



April 17, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Resolution Delegating Signature Authority for Agreements Related to State Funding for the Courthouse Project. Agreement Value is \$139,500,000. Funding is through State of Oregon Article XI-Q Bonds. No County General Funds are involved.

Previous Board Action/Review	<p>On February 21, 2019, the Board of County Commissioners entered into the Clackamas County Courthouse Master Funding Agreement with the State of Oregon.</p> <p>On February 24, 2022, the Board of County Commissioners entered into the Clackamas County Courthouse Amended and Restated Master Funding Agreement with the State of Oregon.</p> <p>On August 10, 2022, the Board of County Commissioners entered into the Clackamas County Courthouse Agreement – Phase II Funding Agreement.</p> <p>On March 6, 2025, the Board of County Commissioners approved an earlier version of Amendment No. 1 to the Clackamas County Courthouse Phase II Funding Agreement.</p>		
Performance Clackamas	1. Ensure Safe, Healthy and Secure Communities		
Counsel Review	Yes	Procurement Review	No
Contact Person	Nancy Bush	Contact Phone	X8581

EXECUTIVE SUMMARY: Clackamas County (“County”) entered into a series of agreements with the State of Oregon (“State”), through the Department of Administrative Services and the Oregon Judicial Department, for the State to provide funding for the Courthouse project (“Funding Agreements”). The County has a milestone payment due to the Courthouse contractor on May 1st and the County requires the State to release funding to make that payment. Prior to the release of the State funds, the State requires a series of amendments and additional agreements to be executed. Due to the quick turn around time required for executing these agreements, a delegation of authority is required to facilitate the receipt of the State funds.

These amendments and agreements accomplish the following key objectives: increase the Article XI-Q bond dollars for the Courthouse Phase II funding by \$45,000,000, totaling \$139,500,000; revise the trigger for

For Filing Use Only

the payment of State funds from a permanent certificate of occupancy to a temporary certificate of occupancy (“TCO”); add remedies for the State if the TCO is revoked by the City of Oregon City and impacts State’s use of the Courthouse; add a Phase III Funding Agreement that covers monthly reporting requirements during the period of time the TCO is in effect; lease space in the Courthouse to three State agencies (Oregon Judicial Department, Department of Human Services, Oregon Public Defense Commission); and transfer ownership of furniture and equipment for State-occupied spaces to the State.

RECOMMENDATION: Staff recommends BCC approval of this Resolution Delegating Signature Authority for Agreements Related to State Funding for the Courthouse Project.

Respectfully submitted,

Nancy Bush
County Operation Officer
Office of County Administration

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Delegating Signature
Authority for Agreements Related to State
Funding for the Courthouse Project



Resolution No.

Page 1 of 2

Whereas, this matter coming before the Board at this time, and it appearing that a delegation of signature authority is required to facilitate the transfer of State funds for the Courthouse project;

Whereas, the Board of County Commissioners (“Board”) authorized Clackamas County (“County”) to enter into a series of agreements with the State of Oregon (“State”), through its Department of Administrative Services and the Oregon Judicial Department, to assist with funding the design and construction of a new courthouse on the Red Soils Campus (“Courthouse”);

Whereas, the agreements between the County and the State for Courthouse funding include the Clackamas County Courthouse Master Funding Agreement (2019), the Clackamas County Courthouse Phase I Funding Agreement (2019), the Amended and Restated Master Funding Agreement (2022), and the Phase II Funding Agreement (2022), collectively known as the “Funding Agreements;”

Whereas, the Funding Agreements made the release of State funds for the Courthouse project contingent on the County receiving a permanent certificate of occupancy;

Whereas, the land use approval by the City of Oregon City for the Courthouse project included a Condition of Approval that required certain capacity improvements at an off-site intersection at Redland Road and Oregon Highway 213 in Oregon City and, as a result, the Courthouse project will not be eligible to receive a permanent certificate of occupancy until the completion of that work;

Whereas, the Funding Agreements need to be amended to reflect that the payment of State funds will be triggered by a temporary certificate of occupancy instead of a permanent certificate of occupancy;

Whereas, the County is required to make a payment to Clackamas Progress Partners, LLC (“CPP”), for the Courthouse project on May 1, 2025, and the County requires the State funding prior to making the payment to CPP; and

Whereas, in order for the State to release the funds, a series of agreements need to be executed, including amendments to the Amended and Restated Master Funding Agreement and the Phase II Funding Agreement; a new Phase III Funding Agreement covering obligations of the County during the period of time it has a temporary certificate of occupancy; three leases for State agencies that will occupy space in the Courthouse; and a Furniture, Fixture, and Equipment Transfer agreement;

\\

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF CLACKAMAS COUNTY, STATE OF OREGON

In the Matter of Delegating Signature
Authority for Agreements Related to State
Funding for the Courthouse Project



Resolution No.

Page 2 of 2

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

1. The Chair of the Board and the County Administrator are delegated authority to execute the following agreements in substantially the same form as those attached to this resolution:
 - a. Amendment No. 1 to the Clackamas County Courthouse Amended and Restated Master Funding Agreement, attached and incorporated herein as Attachment A;
 - b. Amendment No. 1 to the Clackamas County Courthouse Phase II Funding Agreement, attached and incorporated herein as Attachment B;
 - c. Clackamas County Courthouse Phase Funding Agreement for Phase III, attached and incorporated herein as Attachment C;
 - d. Lease Agreement with the Oregon Judicial Department, attached as Exhibit E to the Phase II Funding Agreement amendment in Attachment B;
 - e. Co-Location Lease Agreement with the Oregon Department of Human Services, attached and incorporated herein as Attachment D;
 - f. Co-Location Lease Agreement with the Oregon Public Defense Commission, attached and incorporated herein as Attachment E; and
 - g. Agreement for Transfer of Furniture, Fixtures, and Equipment, attached as Exhibit D to the Phase II Funding Agreement amendment in Attachment B.
2. The Chair of the Board and the County Administrator are delegated authority to execute any other documents, agreements, or forms necessary for the release of funding from the State for the Courthouse project.

DATED this 17th day of April 2025

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Attachment A

AMENDMENT NUMBER NO. 1 CLACKAMAS COUNTY COURTHOUSE AMENDED AND RESTATED MASTER FUNDING AGREEMENT

THIS AMENDMENT No. 1 (this “Amendment”) to the Clackamas County Courthouse Amended And Restated Master Funding Agreement (the “Restated Agreement”) is made as of **April 17, 2025** (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”).

Except as expressly herein, any defined terms used in this Amendment shall have the same meanings as set forth in the Restated Agreement.

The parties hereby amend the Restated Agreement as follows:

1. The Estimated Project Completion Date is changed from December 1, 2025, to December 30, 2029, throughout the Restated Agreement.
2. Section 3(dd) is deleted in its entirety and replaced with the following:

“(dd) “Phase” means Phase I, Phase II, or Phase III as the context so requires.”
3. The following new section is added directly after Section 3(ff) and prior to Section 3(gg):

“(ff-2) “Phase III” means the period during which the Project is covered by a temporary certificate of occupancy.”
4. The following new section is added directly after Section 3(ii) and prior to Section 3(jj):

“(ii-2) “Phase III Funding Agreement” means the agreement the parties shall enter into during Phase II of the Project in order to address obtaining a permanent certificate of occupancy for the Project.”
5. Section 25, County Default, is deleted in its entirety and replaced with the following:

“**25. County Default.** Any of the following shall constitute a County Default of the Funding Agreement:
 - (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 the Funding 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 the Funding 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.

(f) The temporary certificate of occupancy for the Project issued by City of Oregon City on April (insert date) 2025, and expiring on (insert date) 2029 is revoked, expires, or not extended for reasons other than that it has been replaced with a permanent certificate of occupancy for the Project.”

6. Section 26, State’s Remedies for County Default, is deleted in its entirety and replaced with the following:

“26. State’s Remedies for County Default.

(a) Upon a County Default, the State, may, at its option, pursue any or all of the remedies available under the Funding Agreement and at law or in equity, including but not limited to:

- (i) ceasing disbursement of State Funds;
- (ii) terminating this Restated Agreement and/or any applicable Phase Funding Agreement;
- (iii) recovering from the County any State Funds disbursed to the County from General Funds, or the Defeasance Costs for any State Bonds, within 60 Calendar Days after the termination;
- (iv) 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
- (v) any equitable remedies, including specific performance, which may be available to the State.

(b) If there is a County Default under Section 25(f) and the State’s ability to occupy, operate, and control the State Premises is changed, modified, or adjusted due to that default, County shall be liable to the State for the following damages and the State may pursue any or all of the remedies available under the Funding Agreement and at law or in equity to recover the damages:

- (i) State Funds disbursed to the County from State Bonds;

- (ii) Any interest payments the State has made or will make on the State Bonds before the State Bonds are defeased;
- (iii) Costs necessary for the defeasance of the State Bonds; and
- (iv) All other damages associated with the default, including but not limited to costs for vacating the State Premises, State relocation costs, and damages associated with Furniture, Fixture and Equipment in the Project.”

7. Section 28(c), Termination by State or County, is deleted and replaced in its entirety with the following:

“(c) In the event the Funding Agreement is terminated for any reason other than the State’s Default, County shall repay to the State the Defeasance Costs for any State Bonds under the Funding Agreement within 60 Calendar Days after the termination.”

8. Section 29(a)(i), Defeasance Costs, is deleted and replaced in its entirety with the following:

“(i) The County has no obligation to pay Defense Costs except where specifically provided for in the Funding Agreement. ”

The State and the County, by execution of this Amendment, each hereby acknowledge that each has read this Amendment, understands it and agrees to be bound by its terms and conditions. The Parties agree that by the exchange of this Amendment electronically, each has agreed to the use of electronic means, if applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intend to execute this Amendment to the Restated Agreement, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

Signature: _____

Print Name: _____

Title: _____

Date: _____

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

Signature: _____

Print Name: _____

Title: _____

Date: _____

Approved as to Legal Sufficiency for the State:

Print Name: Wendy Johnson

Title: Sr. Assistant Attorney General, Oregon Department of Justice

Email approval dated [REDACTED], 2025 on file with DAS and OJD

Clackamas County, Oregon (“County”):

Signature: _____

Print Name: _____

Title: _____

Date: _____

Reviewed for the County:

AMANDA KELLER, ASSISTANT COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____

Amanda Keller, Assistant County Counsel

Date:

Attachment B

**AMENDMENT NO. 1
CLACKAMAS COUNTY COURTHOUSE
PHASE FUNDING AGREEMENT FOR PHASE II**

This Amendment No. 1 (“Amendment”) to the Clackamas County Courthouse Phase Funding Agreement For Phase II (the “Phase II Agreement”) is made as of the date of last signature on the Amendment (the “Amendment 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 (“County”). OJD, DAS and County are each referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. On August 10, 2022, the Parties entered into the Clackamas County Courthouse Phase Funding Agreement For Phase II (“Phase II Agreement”).
- B. The County submitted a Spending Plan to the State on December 9, 2022.
- C. During the 2023 and 2024 legislative sessions, the legislature provided additional funding for the Project, and consequently, the Parties now desire to amend the Phase II Agreement to reflect the additional funding.

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. “State Funds for Phase II” under Project Summary on the first page of the Phase II Agreement is deleted in its entirety and replaced with the following:

 “State Funds for Phase II: \$139,500,000 (Article XI-Q bonds)”
- 2. Section 3 is deleted in its entirety and replaced with the following:

 “3. Agreement Documents. This Phase II Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, less all Exhibits; then **Exhibit C** (Initial Technical Requirements); then **Exhibit A** (Phase Work for Phase II) and **Exhibit B** (Benchmarks for Phase II), **Exhibit E** (OJD Lease Form), and **Exhibit D** (Agreement Form for Transfer of Furniture, Fixtures, and Equipment). The foregoing Exhibits and any documents referenced in those Exhibits are incorporated herein by this reference.
- 3. Section 4(a)(ii), County Contribution, is deleted in its entirety and replaced with the following:

“ ii. “County Contribution” means the amount of not less than \$131,300,000.00, for this Phase II that the County has agreed to provide under this Phase II Agreement.”

