



Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

May 20, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for a Clackamas County
Supplemental Budget for Fiscal Year 2020-2021

Purpose/Outcomes	Public hearing for supplemental budget change for FY 2020-2021 and the closing of the Tourism Development Fund
Dollar Amount and Fiscal Impact	The effect is an increase in appropriations of \$8,055,479
Funding Source	Fund Balance, Federal and State Operating Grants, Charge for Services, and Interfund Transfers
Duration	July 1, 2020-June 30, 2021
Previous Board Action/Review	Budget Adopted June 18, 2020 with amendments on <ul style="list-style-type: none"> • December 3, 2020; and • February 25 2021
Strategic Plan Alignment	Build public trust through good government by providing budget responsibility and transparency
Counsel Review	N/A
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> X 2. If no, provide brief explanation: This is a Budget item and does not require Procurement's involvement
Contact Person	Sandra Montoya, 503-742-5424

BACKGROUND:

Each fiscal year it is necessary to reduce or allocate additional sources of revenue and appropriate additional expenditures to more accurately meet the changing requirements of the operating departments. The attached resolution reflects such changes requested by departments in keeping with a legally accurate budget. These changes are in compliance with Oregon Local Budget Law ORS 294.433 - ORS 294.481, which allows for governing body approval of budget changes under qualified circumstances. The required notice has been published.

The effect of this resolution is an increase in revenues and appropriations of \$8,055,479.

Item							
1 General Fund 100 - Non Departmental							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Revenues	191,690,657	(650,000)	191,040,657	Operating Expenses	124,687,141	(1,300,000)	123,387,141
Interfund Transfer	4,248,686	-	4,248,686	Interfund Transfers	615,267	650,000	1,265,267
				Special Payments	10,807,954	-	10,807,954
				Debt	244,303	-	244,303
				Reserve	20,280,112	-	20,280,112
				Contingency	23,149,293	-	23,149,293
				General Fund Support	16,155,273	-	16,155,273
Revised Total Fund Resources			195,289,343	Revised Total Fund Requirements			195,289,343
Comments:	The Courthouse project has been moved to the Capital Projects Fund 420. This budget adjustment moves the 50% State revenue, transfers the 50% General Fund match, and removes the project spending authority from General Fund-Non Departmental.						
2 County Fair Fund 201							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Fund Balance	390,926	-	390,926	Operating Expenses	2,308,279	46,200	2,354,479
Revenues	1,617,467	-	1,617,467	Contingency	206,568	(46,200)	160,368
Interfund Transfer	507,454	-	507,454	Special Payments	1,000	-	1,000
Revised Total Fund Resources			2,515,847	Revised Total Fund Requirements			2,515,847
Comments:	The County Fair is transferring budget authority from contingency to capital operating equipment for the purchase of a skid steer loader.						
3 Social Services Fund 242							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Revenues	55,751,225	1,467,031	57,218,256	Operating Expenses	48,276,583	(2,356,457)	45,920,126
Interfund Transfers	3,073,266	-	3,073,266	Special Payments	8,968,886	3,823,488	12,792,374
				Contingency	1,579,022	-	1,579,022
Revised Total Fund Resources			60,291,522	Revised Total Fund Requirements			60,291,522
Comments:	Recognizing additional Oregon Housing & Community Services revenue for the Support Tenant Access Rent Relief (STARR) program and realigning Federal Rent Assistance program cost from materials and services to special payments.						
4 Children, Family & Community Connections Fund 246							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Revenues	8,232,094	-	8,232,094	Operating Expenses	6,474,407	-	6,474,407
Interfund Transfers	2,400,379	33,000	2,433,379	Special Payments	4,065,180	-	4,065,180
				Interfund Transfers	92,886	33,000	125,886
Revised Total Fund Resources			10,665,473	Revised Total Fund Requirements			10,665,473
Comments:	Recognizing revenue from Health, Housing and Administration and appropriating transfer authority to fund the Human Services Coordinator position to the County Administration program.						
5 Dog Services Fund 247							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Revenues	1,779,181	-	1,779,181	Operating Expenses	2,881,792	(44,000)	2,837,792
Interfund Transfers	1,595,517	-	1,595,517	Interfund Transfers	-	44,000	44,000
				Contingency	150,000	-	150,000
				Reserves	342,906	-	342,906
Revised Total Fund Resources			3,374,698	Revised Total Fund Requirements			3,374,698
Comments:	Dog Services Fund 247 is reducing operating expenses and appropriating an interfund transfer to the Fleet Mangement Fund 770 to purchase and upfit a new vehicle.						
6 Public Health Fund 252							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Revenues	11,928,006	4,402,740	16,330,746	Operating Expenses	13,067,901	4,402,740	17,470,641
Interfund Transfers	2,122,720	-	2,122,720	Special Payments	598,740	-	598,740
				Contingency	384,085	-	384,085
Revised Total Fund Resources			18,453,466	Revised Total Fund Requirements			18,453,466
Comments:	Recognizing revenue from Department of Health and Human Services, Oregon Health Authority, charge for services, and appropriating to hire additional staff needed to support COVID 19 response related activities.						
7 Transient Room Tax Fund 255							
Resources	Original	Change	Revised	Requirement	Original	Change	Revised
Revenues	1,684,267	-	1,684,267	Operating Expenses	1,026,813	727,994	1,754,807
Interfund Transfers	901,046	729,354	1,630,400	Special Payments	254,455	1,360	255,815
				Interfund Transfers	1,154,045	-	1,154,045
				Contingency	150,000	-	150,000
Revised Total Fund Resources			3,314,667	Revised Total Fund Requirements			3,314,667
Comments:	The Tourism Development Fund 256 is merged into Transient Room Tax Fund 255. Fund 255 is appropriating budget authority from the receipt of ending fund balance from Fund 256.						

8 Tourism Development Fund 256								
Resources	Original	Change	Revised	Requirement	Original	Change	Revised	
Fund balance	-	729,354	729,354	Interfund Transfers	-	729,354	729,354	
Revised Total Fund Resources			729,354	Revised Total Fund Requirements			729,354	

Comments: The Tourism Development Fund 256 is merged into Transient Room Tax Fund 255. Authority is requested to transfer the ending balance to Fund 255 and close Fund 256.

9 Juvenile Fund 260								
Resources	Original	Change	Revised	Requirement	Original	Change	Revised	
Fund Balance	1,925,886	-	1,925,886	Operating Expenses	11,291,138	(159,268)	11,131,870	
Revenues	1,774,138	-	1,774,138	Special Payments	-	159,268	159,268	
Interfund Transfer	9,467,000	-	9,467,000	Interfund Transfers	1,875,886		1,875,886	
Revised Total Fund Resources			13,167,024	Revised Total Fund Requirements			13,167,024	

Comments: The Juvenile Fund is adjusting its budget to correctly align payments to the HEART program as special payments.

