enclosed office	2020 unit quantity	Area		Direction Facilities Criteria 2007 unit area	California Trial Court Std. unit area	Utah Judicial Facility Design Std. unit area	Notes:
		proposed 2020 staff	proposed 2020 staff total				2020 unit area	2020 subtotal				
Courtroom												
1. Large District Criminal Courtroom						1	2,400	2,400	2,150 - 2,400	2,100 - 2,400	1,400 - 2,500	25-person jury box, gallery for 50, dedicated juror/deliberation
Standard Civil/Criminal Courtroom						8	3,500	28,000	3,500 - 4,000	1,600 - 1,800	1,600 - 1,800	16-person jury box, gallery for 40, dedicated juror/deliberation
Large Family Courtroom						1	2,100	2,100	2,100	1,600 - 1,800	1,600 - 1,800	No jury box, gallery for 40
Herndon Court Observational/Treatment						1	200	200				No jury box, gallery for 20
Standard Family Courtroom						1	1,400	1,400	1,300 - 1,350			dedicated to Family Court secure area, Confirms size
Herndon Court Observational/Treatment						3	310	930				No jury box, gallery for 60 (1,400 sq ft min.)
Child Welfare Area						1	420	420				
Treatment Court						1	1,400	1,400				
Courtroom Ancillary Spaces												
Attorney/Client Conference Rooms						15	320	4,800			110	One for each courtroom
Witness Waiting Room						15	320	4,800			110	One for each courtroom
Shuttle/Waiting Room						25	64	1,600			60	One for each courtroom
Shuttle/Waiting Room						15	120	1,800			60	One of each courtroom type
Staff ADA Access Ramp						15	120	1,800			60	
Jury Deliberation												
Jury Deliberation Room						12	350	4,200	3,100 incl. restroom and refreshment area	310	310	One above 34 courtrooms, generic assembled with panels and window coverings
Jury Restroom						12	50	600		60	60	Shown in Public & Building Support Program
Jury Lockup Room												
Shuttle/Waiting Room						12	60	720			80	Shown in Public & Building Support Program
AV Equipment						12	30	360			40	
Client and Gallery						12	30	360			40	
Client and Gallery						21	35	735			40	
Impacted Jury Waiting Courtroom Holding						2	450	900			40	
Holding												
Holding						15	50	750			40	
Holding						21	110	2,310	65 sq ft for ADA (in hallway)	65	65	
Sound-Attenuated Hearing Aids in Courtroom						21	110	2,310			65	
Program Interconnected Hearing Aids in Holding						7	90	630			40	
Attorney/Client Area						9	80	720			40	
Courtroom Floor Judicial Staff Support Areas:												
Holding Conference Rooms												
Staff Restrooms						9	50	450	Conference Small 110-120			
Shower/Sigal Work Area						9	200	1,800	Conference 120			
Total FTO/Net Square Footage Total								16,600				
Condition Factor								2,700				
Departmental Gross Square Footage Total								19,300				

3.00 Court Operations	Staff				Area			California Trial Court Std.	Utah Judicial Facility Design Std.	notes
	2025 staff total	2020 proposed additional staff	2020 proposed staff total	full or part time	enclosed (E) staff office	2020 quantity	2020 unit area			
3.1 Circuit Court Administration										
Reception and Waiting Area					O	1	110	110	Staff Reception/Mail 100 - 120 Workstation Medium 64 - 80	
Receptionist	0	0	0	FT		64	64			
Trial Court Administrator	1	0	1	FT	E	1	275	275	Office Director 240 - 300 Office Medium 120 - 150 Workstation Medium 64 - 80	
OID Manager 2	1	0	1	FT	E	1	120	120		
Court Administrative Staff	1	1	2	FT	O	1	64	192		Staff provides orientation for new staff, provide acoustic privacy/wall-to-wall space
Shared Court Operations Staff Spaces										
Conference Room - Small						2	150	300	Conference Small 120 - 150	
Conference Room - Medium						1	200	200	Conference Medium 240 - 300	
Conference Room - Large						1	700	700	Conference Large 240	
Conference Room Training - Large						1	1,200	1,200	Training Room Large 2,200 80 - 100	
Copy/Work Room/Recycling						2	330	660		
Supply Room						1	200	200		
Office Bk						1	60	60		
Staff Lounge/ Quiet Room						1	200	200		
Break Room						1	2,000	2,000		
Staff Restrooms						6	64	384		Staff use only
Total FTE/Net Square Footage Total	4	3	7	3.5FTE				7,172		
Circulation Factor								3,666		
Departmental Gross Square Footage Total								9,837		
Staff										
Area										
					open (O) or enclosed (E) staff office	2020 quantity	2020 unit area	2020 subtotal	unit area	
3.2 Technical Services Staff										
Technical Services Staff	3	3	6	FT	O	6	64	384	Workstation Medium 64 - 80	
Technical Services Temp Staff	1	0	1	FT	O	1	64	64	Workstation Medium 64 - 80	larger door(s), racks, 4-5 carts, recycling
IT Equipment Work Room						1	300	300		
Receiving Storage (Basement)						1	250	250		Site Public & Building Support
Total FTE/Net Square Footage Total	4	3	7	2.5FTE				1,000		
Circulation Factor								368		
Departmental Gross Square Footage Total								1,368		
notes										
Does not need to be adjacent to Courts Admin or other Court Ops										
Does need separation from County ITS functions.										