4. Section 4(a)(v), “State Funds”, is deleted in its entirety and replaced with the following:

“ v. “State Funds” means the not-to-exceed monetary contribution of \$139,500,000.00 for this Phase II, that the State has agreed to provide under this Phase II Agreement. This amount includes the amount the State has agreed to provide for Authorized State Costs for this Phase II. Authorized State Costs include the FFE Costs which shall not exceed \$8,200,000.00, and all other Authorized State Costs which shall not exceed \$131,300,000.00.”

5. Section 5(h) is deleted in its entirety and replaced with the following seven sections:

“(h) In the 2023 legislative session, the Legislative Assembly authorized DAS to issue an additional \$30,365,000.00 in Article XI-Q bonds and provided OJD with an additional \$30,000,000.00 in expenditure limitation authority for the Project (see Or. Laws 2023, ch. 596, sec. 1 and Or. Laws 2023, ch. 605, sec. 141, respectively). Further, in the 2024 regular legislative session, the Legislative Assembly authorized DAS to issue an additional \$15,170,000.00 in Article XI-Q bonds and provided OJD with an additional \$15,000,000 in expenditure limitation authority for the Project (see Or. Laws 2024, ch. 104, sec. 1 and Or. Laws 2024, ch. 114, sec. 436, respectively).

(i) On March 2, 2023, the City of Oregon City (the “City”) issued a Staff Report and Decision (the “Decision”) in File Nos. GLUA-22-00033, MAS-22-00004, and NROD-22-00020, approving with conditions the County’s application for Detailed Development Plan and Natural Resources Overlay District Review for the Project, new loop road, parking areas, utilities, landscaping, and other associated improvements. One of the conditions of the approval and marked as Condition of Approval No. 47 in the Decision, requires the County to construct certain capacity improvements at the intersection of Redland Road and Oregon Highway 213 in Oregon City that is off-site from the Project. This condition has not been met by the County as of the date of this Amendment to the Phase II Agreement.

(j) On March 27, 2025, the City of Oregon City and County entered into an “Intergovernmental Agreement Regarding Redland Road / OR 213 Improvements for the Courthouse Project” (the “Redlands Improvement IGA”). The Redlands Improvement IGA provides in Section 5.5 that “[t]he obligations in the Decision are the only obligations outstanding that the County must satisfy in order for the City to issue a permanent certificate of occupancy for the [. . .] Project.” The Redlands Improvement IGA provides in Section 7.3 that the City shall issue a final certificate of occupancy upon the earlier of (i) the County

satisfying all of its obligations under the Redlands Improvement IGA; (ii) the County satisfying all of the conditions of approval in the Decision (including any modifications made to the Decision); or (iii) the City calling upon and receiving payment of an amount not to exceed \$3.6 million from an approved bond or irrevocable letter of credit provided by the County to the City (“Redland/213 Improvements Bond”).

(k) On **April (insert date), 2025**, the City issued a temporary certificate of occupancy to the County for the Project.

(l) The parties agreed to enter into a Phase III Funding Agreement to address the County’s responsibility to ensure a permanent certificate of occupancy is obtained for the Project.

(m) On **April 3, 2025**, the County provided the City with an approved Redland/213 Improvements Bond.

(n) The Oregon Legislative Assembly may authorize additional funding for the Project, but the State has no present obligation of any kind to provide additional funding, other than the State Funds.”

- 6.** Section 6(b)(viii) and 6(b)(ix) are deleted in their entirety and replaced with the following three sections:

“(viii) The County submitted a Spending Plan to the State on December 9, 2022. The Spending Plan provided estimated quarterly payments of State Bond proceeds with their expected expenditure itemizations for the Project starting after the closing date of the State Bonds and continuing over a period not to exceed three years in an amount totaling the not-to-exceed Article XI-Q bonds amount of \$94,500,000.00. The Spending Plan included anticipated payments for Project Agreement Costs and Non-Project Agreement Costs, including the State’s Occupancy Readiness Milestone Payment.

(ix) In connection with the additional State Bond funding approved in 2023 and 2024, the County shall submit an updated Spending Plan to the State in form and substance acceptable to the State and when requested by the State (“Updated Spending Plan”). The Updated Spending Plan is presently anticipated to be due no later than January 15, 2025. The Updated Spending Plan shall provide estimated quarterly payments of State Bond proceeds with their expected expenditure itemizations for the Project starting after the closing date of the State Bonds and continuing over a period not to exceed three years in an amount totaling the not-to-exceed Article XI-Q bonds amount of \$139,500,000. The Updated Spending Plan shall include anticipated payments for Project Agreement Costs and Non-Project Agreement Costs, including the State’s Occupancy Readiness Milestone Payment.

(x) The County shall require the Project Company to comply with all Initial Technical Requirements and attach and incorporate such Initial Technical Requirements to the Project Agreement.”

7. Section 7(b), maximum State Contribution for State Funds”, is deleted in its entirety and replaced with the following:

“(b) Maximum State Contribution for State Funds. Unless the amount of State Funds is increased after the Effective Date, the State’s maximum monetary obligation with respect to this Phase II shall not exceed \$139,500,000.00, for both the not-to-exceed \$8,200,000.00 for FFE Costs and the not-to-exceed \$131,300,000.00 for all Authorized State Costs other than FFE Costs.

In the event that the FFE Costs will exceed \$8,200,000.00, the County shall have no obligation to provide FFE in excess of \$8,200,000.00 unless OJD, in its sole discretion provides additional funding for the FFE.

In the event that the Authorized State Costs, other than FFE Costs of this Phase II exceed the \$131,300,000.00 and the parties have not amended this Phase II Agreement to increase the amount of State Funds for the payment of the excess costs, 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.”

8. The following new subsection is inserted at the end of Section 10(b):

“(iv) Any costs associated with obtaining or renewing and extending any temporary certificates of occupancy.”

9. Section 10(b)(iii) is deleted in its entirety and replaced with the following:

“(iii) Costs for road improvements not required by City of Oregon City or not directly related to the Project. Without limiting the generality of the prior sentence, all costs for any road improvements not contained within the Project Parcel are excluded from Authorized Costs.”

10. Section 14 is amended to include the following:

“(f) During Bond Defeasance. Except as set forth above in this Section, after execution of this Phase II Agreement and before the defeasance or payment in full, including at redemption, of State Bonds, County shall not make any changes or modifications to the State Premises or make any changes, modification, or adjustment to State’s ability to occupy, enjoy, operate, and control the State Premises without obtaining prior written approval of the State.”

11. Section 15 is amended to include the following:

“(g) During this Phase II, the parties shall finalize and enter into an agreement for the transfer of FFE to OJD (substantially in the form attached to this Agreement in **Exhibit D- Agreement Form for Transfer of Furniture, Fixtures, and Equipment**), and in accordance with the provisions of this Section 15.

12. Section 17 is deleted in its entirety and replaced with the following:

“**17. Execution of Leases.** During this Phase II, the parties shall finalize and enter into the OJD Lease (substantially in the form attached to this Agreement in **Exhibit E- OJD Lease Form**), and the County shall enter into a Colocation Lease with each of the Colocation Agencies, in accordance with the provisions of Section 19 of the Master Agreement and substantially on the same terms as the OJD Lease with the exception of the right to expansion space and rent-free term extensions. OJD may require full execution of the OJD Lease and Colocation Leases as a pre-condition to the payment of the State’s Occupancy Readiness Milestone Payment. Notwithstanding the foregoing, (a) OJD shall not unreasonably withhold, condition or delay its approval and execution of the OJD Lease and (b) the County shall not unreasonably withhold, condition or delay its approval and execution of the OJD Lease or the Colocation Leases.

13. Section 18(f) is deleted in its entirety and replaced with the following:

“(f) In the event that, pursuant to Section 18(b) above, the Independent Building Expert determines that the Project has been successfully completed, but the State, pursuant to Section 18(c) above, reasonably determines that the Phase Work listed in item #9 of **Exhibit A** or the Benchmark listed as item #9 on **Exhibit B** have not been fully completed as required by the Funding Agreements or in the event there are Punch List items, the State may retain from the State’s Occupancy Readiness Milestone Payment, an amount reasonably determined by the State to reflect the actual cost of completing the Phase Work item #9, the Benchmark item #9, and any Punch List items.”

14. **Exhibit A** (Phase Work for Phase II) and **Exhibit B** (Benchmarks for Phase II) of the Phase II Agreement are deleted in their entirety and replaced with **Amended Exhibit A** (Phase Work for Phase II) and **Amended Exhibit B** (Benchmarks for Phase II) attached to this Amendment.

15. The Phase II Funding Agreement is amended to include **Exhibit D** and **Exhibit E**, each attached to this Amendment.

The State and the County, by execution of this Amendment, each hereby acknowledge that each has read this Amendment, understands it and agrees to be bound by its terms and conditions. The Parties agree that by the exchange of this Amendment electronically, each has agreed to the use of electronic means, if

applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intend to execute this agreement, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

**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:

Print Name: Wendy Johnson

Title: Sr. Assistant Attorney General, Oregon Department of Justice

Email approval dated [xx] on file with DAS and OJD

Clackamas County, Oregon (“County”):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

AMANDA KELLER, ASSISTANT COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
Amanda Keller, Assistant County Counsel Date

Amended Exhibit A
Phase Work for Phase II

- 1)** Complete and provide a copy of Request for Proposal (RFP) for the Project Company
- 2)** Provide copy of the successful proposer's response to the RFP for the Project Company
- 3)** Complete and provide copy of the fully executed Project Agreement
- 4)** Complete and provide copy of the Initial Technical Requirements
- 5)** Complete and provide the Project Schedule
- 6)** Complete and provide the Project Budget
- 7)** Complete Project Parcel due diligence and provide documentation of completion
- 8)** Obtain approval from the City of Oregon City and any other government agency of any necessary land use permits
- 9)** Except for the issuance of a permanent certificate of occupancy pursuant to the Funding Agreement for Phase III, complete the Project, as evidenced by a temporary certificate of occupancy from the City of Oregon City and determination by the County, acting by and through the Independent Building Expert, and the State that the Project was constructed as required under the Funding Agreements including, without limitation, that the Project was completed in accordance with the Initial Technical Requirements, including any Material Changes approved by OJD or the Colocation Agencies, as applicable.
- 10)** The County has entered into a Phase Funding Agreement for Phase III with OJD and DAS

Amended Exhibit B
Benchmarks for Phase II

- 1) County has entered into OJD Lease
- 2) County has entered into a Colocation Lease with each Colocation Agency
- 3) County has entered into the Agreement for Transfer of Furniture, Fixtures, and Equipment
- 4) County has provided complete copy of the Spending Plan (see Section 6(b)(viii))
- 5) County has provided a complete copy of the Updated Spending Plan (see Section 6(b)(ix))
- 6) City of Oregon City issuance of temporary certificate of occupancy for the Project
- 7) The County has entered into a Phase Funding Agreement for Phase III with OJD and DAS
- 8) Complete and provide a copy of permit set of the design documents
- 9) County has completed the Phase Work for Phase II in accordance with the Initial Technical Requirements, including any Material Changes approved by OJD or the Colocation Agencies, as applicable

Exhibit D
AGREEMENT FORM FOR TRANSFER OF FURNITURE, FIXTURES, AND
EQUIPMENT

AGREEMENT FOR TRANSFER OF FURNITURE, FIXTURES, AND EQUIPMENT

This Agreement for Transfer of Furniture, Fixtures, and Equipment (the “Agreement”) is made and entered into as of [Effective Date] (the “Effective Date”) by and between Clackamas County, a political subdivision of State of Oregon (“County”), and State of Oregon, acting by and through its Oregon Judicial Department (“OJD”). County and OJD are collectively referred to as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, County purchased certain furniture, fixtures, and equipment as more specifically described in **Attachment A** of this Agreement (collectively, the “FFE”) as part of County responsibilities under the following agreements: (1) the Amended and Restated Master Funding Agreement, OJD Contract No. 190071-Restate/Amend 1 dated February 28, 2022, as amended from time to time; (2) the Phase I Funding Agreement effective as of June 27, 2019, as amended from time to time, OJD Contract No. 190072; (3) the Phase II Funding Agreement effective as of August 24, 2022, as amended from time to time, OJD Contract No. 230010; and (4) the Phase III Funding Agreement dated as of April [REDACTED], 2025, as amended from time to time, OJD Contract No. 250155 collectively (the “Funding Agreement”).

