



June 25, 2020

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Amendment to an Intergovernmental Agreement with the
State of Oregon Related to Funding for a Future County Courthouse

Purpose/Outcome	Approval of an amendment to an intergovernmental agreement with the State of Oregon related to the planning phase for a future county courthouse.
Dollar Amount and Fiscal Impact	No financial impact as a result of this amendment. The existing agreements facilitate the receipt of approximately \$95.7 million in state funds towards the design and construction of a new County Courthouse.
Funding Source	County staff anticipates that the future county courthouse will be funded using a combination of local funds from the County's general fund and matching funds from the State of Oregon.
Duration	The existing Phase 1 agreement will expire upon the completion of the benchmarks described in the agreement, which County staff anticipates will occur by June 30, 2021.
Previous Board Action/Review	Policy Sessions: 2/14/17, 10/17/17, 6/26/18, 9/18/18, 1/29/19, 3/19/19, 6/18/19, 10/22/19, 2/18/20 Approval of IGA and amendments: 2/14/19, 6/25/19
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Ensure safe, healthy and secure communities
Contact Person	Gary Barth, (503) 754-2050

Project Background

For over 20 years Clackamas County has been planning, building, and consolidating relevant services to the County owned Red Soils Campus in Oregon City to provide a cohesive integrated public service center for citizens. A new Courthouse facility has been the center of that master plan since its inception.

The Oregon Courthouse Capital Construction Improvement Fund (OCCCIF) provides a path to assist the County with realizing this piece of the master plan. The OCCCIF is funded through the sale of 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 County plans to divide the state matching fund request over three biennia:

- 2017-2019 \$1.2 million (planning)
- 2019-2021 \$31.5 million (procurement, design, preconstruction, and initial construction)
- 2021-2023 \$63.0 million (up to \$63 million to complete construction & purchase furniture, fixtures and equipment (FF&E))

One of the two previous intergovernmental agreements approved by the Board in 2019 relates to Phase I of the project, which the parties intend to cover project planning activities and establishes a State reimbursement to the County of up to \$1.2 million for qualifying costs. The Fiscal Year 2017-2019 fund request was approved and is being used for the current planning efforts. The source of these funds is from the State General Fund.

The Phase I Funding Agreement specifies those costs that will be eligible for reimbursement, and establishes benchmarks that define the successful completion of Phase I of the project. The date to complete the benchmarks for Phase 1 was originally July 1, 2019. In June 2019 the parties recognized that it was not going to be possible for the county to fulfill its obligations in the agreement and the agreement was extended to July 1, 2020. Once again, the parties recognized that the county is unable to fulfill its obligations in the agreement by July 1, 2020 to include the project financing plan with local match and determine a project delivery approach. Accordingly, the parties have agreed to amend the Phase 1 agreement to extend time in which the County has to complete its obligation to June 30, 2021.

This amendment also acknowledges that, due to the county's continued delay in completing Phase 1 coupled with the recent covid-19 forecasted impact on the state general fund, the state general fund may not be the source of the remaining state contribution to Phase 1. If that is determined to be the case, the state may use the approved OCCIF funding of \$31.5 million as the source of match funds for the completion of Phase 1, assuming the state proceeds with its bond sale as planned.

RECOMMENDATION

Staff respectfully recommends the Board approve the attached amendment to the Phase 1 intergovernmental agreement with the State of Oregon.

Sincerely,

A handwritten signature in blue ink that reads "Gary Schmidt". The signature is written in a cursive style with a long horizontal stroke at the end.

Gary Schmidt
Clackamas County Administrator

**SECOND AMENDMENT TO
CLACKAMAS COUNTY COURTHOUSE
PHASE 1 FUNDING AGREEMENT**

This Second Amendment (“Amendment”) to Clackamas County Courthouse Funding Agreement – Phase I (“Original Agreement”) is 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 (“County”). OJD, DAS and County referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. On February 28, 2019, the Parties entered into the Original Agreement.
- B. On June 27, 2019, the Parties entered into Amendment No. 1 to the Original Agreement to extend the Project Completion Date. The Original Agreement and this Amendment No. 1 are collectively referred to as the “Phase I Agreement.”
- C. The Parties now desire to further amend the Phase I Agreement to extend the Phase Completion Date and revise requirements related to State Funds for Phase I during the extended period.

AGREEMENT

In consideration of the above Recitals which are incorporated in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

- 1. Any reference in the Phase 1 Agreement to the “Phase Completion Date” shall be July 1, 2021, and section 4(c) of the Phase 1 Agreement is deleted in its entirety and replaced with the following:

“(c) ‘Phase Completion Date’ means July 1, 2021 (or as may be extended by the agreement of the parties.)”
- 2. In the Project Summary section of the Phase I Agreement the line for State Funds for Phase I is deleted in its entirety and replaced with the following:

“**State Funds for Phase I: \$1,200,000.00**”
- 3. Section 5 of the Phase I Agreement is deleted in its entirety and replaced with the following:

“(a) While the Phase Completion Date is extended to July 1, 2021, the State Funds for Phase I are available only through June 30, 2020. The availability of the State Funds for Phase I after June 30, 2020, is contingent upon the issuance of State Bonds in 2021.

- (b) Subject to all the terms, conditions, and limitations contained in this Section 5, the State of Oregon has agreed to contribute the State Funds to the Project. The State Funds are from the State's General Funds but may also include State Bonds, if issued by the State. If State Bonds are issued for the Project, the State will contribute the full amount of the State Funds for Phase 1.
 - (c) OJD may authorize use of General Funds after June 30, 2020, and may authorize the sale of State Bonds in 2021, but OJD has no present obligations of any kind to provide any funding after June 30, 2020.
 - (d) The Oregon Legislative Assembly may authorize additional State Funds for the Project, but the State has no present obligation of any kind to provide additional funding, other than the State Funds.
 - (e) The parties may enter into a Funding Agreement for Phase II subject to the provisions of Section 13 below."
4. Section 6(ii) and (iii) of the Phase I Agreement is deleted in its entirety and replaced with the following:
- "(ii) Subject to the terms, conditions, and limitations in Section 5 above, the State has taken all actions required by law for the State to acquire and use the State Funds, and the State Funds are available or will be available as needed, to be spent on this Phase pursuant to this Agreement and the Master Agreement.
- (iii) Subject to the terms, conditions, and limitations in Section 5 above, the State will contribute the full amount of the State Funds to the Project."
5. Section 8(a) of the Phase I Agreement is deleted in its entirety and replaced with the following:
- "(a) To the extent State Funds are derived from the State's General Funds instead of State Bonds, the provisions in this Section 8 shall apply to those State Funds that are derived from State General Funds and the respective County Contribution."
6. Except as provided in this Amendment, all other terms and conditions of the Phase I Agreement are still in full force and effect.
7. This Amendment may be executed in two or more counterparts (by electronic signature, facsimile, or otherwise), each of which is an original and all of which when taken together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

[SIGNATURES FOLLOW ON NEXT TWO PAGES]

The State and the County, by execution of this Amendment, each hereby acknowledge each has read this Amendment, 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: _____

Date: _____

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

Print Name: _____

Title: _____

Signature: _____

Date: _____

Approved as to Legal Sufficiency for the State:

By: _____

_____, 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 its Department of Human Services (Collocation Agency):**

Print Name: _____

Title: _____

Signature: _____

Date: _____

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 its Office of Public Defense Services (Colocation Agency):**

Print Name: _____

Title: _____

Signature: _____

Date: _____

Clackamas County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Approved as to legal sufficiency for the County:

By: _____
_____, Assistant County Attorney