Clackamas County, Oregon, Circuit Court
New Court House Space Programming

Court Operations

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
Mental Health/ CAPA Staff	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Probate	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Probate Staff	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Information Center	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Information Center Staff	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Front Counter	4	1	5	FT	O	5	40	200	Public Trans. Counter 40 - 60		
Front Counter Staff	4	1	5	FT	O	5	40	200	Public Trans. Counter 40 - 60		In Circuit Court Administration
Shoved Staff Spaces											
Total FTE/Net Square Footage Total	17	7	24	43%				1,472			
Circulation Factor								40%			
Departmental Gross Square Footage Total								2,051			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.6 Accounting Collections, Indigent Defense Staff											
Accounting, Collections, Indigent Defense Supervisor	1	0	1	FT	E	1	110	110	Office Medium 110 - 150		
Supervisor Staff	1	0	1	FT	E	1	110	110	Office Medium 110 - 150		
Accounting	4	1	5	FT	O	5	64	320	Workstation Medium 64 - 80		
Accounting Staff	4	1	5	FT	O	5	64	320	Workstation Medium 64 - 80		
Collections & Criminal Restitution Lead	1	0	1	FT	O	1	64	64	Workstation Medium 64 - 80		
Collections	1	2	3	FT	O	3	64	192	Workstation Medium 64 - 80		
Collections Staff	1	2	3	FT	O	3	64	192	Workstation Medium 64 - 80		
Criminal Restitution	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Criminal Restitution Staff	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Indigent Defense	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Indigent Defense Staff	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Sale	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Cashier workstation	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		Existing safe, to be re-located in new facility, locate in secure room
Secure room	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Cashier counter	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Cashier counter	1	1	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Shared Staff Spaces								300			For process of auditing cash daily from safe, locate safe in this room See Court-Related Public Service and Payment Center In Circuit Court Administration
Total FTE/Net Square Footage Total	13	4	17	31%				1,453			
Circulation Factor								60%			
Departmental Gross Square Footage Total								2,074			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.7 Criminal & Traffic Staff											
Criminal & Traffic Supervisor	1	0	1	FT	E	1	120	120	Office Medium 120 - 150		
Supervisor Staff	1	0	1	FT	E	1	120	120	Office Medium 120 - 150		