As of the Effective Date of this Agreement, County has either delivered the FFE to OJD or installed the FFE in OJD Premises located at 1000 Courthouse Road, Oregon City, OR 97045.

County now desires to transfer ownership, title, and warranties (if transferrable) of the FFE to OJD, and OJD agrees to accept such transfer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated into this Agreement, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

1. Transfer of Ownership and Title

1.1 As of the Effective Date, County hereby transfers, assigns, and conveys to OJD all its ownership, title, and interest to the FFE.

1.2 OJD accepts such transfer, assignment, and conveyance of the FFE and assumes full ownership as of the Effective Date.

1.3 County shall deliver to OJD all paperwork, owner's manuals, and warranties to OJD on or before the Effective Date.

2. Warranties

2.1 County shall transfer to OJD any manufacturer warranties, service warranties, or other warranties related to the FFE (the "Warranties") to the extent such Warranties are transferrable.

2.2 If any Warranties are not transferrable, County agrees to maintain and administer the Warranties on behalf of OJD at no additional cost to OJD.

3. Responsibilities for Repair and Maintenance

3.1 County shall be responsible for the repair, maintenance, and upkeep of the FFE up to and including the Effective Date.

3.2 Effective from the Effective Date, OJD shall be solely responsible for the repair, maintenance, and upkeep of the FFE.

4. Representations and Warranties

4.1 By County: County represents and warrants:

4.1.1 It has good and marketable title to the FFE, free and clear of any liens or encumbrances.

4.1.2 It has the authority to transfer ownership of the FFE to OJD.

4.1.3 OJD has reimbursed the County in full for all the costs associated with procurement, delivery, installation, maintenance, and transfer of title and warranties of the FFE.

4.1.4 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.

4.2 By OJD. OJD represents and warrants that it accepts the FFE "as is," except as expressly provided herein, and assumes all risk and liability associated with the ownership and use of the FFE after the Effective Date.

5. Parties' Contribution for Third-Party Claims; Indemnification by Third Parties.

5.1 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 including, without limitation, third-party claims for infringement of intellectual property rights (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, 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 with respect to the Third-Party Claim.

5.2 OJD Contribution: With respect to a Third-Party Claim for which OJD is jointly liable with County (or would be if joined in the Third-Party Claim), OJD 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 OJD on the one hand and of 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 OJD 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. OJD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OJD had sole liability in the proceeding.

5.3 County Contribution: With respect to a Third-Party Claim for which County is jointly liable with OJD (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 OJD in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OJD 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 OJD 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 County had sole liability in the proceeding.

5.4 Other Claims: The Parties shall take all reasonable steps to cause their contractor(s) that are not units of County or OJD 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, 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 the contractor's fault.

6. Miscellaneous

6.1 Notice.

6.1.1 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 6.1.2 below to the address of the Parties set forth in Section 6.1.3 below, unless a Party modifies its address by notice to the other Parties. The phone numbers listed in Section 6.1.3 below are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Agreement.

6.1.2 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 five 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 Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

6.1.3 Addresses:

County	OJD
NAME County	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	CITY STATE ZIP CODE
Email:	Email:
Phone:	Phone:
<i>With copy to:</i>	<i>With copy to:</i>
TITLE	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	Salem, OR 97301
Email:	Email:
Phone:	Phone:

6.2 Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any Claim between OJD (or any other agency or department of the State of Oregon) and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon; provided, however, if a Claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section or any other provision of this Agreement 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.

6.3 Records Maintenance; Review and Audit.

6.3.1 The County shall maintain all financial records relating to the FFE in accordance with generally accepted accounting principles, consistently

applied. In addition, the County shall maintain any other records pertinent to the FFE in such a manner as to clearly document the County's performance. The County acknowledges and agrees that 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 the FFE, 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 6.3.3 below.

6.3.2 Upon request, the County shall promptly provide OJD with any other such information regarding the FFE as OJD may require.

6.3.3 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, as defined in the Funding Agreement, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

6.4 Survival: All provisions of this Agreement that would reasonably be expected to survive the expiration or earlier termination of this Agreement shall do so.

6.5 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 this Agreement did not contain the particular term or provisions held to be invalid.

6.6 Waiver: The failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

6.7 Ambiguities: Each Party has participated fully in the review and revision of this Agreement 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.

6.8 Entire Agreement: This Agreement constitutes the entire agreement between the Parties concerning the transfer of the FFE and supersedes all prior discussions and agreements.

6.9 Amendments: This Agreement may be amended only by a written document signed by both Parties.

6.10 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 purchase and maintenance of the FFE is not an obligation of OJD. The County shall not represent that it has the power or authority to obligate OJD.

6.11 Parties; No Third-Party Beneficiaries. 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.

6.12 Electronic Signatures and Counterparts: This Agreement and any amendments hereto may be executed via electronic signature and in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COUNTY

By: _____

Name: _____

Title: _____

Date: _____

Reviewed for County

FIRST NAME, LAST NAME - COUNTY ATTORNEY
FOR NAME COUNTY, OREGON:

By: _____

NAME, TITLE

OJD

By: _____

Name: _____

Title: _____

Date: _____

Attachment A
FURNITURE, FIXTURES, AND EQUIPMENT
[insert detailed list]

Exhibit E
OJD Lease Form

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Agreement**”) is made as of MONTH XX, XXXX (the “**Effective Date**”), by and between Clackamas County, an Oregon political subdivision (“**County**”) and the State of Oregon, acting by and through the Oregon Judicial Department (“**OJD**”). County and OJD are each a “**Party**” and together the “**Parties.**”

RECITALS

- A. County is the owner of the Clackamas County Courthouse, located at 1000 Courthouse Road, Oregon City, OR 97045 in Oregon, Oregon, Clackamas County (the “**Courthouse**”).
- B. Pursuant to ORS 1.185 and 1.187, the counties in the State of Oregon provide courthouse facilities for the circuit courts, including suitable and sufficient courtrooms, offices, and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury rooms.
- C. Pursuant to ORS 1.185 and 1.187, OJD operates the State of Oregon’s circuit courts and provides all supplies, materials, equipment and other property necessary for the operation of the circuit courts.
- D. Sections 8 and 9, chapter 705, Oregon Laws 2013 and Section 64, chapter 723, Oregon Laws 2013, as amended from time to time (the “**Courthouse Act**”), authorize the State’s sale of Article XI-Q bonds to finance certain capital costs related to counties’ acquisition of land for and construction of county courthouses.
- E. Nothing in this Agreement shall mean or be construed to mean that the Parties’ obligations and State’s rights under ORS 1.185, 1.187, the Courthouse Act, or any other laws have been modified or waived.
- F. Pursuant to the Courthouse Act, the State contributed funds from the State Bonds for certain capital costs related to County’s acquisition of land for and construction of the Courthouse as consideration for OJD’s long-term interest in premises in the Courthouse for the operation of the Circuit Court.
- G. The Parties’ agreements regarding the use of the State Bonds for the planning and construction of the Courthouse and OJD’s long-term interest in a premises in the Courthouse were memorialized in the following funding agreements between County, and OJD and the Oregon Department of Administrative Services (“DAS”) (collectively the “**Funding Agreement**”):

- a. Amended and Restated Master Funding Agreement dated February 28, 2022, as amended from time to time, OJD Contract No. 190071-Restate/Amend 1 ("MFA")
- b. Phase I Funding Agreement, effective as of June 27, 2019, as amended from time to time, OJD Contract No. 190072
- c. Phase Funding Agreement for Phase II, effective as of August 24, 2022, as amended from time to time, OJD Contract No. 230010
- d. Phase Funding Agreement for Phase III, dated **as of April**, 2025, as amended from time to time, OJD Contract No. 250155.

H. Pursuant to Section 19 of the MFA, County is required to enter into certain agreements for the use and control of the Courthouse with OJD and other Collocated Agencies. This Agreement constitutes the OJD Lease.

TERMS AND CONDITIONS

In consideration of the above Recitals, which are incorporated into this Agreement, the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. **Defined Terms.** Terms used but not otherwise defined in this Agreement shall have the meaning assigned to such terms in the Funding Agreement.
2. **Description.**
 - 2.1. **Premises.** County hereby conveys and grants to OJD, and OJD hereby accepts from County, those portions of the building identified as OJD space (the "**Premises**") on **Exhibit A, Floor Plans**, located in the Courthouse as shown and legally described on **Exhibit B, Legal Description and Property Map**. As of the Effective Date of this Agreement, the Premises are approximately 214,534 square feet. If OJD exercises its right to expand into any Expansion Space (as defined in and pursuant to Section 2.3 below), then that Expansion Space shall become part of the Premises.
 - 2.2. **Grant of Rights.** County conveyance and grant to OJD of the Premises includes the exclusive rights to control and use the Premises for the Term of this Agreement. This grant includes the right of control over any portions of the Courthouse that were constructed with State Funds including without limitation Courthouse Common Areas (defined in Section 4.1 below).
 - 2.3. **Right of Expansion.** During the Initial Term (defined below), in the event any portion of the Courthouse outside of the Premises becomes available for use (the "Expansion Space"), OJD shall have the option(s) (each an "Expansion Option"), to expand the Premises to include the Expansion Space. OJD's use and occupancy of the Expansion Space shall be on the same terms and conditions of OJD's use and occupancy of the existing Premises under this Agreement.

3. Term.

3.1. Initial Term. The “**Initial Term**” of this Agreement shall begin on **MONTH DAY YEAR** (the “**Commencement Date**”) and continue for the later of: (a) 25 years; or (b) until defeasance or payment in full, including redemption, of the State Bonds. The word “**Term**” is used in this Agreement to describe the Initial Term and any Extension Term (as defined in Section 3.2 below).

3.2. Extension of Term. After the Initial Term, OJD and County may agree to extend the Term of this Agreement for consecutive terms (each an “**Extension Term**”). If the Parties agree to extend the Term, all terms and conditions of this Agreement shall apply to any extension except for the Term dates.

4. Courthouse Common Areas.

4.1. Generally. In addition to the Premises, the Courthouse contains portions of the building identified as common areas on **Exhibit A, Floor Plans**, such as the loading zones, lobby, and public restrooms that are provided by County for the appurtenant, nonexclusive use of County, OJD, Colocation Agencies, other tenants of the Courthouse and their respective agents, employees and invitees, or the general public (the “**Courthouse Common Areas**”). OJD has the appurtenant, exclusive right to control and use the Courthouse Common Areas. Notwithstanding the prior sentence, OJD grants County, Colocation Agencies, other tenants of the Courthouse and their respective agents, employees and invitees, and the general public the nonexclusive right to use the Courthouse Common Areas, in common with other authorized users. Subject to the terms of this provision, OJD hereby delegates the day-to-day operational control of the Courthouse Common Areas to County provided such areas are maintained for appurtenant, nonexclusive common use. Any proposed changes, including, without limitation, changes in use or physical layout, in the Courthouse Common Areas must be approved by OJD. OJD may, in its reasonable discretion, revoke the delegations granted under this Section.

4.2. Alterations. County shall inform OJD of any plans to materially adjust or modify any portion of the Courthouse Common Areas at least 30 days prior to filing a permit application for the adjustment or modification work. County and OJD must consent in writing to any alterations to the Courthouse Common Areas that will have an adverse impact to OJD operations in the Courthouse.

5. Rent. OJD shall not pay any rent for the use and occupation of Premises and the Courthouse Common Areas during the Term of this Agreement.

6. Use of Premises.

6.1. OJD Use. OJD may use the Premises for any and all purposes related to the operation of the Clackamas County Circuit Court (the “**Court**”) and activities related

thereto, including, but not limited to, court operations, business operations, administrative support, office use, and OJD supplies and equipment storage.

6.2. County Use.

6.2.1. The County agrees that no portion of the Courthouse that was constructed using Article XI-Q bonds may be used for Private Use by a Private Person.

6.2.1.1. For the purposes of this Agreement, “Private Person” means any person or entity other than a state or local governmental unit or an individual not acting in a trade or business. Accordingly, a Private Person would include the federal government, for-profit organizations, non-profit organizations, and individuals who are acting in a trade or business capacity.