10 Capital Projects Fund 420								
Resources	Original	Change	Revised	Requirement	Original	Change	Revised	
Fund Balance	5,390,081	-	5,390,081	Operating Expenses	5,390,081	1,300,000	6,690,081	
Revenues	-	650,000	650,000		-	-	-	
Interfund Transfer	-	650,000	650,000					
Revised Total Fund Resources			6,690,081	Revised Total Fund Requirements			6,690,081	

Comments: The Capital Projects Fund 420 is recognizing state revenue and an interfund transfer from the General Fund for the Courthouse project.

11 Fleet Management Fund 770								
Resources	Original	Change	Revised	Requirement	Original	Change	Revised	
Fund Balance	399,102	-	399,102	Operating Expenses	5,878,807	44,000	5,922,807	
Revenues	5,576,512	-	5,576,512	Contingency	96,807	-	96,807	
Interfund Revenue	-	44,000	44,000		-		-	
Revised Total Fund Resources			6,019,614	Revised Total Fund Requirements			6,019,614	

Comments: The Fleet Management Fund 770 is recognizing an interfund transfer from the Dog Services Fund 247 and seeking spending authority for the purchase and upfit a new vehicle.

RECOMMENDATION:

Staff respectfully recommends adoption of the attached Resolution Order in keeping with a legally accurate budget.

Sincerely,

Elizabeth Comfort

Elizabeth Comfort
Finance Director




~May 20 2021 Supplemental Staff Report

Final Audit Report

2021-04-28

Created:	2021-04-27
By:	Jennifer Johnson (JJohnson@clackamas.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXnC233WuskgrkOCn9N7VQxO67fOBS28W

"~May 20 2021 Supplemental Staff Report" History

-  Document created by Jennifer Johnson (JJohnson@clackamas.us)
2021-04-27 - 10:25:59 PM GMT- IP address: 198.245.132.3
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-  Email viewed by Elizabeth Comfort (ecomfort@clackamas.us)
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**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Providing Authorization
Regarding Adoption of a Supplemental
Budget and Making to Appropriations
for Fiscal Year 2020-21



Resolution Order No. 2021-28

Page 1 of 2

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, a supplemental budget for the period of July 1, 2020 through June 30, 2021, inclusive, has been prepared, published and submitted to the taxpayers as provided by statute;

WHEREAS; a hearing to discuss the supplemental budget and approve any necessary transfer to close the Tourism Development Fund 256 and merge remaining dollars into the Transient Room Tax Fund 255 was held before the Board of County Commissioners on May 20, 2021.

WHEREAS; the funds being adjusted are:

- . General Fund – Non-Departmental
- . County Fair Fund
- . Social Services Fund
- . Children, Family & Community Connections Fund
- . Dog Services Fund
- . Public Health Fund
- . Transient Room Tax Fund
- . Tourism Development Fund (Closing Fund)
- . Juvenile Fund
- . Capital Projects Fund
- . Fleet Management Fund;

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
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Regarding Adoption of a Supplemental
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for Fiscal Year 2020-21



Resolution Order No. 2021-28
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It further appearing that it is in the best interest of the County to approve this change in appropriations for the period of July 1, 2020 through June 30, 2021.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.433 – ORS 294.481, the supplemental budget be adopted and appropriations established as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED this 20th day of May 2021

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



Board of County Commissioners
 Clackamas County

Members of the Board:

Public Hearing and Approval of a Resolution for Exemption and Authorization to Use a Competitive Proposal Process to Obtain a P3 Project Company for the Courthouse Replacement Project

Purpose/Outcomes	Public hearing and recommended approval of a resolution for the proposed exemption and authorization to use a competitive proposal process to obtain a P3 project company for the Courthouse Replacement Project.
Dollar Amount and Fiscal Impact	Should the Board authorize moving forward with the P3 procurement the estimated cost to execute the competitive P3 procurement phase is proposed in the FY 21/22 budget at \$5.4 million with 50% eligible for subsequent state reimbursement. The Net Present Value (NPV) of the projected availability payments is estimated at \$170 million which the Board can establish as an “Affordability Ceiling” for the P3 procurement process with any proposals exceeding that ceiling deemed unacceptable.
Funding Source	County general fund and State of Oregon funding (Oregon Courthouse Capital Construction and Improvement Fund)
Duration	If the resolution is approved a two-step request for qualifications and request for proposals competitive proposal process will be initiated, and staff anticipates that a P3 project company will be selected in the second quarter of 2022. The new Courthouse is expected to be complete and ready for occupancy in the first quarter of 2025.
Previous Board Action	Board of County Commissioners Policy Sessions: February 14, 2017, October 17, 2017, June 26, 2018, September 18, 2018, January 29, 2019, June 18, 2019, October 2, 2019, October 22, 2019, February 4, 2020, February 18, 2020, July 7, 2020, January 1, 2021, April 21, 2021, May 5, 2021.
Strategic Plan Alignment	1. Build public trust through good government.
Contact Person	Gary Barth, Courthouse Project Manager, 503-754-2050 Ryan Rice, Interim Chief Procurement Officer, 503-742-5446 Nate Boderman, Asst. County Counsel, 503-655-8364
Contract No.	N/A

BACKGROUND:

Oregon law requires all contracts for public improvement projects be based on competitive low-price bids, unless the local contract review board grants an exemption under LCRB C-049-0600 and ORS 279C.335. The Clackamas County Board of Commissioners is the local contract review board for Clackamas County and has the authority to grant such an exemption. ORS 279C.400 to .410 permits a contracting agency to solicit and award public improvement contracts through a Competitive Proposal Process when an exemption is granted under ORS 279C.335. ORS 279C.335 requires the local contract review board to approve two findings submitted by the County: (1) that the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition; and (2) awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

The resolution included with this report would authorize an exemption from the traditional low-price competitive procurement process and authorize the use of a two-step request for qualifications and request for proposals competitive proposal process to select a public-private partnership (“P3”) Project Company (as defined below) for the Courthouse Replacement Project (“Project”).

A public hearing has been scheduled which satisfies the requirements under ORS 279C.335 to provide notice and the opportunity for a public hearing for the purpose of taking comments on the draft findings for an exemption to use the competitive proposal process method to retain a project company in a P3 project delivery method. Clackamas County Procurement placed a Public Notice on the Oregon Procurement Information Network (“ORPIN”) on May 6, 2021, and with the Business Tribune online edition on May 6, 2021 and its print version on May 11, 2021, which included the date and time of a Public Hearing to take place before the Board.