Exhibit B - Initial Plans

Clackamas County Oregon, Circuit Court
New Courtroom Space Programming

Court Operations

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	2050 proposed full or part time	full or part time	open (O) or enclosed (E) staff office	2050 enclosed office quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
Criminal & Traffic												
Criminal & Traffic Staff	8	1	9	9	FT	O	9	64	64	Workstation Medium 64 - 80		
Criminal & Traffic Part-Time Staff	1	0	1	1	FT	O	1	64	64	Workstation Medium 64 - 80		
Counter												See Centralized Public Service and Payment Center in Circuit Court Administration
Shared Staff Spaces												
Total FTE/Net Square Footage Total	10	1	11	11	100%			150	150			
Circulation Factor								40%	304			
Departmental Gross Square Footage Total								1,064	1,064			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	2050 proposed full or part time	full or part time	open (O) or enclosed (E) staff office	2050 enclosed office quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.8 Calendar, Juvenile & Jury Staff												
Calendar, Juvenile & Jury Supervisor	1	0	1	1	FT	E	1	120	120	Office Medium 120 - 150		
Calendar, Juvenile & Jury Supervisor	1	0	1	1	FT	E	1	120	120	Office Medium 120 - 150		
Calendar	5	2	7	7	FT	O	7	64	448	Workstation Medium 64 - 80		
Calendar Part-Time Staff	1	0	1	1	FT	O	1	64	64	Workstation Medium 64 - 80		Two counters, see Centralized Public Service and Payment Center
Calendar Counter												
Juvenile Dependency Staff	1	0	1	1	FT	E	1	120	120	Office Medium 120 - 150		
Jury	1	1	2	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Jury Staff	1	1	2	2	FT	O	2	64	128	Workstation Medium 64 - 80		In Circuit Court Administration
Shared Staff Spaces												
Total FTE/Net Square Footage Total	9	3	12	12	100%			1,064	1,064			
Circulation Factor								40%	426			
Departmental Gross Square Footage Total								1,490	1,490			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	2050 proposed full or part time	full or part time	open (O) or enclosed (E) staff office	2050 enclosed office quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.9 Records & Mail												
Records & Mail Supervisor	1	0	1	1	FT	E	1	120	120	Office Medium 120 - 150		
Records & Mail Supervisor	1	0	1	1	FT	E	1	120	120	Office Medium 120 - 150		Notes: Records Supervisor, needs public access, evidence storage
Exhibit Viewing	8	2	10	10	FT	O	10	64	640	Workstation Medium 64 - 80		
Records & Mail Staff	2	0	2	2	FT	O	2	64	128	Workstation Medium 64 - 80		
Records & Mail Temporary Staff												
Appellate Viewing												Staff is backup for Records, but main duty is Appellate, receives public by appointment
Files and Records Access Customer Service Center												
Public Counter/ File Review Area												Public counter, computer carts (8) in the room, limited storage
Print/Work Area												
Staff Work Area												
FTR Recording Copying Station												

Court Operations

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
Staff Scanning Stations											
Exhibit/Deposits Storage						4	50	200			Confirm if needed.
File Storage						3	500	1500			Locking enclosed room, chain of custody procedures
Mailroom Operations						1	200	200			Confirm if needed. (Mail, Co. not included)
Mail Sorting Area						3	200	600			Confirm if needed in addition to Mail Room
Main Copy Room						3	100	300			Needs acoustic isolation & separate HVAC.
Mail Machine Room						3	100	300			Included in Building General Support.
Loading Dock						*	*	*			300 sq. ft. included in Building General Support.
Receiving Holding Area/Supply Storage						*	*	*			300 sq. ft. included in Building General Support.
Shared Staff Spaces						*	*	*			In Circuit Court Administration
Public Scanning Station						4	60	240			Provide privacy but large enough for staff to assist if needed
Total FTE/Net Square Footage Total	13	1	14	38%			4094	1,818			
Circulation Factor								1,537			
Departmental Gross Square Footage Total								5,345			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.10 Interpreters											
Interpreter Offices	2	1	3	FT	E	3	110	330			Best located next to calendaring, independent state service
Conference room/small						1	150	150			Can be housed in open office space, with meeting rooms, or in individual offices where they receive public
Total FTE/Net Square Footage Total	2	1	3	50%			4094	510			
Circulation Factor								204			
Departmental Gross Square Footage Total								714			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.11 Jury Assembly											
Jury Assembly Check-in											
Jury Assembly Entrance						1	300	300			
Jury Check-in Counter						2	100	200			10 - 15% of jury call for queuing
Check in Kiosk						5	35	175			0 - 300 reception/registration
Paperwork/Forms Area						2	40	80			3 - 10% of jury call
Main Jury Assembly											
Jury Room Main Assembly Area						1	2,000	2,000			11 - 20/ Juror
Jury Room Lounge Area						1	700	700			
Jury Room Business Center						1	1,115	1,115			
Break Area/Galley Kitchen						1	115	115			215
Jury Support Areas											
Game Storage & Display						1	35	35			200 people at 1 table each,
Newsstand & Reading Material Display						1	25	25			35 people at 20 ft each,
Jury Restrooms						1	260	260			45 people at 3 ft each. Enclosed room with speakers.