6.2.1.2. “Private Use” means, subject to certain exceptions, the use of a portion or all of the Courthouse by a Private Person if such use is other than as a member of the general public.

6.2.1.3. Private Use can include ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management contract, service or incentive payment contract, output contract, naming rights contract or other special arrangement) in such a manner as to set the Private Person apart from the general public.

6.2.1.4. Use by employees of the County solely in their capacity as employees ordinarily will not be considered Private Use.

6.2.2. County agrees that until the State Bonds (defined in the Funding Agreements) mature or full payment of the Defeasance Costs of the State Bonds, whichever occurs first, the Courthouse shall not be sold, leased, subleased, or otherwise transferred without prior written approval of OJD and the State to confirm that the proposed changes do not adversely impact the tax-exempt status of the Article XI-Q bonds.

7. Hours of Facility Operation. The Courthouse shall be open and fully accessible to the public during Normal Business Hours. “**Normal Business Hours**” means 7:30 a.m. to 5:00 p.m., Monday through Friday, except during federal or State of Oregon holidays. Court operating hours may differ from Courthouse operating hours.

8. Security and Safety. Pursuant to Oregon laws including but not limited to ORS 1.178, 1.180, 1.182, 1.185 and 1.187, the County is responsible for providing suitable and sufficient court facilities for OJD, including suitable and sufficient security for the Courthouse.

9. Maintenance, Repair and Utilities.

9.1. County’s Obligations. As part of its obligations under ORS 1.185 and 1.187, County shall perform all maintenance, repair and replacement suitable and sufficient to

provide and maintain the Courthouse and necessary for the operation of the Courthouse (including the Premises and the Courthouse Common Areas). Further, County shall provide, at its own expense, all utilities and services, including, without limitation, maintenance and janitorial services, to the Courthouse including, without limitation, the Premises and Courthouse Common Areas.

9.2. OJD's Obligations. Except as provided in ORS 1.185(1), OJD shall provide the supplies, materials, equipment and other personal property necessary for the operation of the Court as required by ORS 1.187.

10. Quiet Enjoyment. Subject to the terms and conditions of this Agreement, OJD shall peaceably and quietly have, hold, and enjoy the Premises during the Term, without any interruption or disturbance from County or any party claiming by, through or under County.

11. Force Majeure. If the performance by either Party of any provision of this Agreement is prevented or delayed by any strikes, lockouts, labor disputes, other public emergency, acts of God, fire or other casualty, or other cause beyond the reasonable control of the Party from whom performance is required (each an “**Event of Force Majeure**”), the Party will be excused from such performance for the period of time equal to the time of that prevention or delay. The Party so excused shall, upon cessation of the Event of Force Majeure, diligently pursue performance of its obligations under this Agreement.

12. Parties' Contribution for Third-Party Claims; Indemnification by Third Parties.

12.1. 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, 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 with respect to the Third-Party Claim.

12.2. OJD Contribution. With respect to a Third-Party Claim for which OJD is jointly liable with County (or would be if joined in the Third-Party Claim), OJD 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 OJD on the one hand and of 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 OJD 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. OJD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OJD had sole liability in the proceeding.

12.3. County Contribution. With respect to a Third-Party Claim for which County is jointly liable with OJD (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 OJD in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OJD 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 OJD 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 County had sole liability in the proceeding.

12.4. Other Claims. The Parties shall take all reasonable steps to cause their contractor(s) that are not units of County or OJD 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, 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 the contractor's fault.

13. Notice.

13.1. 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 13.2 below to the address of the Parties set forth in Section 13.3 below, unless a Party modifies its address by notice to the other Parties. The phone numbers listed in Section 13.3 below are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Agreement.

13.2. 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 five 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 Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

13.3. Addresses:

County	OJD
NAME County	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	CITY STATE ZIP CODE
Email:	Email:
Phone:	Phone:
<i>With copy to:</i>	<i>With copy to:</i>
TITLE	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	Salem, OR 97301
Email:	Email:
Phone:	Phone:

14. **Miscellaneous.**

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

14.2. Calculation of Days. Any reference in this Agreement to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or State of Oregon holiday.

- 14.3. No Third-Party Beneficiaries.** County and OJD 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.
- 14.4. 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 this Agreement did not contain the particular term or provisions held to be invalid.
- 14.5. Waiver.** The failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.
- 14.6. Consent.** Unless otherwise specifically stated herein, any consent by a Party shall not be unreasonably withheld, conditioned or delayed.
- 14.7. Governing Law; Consent to Jurisdiction.** This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any Claim between OJD (or any other agency or department of the State of Oregon) and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon; provided, however, if a Claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section or any other provision of this Agreement 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.
- 14.8. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 14.9. Amendments.** No amendment, waiver, consent, modification or change of terms of this Agreement shall bind a Party unless in writing and signed by all Parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
- 14.10. Electronic Signatures and Counterparts.** This Agreement and any amendments hereto may be executed via electronic signature and in two or more counterparts,

each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

14.11. Survival. All provisions of this Agreement that would reasonably be expected to survive the expiration or earlier termination of this Agreement shall do so.

14.12. Insurance: Upon the commencement of this Agreement 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 Courthouse in an amount at least equal to the amount of the Project Financing (as defined in the Master Funding Agreement and subsequent Phase Agreement to it). Insurance proceeds from an insured loss affecting the Courthouse shall be exclusively used by the County to rebuild, repair and restore the Courthouse 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 Courthouse 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 insurance obligations through its existing self-insurance program, provided that 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 insurance coverages.

14.13. Defeasance Costs. County shall be liable for any County breach of this Agreement. Upon the County's breach, OJD remedies include the right to recover from the County any General Funds or the Defeasance Costs for any State Bonds.

14.14. No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

14.15. Limitation of Liabilities. This Agreement is expressly subject to the debt limitation set forth in Article XI of the Oregon Constitution, and is contingent upon funds being

appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

14.16. Exhibits. The Exhibits listed below are incorporated as part of this Agreement:

Exhibit A: Floor Plans

Exhibit B: Legal Description and Property Map

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

COUNTY:

Clackamas County, an Oregon political subdivision:

Print Name: _____

Title: _____

Signature: _____

Reviewed for County

FIRST NAME, LAST NAME - COUNTY ATTORNEY
FOR NAME COUNTY, OREGON:

By: _____

NAME, TITLE

OJD:

The State of Oregon, acting by and through the Oregon Judicial Department

Print Name: _____

Title: _____

Signature: _____

OJD Legal Approval:

By: _____

Title: _____

Date: _____

**Exhibit A
Floor Plans**

[to be inserted]

Exhibit B
Legal Description and Property Map

Legal Description: Tract "B", RED SOILS, in the City of Oregon City, County of Clackamas and State of Oregon EXCEPTING THEREFROM that portion conveyed to the City of Oregon City for street dedication in Deed recorded August 24, 1993 as Fee No. 93-061053. FURTHER EXCEPTING THEREFROM that portion conveyed to the City of Oregon City for street dedication in Deed recorded July 19, 2012 as Fee No. 2012-045338. FURTHER EXCEPTING THEREFROM that portion conveyed to the City of Oregon City for street dedication in Deed recorded July 19, 2012 as Fee No. 2012-045339.



Attachment C

CLACKAMAS COUNTY COURTHOUSE PHASE FUNDING AGREEMENT FOR PHASE III

THIS CLACKAMAS COUNTY COURTHOUSE PHASE FUNDING AGREEMENT FOR PHASE III (this “Phase III 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 (the “County”).

Project Summary

Project Title: Clackamas County Courthouse

County: Clackamas County

Phase: Phase III

State Funds for Phase III: No Funding

Phase Completion Date: December 30, 2029

Terms and Conditions

1. Effective Date and Term. This Phase III Agreement is effective on the date all required signatures and approvals are obtained (“Effective Date”). The term of this Phase III Agreement shall be from the Effective Date through the date the parties fulfill their obligations hereunder, unless it is sooner terminated pursuant to the provisions of the Master Agreement.

2. Agreement Documents. This Phase III Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, less all Exhibits; then **Exhibit A** (Phase Work for Phase III) and **Exhibit B** (Benchmarks for Phase III). The foregoing Exhibits and any documents referenced in those Exhibits are incorporated herein by this reference.

3. Background.

- (a)** Effective as of February 28, 2022, the Parties entered into an Amended and Restated Master Funding Agreement, as amended from time to time, OJD Contract No. 190071-Restate/Amend 1 (“Master Agreement.”)
- (b)** Effective as of June 27, 2019, the Parties entered into a Phase I Funding Agreement, as amended from time to time, OJD Contract No. 190072.
- (c)** Effective as of August 24, 2022, the Parties entered into a Phase II Funding Agreement, as amended from time to time, OJD Contract No. 230010.

- (d) The Master Agreement, the Phase I Funding Agreement, Phase II Funding Agreement, and this Phase III Funding Agreement are collectively referred to as the “Funding Agreement.”

4. Phase II Funding Agreement and Master Agreement. As required in the Phase II Funding Agreement, the parties enter into this Phase III Agreement. This Phase III Agreement incorporates all the terms of the Master Agreement as if fully set forth herein. In the event of a conflict between this Phase III Agreement and the Master Agreement, this Phase III Agreement shall control.

5. Definitions.

- (a) Phase Specific Definitions. The following capitalized terms defined in Section 4 of the Master Agreement shall have the following meanings for the purposes of this Phase III Agreement:
 - i. “Benchmarks” means the items set forth in **Exhibit B**.
 - ii. “County Contribution” means the amount of not less than \$0.00, for this Phase III that the County has agreed to provide under this Phase III Agreement.
 - iii. “Phase Completion Date” means **December 30, 2029** (or as may be extended by the agreement of the parties), which is the latest date by which a permanent certificate of occupancy shall have been issued for the Project.
 - iv. “Phase Work” means the County’s work for the Project, including those items set forth in **Exhibit A**.
 - v. “State Funds” means the not-to-exceed monetary contribution of **\$0.00** for this Phase III, that the State has agreed to provide under this Phase III Agreement. For the avoidance of doubt, the Parties agree there are no State Funds provided for this Phase III.

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

- (a) The State represents, warrants and covenants as follows:
 - (i) All representations, warranties, and covenants of the State under the Funding Agreement are true and correct as of the Effective Date of this Phase III Agreement.
 - (ii) This Phase III Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Phase III 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) All representations, warranties, and covenants of the County under the Funding

Agreement are true and correct as of the Effective Date of this Phase III Agreement.

- (ii) This Phase III 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.
- (iii) The County understands, acknowledges and agrees that the State has no obligation of any kind to provide funding under this Phase III Agreement.
- (iv) The County shall cooperate with any and all consultants or other contractors hired by OJD in connection with the Project.

7. Proportionate Share. The parties acknowledge and agree that since there are no Authorized Costs under this Phase III Agreement, there is no Proportionate Share of the Authorized Costs for this Phase III.

8. Phase Work.

- (a) The County shall perform all Phase Work listed on **Exhibit A**.
- (b) The County shall perform the Phase Work in strict compliance with all applicable requirements of Section 17 of the Master Agreement.

9. Benchmarks.

- (a) The County shall meet the Benchmarks listed on **Exhibit B** by the Phase Completion Date.
- (b) The County shall use all efforts to timely meet the Benchmarks.