The State’s justice system in Clackamas County is currently served by the Clackamas County Courthouse in downtown Oregon City.

The Clackamas County Courthouse is home to the Fifth Circuit Court of the Oregon Judicial Department (“OJD”). The current courthouse was built in 1937 to house County offices and a single courtroom. The courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms. Due to the insufficient amount of space available in the building, services in support of the courthouse are located off-site, creating numerous operational inefficiencies. The courthouse is over 80 years old, requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services.

Recognizing the need for new county courthouses, the State legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013, administered through the OJD. Counties that meet OCCCIF requirements and are approved will receive OCCCIF funding for 50% of the cost of a new county courthouse that is attributable to state functions. The County applied to the OCCCIF for the Project and was approved by the State in 2017. Even with the prospect of receiving a sizable contribution from the state to fund the Project,

the cost to the County will be substantial and will be a burden on the general fund, particularly during the next several years and until the County's existing debt obligations are retired.

A "P3" is a well-established approach to financing and procuring large, complex public infrastructure projects. Under a P3, the public agency establishes the scope, purpose, specifications, and requirements of a project, while design, construction, private financing and long-term operations, maintenance, and rehabilitation are carried out by the private P3 partner ("Project Company"). Typically, only after a project is completed will the public agency start paying the Project Company "availability payments" that are performance-based payments for delivering a building that is meeting contractually specified performance criteria. As a result, the County will generally not be required to make any payments until the Project is ready for occupancy by the County and state.

P3's have proven to be effective and reliable delivery methods for courthouses across the United States. Recent examples include the Howard County (MD) Courthouse, Travis County (TX) Courthouse, Miami-Dade (FL) Courthouse, and the Long Beach (CA) Courthouse. The P3 method enables the County to effectively leverage private sector innovation and know-how, and the benefits of competition to deliver the project on time, on budget, and with cost certainty for the next 30 years, knowing that the County will have a top-notch, well-maintained courthouse throughout that time period. In addition, due to the unification of multiple services under a single contract, many risks typically retained by a public agency will be transferred to the Project Company. For instance, the Project Company will take on design liability and the risk of any component of the Project breaking down earlier than would otherwise be expected. By transferring these risks to the Project Company, the County will be able to focus on its other core programs and services when such risks materialize.

The Project Company will be responsible for designing, building, partially financing, operating and maintaining the New Courthouse for a 30-year term, as further described below. The Project Company will perform all design and build ("D&B") activities for the replacement courthouse facility, generally including:

1. the building for the replacement courthouse;
2. exterior grounds and amenities, which may include benches, exterior walkways, etc.;
3. surface parking lots and, if required, secure parking garage(s);
4. access and circulation roadways; and
5. utility connections.

The Project Company's operations and maintenance ("O&M") responsibilities for a 30-year term following the completion of the D&B activities, will generally include:

1. preventive (or scheduled) maintenance;
2. reactive (or unscheduled) maintenance;

3. custodial services;
4. renewal and/or replacement on a predetermined schedule of interior building items, including ceilings, flooring, walls, heating/cooling systems, electrical systems, plumbing, security systems and/or equipment, etc.;
5. renewal and/or replacement on a predetermined schedule of exterior building items, including roofing, building cladding, window repair, cleaning and replacement, structural systems, etc.;
6. maintenance and/or rehabilitation of exterior grounds, including surface parking lots, parking garage(s), and exterior amenities such as benches and landscaping; and
7. returning the New Courthouse to the County at the end of the 30-year operations and maintenance period in like-new condition.

The Project Company's services are referred to as "partial" financing because the County currently plans to have the Project Company privately finance the entire Project only until the Project Company achieves "Occupancy Readiness." After Occupancy Readiness is achieved, the County intends to finance half of the eligible long-term capital costs through a milestone payment to the Project Company utilizing the State program funding, with the Project Company financing the other half. Repayment of the Project debt will be the obligation of the Project Company, not the County, but the Project Company will rely on the County's availability payments to meet its private debt obligations.

The County procurement process to select a Project Company shall generally include the following steps:

1. An RFQ process resulting in a short-list of the most qualified respondents;
2. An RFP issued to the qualified short-listed respondents;
3. Commercially confidential individual meetings with the short-listed respondents;
4. Addenda to the RFP issued to short-listed respondents;
5. Submittal of proposals by the short-listed respondents;
6. Review of proposals by an evaluation committee;
7. Selection of Project Company from the group of short-listed respondents based on the review of the proposals;
8. Negotiate and finalize terms of the project agreement with the selected Project Company;
9. Commercial and financial close.

ORS 279C.405(1) and Clackamas County Local Contract Review Board Rule C-049-0645 allow for the use of an RFQ process to obtain information useful in the preparation or distribution of an RFP. For this procurement, the RFQ would invite respondents to submit statements of qualifications describing in detail their technical and financial qualifications relevant to the delivery of the Project. As contemplated by state statute and the County's local contracting rules, the issuance of the RFQ would be the first step in the two-step Competitive Proposal Process to retain a Project Company. Only those respondents that respond to the RFQ and are short-listed by the

evaluation committee will be issued an RFP and invited to submit a proposal in response to the RFP.

The County anticipates that it will short-list three respondents to participate in the RFP stage of the Competitive Proposal Process. The County intends to offer to pay a design fee (stipend) of \$500,000 to the short-listed respondents who are selected to respond to the RFP and who submit for consideration by the County a fully responsive proposal that is not selected by the County, as compensation for the design services and other work product provided to the County as part of their proposal. The design fee, including the conditions for entitlement, will be addressed in the RFP, and the County's budget for fiscal year 2021-2022 is expected to include a line item for such proposed payments.

The County has retained three firms to assist in the development and management of the procurement activities necessary to engage a preferred Project Company:

- WT Partnership ("WT") – Technical Advisor: along with architectural firm WRNS Studio and sustainability advisor Atelier Ten, WT will be providing technical guidance, program corroboration and refinement, cost estimating and value engineering services throughout the procurement process, and developing the technical requirements;
- Rebel – Financial Advisor: in addition to financial and transaction guidance to the County, Rebel will be developing financial models and an "affordability ceiling" for the project, preparing the risk assessment and allocation, defining the payment and deductions mechanisms, and working to make sure that the County gets an "on market" transaction; and
- Hawkins Delafield & Wood LLP ("Hawkins") – Legal Advisors: Hawkins will be developing the procurement documents as well as drafting the project agreement and other ancillary documents between the County and the Project Company.

All three firms have vast advisory experience on many successfully completed P3 projects of similar scope and complexity to the Project.