Exhibit B - Initial Plans

Clackamas County, Oregon, Circuit Court
New Courthouse Space Programming

Court Operations

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
Locker Area/Alcove						2	100	200			
Lactation Room						1	100	100			See 3.5 Calendaring, Juvenile & Aliv
Jury Staff											
Total FTE/Net Square Footage Total								5,334			
Circulation Factor								2,334			
Departmental Gross Square Footage Total								6,668			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
3.22 Centralized Public Service and Payment Center											
Public Waiting/Clueing at Counter						22	70	840		Public Trans. Counter 4.0 - 5.0	All staff have second desk in their unit except Calendaring
Records						2	35	72			
Civil Probate/Domestic/FED						1	35	108			
Cashier						1	35	16			
Collections						1	35	72			privacy need
Criminal Traffic						1	35	36			
Calendaring						2	64	128			privacy need
Juvenile Dependency						1	35	35			privacy need
Clerk - Protective Orders						1	35	35			privacy need
CCSO counter						5	30	150		See 4.0 Sheriff	
Public Information Terminal/Scanning Stations						1	30	90		34/ person	Need privacy + room for staff assistance, power & data connections
Payment Kiosk						1	50	50		*	Need privacy + room for staff assistance, power & data connections
Public Information Forms Area											
Total FTE/Net Square Footage Total								1,654			
Circulation Factor								662			
Departmental Gross Square Footage Total								2,316			

	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	unit area	unit area	notes
Total FTE	64	18	82	28%							
Total Court Operations								35,357			
Departmental Gross Square Footage:								34,433			

Clackamas County, Oregon, Circuit Court
 New Courthouse Space Programming

4.00 Clackamas County Civil Division Sheriff's Office									
	Staff			full or part time	Area				notes
	2015 staff total	2050 proposed additional staff	2050 proposed staff total		or enclosed (E) staff office	2050 quantity	2050 unit area	2050 subtotal	
4.1 CCSO Facility Security									
CCSO Public Counter						3	45	135	Need 2 to 3 counters, can be called up
Confiscated Property Room						1	80	80	Adjacent to security screening.
Law Enforcement Waiting/Work/ Quiet Room						1	360	360	Designated area for 4 touchdown stations, chairs
Command Staff Offices									Locate suite near public entry.
Reception/Waiting Area						1	200	200	Includes public counter
Captain	1	0	1	FT	E	1	150	150	
Supervisors	2	0	2	FT	E	2	120	240	
Administrative Staff	4	2	6	FT	O	6	64	384	
Deputy Shared Workstations	8	12	20	FT	O	20	42	840	
Shared Staff Areas									
Conference Room						1	300	300	
Briefing/ Training Room						1	750	750	Room for 25. Potential to share as conference room.
Weapons lockers						2	25	50	In office suite for immediate access.
Work/ Copy/Mail Room						1	100	100	
Break Room with kitchenette						1	300	300	Adjacent to Training Room
Lockers/ Changing Room (Male)						1	400	400	24 Full height lockers.
Restroom (Male)						1	200	200	Includes shower.
Lockers/ Changing Room (Female)						1	200	200	12 Full height lockers.
Restroom (Female)						1	200	200	Includes shower.
Secure Storage						1	120	120	Can be located in basement.
Administrative Storage/ Supplies						1	120	120	Can be located in basement.
Total FTE/ Net Square Footage Total	15	14	29	93%				5,129	
Circulation Factor							30%	1,539	
Departmental Gross Square Footage Total								6,668	

Exhibit B - Initial Plans

Clackamas County, Oregon, Circuit Court
New Courthouse Space Programming

Civil Division	Staff			Area				notes
	2015 staff total	2050 proposed additional staff	2050 proposed staff total	full or part time	open (O) or enclosed (E) staff office quantity	2050 unit area	2050 subtotal	
4.2 CCSO Transport/Central Holding								
Sallyports and Entrance Areas								
Vehicle Sallyport					1	1,800	1,800	Room for (2) 30' vehicles & (1) 12' passenger van.
Prisoner Loading Elevator						-	-	Included in Building Support.
Central Holding Areas								Adjacent to sallyport
Control Center	2	2	4		1	260	260	
Holding Support Areas	4	8	12		1	360	360	Staff growth linked to central holding/holding at courtrooms
Men's Large Group Holding					2	320	640	2 holding rooms of 16 person capacity.
Women's Large Group Holding					1	320	320	1 room of 16 person capacity.
Individual Holding					4	80	320	2 person capacity.
Video Booth					1	50	50	
Non-contact Visitation Room					1	100	100	
Booking Center								Need small refrigerator for prisoner medications.
Control Center					1	250	250	
Staff Restroom					1	64	64	
Control Center Equipment Closet					1	100	100	
Short-term Detaining + Viewing area					1	100	100	Off main lobby
Restraints Storage					1	80	80	
Non-Contact Visitation Booths					2	100	200	
Total FTE/Net Square Footage Total	6	10	16				4,644	
Circulation Factor							50%	2,322
Departmental Gross Square Footage Total								6,966
Total FTE	21	24	45					
Total Clackamas County Sheriff Space							9,773	
Net Square Footage:								13,634
Departmental Gross Square Footage:								