10. Phase Work Authorized Costs. The parties acknowledge and agree there are no Authorized Costs for this Phase III.

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

- (a) Phase Work; and
- (b) 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):**

Signature: _____
Print Name: _____
Title: _____
Date: _____

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

Signature: _____
Print Name: _____
Title: _____
Date: _____

Approved as to Legal Sufficiency for the State:

Print Name: Wendy Johnson
Title: Sr. Assistant Attorney General, Oregon Department of Justice
Email approval dated _____, 2025 on file with DAS and OJD

Clackamas County, Oregon (County):

Signature: _____
Print Name: _____
Title: _____
Date: _____

Reviewed for the County:

AMANDA KELLER, ASSISTANT COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
Amanda Keller, Assistant County Counsel

Exhibit A
Phase Work for Phase III

- 1) **Monthly Progress Reports.** Unless and until the City of Oregon City has issued a permanent certificate of occupancy for the Project, County shall submit to State Project Monitor a monthly Progress Report within 10 Calendar Days after the end of each month. Each monthly Progress Report shall, at a minimum, provide the following:
 - a. Describe the progress toward the satisfaction of Condition of Approval No. 47 in the Staff Report and Decision in Files Nos. GLUA-22-00033, MS-22-00004, and NROD-22-00020 (the “Condition of Approval No. 47”);
 - b. Identify schedule of all activities planned for the upcoming period related to Condition of Approval No. 47;
 - c. Identify critical path issues and proposed resolution related to Condition of Approval No. 47;
 - d. Identify problems and issues that arose related to Condition of Approval No. 47 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;
 - e. Summarize resolution or mitigation raised regarding Condition of Approval No. 47 in previous Progress Reports and their status;
 - f. Identify requested and/or required actions by the City of Oregon City or the Oregon Department of Transportation related to the Condition of Approval No. 47 for the next month;
 - g. Provide complete copies of any new extensions to the temporary certificate of occupancy as well as copies of any other changes, including revocation of the temporary certificate of occupancy;
 - h. Identify problems and issues that arose related to continuation or extension of the temporary certificate of occupancy 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;
 - i. Summarize resolution or mitigation raised regarding the temporary certificate of occupancy in previous Progress Reports and their status;
 - j. Provide complete copies of any proposed or executed amendments or any other changes in or to the Intergovernmental Agreement between Clackamas County and the City of Oregon City Regarding Redlands Road/OR 213 Improvements for the Courthouse Project (“Redlands Improvement IGA.”);
 - k. Provide complete copies of any proposed or executed agreements with the Oregon Department of Transportation related to Condition of Approval No. 47; and
 - l. Provide complete copies of any proposed or executed changes to the Redland/213 Improvements Bond as that term is defined in the Phase II Agreement.
- 2) **Permanent Certificate of Occupancy.** Obtain a permanent certificate of occupancy from the City of Oregon City for the Project by no later than December 30, 2029.

Exhibit B
Benchmarks for Phase III

- 1) County has completed the Monthly Progress Reports listed as Phase Work for Phase III.
- 2) City of Oregon City has issued a permanent certificate of occupancy for the Project.

COLOCATION LEASE AGREEMENT

**DHS Colocation Premises
Clackamas County Courthouse**

THIS COLOCATION LEASE AGREEMENT (this “**Lease**”) is made on _____, 20____ (the “**Effective Date**”), by and between Clackamas County, an Oregon political subdivision (“**County**”) and the State of Oregon, acting by and through its Department of Human Services (“**Agency**”). County and Agency are each a “**Party**” and together the “**Parties.**”

RECITALS

- A. County is the owner of the Clackamas County Courthouse, located at 1000 Courthouse Road, Oregon City, Oregon, Clackamas County (the “**Courthouse**”).
- B. Pursuant to ORS 1.185 and 1.187, the counties in the State of Oregon provide courthouse facilities for the circuit courts, including suitable and sufficient courtrooms, offices and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury rooms.
- C. Pursuant to ORS 1.185 and 1.187, the Oregon Judicial Department (“**OJD**”) operates the circuit courts for the State of Oregon (the “**State**”) and provides all supplies, materials, equipment and other property necessary for the operation of the circuit courts.
- D. Sections 8 and 9, chapter 705, Oregon Laws 2013 and Section 64, chapter 723, Oregon Laws 2013, as amended from time to time (the “**Courthouse Act**”), authorize the State’s sale of Article XI-Q bonds to finance certain capital costs related to counties’ acquisition of land for and construction of county courthouses.
- E. Pursuant to the Courthouse Act, the State contributed funds from the sale of Article XI-Q bonds (the “**State Bond Funds**”) for certain capital costs related to County’s acquisition of land for and construction of the Courthouse.
- F. Such use of the State Bond Funds was memorialized in the following “**Funding Agreements**” between County, OJD and the State, acting by and through its Department of Administrative Services:

Document	Date	Amendments
Amended and Restated Master Funding Agreement	February 28, 2022	
Phase I Funding Agreement	February 28, 2019	June 27, 2019 June 30, 2020 June 30, 2021

Phase II Funding Agreement	August 10, 2022	
----------------------------	-----------------	--

G. The Funding Agreements contemplated County's lease of space in the Courthouse to OJD, as well as to two "**Colocation Agencies**," specifically Agency and the State, acting by and through the Oregon Public Defense Commission ("**OPDC**"), in consideration for such State agencies' leasehold interests in the Courthouse, as follows:

1. Agency's leasehold interest in the "**Colocation Premises**" as shown on Exhibit A, pursuant to this Lease;
2. OJD's leasehold interest in the "**OJD Premises**" as shown on Exhibit B, pursuant to that certain [REDACTED] Lease dated [REDACTED] (the "**OJD Lease**"); and
3. OPDC's leasehold interest in the "**OPDC Premises**" as shown on Exhibit C, pursuant to that certain [REDACTED] Lease dated [REDACTED] (the "**OPDC Lease**").

H. The OJD Premises, the Colocation Premises and the OPDC Premises are collectively the "**State Premises**."

I. The Parties wish to memorialize their understandings regarding Agency's lease of the Colocation Premise.

TERMS AND CONDITIONS

In consideration of the above Recitals, which are incorporated into this Lease, the mutual promises contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. Colocation Premises. County hereby leases to Agency, as a Colocation Agency, and Agency hereby leases from County, the Colocation Premises. The Colocation Premises are approximately 2,816 (3,494 for OPDC) rentable square feet. The Premises expressly excludes the following portions of the Courthouse, which are not subject to the Lease: approximately 24,150 square feet for the Clackamas County District Attorney's offices and approximately 2,389 square feet for the Clackamas County law library.

2. Term.

2.1 Initial Term. The "**Initial Term**" of this Lease will begin on [REDACTED], 20[REDACTED] (the "**Commencement Date**") and continue until the **State Bonds** mature or full payment of the **Defeasance Costs** (as those terms are defined in the Funding Agreements) of the State Bond Funds, whichever occurs first, pursuant to the Funding Agreements. The date of full repayment of the Defeasance Costs, as determined by the Oregon Department of Administrative Services, will be deemed the end date of the Initial Term. The word "**Term**" is used in this Lease to describe the Initial Term and any Extension Term (as defined in Section 2.2 below).

2.2 Extension of Initial Term. The Parties may agree to extend the Term of this Lease for

additional, consecutive term(s) (each an “**Extension Term**”). All terms and conditions of this Lease for any Extension Term will be negotiated and agreed upon by the Parties prior to commencement of such Extension Term, provided that any such terms and conditions shall comply with applicable Laws and Ordinances (as defined in Section 14.3 below) at the time of an Extension Term.

3. Courthouse Common Areas.

3.1 Generally. The Courthouse contains certain areas and facilities outside the Colocation Premises, including, without limitation, [REDACTED], that are provided by County for the appurtenant, nonexclusive use of County, Agency, OJD, other tenants of the Courthouse and their respective agents, employees and invitees, or the general public (the “**Courthouse Common Areas**”). Agency has the appurtenant, nonexclusive right to use the Courthouse Common Areas, in common with other authorized users.

3.2 Alterations.

(a) County shall notify Agency of any plans to materially adjust or modify any portion of the Courthouse Common Areas at least thirty (30) days prior to the earlier of:

- (i) the filing of a permit application for the adjustment or modification work; or
- (ii) thirty (30) days prior to the commencement of the adjustment or modification work.

(b) Agency may provide input on any adverse impacts to Agency operations within fifteen (15) business days after receipt of County’s notice under Section 3.2(a) above. Upon delivery of Agency’s input, the Parties shall work in good faith to ensure that the material adjustments or modifications to the Courthouse Common Areas are performed in a manner to minimize interference with Agency’s use and enjoyment of the Courthouse, and are acceptable to Agency, before commencing such work. If the Parties are unable to reach an agreement regarding proposed alterations to Courthouse Common Areas, the Parties shall pursue dispute resolution as described in Section 28 below.

4. Option to Lease Surplus Space.

During the Initial Term of this Lease, if any portion of the Courthouse outside the State Premises (“**Surplus Space**”) becomes available for rent, Agency, in common with OJD and OPDC, has the unrestricted first option to lease the Surplus Space from County. Agency’s lease of any Surplus Space will be at no rent during the Initial Term.

5. Rent.

5.1 Initial Term. During the Initial Term of this Lease, Agency shall not pay any rent for the Colocation Premises, as may be expanded to include any Surplus Space.

6. Use of Colocation Premises. Agency may use the Colocation Premises for any and all purposes related to the operation of Agency and activities related thereto, including client business operations, administrative support, office use and Agency supplies and equipment storage.

7. Hours of Courthouse Operation. The Courthouse will be open and fully accessible to the public during Normal Business Hours. “**Normal Business Hours**” means 7:30 am to 5:30 pm, Monday through Friday, except federal or State holidays. Court operating hours may differ from Courthouse operating hours.

8. Agency’s Physical and Systems Access.

8.1 Physical Access.

(a) *Agency Staff.* Agency staff named on Agency’s after-hours access list shall have access to the Courthouse Common Areas and the Colocation Premises 24 hours per day, 7 days per week, 365 days per year. Prior to the Commencement Date, Agency shall prepare and deliver the access list to County, and shall deliver updated, current access lists to County throughout the Term of this Agreement.

(b) *IT Rooms.* As of the Effective Date of this Lease, Agency’s internet and telecom services are supplied through OJD’s server(s). In the event OJD discontinues its service of Agency’s internet and telecom services, information technology (IT) staff selected by Agency and pre-approved for security clearance by County shall have access to the following areas of the Courthouse outside the Colocation Premises 24 hours per day, 7 days per week, 365 days per year: [REDACTED] (collectively the “**IT Rooms**”). The Parties understand, acknowledge and agree that the IT Rooms are small; accordingly, the Parties will endeavor to have no more than three (3) staff members present in any one IT Room at any one time.

8.2 Systems Access.

(a) Subject to the limitations set forth in Section 8.1 above and Section 8.3 below, Agency shall have access 24 hours per day, 7 days per week, 365 days per year, to all peripheral devices in the Courthouse connected to Agency’s equipment and systems, including, without limitation, the following devices located within the Colocation Premises, provided they are “plug & play” devices, removable without disconnecting hard-wired cables above the ceiling grids:

- (i) sound-masking controllers;
- (ii) speakers used by Agency’s equipment and systems;
- (iii) microphones used by Agency’s equipment and systems;
- (iv) all Agency digital display monitors (installation or removal of display mounts in

locations requires prior coordination with Honeywell and County, with work subject to terms of the County's Courthouse Project Agreement);

(v) all sound systems owned by Agency; and

(vi) all video systems owned by Agency.

(b) Subject to the limitations set forth in Section 8.1 above and Section 8.3 below, Agency shall have access to and the ability to use and adjust the following, 24 hours per day, 7 days per week, 365 days per year:

(i) on-off switches and dimmers (to adjust lighting in the Colocation Premises); and

(ii) manual pulls and electronic controls (to adjust window coverings in the Colocation Premises).

8.3 Limitations on Agency Systems Access.

(a) If Agency or its manufacturer-certified technicians need to replace or remove for repairs any of the devices listed in Section 8.2(a) above, and such repair or replacement requires access above the ceiling grids, any repair or replacement work above the ceiling grids will be performed by County in accordance with Section 18 below.

(b) If Agency moves digital displays to locations requiring installation of new, additional power and data, the installation of the additional power and data will be performed by County in accordance with Section 18 below.

9. **Security and Safety.**

9.1 Generally. Pursuant to ORS 1.178, 1.180, 1.182, 1.185, County is responsible for providing suitable and sufficient court facilities for the State, including suitable and sufficient security for the Courthouse.

9.2 Events Outside of Normal Business Hours.

(a) *Notice to County.* If Agency intends to hold an Agency-sponsored or co-sponsored event on the Colocation Premises or in the Courthouse Common Areas outside of Normal Business Hours, Agency shall deliver a notice to County at least thirty (30) days prior to the proposed event. Upon delivery of the notice, the Parties shall work together to determine what County services are needed for the event.

(b) *Costs.*

(i) *Agency Events.* For events outside of Normal Business Hours that are sponsored by Agency, Agency will bear the costs incurred for additional security provided by County, additional operational costs and additional janitorial services directly related to

the event. Agency shall not charge any third party for use of the Colocation Premises without County's consent.