Under the circumstances, a P3 is the preferred project delivery methodology for several reasons, including the desire to deliver the best value for money, the highly specialized design and construction requirements associated with the Project, a desire to optimize the risk transfer associated with the Project to a 3rd party, the multi-faceted nature of the proposed scope of work, and the priority to optimize the construction schedule to ensure a timely and predictable relocation from the current courthouse to the new courthouse.

RECOMMENDATION:

Staff recommends the Board take the following actions:

- 1) Hold a public hearing to provide the opportunity for members of the public to provide comments related to the request for exemption.
- 2) Direct staff to make any changes necessary to the proposed exemption resolution and findings as a result of the Board's consideration of any testimony received.

- 3) Barring the need for significant revisions to the exemption resolution or findings, proceed with the approval of the resolution by the Board on May 20, 2021.

Respectfully submitted,

Gary Barth

Gary Barth
Courthouse Project Manager

A Resolution Granting Exemption from Low-Bid
Competitive Bidding for the Clackamas County
Courthouse Replacement Project and Authorizing
the Use of a P3 Delivery Approach Based on a
Competitive Proposal Process

Resolution No. 2021-27

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WHEREAS, the Board of County Commissioners (the “Board”), acting as the local contract review board for Clackamas County (the “County”), has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C; and

WHEREAS, ORS 279C.335 provides a process for exempting certain contracts from competitive bidding and authorizes the selection of a project company through a two-step request for qualifications (“RFQ”) and request for proposals (“RFP”) competitive proposal process (a “Competitive Proposal Process”); and

WHEREAS, draft findings, attached hereto as Exhibit A and incorporated herein (“Findings”), addressing competition; operational, budget and financial data; public benefits; value engineering; specialized expertise required; market conditions; technical complexity; public safety; and funding sources recommended by the County were available 14 days in advance of the public hearing on this Resolution related to the Clackamas County Courthouse Replacement Project (“Project”); and

WHEREAS, the Findings also highlight the public benefits of using the Competitive Proposal Process for the selection of a single project company to design-build-finance-operate-maintain the Project and using the public-private partnership (“P3”) method of project delivery; and

WHEREAS, the Board has reviewed the Findings and is satisfied with the supporting information and materials that has been provided to justify the application of the exemption and the use of the Competitive Proposal Process in its place.

NOW, THEREFORE, the Clackamas County Board of Commissioners do hereby resolve:

1. That, pursuant to ORS 279C.335, the Board hereby adopts the Findings, as set forth in Exhibit A to this Resolution, and makes the following additional findings:

- a. The exemption from competitive bidding will promote competition and will not encourage favoritism, because the project company will be chosen through the Competitive Proposal Process.
- b. The exemption from competitive bidding is likely to result in cost savings to the County, optimal risk transfer, and an innovative and efficient building design, for the reasons set forth in the adopted Findings.
- c. The exemption from competitive bidding will allow the Project to be procured as a P3 project, which the Findings support as the delivery method that will deliver the best value to the County.
- d. Pursuant to ORS 279C.390, the Project is hereby exempted from the ordinary bid security, performance bonding and payment bonding requirements which would otherwise apply pursuant to ORS 279C.365(5) and ORS 279C.380, because (1) the project company will be requiring performance and payment bonds, letters of credit or similar security from each of its subcontractors (including the single design-build firm responsible for all the construction work), and (2) the “at-risk” nature of the project company’s private financing constitute sufficient security for performance.

2. That the Board authorizes the County’s staff to proceed with the procurement of a P3 project company to implement the Project using the Request for Qualifications and Request for Proposals process set forth in ORS 279C.400 to .410 and Clackamas Local Contract Review Board C-049-0645 to -650.

Dated this 20th day of May, 2021

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

CLACKAMAS COUNTY COURTHOUSE REPLACEMENT PROJECT

FINDINGS IN SUPPORT OF USE OF REQUEST FOR PROPOSALS AND ALTERNATIVE CONTRACTING METHODS

These Findings are for the approval of the use of an alternative contracting method so that Clackamas County (the “County”) may utilize a two-step request for qualifications (“RFQ”) and request for proposals (“RFP”) competitive proposal process (a “Competitive Proposal Process”) to retain a project company in connection with a Public-Private Partnership (“P3”) project delivery method for the Clackamas County Courthouse Replacement Project (the “Project”).

A. Alternative Contracting Exemption under Oregon Law

Oregon law requires all contracts for public improvement projects be based on competitive bids, unless the local contract review board grants an exemption under LCRB C-049-0600 and ORS 279C.335. The Clackamas County Board of Commissioners is the local contract review board for Clackamas County and has the authority to grant such an exemption. ORS 279C.400 to .410 permits a contracting agency to solicit and award public improvement contracts through a Competitive Proposal Process when an exemption is granted under ORS 279C.335. ORS 279C.335 requires the local contract review board to approve two findings submitted by the County: (1) that the exemption is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition; and (2) awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

For public improvement projects, ORS 279C.330 and 279C.335 provide that the agency must consider the type, cost and amount of the contract(s) and information regarding the following:

- a. Operational, budget and financial data;
- b. Public benefits;
- c. Value engineering;
- d. Specialized expertise required;
- e. Public safety;
- f. Market conditions;
- g. Technical complexity; and
- h. Funding sources.

The local contract review board also is required to consider the following items when evaluating whether award of a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency:

- a. How many persons are available to bid;
- b. The construction budget and the projected operating costs for the completed public improvement;
- c. Public benefits that may result from granting the exemption;
- d. Whether value engineering techniques may decrease the cost of the public improvement;
- e. The cost and availability of specialized expertise that is necessary for the public improvement;
- f. Any likely increases in public safety;
- g. Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement;
- h. Whether granting the exemption will affect the sources of funding for the public improvement;

- i. Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;
- j. Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;
- k. Whether the public improvement involves new construction or renovates or remodels an existing structure;
- l. Whether the public improvement will be occupied or unoccupied during construction;
- m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions; and
- n. Whether the contracting agency or state agency has and will use contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.

Public improvement contracts, which are subject to the competitive bidding requirement absent an exemption, are generally defined to include all public construction contracts. They are not, however, considered to include architectural and engineering services or ordinary repair and maintenance services which are key components of a P3 project agreement. Architectural and engineering services are procured pursuant to a qualifications based selection process (see ORS.279C.100 et seq.) and ordinary repair and maintenance services are procured pursuant to a competitive proposal process (see ORS 279C.320(1) and ORS Chapter 279B). As further described in these findings, the Competitive Proposal Process to be applied to the Project generally satisfy the procurement requirements which relate to architectural, engineering and ordinary repair and maintenance services. As a result, no additional statutory exemptions beyond the one described in ORS 279C.335 are expected to be required from the County in order to deliver this Project on a P3 basis. However, to the extent the P3 project delivery system is considered to deviate from the standard procurement process for the non-public improvement portions of the Project, these findings also serve to satisfy the requirements of ORS 279B.085 for a contract-specific special procurement, which permits deviation from the standard procurement process for a specific contract on a one-time basis. As would be required under ORS 279B.085(4), the factors discussed herein demonstrate why the P3 project delivery system will not diminish competition, will result in substantial cost savings, or otherwise promote the public interest. By approving use of the P3 project delivery method under ORS Chapter 279C, the County is hereby also approving, to the extent applicable, a contract-specific special procurement under ORS 279B.085.