Exhibit B - Initial Plans

Clackamas County, Oregon, Circuit Court
New Courthouse Space Programming

5.00 Law Library	Staff				full or part time	Area		2050 subtotal	notes	
	2015 staff total	2050 proposed additional staff	2050 proposed staff total			or enclosed (E) staff office quantity	2050 unit area			
5.1 Law Library										
Staff Office	1	0	1		FT	E	1	120	120	currently in Holman building
Librarian	1	0	1		FT	E	1	150	150	
Copy Room							1	120	120	
Microfiche Reading Room							1	120	120	
Storage							1	100	100	
Law Library							1	1,800	1,800	Incl. reference desk for 2 & public assistance desk
Conference Room - Medium							1	300	300	
Conference Rooms - Small							2	150	300	
Restrooms							2	64	128	Separate for staff/public
Lunch/Break Room							1	150	150	
Total FTE/Net Square Footage Total	2	0	2		0%			3,288	3,288	
Circulation Factor								35%	1,151	
Departmental Gross Square Footage Total									4,439	
Total FTE	2	0	2		0%					
Total Law Library									3,288	
									4,439	

Net Square Footage:
Departmental Gross Square Footage:

Exhibit C

Courthouse Design Criteria

I. General Facilities Design Assessment Criteria

1. Building Configuration

- High public contact functions are located on lower floors.
- Functions not requiring substantial public contact are located on upper or below ground floors.
- Functions requiring higher security levels are located on upper or below ground floors.
- Internal circulation patterns for in-custody cases are located in three separate and distinct zones: public; private (for court staff); and secured circulation for in-custody persons. (See Section IX)

2. Public Service Requirements (including Fire, Life, Safety)

- Main public entrance accommodates anticipated public traffic.
- Public waiting areas:
 - Include sufficient comfortable seating.
 - Located close to areas of highest public use.
 - Have easy access to restrooms, water fountains and telephones.
 - Sized in proportion to the population to be served.
 - Configured to minimize noise transmission to courtrooms.
- Signs, Directions:
 - Directional and informational content is incorporated into the design of all public areas.
 - A building directory is located near each public entrance.
 - A building directory features a diagram that lists all the building's major components.
 - Informational signs are multi-lingual, as appropriate.
 - Braille lettering and audio signals are provided at elevators.
- Information kiosk or counter:
 - Located in a highly visible place near the main entrance.
 - Provides direction and basic information.
 - Provides an automated system using touch screen technology connected to the Local area network.
- Court calendar information:
 - Posted in the information area.
 - Video monitors used (large court facilities).

3. General Office and Workstation

- General Office Guideline (in square feet)
Per staff member; includes work space, files, office equipment, conference; training and reception areas. 250 - 280
- Workstation Sizes (in square feet)

(Type)	(Workstation)	(Private Office)
Staff/Technical	50-80	
Supervisory	80-100	100-120
Management		120-250
Executive		200-250

4. Provisions for Persons with Disabilities

- All areas of the court facility meet all state and federal ADA requirements (The courts have completed extensive ADA Assessment surveys evaluating compliance with applicable requirements).

5. Security and Public Safety

- Building security (See Section VIII)
 - External video surveillance cameras positioned at each pedestrian and vehicular entrance.
 - Building entrances configured with unobtrusive security barriers.
 - Grounds configured to inhibit access of unauthorized vehicles.
 - No public parking adjacent to structures containing courtrooms or court support areas, if allowed by City.
 - At least one courtroom is equipped for high risk trials.
 - Air intake vents for the HVAC system are secured from public access.
- Public Safety
 - Building complies with all relevant fire codes (adequate fire protection and fire alarms).
 - Emergency power and lighting capacity are provided.

6. Seismic Safety

- The structure of the building complies with relevant seismic safety codes.
(A full-scale evaluation is outside the scope of this assessment).

7 Heating, Ventilating and Air Conditioning (HVAC)

- HVAC system meets all code requirements.
- Systems are able to maintain temperatures between 66 and 78 degrees Fahrenheit.
- Each courtroom has an individual thermostatic control for its heating and cooling provided by the buildings central HVAC control system.
- Adequate fresh air and exhaust ventilation in areas subject to dense occupation (i.e., courtrooms).
- HVAC system sound transmissions have been minimized.
- HVAC system ductwork incorporates sound deadening technology between rooms that require private conversations (jury rooms, judges' chambers, and attorney client conference rooms).