(ii) *Agency-County Events.* For events outside of Normal Business Hours that are sponsored by both County and Agency, the Parties shall proportionally bear the costs incurred for additional security provided by County, additional operational costs and additional janitorial services directly related to the event.

10. Access to Colocation Premises; Key Cards.

10.1 Access. Agency shall have access to the Colocation Premises 24 hours per day, 7 days per week, 365 days per year. County and Agency agree to provide updated lists of authorized personnel with access to the Courthouse each quarter (July 1, October 1, January 1, April 1).

10.2 Key Cards. County shall provide Agency with electronic access to the County-controlled Courthouse access control system.

11. Furniture, Fixtures and Equipment.

11.1 County's Obligations. County shall, throughout the Initial Term of this Lease, maintain, repair and replace the following (except for items that are Agency's personal property):

- (a) all fixtures and built-in equipment not owned by Agency, as shown on the as-built plans and record drawings for the Courthouse; and
- (b) all Courthouse security equipment, including magnetometers and x-ray equipment.

11.2 Agency's Obligations. The Agency shall submit a work request to the County in accordance with the procedures established by the County and Honeywell, as applicable.

12. Supplies.

12.1 County. County shall, at its own expense and throughout the Initial Term of this Lease, provide supplies for the Colocation Premises related to the every-day use of same, including, without limitation:

- (a) light bulbs;
- (b) fire extinguishers;
- (c) automated external defibrillators (AEDs), as located on the egress maps;
- (d) filters for bottle filling water stations; and
- (e) toilet paper, paper towels, soap and other such consumables reasonably related to the ordinary operation of the Colocation Premises and the Courthouse Common Areas.

12.2 Agency. Except as required to be supplied by County for the Courthouse pursuant to Section 12.1 above, Agency shall, at its own expense, purchase all supplies, materials, equipment and other such personal property needed for the operation of the Colocation Premises.

13. Utilities and Services.

13.1 Availability. County shall, subject to interruption by a Force Majeure Event (as defined in Section 24 below) or emergency repairs, and except for those services Agency will provide under Subsections 13.3 and 13.4, provide all utilities and services, including maintenance and janitorial services, to the Courthouse.

13.3 Internet and Telephone Service and Equipment.

(a) Agency shall, at its own cost and expense, obtain its own internet and telephone service for the Colocation Premises, including installation and monthly charges, and shall communicate directly with the providers of same regarding service issues or upgrades. County and Agency shall cooperate with each other, and with OJD, in connection with Agency's obtaining and installing new or additional internet or telephone services and equipment.

(b) Any additional or replacement internet or telephone service and equipment for the Colocation Premises will require County's confirmation that County's vaults have sufficient capacity to allow same.

13.4 Other Utilities and Services. In addition to the internet and telephone providers described in Section 13.3 above, Agency may, at its sole cost and expense (including any long-term operating costs), obtain other utilities and services for the Colocation Premises. County and Agency shall coordinate and cooperate with each other in connection with Agency's obtaining and installing additional utilities or services.

14. County's Maintenance, Repair and Replacement Obligations.

14.1 Generally. Pursuant to ORS 1.185, and except as specifically set forth in Section 14.2 below, County shall provide suitable and sufficient courtrooms, offices and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury room.

14.2 Exclusions from County's Obligations. County's maintenance, repair and replacement obligations Section 14.1 above do not include the following, which Agency shall maintain, repair and replace at Agency's sole cost and expense:

- (a) Agency's audio-video equipment, switch equipment and telephone equipment;
- (b) window treatments within the Colocation Premises that are provided by Agency.

14.3 Standards.

(a) County shall perform all maintenance, repair and replacement work promptly; ensure that such work is performed in a good and workmanlike manner and consistent with the maintenance of other County facilities and in accordance with all applicable federal, State and local laws, ordinances, codes, regulations and rules (“**Laws and Ordinances**”); and obtain all required permits and inspections for such work.

(b) County shall perform all maintenance, repair and replacement work in accordance with County’s maintenance standards and protocols as set forth in that certain [REDACTED] dated [REDACTED], as may be revised from time to time during the Term of this Lease (“**County’s Facilities Standards**”), and in accordance with Honeywell’s maintenance standards and protocols set forth in that certain Client Specific Operation Procedures dated [REDACTED] (“**Honeywell Facilities Standards**”) where applicable. County shall provide Agency with prior notice of any revisions to County’s Facilities Standards. Promptly after revision, County shall provide Agency with a copy of the updated County’s Facilities Standards.

15. Reserved.

16. Reserved.

17. Reserved.

18. Additional Services for Colocation Premises.

18.1 Additional Services. For any work or services on the Colocation Premises that are not included in County’s maintenance, repair or replacement obligations under Sections 14 above (such work or services being “**Additional Services**”), County may, in its sole discretion, and at Agency’s request, perform such Additional Services pursuant to this Section 18. All Additional Services will be performed in accordance with the standards set forth in Sections 14 above.

18.2 Estimates. If Agency requests Additional Services, and County agrees to provide such Additional Services, County shall provide, at no cost to Agency, an estimate of the costs to perform such Additional Services, based on County’s then-current service rates. Upon Agency’s acceptance of the estimate, and the Parties agreement on a not-to-exceed amount for the Additional Services, County shall perform the Additional Services.

18.3 County’s Service Providers. the Additional Services may be performed by a third party, such as County’s Service Providers (as defined in Section 19.1 below).

19. Parties’ Service Providers.

19.1 Service Providers. Each Party may contract with service providers (“**Service Providers**”) to perform any of that Party’s maintenance, repair or replacement obligations for the Colocation Premises under Sections 14 above or any Additional Services (the “**Building Services**”).

19.2 Selection. Each Party shall exercise due care to select and manage its Service Providers such that only suitably responsible and professionally competent personnel perform Building Services on the Colocation Premises.

19.3 Current List of Services Providers. At all times during the Term of this Lease, each Party shall maintain, and promptly provide the other Party with, a current listing of all of that Party's Service Providers.

19.4 Criminal Background Checks. No individuals who will be providing Building Services for a Party's Service Provider will perform Building Services on, or have access to, the Colocation Premises unless that individual has passed a background check to Agency's standards; and prior to a Party's Service Provider performing Building Services on the Colocation Premises, and at other times upon the other Party's request, the first Party shall deliver to the other Party a verification that the first Party has performed a criminal background check on each Service Provider.

19.5 Training. Each Party shall provide training to its Service Providers to address the performance, safety and security expectations as required under this Lease, and to ensure that Service Providers use appropriate equipment and supplies and follow correct operating procedures and work practices when performing the Building Services.

19.6 Supervision. Each Party shall ensure that its Service Providers provide appropriate supervision of all the Service Providers' employees and contractors performing the Building Services, during all shifts and during all work hours.

19.7 Insurance. For any Service Provider engaged by a Party to perform Building Services work on the Colocation Premises, that Party shall require such Service Provider to obtain the insurance specified in Exhibit E before the Service Provider performs the Building Services, and to maintain such insurance in full force throughout the duration of the Building Services.

19.8 County's Contacts for Emergency Services. If any of County's maintenance, repair or replacement obligations as set forth in Sections 14-17 necessitate immediate work in order to prevent imminent and material damage to the Colocation Premises or Agency's property thereon, and Agency is unable to reach County within an hour after giving County notice of such imminent damage (include by telephone or text), Agency may contact County's Service Providers to perform the emergency work at County's cost and expense.

20. County's Entry onto Colocation Premises.

20.1 Notice and Escort.

(a) In order to perform necessary or appropriate maintenance, repair or replacement pursuant to this Lease, and subject to Section 20.1(b) below, County, its agents, employees and contractors may enter the Colocation Premises with at least two (2) business days' prior notice. Upon receipt of such notice, Agency may require those entering the Colocation Premises pursuant to this

Section 20.1 be escorted by designated Agency personnel.

(b) The notice and escort procedures described in Section 20.1(a) above are not required for County's facilities personnel or for janitorial Service Providers to enter the Colocation Premises for their performance of scheduled and routine services required by this Lease.

20.2 Emergency Entry. In the event of an emergency and in order to address such emergency, County, its agents, employees and contractors may enter the Colocation Premises at any time without prior notice, provided that County notifies Agency of such entry and such emergency as soon as reasonably possible.

20.3 Scheduling. County shall use its reasonable best efforts to coordinate the scheduling of any non-emergency maintenance, repair or replacement with Agency in order to minimize interference with Agency's use of the Colocation Premises.

21. Improvements and Alterations to Colocation Premises.

21.1 Improvements and Alterations: Nonstructural. Agency may, at its sole cost and expense:

(a) make nonstructural improvements and alterations to the Colocation Premises, including revising the systems furniture layout in the Colocation Premises, in coordination with the County.

(b) without notice to County or County's consent, place personal property, equipment and the like in the Colocation Premises. Agency shall retain ownership of all such personal property, equipment, trade fixtures and the like.

21.2 Improvements and Alterations: Structural.

(a) Agency shall not make any improvements or alterations to the Colocation Premises that modify or affect the Courthouse structure or the proper operation of any major building system. Agency shall request and obtain County consent to any structural improvements or alterations. Any such improvements or alterations will become part of the Colocation Premises and will be surrendered with the Colocation Premises upon the expiration or earlier termination of this Lease.

(b) If Agency's improvements or alterations to the Colocation Premises entail modifications to the Courthouse's electrical, HVAC, low-voltage or security systems, County shall, at Agency's cost and expense, perform or manage the service contracts for such modifications, except for Agency-owned and controlled equipment.

(c) If Agency's improvements or alterations to the Colocation Premises entail changes to the Colocation Premises' egress pathways, County shall, at Agency's cost and expense, construct any associated changes to emergency egress signage or lighting.

21.3 Performance of Work. Any improvements or alterations that a Party makes to the

Colocation Premises or the Courthouse will be made in a good and workmanlike manner, in accordance with all applicable Laws and Ordinances, with all required permits and inspections for such work, and with all applicable provisions of this Lease.

21.4 **Liens.** Neither Party will permit any liens to attach to the Courthouse as a result of any work performed by or at such Party's request. If any such lien shall at any time be filed against the Courthouse, or any portion thereof, the applicable Party shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after such Party's receipt of written notice of same.

22. Confidential Information. County understands and acknowledges that Agency's use of the Colocation Premises may include the creation, management and retention of business information of a personal or confidential nature ("**Confidential Information**"), and that the unauthorized acquisition or disclosure of Confidential Information may be grounds for civil and criminal liability. County shall reasonably cooperate with Agency in protecting the confidentiality of all information that Agency notifies County is Confidential Information and shall ensure that its employees, Service Providers, agents and contractors do not, through any acts or omissions, jeopardize the confidentiality of such Confidential Information or disclose it to any unauthorized parties.

Notwithstanding anything to the contrary, County's confidentiality obligations under this Lease are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 et. seq., and any other applicable state or federal law. While County will make good faith efforts to perform under this agreement, County's disclosure of Confidential Information, in whole or in part, will not be a breach of the Lease if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If County is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, County shall notify Agency within a reasonable period of time of the request. Agency is exclusively responsible for defending Agency's position concerning the confidentiality of the requested information. County is not required to assist Agency in opposing disclosure of Confidential Information, nor is County required to provide a legal opinion as to whether the Confidential Information is protected under ORS Chapter 192, et. seq., or other applicable state or federal law.

23. Quiet Enjoyment. Subject to the terms and conditions of this Lease, Agency shall peaceably and quietly have, hold and enjoy the Colocation Premises during the Term, without any interruption or disturbance from County or any party claiming by, through or under County. County shall ensure that neither County nor County's agents, employees or contractors access the Colocation Premises without Agency's consent, except as expressly permitted pursuant to the terms of this Lease.

24. Force Majeure. If the performance by either Party of any provision of this Lease is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, fire or other casualty

or other cause beyond the reasonable control of the Party from whom performance is required (a “**Force Majeure Event**”), the Party will be excused from such performance for the period of time equal to the time of that prevention or delay. The Party so excused shall, upon cessation of the cause, diligently pursue performance of its obligations under this Lease.

25. Interest Rate. Except as otherwise specifically provided in this Lease, any payment due hereunder by one Party to the other Party shall accrue interest at the maximum rate permitted under ORS 293.462, as it may be amended or replaced from time to time, from the date the payment is past due until the past-due payment and all interest thereon are paid in full.