B. Background Information

The State’s justice system in Clackamas County is currently served by the Clackamas County Courthouse in downtown Oregon City.

The Clackamas County Courthouse is home to the Fifth Circuit Court of the Oregon Judicial Department (“OJD”). The current courthouse was built in 1937 to house County offices and a single courtroom. The courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms. Due to the insufficient amount of space available in the building, services in support of the courthouse are located off-site, creating numerous operational inefficiencies. The courthouse is over 80 years old, requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services.

Recognizing the need for new county courthouses, the State legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013, administered through the OJD. Counties that meet OCCCIF requirements and are approved will receive OCCCIF funding for 50% of the cost of a new county courthouse that is attributable to state functions. The County applied to the OCCCIF for the Project and was approved by the State in 2017. Even with the prospect of receiving a sizable contribution from the state to fund the Project, the cost to the County will be substantial and will be a burden on the general fund, particularly during the next several years and until the County’s existing debt obligations are retired.

A “P3” is a well-established approach to financing and procuring large, complex public infrastructure projects. Under a P3, the public agency establishes the scope, purpose, specifications, and requirements of a project, while design, construction, private financing and long-term operations, maintenance, and rehabilitation are carried out by the private P3 partner (“Project Company”). Typically, only after a project is completed will the public agency start paying the Project Company “availability payments” that are performance-based payments for delivering a building that is meeting contractually specified performance criteria. As a result, the County will generally not be required to make any payments until the Project is ready for occupancy by the County and state.

P3’s have proven to be effective and reliable delivery methods for courthouses across the United States. Recent examples include the Howard County (MD) Courthouse, Travis County (TX) Courthouse, Miami-Dade (FL) Courthouse, and the Long Beach (CA) Courthouse. The P3 method enables the County to effectively leverage private sector innovation and know-how, and the benefits of competition to deliver the project on time, on budget, and with cost certainty for the next 30 years, knowing that the County will have a top-notch, well-maintained courthouse throughout that time period. In addition, due to the unification of multiple services under a single contract, many risks typically retained by a public agency will be transferred to the Project Company. For instance, the Project Company will take on design liability and the risk of any component of the Project breaking down earlier than would otherwise be expected. By transferring these risks to the Project Company, the County will be able to focus on its other core programs and services when such risks materialize.

The Project Company will be responsible for designing, building, partially financing, operating and maintaining the New Courthouse for a 30-year term, as further described below. The Project Company will perform all design and build (“D&B”) activities for the replacement courthouse facility, generally including:

1. the building for the replacement courthouse;
2. exterior grounds and amenities, which may include benches, exterior walkways, etc.;
3. surface parking lots and, if required, secure parking garage(s);
4. access and circulation roadways; and
5. utility connections.

The Project Company’s operations and maintenance (“O&M”) responsibilities for a 30-year term following the completion of the D&B activities, will generally include:

1. preventive (or scheduled) maintenance;
2. reactive (or unscheduled) maintenance;
3. custodial services;
4. renewal and/or replacement on a predetermined schedule of interior building items, including ceilings, flooring, walls, heating/cooling systems, electrical systems, plumbing, security systems and/or equipment, etc.;
5. renewal and/or replacement on a predetermined schedule of exterior building items,

- including roofing, building cladding, window repair, cleaning and replacement, structural systems, etc.;
- 6. maintenance and/or rehabilitation of exterior grounds, including surface parking lots, parking garage(s), and exterior amenities such as benches and landscaping; and
- 7. returning the New Courthouse to the County at the end of the 30-year operations and maintenance period in like-new condition.

The Project Company's services are referred to as "partial" financing because the County currently plans to have the Project Company privately finance the entire Project only until the Project Company achieves "Occupancy Readiness." After Occupancy Readiness is achieved, the County intends to finance half of the eligible long-term capital costs through a milestone payment to the Project Company utilizing the State program funding, with the Project Company financing the other half. Repayment of the Project debt will be the obligation of the Project Company, not the County, but the Project Company will rely on the County's availability payments to meet its private debt obligations.

The County procurement process to select a Project Company shall generally include the following steps:

1. An RFQ process resulting in a short-list of the most qualified respondents;
2. An RFP issued to the qualified short-listed respondents;
3. Commercially confidential individual meetings with the short-listed respondents;
4. Addenda to the RFP issued to short-listed respondents;
5. Submittal of proposals by the short-listed respondents;
6. Review of proposals by an evaluation committee;
7. Selection of Project Company from the group of short-listed respondents based on the review of the proposals;
8. Negotiate and finalize terms of the project agreement with the selected Project Company;
9. Commercial and financial close.

ORS 279C.405(1) and Clackamas County Local Contract Review Board Rule C-049-0645 allow for the use of an RFQ process to obtain information useful in the preparation or distribution of an RFP. For this procurement, the RFQ would invite respondents to submit statements of qualifications describing in detail their technical and financial qualifications relevant to the delivery of the Project. As contemplated by state statute and the County's local contracting rules, the issuance of the RFQ would be the first step in the two-step Competitive Proposal Process to retain a Project Company. Only those respondents that respond to the RFQ and are short-listed by the evaluation committee will be issued an RFP and invited to submit a proposal in response to the RFP.

The County anticipates that it will short-list three respondents to participate in the RFP stage of the Competitive Proposal Process. The County intends to offer to pay a design fee (stipend) of \$500,000 to the short-listed respondents who are selected to respond to the RFP and who submit for consideration by the County a fully responsive proposal that is not selected by the County, as compensation for the design services and other work product provided to the County as part of their proposal. The design fee,

including the conditions for entitlement, will be addressed in the RFP, and the County’s budget for fiscal year 2021-2022 is expected to include a line item for such proposed payments.

The County has retained three firms to assist in the development and management of the procurement activities necessary to engage a preferred Project Company:

- WT Partnership (“WT”) – Technical Advisor: along with architectural firm WRNS Studio and sustainability advisor Atelier Ten, WT will be providing technical guidance, program corroboration and refinement, cost estimating and value engineering services throughout the procurement process, and developing the technical requirements;
- Rebel – Financial Advisor: in addition to financial and transaction guidance to the County, Rebel will be developing financial models and an “affordability ceiling” for the project, preparing the risk assessment and allocation, defining the payment and deductions mechanisms, and working to make sure that the County gets an “on market” transaction; and
- Hawkins Delafield & Wood LLP (“Hawkins”) – Legal Advisors: Hawkins will be developing the procurement documents as well as drafting the project agreement and other ancillary documents between the County and the Project Company.