8. Plumbing and Electrical

- Plumbing
 - All restroom facilities and drinking fountains meet building codes.
 - Separate restroom facilities are provided for the public, judicial staff, and in-custody defendants.
- Electrical
 - Electrical systems meet building codes.
 - Sufficient electrical capacity and quality are provided to accommodate anticipated future needs.
 - Electrical capacity meets total connected load requirements plus 25 percent for future load growth.

9. Information Systems and Communications

- Also See Section X
- Designated computer or telecommunications rooms (Larger Court facilities) with increased cooling capacity, separate or redundant power and located to reduce the risk of flooding
- Designated room has sufficient cooling not to exceed 82 degrees Fahrenheit.
- Designated room has controlled access including access controls.

10. Lighting

- Sufficient lighting in all building areas to conduct business.

11. Acoustics

- Minimizes intrusive noise.
- Allows accurate hearing and recording of proceedings.
- Allows access to the court by the hearing impaired.

12. Parking; Vehicular and Pedestrian Access

- Provides secured parking for judges and supervisory court staff.
- Passenger loading and short term parking areas are provided near to but at a safe distance from courthouse entrances.
- Loading zone area provided for delivery vehicles that do not need to use the loading dock, if allowed by City.
- All deliveries to courts required to go through x-ray screening.
- Access to the courthouse meets ADA requirements.
- Building provides a single primary public entrance to the courts area.
- Lobby is large enough to accommodate all visitors during peak periods.
- Metal detectors and x-ray equipment are placed in the circulation path from the entrance.

13. Building Support Services

- Court facility incorporates space for the following functions:
 - First aid station
 - Food services or vending
 - Loading dock
 - Supplies and equipment storage
 - Maintenance shops and office
 - Custodial supplies and storage and
 - File shredding area

II. Courtroom Assessment Criteria

1. General criteria

- Courthouse has at least one large courtroom to accommodate large trials and other kinds of public functions.
- Courtrooms sized and configured to accommodate the type of proceedings assigned to the room.
- Courtroom is composed of 2 components: the litigation area; and the spectator seating area
- The parties in any proceeding are able to clearly see and hear the witness, jury, judicial officer and counsel
- Courtroom is configured to protect witnesses and jurors from intimidation.
- Courtroom is configured to ensure appropriate confidentiality for attorneys and judicial officers.

2. Courtroom Size Criteria (NSF is net square feet)

- Ceiling heights are proportional to the size of the room.
- The size of the courtrooms:

Type	Litigation area			S Seating	spectator area			Total Square Feet
	NSF	Width	Length		NSF	Widt	Lengt	
Non-jury civil/juvenile/family	840	30	28	20-40	260-360	30	varies	1,100-1,200
1 2-person jury	1,152	36	32	30-60	348-648	36	Varies.	1,500-1,800
High volume/multiligitant	1,360	40	34	100- 150	840-1040	40	varies	2,200-2,400

3. Courtroom areas

- Judicial officers bench:
 - Has an unobstructed view of the entire courtroom.
 - Is elevated so that the occupant's seated eye level is higher than anyone standing.
 - Accommodates computer (including sufficient space for multiple monitors), telephone, data transmission equipment, and writing desk.

- Courtroom clerk's station:
 - Is adjacent to the bench and accessible to counsel.
 - Has adequate space for placement of in-process forms, exhibits and other essential materials.
 - Is cable-ready for computer terminals, has telephone, electrical outlets and audio controls.
- Witness stand:
 - Witness has clear facial view of the judge, jury, parties, court reporter and counsel
 - The chair is height adjustable and easily removable to accommodate wheelchair access.
 - The stand is on a level between the floor of the litigation area and the judge's bench.
 - The stand is large enough to accommodate an interpreter.
- Jury box:
 - Each juror has clear sight lines to the witness, counsel, judge and evidence display areas.
 - Has physical separation from the spectator and counsel areas.
 - Is large enough to comfortably seat the full number of jurors needed for trial.
- Counsel area:
 - Has at least two tables positioned so attorneys can be seen and heard by other attorneys, the judge, the witness and the jury.
 - Tables placed far enough apart to allow private conversations between attorneys and clients.
 - Tables provide electrical outlets and connections to accommodate computers and internet.
 - Tables and table areas are large enough to accommodate interpreters.
- Spectator area:
 - Provides seating for witnesses, family and the public.
 - The area is separated from the litigation area in a manner that controls movement.
 - The area is sized to accommodate the jury panel during jury selection.
 - Space is reserved for wheelchairs.
- Other Areas and Features:
 - Court reporter area is situated so that anything said by participants can be heard; reporter has access to electrical outlets.
 - Bailiff's station is situated to enable the occupant to see all persons in the courtroom.
 - Exhibit display and equipment is located to be clearly visible for all court participants.
 - Silent duress alarms are located in the judges' bench, courtroom clerk and bailiff areas.
 - Assisted listening devices are available.