26. Parties’ Contribution for Third-Party Claims; Indemnification by Third Parties.

26.1 Generally. If any third party makes any tort claim or brings any action, suit or proceeding relating to this Lease and 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 26.1, 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 26.1 with respect to the Third-Party Claim.

26.2 Agency Contribution. With respect to a Third-Party Claim for which Agency is jointly liable with County (or would be if joined in the Third-Party Claim), Agency 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 Agency on the one hand and of 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 Agency on the one hand and of County on the other hand will 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. Agency’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Agency had sole liability in the proceeding.

26.3 County Contribution. With respect to a Third-Party Claim for which County is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of County on the one hand and of Agency 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 Agency on the other hand will 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 County had sole liability in the proceeding.

26.4 Other Claims. The Parties shall take all reasonable steps to cause their contractor(s) that are not units of County or Agency 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, 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 the contractor's fault.

27. Records Maintenance and Review.

27.1 Each Party shall maintain all records pertinent to this Lease in accordance with generally-accepted accounting principles (as applicable) and in such a manner as to clearly document the Party's performance hereunder. Such records may include, without limitation, financial records, books, documents, papers, plans, records of shipments and payments and writings that are pertinent to this Lease, whether in paper, electronic or other form.

27.2 Each Party shall retain and keep accessible all records described in Section 27.1 above for a minimum of six (6) years, or such longer period as may be required by applicable Law or Ordinance, following expiration or earlier termination of this Lease, or until the conclusion of any audit, controversy or litigation arising out of or related to this Lease, whichever is later.

27.3 Each Party shall provide the other Party with access to the records described in Section 27.1 above within fifteen (15) business days after the other Party's request. Each Party understands and acknowledges that the other Party and its duly authorized representatives will have access to such records and may use the records to perform examinations and audits and make excerpts and transcripts.

28. Dispute Resolution.

28.1 Before Notice of Nonperformance. If one Party wishes to resolve a dispute with the other Party regarding any matter arising under this Lease, regardless of whether the dispute arises from a matter that may lead to a Default by one Party (as defined in Section 29.1 below), then, before giving notice of nonperformance pursuant to Section 29.2 or 29.3 below (if applicable), the first Party shall give notice to the other Party, and the Parties shall attempt in good faith to resolve the dispute within thirty (30) days after delivery of such notice by the first Party. Such dispute resolution may be conducted at any management level, including at a level higher than persons directly responsible for administration of this Lease, such as County's Manager of Business

Services Facilities Management and Agency's Administrator of the Office of Facilities Management, or County's Chair of the County Board of Commissioners and Agency's Director.

28.2 Mediation.

- (a) If a dispute is not timely resolved pursuant to Section 28.1 above, then the Parties may agree to submit the dispute to a mediator (the "**Mediator**"), to be chosen by the Parties as follows: within fifteen (15) business days after expiration of the 30-day period set forth in Section 28.1 above, County shall deliver to Agency a list of at least three (3) independent and experienced mediators, and within fifteen (15) business days after such delivery, Agency shall notify County of its choice of the Mediator from said list. Notwithstanding the foregoing, if County fails to timely deliver the list to Agency, then Agency's choice of a mediator will be deemed the Mediator; and if County does timely deliver the list to Agency, and Agency fails to timely respond, then County's choice of a mediator will be deemed the Mediator. Each Party will pay half the cost of a retained mediator.
- (b) If the parties are unable to resolve the dispute during mediation, the parties may proceed to litigation or, if the Parties agree, other dispute resolution procedures.
- (c) Notwithstanding the dispute resolution process set forth above, nothing prevents a Party from immediately resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

28.3 After Notice of Nonperformance. In the event of a dispute in which notice of a failure to comply with or fulfill any term, condition or obligation of this Lease has been given by one Party to the other Party pursuant to Section 28.1 above or Section 29.2 or 29.3 below, then during the thirty (30)-day period prior to a Default occurring, the Parties may use the process set forth in Section 28.2 above to resolve the dispute.

29. **Default.**

29.1 Default. A "**Default**" is an Agency Default or a County Default, as defined in Sections 29.2 and 29.3 below.

29.2 Agency Default. The following will be events of default by Agency ("**Agency Default**"):

- (a) Agency's failure to comply with or fulfill any term, condition or obligation of this Lease within thirty (30) days after notice from County specifying the nature of the failure with reasonable particularity; or, if Agency cannot reasonably cure such failure within such 30-day period, then within such time as Agency can cure the failure with reasonable good faith and diligence; provided, however, that such cure period shall not exceed one hundred eighty (180) days; or
- (b) if County notifies Agency of an emergency condition or other safety hazard in the Colocation Premises (such emergency condition or other safety hazard being one that is directly

caused by Agency and presents an immediate risk of substantial harm to the Colocation Premises, the rest of the Courthouse or any contents therein or any of Agency's, County's or another tenant's agents, employees or invitees), Agency's failure to promptly commence and diligently pursue to completion a cure of such emergency condition or other safety hazard.

29.3 County Default. The following will be events of default by County ("**County Default**"):

- (a) County's failure to comply with or fulfill any term, condition or obligation of this Lease within thirty (30) days after notice from Agency specifying the nature of the failure with reasonable particularity; provided, however, that if County cannot reasonably cure such failure within such 30-day period, then within such time as County can cure the failure with reasonable good faith and diligence, provided, however, that such cure period shall not exceed one hundred eighty (180) days; or
- (b) if Agency notifies County of an emergency condition or other safety hazard in the Colocation Premises or the Courthouse (such emergency condition or other safety hazard being one that is not directly caused by Agency and presents an immediate risk of substantial harm to the Colocation Premises, the rest of the Courthouse or any contents therein or any of Agency's, County's or another tenant's agents, employees or invitees), County's failure to promptly commence and diligently pursue to completion a cure of such emergency condition or other safety hazard.

30. Remedies.

Upon any Default, the non-defaulting Party may exercise any or all of the following remedies:

30.1 Cure: the non-defaulting Party may perform the defaulting Party's unperformed obligations that gave rise to the Default, and charge all such costs and expenses to the defaulting Party pursuant to this Lease, which the defaulting Party shall pay within thirty (30) days after the other Party delivers an invoice therefor, together with reasonable supporting documentation of such costs and expenses.

30.2 Right to Sue: the non-defaulting Party may sue periodically to recover damages as they accrue without barring a later action for further damages.

30.3 Damages: the non-defaulting Party may recover from the defaulting Party any and all damages arising from the Default.

31. Notice.

31.1 Generally. Any notices, demands, deliveries, consents or other communications required under this Lease will be made in writing and delivered by one of the methods set forth in Section 31.2 below to the address of the Parties set forth beneath their respective signatures on this Agreement, unless a Party modifies its address by notice to the other Parties. The phone numbers provided on the Parties' signature pages to this Agreement are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Lease.

31.2 Delivery.

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Facsimile	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or facsimile will 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 Lease for delivery of a notice is a Saturday, Sunday or federal or State holiday, such deadline will be deemed extended to the next business day.

32. **Miscellaneous.**

32.1 Time is of the Essence. Time is of the essence in the performance of the terms of this Lease.

32.2 Calculation of Days. Any reference in this Lease to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or State holiday.

32.3 No Third-Party Beneficiaries. County and Agency are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives, is intended to give or will 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 Lease.

32.4 Severability. If any term or provision of this Lease 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 will not be affected. The rights and obligations of the Parties will be construed and enforced as if this Lease did not contain the particular term or provisions held to be invalid.

32.5 Waiver. The failure by a Party to enforce any provision of this Lease shall not constitute a waiver of that or any other provision.

32.6 Consent. Unless otherwise specifically stated herein, any consent by a Party will not be unreasonably withheld, conditioned or delayed.

32.7 Governing Law; Consent to Jurisdiction. This Lease is governed by and construed in

accordance with the laws of the State without regard to principles of conflicts of law. Any Claim between Agency (or any other agency or department of the State) and County that arises from or relates to this Lease will be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State; provided, however, if a Claim is brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section 32.7 or any other provision of this Lease be construed as a waiver by the State 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.

32.8 Entire Agreement. This Lease constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease.

32.9 Amendments. No amendment, waiver, consent, modification or change of terms of this Lease will bind a Party unless in writing and signed by both Parties. Such amendment, waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given.

32.10 Electronic Signatures and Counterparts. This Lease and any amendments hereto may be executed via electronic signature and in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

32.11 Survival. All provisions of this Lease that would reasonably be expected to survive the expiration or earlier termination of this Lease shall do so.

32.12 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses.

32.13. Limitation of Liabilities. This Lease is expressly subject to the debt limitation set forth in Article XI of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

32.12 Exhibits. The Exhibits listed below are incorporated as part of this Lease:

- Exhibit A: Colocation Premises
- Exhibit B: OJD Premises
- Exhibit C: OPDC Premises
- Exhibit D: Janitorial Specifications
- Exhibit E: Service Providers Insurance Requirements

[remainder of page intentionally left blank]

DRAFT

County and Agency, by execution of this Lease, hereby acknowledge that each Party has read this Lease, understands it and agrees to be bound by its terms and conditions.

COUNTY:

Clackamas County, an Oregon political subdivision

Signature _____
Name _____ Date _____
Title _____

Reviewed for County:

By: _____
_____, Assistant County Attorney

County
Clackamas County

ATTN: _____

Email: _____
Phone: _____
cc: _____

AGENCY:

State of Oregon, acting by and through its Department of Human Services

Signature _____
Name _____ Date _____
Title _____

APPROVED BY OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES

Signature _____
Name Brady Ricks Date _____
Title Manager, Real Estate Services

Approved as to legal sufficiency for Agency:

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

Agency

Oregon Department of Human Services

ATTN: _____

Email: _____

Phone: _____

cc: res.info@das.oregon.gov

#2(ser)

EXHIBIT A

Colocation Premises

DRAFT

EXHIBIT B

OJD Premises

DRAFT

EXHIBIT C

OPDC Premises

DRAFT

EXHIBIT D

Janitorial Specifications

DRAFT

EXHIBIT E

Service Providers Insurance Requirements

Capitalized terms used but not defined in this Exhibit shall have the same definition as set forth in the Lease Agreement.

The insurance listed below will be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to both Parties. A Party shall not authorize its Contractor to begin work under the Contract until the insurance is in full force. Thereafter, the applicable Party shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. The Party shall incorporate appropriate provisions in its Contracts, permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of “reasonable steps” include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Contracts as permitted by the Contracts, or pursuing legal action to enforce the insurance requirements. In no event shall a Party permit its Contractor to work under a Contract when such Party is aware that the Contractor is not in compliance with the insurance requirements.

1. Workers’ Compensation and Employers’ Liability

All employers, including a Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers’ compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). A Contractor shall require and ensure that each of its subcontractors complies with these requirements. If a Contractor is a subject employer, as defined in ORS 656.023, the Contractor shall also obtain employers’ liability insurance coverage with limits not less than \$1,000,000 each accident. If a Contractor is an employer subject to any other state’s workers’ compensation law, the Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$1,000,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

2. Commercial General Liability

☒ **Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State of Oregon and County. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under the Lease, and have no limitation of coverage to designated premises, project or operation. Coverage will be written on an occurrence basis in an amount not less than \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate.

3. Automobile Insurance

☒ **Required** ☐ **Not required**

Automobile Liability Insurance covering a Party's Contractor's business use including coverage for all owned, non-owned or hired vehicles with a combined single limit of not less than \$2,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

4. Professional Liability

☒ **Required** ☐ **Not required**

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Lease by a Party's Contractor in an amount not less than \$2,000,000.00 per occurrence. Annual aggregate limit will be not less than \$4,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than twenty-four (24) months will be included in the Professional Liability insurance coverage, or the Contractor shall provide tail coverage as provided below.

5. NETWORK SECURITY & PRIVACY LIABILITY

☒ **Required** ☐ **Not required**

Network Security and Privacy Liability Insurance for the duration of the Contract and for the period of time in which a Party's Contractor maintains, possesses, stores or has access to the other Party's data, whichever is longer, with a combined single limit of no less than \$2,000,000.00 per claim or incident covering the Contractor's liability for loss, theft, unauthorized disclosure, access or use of such Party's data (which may include, without limitation, Personally Identifiable Information (PII), Payment Card Data and Protected Health Information (PHI)) in any format including, without limitation, hard copy format, including coverage for accidental loss, theft, unauthorized disclosure access or use of such Party's data.