All three firms have vast advisory experience on many successfully completed P3 projects of similar scope and complexity to the Project.

Under the circumstances, a P3 is the preferred project delivery methodology for several reasons, including the desire to deliver the best value for money, the highly specialized design and construction requirements associated with the Project, a desire to optimize the risk transfer associated with the Project to a 3rd party, the multi-faceted nature of the proposed scope of work, and the priority to optimize the construction schedule to ensure a timely and predictable relocation from the current courthouse to the new courthouse.

C. Findings

1. Appropriate alternative contracting methods will be used.

The Competitive Proposal Process for selecting a Project Company for this Project falls within the purview of ORS 279C.335(2), because the process is competitive and contractors will be selected based not only on price, but also on technical merit, including among other factors, design innovation, construction approach, sustainability, and their ability to best complete the Project in a timely manner. The Competitive Proposal Process approach is widely used and recognized as one of the preferred alternative approaches where projects are more complex. The Competitive Proposal Process allow qualified contractors to compete based on their skills and experience, in addition to their price. In this Project, some of the complexities require a combination of skills that cannot be evaluated in a standard low-bid process. The benefits of utilizing the P3 delivery method have been identified above. As such, the P3 delivery method, selected through a Competitive Proposal Process, is the most appropriate contracting method for the Project.

2. No favoritism or diminished competition.

The Project Company will still be selected through a competitive process. The exemption is sought only to authorize a different competitive process than the standard low-bid procurement process. To ensure the exemption requested does not encourage favoritism or substantially diminish competition, a well-defined competitive procedure will be followed to

select the contractor for this public improvement contract.

Competition will be encouraged by County Procurement publishing advertisements in the *Portland Tribune* and posting the opportunity on the State of Oregon Procurement Website ("ORPIN"). Further steps include direct notification to qualified P3 companies and contractors, scheduling site visits and a pre-submittal informational meeting, and appointment of an evaluation committee that will consider statements of qualifications received in response to the RFQ and proposals received in response to the RFP. The RFQ and RFP will establish the evaluation criteria for each stage. In general the RFQ's evaluation criteria will consider past experience and current qualifications and the RFP's evaluation criteria will consider price and technical merit of the proposed solution.

By marketing these opportunities and working to notify all likely potential proposers, the process will not encourage favoritism in the awarding of the public improvement contract, nor substantially diminish competition.

Following the shortlisting of respondents, the evaluation criteria and selection methodology of the RFP are expected to include and assess, at a minimum, the following factors:

- a. Demonstrated compliance with the design requirements;
- b. Proposer's design solution;
- c. Proposer's quality management plan;
- d. Overall technical merit;
- e. Proposer's Project schedule;
- f. Net present value of the proposed service fee;
- g. Financing plan for the Project; and
- h. Other evaluation factors as may be determined by the County and specified in the RFP.

The selected Project Company will be the one whose proposal is determined to be the most advantageous and providing the best value based on the RFP evaluation criteria and the assessment method described in the RFP.

3. Awarding a public improvement contract under the exemption will likely result in substantial cost savings and other substantial benefits to the public agency.

In terms of the benefits of using Competitive Proposal Process to procure a Project Company, County staff research and experience indicates that standard low-bid contracting for work of this nature is likely to result in numerous change orders and increased costs through claims. This typically occurs when a contractor identifies issues after construction has begun that require a "re-working" of the original design. The result is more change orders, not realizing the benefits of value engineering or private-sector innovation, and not optimizing quality that would occur in the P3 method.

Further, by utilizing the Competitive Proposal Process to engage a Project Company during

design, the County has the ability to set an “affordability ceiling” and to create a competitive environment that will drive innovation and efficiencies, likely resulting in a project that represents a better comparative value. This pricing will facilitate a more accurate assessment of design options and maximize opportunities for innovation, again resulting in cost savings that cannot be achieved by the standard competitive-bid process. The involvement of the Project Company will streamline design and construction, which will significantly mitigate schedule impacts. Finally, the overall Project price is established at the outset and, with very limited exceptions, risks associated with such things as material/labor inflation and construction general conditions are transferred to the Project Company. The limited exceptions will be carefully defined as “Relief Events” in the project agreement, and generally be limited to factors that are outside the Project Company’s control such as changes in law, differing site conditions and force majeure events. In the event a relief event occurs the Project Company will be eligible, as appropriate and following proper mitigation efforts, for any combination of price, schedule and performance relief.

In terms of the benefits of selecting a Project Company through a Competitive Proposal Process, such a process will allow the County to select contractors based upon other factors in addition to price. It will allow selection of a Project Company whose proven experience and proposed solutions matches the nature of the required work, in both the design and the construction phases.

As the analysis below shows, permitting a contract-specific exemption for the Project will result in substantial cost savings and other substantial benefits to the County.

a. How many persons are available to bid.

The County, based on the expertise of its consultants listed above and feedback received to date from interested proposers, anticipates there will be a number of companies that will be interested in submitting proposals for the Project. Additionally, the County anticipates the Project will generate interest due to (1) its position as a prominent social infrastructure project, (2) the plan being heavily supported by state and local officials, and (3) the scope and scale of the project itself.

b. The construction budget and the projected operating costs for the completed public improvement.

The County will use its “availability payment” projection as presented to the Board of County Commissioners on April 21st, 2021 – including estimated design, construction, financing, maintenance and operating costs – as an “affordability ceiling” that proposers in the P3 procurement cannot exceed. Adjusted for the time value of money, to express them in today’s dollars, the projected “availability payments” amount to a net present value of \$170 million (5%, 1/1/2022, excluding milestone payment).

A Competitive Proposal Process will foster robust competition, and will result in up to three proposals incorporating advanced designs, from which the County will select the most advantageous proposal. This process is likely to result in a more innovative and efficient design, a faster construction schedule and fewer unexpected delays. This, combined with specific expertise from the contractors that will build the Project and the price structure negotiated up front, allows the County to better anticipate costs not only during design and construction, but also over the initial 30 year occupancy of the building. Performance metrics associated with the operations portion of the contract will ensure the building is maintained

to pre-agreed upon standards that are finalized during the Competitive Proposal Process. Moreover, the ability to have multiple proposers complete a level of design work prior to awarding the final contract likely shortens the overall duration of construction. A shortened construction duration also will allow the County to address the deficiencies and liabilities associated with the existing courthouse facility. This will lessen the impact to those working in the Courthouse, and those members of the public visiting the Courthouse, and will generally benefit the public by expediting the construction of the new courthouse facility.