III. Judicial Offices and Support Space

1. Judicial offices

- Accessible only from a private corridor.
- Chambers, either clustered or adjacent to courtrooms, are provided to each judicial officer.
- Each chamber is equipped with a silent duress alarm.
- Chambers are a minimum of 350 net sq. ft. (not including restroom).
- Chambers have adequate sound insulation
- Judicial offices have access to non-public restrooms.

2. Support Space

- Support staff workstations/reception/waiting areas are adjacent to chambers.
- Work areas for court reporters, law research clerks, bailiffs are provided.

IV. Jury Assembly and Deliberation

1. Jury Assembly

- Jury assembly room/information presentation area
 - Sufficient seating for all prospective jurors:
 - a. 8 to 12 square feet per person for -theater style seating;
 - b. 15 to 20 square feet for accommodate lounge-type seating.
 - Areas for reading, studying, working and watching television are provided.
 - Working areas are provided with data connections and electric power for computers.
 - Public telephones, restroom facilities, and coatrooms are adjacent to the jury assembly room.
 - Movement of jurors minimizes contact with attorneys and litigants.
- Jury reception/check-in area
 - A silent duress alarm is provided at the desk.

2. Jury deliberation room

- Ratio of jury deliberation rooms to courtrooms is one to two.
- Located on restricted corridors.
- Can comfortably accommodate 14 jurors.
- Allows use of charts, exhibits, and video monitors.
- At least 350 net sq. ft., exclusive of restroom and refreshment areas.
- Acoustically designed so that conversations cannot be heard outside the room.

V. Court Administration

1. General Considerations

- The court administration area is designed to ensure the efficient flow and processing of work.
- Court administrative offices are connected to both public and private corridors.
- Duress security alarms are in appropriate sites.

2. Court Administration Area

- General work area and miscellaneous support
 - Includes a work area for sorting mail and for copying equipment.
 - Work space is provided for all appropriate staff and for records that are in use.
- Public service counters
 - General office areas are separated from public areas.
 - Counters are designed for efficient exchange of public documents.
 - Counters are capable of accepting and electronically processing documents via electronic scanning.
 - The public area outside the counter provides at least 10 feet between the counter and the entrance for queuing.
 - A public area for viewing records is provided adjacent to the counter; secure and visible to staff.
 - Public area has a controlled access terminal or workstation capable of providing service to the public for research and general court functions.
 - Security glass, or other methods for insuring that the public remains outside of office area, is in place at service counters.
 - Duress security alarms are placed in appropriate sites and integrated into the courthouse security system.
- Records storage
 - Sufficient space is provided for records storage and retrieval.
- Exhibit/evidence storage
 - Secure areas are provided for storage of exhibits.
 - Separate secure area is provided for storage of evidence.

VI. Court Support

1. Children waiting area.

- Area includes adequate storage for toys, games and books, easy access to restrooms with diaper changing stations, and space for staff or volunteers.
- Area has electrical capacity and power for VCR/DVD viewing

2. Court facilitator services area

- Court program areas (i.e. for prose litigants) are located in areas convenient to the public.
- Areas have space adequate to fulfill functions.

3. Attorney client conference rooms

- One conference room per two courtrooms is provided for attorney use.
- The rooms accommodate a table and four chairs.

4. Waiting areas for adverse parties

- Areas are divided so that adverse parties are separate from one another.

VII. Alternative Dispute Resolution

Note: With the exception of Marion County, dedicated space for provision of these services is not a part of the courthouse facilities provided in Oregon. However, for courts with increasing family court, small claims, domestic relations and FED mediations, adequate dedicated space is a consideration.

1. Mediation Services

- Mediator offices accommodate up to six individuals, and have sound absorbent walls.
- Reception/waiting areas provide separate areas for different parties.
- Large mediation room accommodates larger family groups and allows involvement of additional staff.
- Mediation area provides a waiting area for children, located in a secure place, and an equipment storage area.
- Mediation area includes some kind of duress alarm system.

VIII. Court Security

1. Building perimeter, site and parking assessments:

- Architectural barriers to protect entrances.
- Surveillance cameras at entrances and exits.
- Illuminated circulation around building and parking lot.
- Illuminated parking lots.
- Tamper resistant utility connections to building
- Low height landscaping
- Secured parking for judges
- Surveillance cameras in parking lots

2. Building entrances assessments:

- Surveillance cameras
- Security weapons screening
- Intrusion detection alarms
- High security door locks
- Intercom system at entry door
- Visual monitoring of entrance
- Controlled access to loading dock
- Screening equipment for incoming packages

- Key car or other electronic device for non-public access doors.

3. Public waiting areas assessments:

- Limited ability to hide contraband
- Controlled public access to secured rooms
- Surveillance cameras

IX. In-Custody Defendant Areas

1. Remote Video Communication.

- Facility is equipped with remote video connections between the court facility and the detention facility.

2. In-Custody Receiving, Holding and Transportation components:

- Vehicle sallyport
- Security vehicle parking
- Pedestrian sallyport
- Initial holding cell and search area
- Control center
- Central holding cell
- Lunchroom or access to eating area
- Dress-out, property and clothing storage
- Attorney interview space
- Secure elevators and corridors
- Courtroom holding cells

X. Facilities Technology Recommendations

1. Power

- Individual electrical receptacles for each technology component without the use of extenders
- Backup power supplies (UPS) sufficient to provide 15 minutes of battery power in the event of power interruption to critical technology components
- Electrical power to computer server rooms capable of supporting a minimum of 10 individual components
- All power used for technology resources should be properly conditioned and filtered to allow for the highest level of efficiency.
- Rack-mounted backup power (UPS) sufficient to provide 30 minutes of battery power in the event of power interruption to all critical network components such as switches and routers, video units, electronic recording and media or file servers.
- Dedicated electrical circuits for computer and technology components at a minimum of 20 amps per circuit.

2. Voice/Data

- Minimum of 2 recessed data-ports on separate circuits, for each workstation or laptop computer
- Minimum of 2 recessed voice-ports capable of supporting both analog and digital voice circuits at each individual work area
- Network cable to support 100mb/s certified data thru-put adhering to current standards for low-voltage cable installation.
- Minimum network switch capacity to handle total number of required connections plus twenty percent additional load.
- Network switch and routers capable of up to 1Gb/s loads.
- Provisioning of cable pathways to allow easier cable changeover to accommodate improvements in data technology
- Network switches operating at 1Gb-10Gb speed and cabling capable of supporting Power Over Ethernet (POE)

- Isolated data circuits in each courtroom and conference room dedicated for video streaming and video conferencing with voice.
- Ceiling oriented network data-ports and power capable of supporting wireless network access components

Exhibit D

Form of Disbursement Request

Disbursement Request Number: _____
[number Requests sequentially for ease of tracking]

Dated: _____

Project Title: Clackamas County Courthouse

Phase: _____

Funding Source: _____

Funding Agreement: Clackamas County Courthouse Phase ____ Funding Agreement
between OJD, DAS and Clackamas County dated _____
(the "Agreement")

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Agreement.

On behalf of Clackamas County (the "County"), I hereby request a total disbursement of \$ _____ pursuant to the Agreement, fifty percent (50%) of such amount to be credited to the County Contribution for the Phase set forth above, and the other fifty percent (50%) of such amount to be disbursed to the County from the State Funds.

I hereby make the following certifications in connection with this Disbursement Request:

1. On behalf of the County, I have reviewed the attached invoice(s) and any other documents attached to this Disbursement Request, and I have determined that the invoiced work or materials represent Authorized Costs for the Phase set forth above, pursuant to the Agreement.
2. The County will use the disbursement amount requested by this Disbursement Request either:
 - (a) to reimburse the County for amounts that the County has previously paid for Authorized State Costs of the Project; or
 - (b) for Authorized State Costs of the Project that the County has incurred from unrelated third parties but has not yet paid, which the County will pay no later than five (5) business days after disbursement by OJD of the amount set forth herein.
3. The total amount credited to the County Contribution pursuant to Section 12(e) of the Agreement is equal to or greater than the total State Funds disbursed to date plus the amount of this Disbursement Request.
4. The certifications in this Disbursement Request are true to the best of my knowledge and belief.

By: _____
Authorized Signature