Last, by selecting a Project Company through a Competitive Proposal Process, versus engaging individual contractors to complete each element of the Project through a standard low-bid procurement, the County will ensure the selected Project Company is best able to maximize the savings to the overall Project budget and its lifecycle costs, due to the integrated nature of a unified contract for multiple services as described above.

c. Public benefits that may result from granting the exemption.

As described at length already herein, by utilizing a Competitive Proposal Process, the County can select the Project Company who can also best maximize public benefits. With the P3 method, the County expects to shorten the construction duration, transfer risk related to design, construction, operations and maintenance issues, foster innovation, enhance constructability, and allow the courthouse to open sooner for public use. All of these significant benefits are in the public's interest.

d. Whether value engineering techniques may decrease the cost of the public improvement.

Utilizing a Competitive Proposal Process to select a Project Company will generate a competitive environment that requires proposing entities to consider innovative and efficient design and construction solutions. The integrated project company will ensure a coordinated approach between design and construction teams (as well as the long-term facilities management team), and will typically engage in their own value engineering exercises to ensure that they are presenting the optimal bid. Utilizing the P3 delivery method ensures alternative options can be considered while the design is being finalized. When it occurs, value engineering on standard low-bid projects typically results in increased design costs because the completed design must be revised to accommodate the changes that result from value engineering. These additional costs are entirely eliminated under the P3 delivery method, potentially decreasing the cost of this public improvement.

Beyond the innovation that will likely be incorporated during the RFP process, this type of contract also allows the successful Project Company to more easily explore the feasibility of innovative design solutions and incorporate ongoing value engineering after the contract is awarded, and in many cases may incentivize the Project Company to incorporate such solutions, which the County again expects to result in a more innovative project, at a lower cost, with a shortened project completion time.

e. The cost and availability of specialized expertise that is necessary for the public improvement.

With respect to the P3 delivery method, it will be a requirement in the RFQ that each respondent demonstrate expertise in working on projects similar in size, scale and complexity to the Project. The design and construction of specific project elements requires special

expertise, knowledge, and experience, all of which will be factored into the RFQ phase of the Competitive Proposal Process. The selection of a Project Company with such specialized expertise to construct the project will result in a substantially lower risk to the County, because it increases the likelihood of the project being completed on or ahead of schedule, resulting in lower costs and increased benefit to courthouse visitors.

The ability to factor expertise and experience into contractor selection is inherent in the Competitive Proposal Process, but is not normally part of the standard low-bid process. The standard process does not ensure a Project Company will possess the needed special expertise because prospective bidders need meet only limited responsibility criteria. The ability to consider each proposer's degree of expertise in these areas is an integral component of the shortlisting process and to be eligible to submit a proposal in response to the RFP.

f. Any likely increases in public safety.

Regardless of the delivery method utilized by the County, the Project must require the utmost attention to public safety, as the surrounding uses include the remainder of the Red Soils Campus that will be open and accessible to the public and County employees during construction.

The Project Company would be responsible for site preparation in advance of construction, which would include demolition of at least two structures on site. In addition, existing parking will need to be closed and re-established elsewhere on site for some duration while permanent improvements are made.

Construction-generated staging, delivery, and parking activity will need to be considered in a comprehensive construction safety and mitigation plan. Constant attention to needs of employees, visitors and construction crews is crucial to maintaining a safe working and living environment for workers and those that work and visit the Red Soils Campus. By utilizing the P3 delivery method, the Project Company will work with the County during the Project to plan for and minimize safety hazards and conflicts between the project and ongoing County operations. The integrated approach of the P3 process which results in a single point of accountability should mitigate issues that might otherwise arise around project phasing, construction staging areas, construction access corridors, and scheduling to reduce impacts where design, demolition and construction may all be the responsibility of separate contractors. The integrated approach provides flexibility to address both anticipated issues and new concerns that may arise.

g. Whether granting the exemption may reduce risks to the contracting agency, the state agency or the public that are related to the public improvement.

For the reasons previously identified, granting an exemption for alternative contracting and utilizing the Competitive Proposal Process for selection of the Project Company will reduce risk to the County by optimizing the risk allocation between the County and the Project Company, and by setting a fixed price at the time of contracting that will be subject to very limited adjustments (see the discussion on "Relief Events" under subsection C(3) herein).

h. Whether granting the exemption will affect the sources of funding for the public improvement.

Construction of the Project will be funded through both state and local funding sources. The

state grant funding is authorized each biennium and may be applied to qualifying capital construction costs. The County has discussed at length with state staff, the use of the state funds in the context of a P3 delivery method. The County does not anticipate the exemption to utilize a P3 delivery method will prohibit or negatively affect the availability of state funding for the Project. If it does, the County would not utilize the P3 delivery method given the substantial contribution to be provided by the state.

- i. *Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement.*

Market conditions for construction in the Portland metro area are extremely busy, with rising construction costs and a tight labor market. General contractors have been able to be much more selective in the work they pursue. It will be important to package this work in the most attractive manner to draw quality contractors and to eliminate as many barriers as possible.

A Competitive Proposal Process to select a Project Company will better enable the County to manage construction bid risks within a robust construction market. The County is more likely to receive the benefit of an experienced and capable construction contractor using alternative contracting methods. In addition, using the P3 delivery method will provide a fixed-price capital construction budget that will insulate the County from the risk of price increases due to the unexpected escalation in the cost of materials or labor. An alternative contracting method will allow the County to collaborate with the Project Company on items and installations that are not off-the-shelf, such as courthouse-specific design features and the installation of public art integrated into the overall Project design. Such elements/installations often require one-of-a-kind construction details for which the professional design community and/or construction industry do not have standard pricing structures. Use of a standard low-bid approach in a tight or rising cost construction market increases the risk bids will exceed budget, with limited options to address overages through scope reductions. When bids exceed budget, it causes delay and budget problems as staff work to find solutions to make the Project viable. Any delays translate into additional costs due to increasing construction material costs and other associated costs. Use of the P3 delivery methods will enable the County to respond to market conditions in a manner that results in a lower-cost Project.

- j. *Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement.*

This Project contains several factors making design and construction more complex:

- Site conditions and context: the future courthouse will be incorporated as part of a master-planned campus environment, which will require some level of design compatibility with existing structures and will require construction coordination to minimize disruption to existing County operations onsite;
- Unique project elements: courthouse design and construction require specialized and/or site-specific technical expertise, knowledge, and experience;
- Financing: anticipated grant funding agreements with the state will require completion in roughly 3.5 years, and the County will be in a better position to assume payment obligations upon building occupancy in 2025 as opposed to assuming debt to finance the Project upon commencement; and
- Schedule: Time is of the essence in replacing a functionally obsolete courthouse

facility.

- Scale: the Project is significant in scale and total capital cost compared to other construction projects the County typically works on

As noted previously, the P3 delivery method will better enable the County to address these complexities in a more efficient and cost effective manner. The Competitive Proposal Process will ensure selection of a Project Company with necessary experience to manage these complexities, will require the Project Company to demonstrate the necessary experience and expertise to address them, and will require the Project Company to perform work in accordance with a schedule that meets contract deadlines driven by financing.

The selection of a Project Company with demonstrated experience and success in implementing such projects increases the likelihood of the Project being completed with fewer construction delays. This results in lower risk and increased benefit to the County and the public.

Beyond the minimum requirements for bidder responsibility, a standard low-bid procurement does not permit an in-depth evaluation of a contractor's technical qualifications or proven ability to address these complex technical issues. Use of a Competitive Proposal Process for the P3 method, which will include several evaluation criteria in addition to price, allows the County to evaluate the technical merit of the proposed design and a contractor's experience in similar work and successfully working through similar complexities.

- k. Whether the public improvement involves new construction or renovates or remodels an existing structure.*

The Project is for new construction, and site improvements/demolition. The Project will be located on a site that the County has owned and controlled for decades. Of particular note is that the future courthouse will be incorporated as part of a master-planned campus environment, which will require some level of design compatibility with existing structures and will require construction coordination to minimize disruption to existing County operations onsite. The County must ensure that the Project is properly, safely, efficiently, and successfully implemented and considers the P3 process the preferred method for this in light of the increased coordination of the design and construction teams under the direction of the Project Company.

In addition, the nature of the Competitive Proposal Process provides the proposers the opportunities and incentives to identify unforeseen conditions at the Project site before commencing work as they may otherwise retain responsibility for such risks, thereby enabling the successful Project Company to efficiently address design changes early in the design phase, rather than during the construction phase.

The Competitive Proposal Process will allow the County to give appropriate weight to proposers that are skilled and experienced in performing similar site work. Because of the nature of constructing courthouse buildings, it will be important for the County to select a Project Company with experience in similar facilities.

- l. Whether the public improvement will be occupied or unoccupied during construction.*

As part of the County's Red Soils Campus, the construction area will be proximate to, but

closed off from, other sections of the campus that can remain accessible. The Project itself will not be occupied until construction is complete. In addition, there are parking areas that will need to be closed during all or part of the construction. A Project Company provides the expertise on construction staging, access, detouring, sequencing, and scheduling that will be required to maintain public access to the campus without compromising safety or timely completion. The use of the Competitive Proposal Process to select the Project Company will ensure this expertise is available.

- m. Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions.*

It is expected that the construction efforts for the Project will be a single phase. However, the County will look to the Project Company to determine the most appropriate phasing based on the scope of work.

- n. Whether the contracting agency has retained under contract, and will use contracting agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract.*

A Project team has been established that includes the consultants identified above, as well as a dedicated project manager for the County, and staff from County Counsel, County Finance and Procurement. This team will actively participate in the Project from inception through contract execution and financial close (upon which construction will commence). The County will retain the services of an owner's representative to assist with the contracting phase and services during construction administration, and will retain other consultants as needed throughout the Project. The consultants currently assisting the County have experience completing similar projects using the P3 project delivery methods and have the necessary qualifications and expertise to assist with the negotiation of the Project agreement.

D. Contract Terms and Conditions

The technical complexities and uncertainties of the Project make it critical for the project agreement to contain specific terms and conditions that will increase efficiency and result in reduced costs. The above referenced Project team along with the owner's representative will ensure the resulting contract includes industry best practices, mitigates the County's risk exposure, and ensures that fees are fair and reasonable for the Project.

County Counsel will also ensure that the contract includes all legally required public procurement terms.

County Counsel, in consultation with Hawkins, has further determined that an exemption from the ordinary bid security, performance bonding and payment bonding requirements which would otherwise apply pursuant to ORS 279C.365(5) and ORS 279C.380 is warranted here. Such an exemption would be established pursuant to ORS 279C.390. Project companies do not typically provide traditional performance and payment bonds or bid security to owners in a P3 structure for a variety of reasons. The primary reason is such security instruments are typically not necessary and does not provide any further assurance that the Project will be completed in a timely manner. The Project Company will already be requiring performance and payment bonds, letters of credit or similar security from each of its

subcontractors (including the single design-build firm responsible to the Project Company for all the construction work). Furthermore, it is generally accepted in the market that the “at-risk” nature of the Project Company’s private financing (because no payments will be made until the Project is ready for occupancy) constitutes sufficient security for performance. Finally, requiring such bonds or other security could result in increased costs to the County. In general, if the Project Company were to obtain performance and payment bonds to be provided to the County, it would have to separately pay for such bonding in addition to the essentially identical bonding provided by the Project Company’s subcontractors to the Project Company. Such double costs would be included in the Project Company’s pricing and ultimately paid for by the County.

E. Reservation of Rights

ORS 279C.335(6) provides that the representations in and the accuracy of these findings support the contract-specific exemption if adopted by resolution of the Board of County Commissioners. These findings also describe, to some extent, anticipated features of the Competitive Proposal Process and resulting project agreement, but the final parameters of the Project agreement are those characteristics that will be announced in the solicitation document, and the County specifically reserves all of its rights in this regard.

F. Recommendation

A Competitive Proposal Process to procure a Project Company to deliver the project on a P3 basis is the preferred option for the Project.

The Competitive Proposal Process will ensure that the selected Project Company has the experience, expertise, and past performance to position the Project for success. Further, the Competitive Proposal Process ensures that meaningful competition occurs and that favoritism is not an element of the selection process. All these factors will assist the County in achieving fair and equitable selection of a Project Company that will deliver both good design and successful completion while minimizing public impacts; minimizing risk to the County; controlling costs associated with the design, construction, operation and maintenance of the new courthouse facility; and meeting an agreed-upon schedule.

Utilizing the P3 delivery method will enable the selected Project Company to deliver the most cost-effective and practical choices in design options, while still allowing the County to retain control of the minimum design requirements and costs. Perhaps most importantly, the P3 method will provide the expertise needed, and an integrated solution to meet financing timelines for construction and allow for a smoother and timelier progression to the start and completion of construction.

County staff therefore recommend adoption of a resolution approving a contract-specific exemption for the Project that permits use of the P3 delivery method, to permit use of the Competitive Proposal Process to select a Project Company and to grant an exemption from the ordinary bonding requirements.