6. CRIME PROTECTION COVERAGE

☒ **Required** ☐ **Not required**

A Party's Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of the Contract, third party Employee Dishonesty or Fidelity Bond coverages for loss of the other Party's owned property by dishonest acts of an employee of the Contractor. Coverage limits will not be less than \$2,000,000.00.

7. EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

8. ADDITIONAL COVERAGE REQUIREMENTS

A Party's Contractor's insurance will be primary and non-contributory with any other insurance. The Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

9. ADDITIONAL INSURED

All liability insurance, except for Workers' Compensation, Professional Liability and Network Security and Privacy Liability (if applicable), required under the Lease for a Party's Contractors shall include an additional insured endorsement specifying the other Party (the State of Oregon or County, as the case may be), its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to the Contractor's activities to be performed under the Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of the Contractor's ongoing operations will be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations will be on ISO form CG 20 37 07 04 or equivalent.

10. TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least twenty-four (24) months, a Party's Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of twenty-four (24) months following the later of: (1) the Contractor's completion and the Party's acceptance of all services required under the Contract; (2) the Party's or the Contractor's termination of the Contract; or (3) the expiration of all warranty periods provided under the Contract.

11. CERTIFICATE(S) AND PROOF OF INSURANCE

The applicable Party shall obtain from its Contractor a Certificate(s) of Insurance for all required insurance before allowing its Contractor to perform any services required under the Contract. For County's Contractors, the Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. For Agency's Contractors, the Certificate(s) shall list County, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. In either case, the Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by the Lease. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance shall include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, a Party has the right to request copies of insurance policies and endorsements relating to the insurance requirements in the Lease.

12. NOTICE OF CHANGE OR CANCELLATION

A Party's Contractor or its insurer shall provide at least thirty (30) days' written notice to both Parties before cancellation of, material change to, potential exhaustion of aggregate limits of or non-renewal of the required insurance coverage(s).

13. INSURANCE REQUIREMENT REVIEW

A Party's Contractor shall agree to periodic review of insurance requirements by either Party under the Contract and to provide updated requirements as agreed upon by the Contractor and the Parties.

14. PARTY ACCEPTANCE

All insurance providers of one Party are subject to the other Party's acceptance. If requested by a Party, the Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to the Party's representatives responsible for verification of the insurance coverages required under this Exhibit.

COLOCATION LEASE AGREEMENT

**OPDC Colocation Premises
Clackamas County Courthouse**

THIS COLOCATION LEASE AGREEMENT (this “**Lease**”) is made on _____, 20____ (the “**Effective Date**”), by and between Clackamas County, an Oregon political subdivision (“**County**”) and the State of Oregon, acting by and through its Oregon Public Defense Commission (“**Agency**”). County and Agency are each a “**Party**” and together the “**Parties**.”

RECITALS

- A. County is the owner of the Clackamas County Courthouse, located at 1000 Courthouse Road, Oregon City, Oregon, Clackamas County (the “**Courthouse**”).
- B. Pursuant to ORS 1.185 and 1.187, the counties in the State of Oregon provide courthouse facilities for the circuit courts, including suitable and sufficient courtrooms, offices and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury rooms.
- C. Pursuant to ORS 1.185 and 1.187, the Oregon Judicial Department (“**OJD**”) operates the circuit courts for the State of Oregon (the “**State**”) and provides all supplies, materials, equipment and other property necessary for the operation of the circuit courts.
- D. Sections 8 and 9, chapter 705, Oregon Laws 2013 and Section 64, chapter 723, Oregon Laws 2013, as amended from time to time (the “**Courthouse Act**”), authorize the State’s sale of Article XI-Q bonds to finance certain capital costs related to counties’ acquisition of land for and construction of county courthouses.
- E. Pursuant to the Courthouse Act, the State contributed funds from the sale of Article XI-Q bonds (the “**State Bond Funds**”) for certain capital costs related to County’s acquisition of land for and construction of the Courthouse.
- F. Such use of the State Bond Funds was memorialized in the following “**Funding Agreements**” between County, OJD and the State, acting by and through its Department of Administrative Services:

Document	Date	Amendments
Amended and Restated Master Funding Agreement	February 28, 2022	
Phase I Funding Agreement	February 28, 2019	June 27, 2019 June 30, 2020 June 30, 2021

Phase II Funding Agreement	August 10, 2022	
----------------------------	-----------------	--

G. The Funding Agreements contemplated County's lease of space in the Courthouse to OJD, as well as to two "**Colocation Agencies**," specifically Agency and the State, acting by and through the Department of Human Services ("**DHS**"), in consideration for such State agencies' leasehold interests in the Courthouse, as follows:

1. Agency's leasehold interest in the "**Colocation Premises**" as shown on Exhibit A, pursuant to this Lease;
2. OJD's leasehold interest in the "**OJD Premises**" as shown on Exhibit B, pursuant to that certain [REDACTED] Lease dated [REDACTED] (the "**OJD Lease**"); and
3. OPDC's leasehold interest in the "**DHS Premises**" as shown on Exhibit C, pursuant to that certain [REDACTED] Lease dated [REDACTED] (the "**DHS Lease**").

H. The OJD Premises, the Colocation Premises and the OPDC Premises are collectively the "**State Premises**."

I. The Parties wish to memorialize their understandings regarding Agency's lease of the Colocation Premise.

TERMS AND CONDITIONS

In consideration of the above Recitals, which are incorporated into this Lease, the mutual promises contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. Colocation Premises. County hereby leases to Agency, as a Colocation Agency, and Agency hereby leases from County, the Colocation Premises. The Colocation Premises are approximately 2,816 (3,494 for Agency) rentable square feet. The Premises expressly excludes the following portions of the Courthouse, which are not subject to the Lease: approximately 24,150 square feet for the Clackamas County District Attorney's offices and approximately 2,389 square feet for the Clackamas County law library.

2. Term.

2.1 Initial Term. The "**Initial Term**" of this Lease will begin on [REDACTED], 20[REDACTED] (the "**Commencement Date**") and continue until the **State Bonds** mature or full payment of the **Defeasance Costs** (as those terms are defined in the Funding Agreements) of the State Bond Funds, whichever occurs first, pursuant to the Funding Agreements. The date of full repayment of the Defeasance Costs, as determined by the Oregon Department of Administrative Services, will be deemed the end date of the Initial Term. The word "**Term**" is used in this Lease to describe the Initial Term and any Extension Term (as defined in Section 2.2 below).

2.2 Extension of Initial Term. The Parties may agree to extend the Term of this Lease for

additional, consecutive term(s) (each an “**Extension Term**”). All terms and conditions of this Lease for any Extension Term will be negotiated and agreed upon by the Parties prior to commencement of such Extension Term, provided that any such terms and conditions shall comply with applicable Laws and Ordinances (as defined in Section 14.3 below) at the time of an Extension Term.

3. Courthouse Common Areas.

3.1 Generally. The Courthouse contains certain areas and facilities outside the Colocation Premises, including, without limitation, [REDACTED], that are provided by County for the appurtenant, nonexclusive use of County, Agency, OJD, other tenants of the Courthouse and their respective agents, employees and invitees, or the general public (the “**Courthouse Common Areas**”). Agency has the appurtenant, nonexclusive right to use the Courthouse Common Areas, in common with other authorized users.

3.2 Alterations.

(a) County shall notify Agency of any plans to materially adjust or modify any portion of the Courthouse Common Areas at least thirty (30) days prior to the earlier of:

- (i) the filing of a permit application for the adjustment or modification work; or
- (ii) thirty (30) days prior to the commencement of the adjustment or modification work.

(b) Agency may provide input on any adverse impacts to Agency operations within fifteen (15) business days after receipt of County’s notice under Section 3.2(a) above. Upon delivery of Agency’s input, the Parties shall work in good faith to ensure that the material adjustments or modifications to the Courthouse Common Areas are performed in a manner to minimize interference with Agency’s use and enjoyment of the Courthouse, and are acceptable to Agency, before commencing such work. If the Parties are unable to reach an agreement regarding proposed alterations to Courthouse Common Areas, the Parties shall pursue dispute resolution as described in Section 28 below.

4. Option to Lease Surplus Space.

During the Initial Term of this Lease, if any portion of the Courthouse outside the State Premises (“**Surplus Space**”) becomes available for rent, Agency, in common with OJD and DHS, has the unrestricted first option to lease the Surplus Space from County. Agency’s lease of any Surplus Space will be at no rent during the Initial Term.

5. Rent.

5.1 Initial Term. During the Initial Term of this Lease, Agency shall not pay any rent for the Colocation Premises, as may be expanded to include any Surplus Space.

6. Use of Colocation Premises. Agency may use the Colocation Premises for any and all purposes related to the operation of Agency and activities related thereto, including client business operations, administrative support, office use and Agency supplies and equipment storage.

7. Hours of Courthouse Operation. The Courthouse will be open and fully accessible to the public during Normal Business Hours. “**Normal Business Hours**” means 7:30 am to 5:30 pm, Monday through Friday, except federal or State holidays. Court operating hours may differ from Courthouse operating hours.

8. Agency’s Physical and Systems Access.

8.1 Physical Access.

(a) *Agency Staff.* Agency staff named on Agency’s after-hours access list shall have access to the Courthouse Common Areas and the Colocation Premises 24 hours per day, 7 days per week, 365 days per year. Prior to the Commencement Date, Agency shall prepare and deliver the access list to County, and shall deliver updated, current access lists to County throughout the Term of this Agreement.

(b) *IT Rooms.* As of the Effective Date of this Lease, Agency’s internet and telecom services are supplied through OJD’s server(s). In the event OJD discontinues its service of Agency’s internet and telecom services, information technology (IT) staff selected by Agency and pre-approved for security clearance by County shall have access to the following areas of the Courthouse outside the Colocation Premises 24 hours per day, 7 days per week, 365 days per year: [REDACTED] (collectively the “**IT Rooms**”). The Parties understand, acknowledge and agree that the IT Rooms are small; accordingly, the Parties will endeavor to have no more than three (3) staff members present in any one IT Room at any one time.

8.2 Systems Access.

(a) Subject to the limitations set forth in Section 8.1 above and Section 8.3 below, Agency shall have access 24 hours per day, 7 days per week, 365 days per year, to all peripheral devices in the Courthouse connected to Agency’s equipment and systems, including, without limitation, the following devices located within the Colocation Premises, provided they are “plug & play” devices, removable without disconnecting hard-wired cables above the ceiling grids:

- (i) sound-masking controllers;
- (ii) speakers used by Agency’s equipment and systems;
- (iii) microphones used by Agency’s equipment and systems;
- (iv) all Agency digital display monitors (installation or removal of display mounts in

locations requires prior coordination with Honeywell and County, with work subject to terms of the County's Courthouse Project Agreement);

(v) all sound systems owned by Agency; and

(vi) all video systems owned by Agency.

(b) Subject to the limitations set forth in Section 8.1 above and Section 8.3 below, Agency shall have access to and the ability to use and adjust the following, 24 hours per day, 7 days per week, 365 days per year:

(i) on-off switches and dimmers (to adjust lighting in the Colocation Premises); and

(ii) manual pulls and electronic controls (to adjust window coverings in the Colocation Premises).

8.3 Limitations on Agency Systems Access.

(a) If Agency or its manufacturer-certified technicians need to replace or remove for repairs any of the devices listed in Section 8.2(a) above, and such repair or replacement requires access above the ceiling grids, any repair or replacement work above the ceiling grids will be performed by County in accordance with Section 18 below.

(b) If Agency moves digital displays to locations requiring installation of new, additional power and data, the installation of the additional power and data will be performed by County in accordance with Section 18 below.

9. **Security and Safety.**

9.1 Generally. Pursuant to ORS 1.178, 1.180, 1.182, 1.185, County is responsible for providing suitable and sufficient court facilities for the State, including suitable and sufficient security for the Courthouse.

9.2 Events Outside of Normal Business Hours.

(a) *Notice to County.* If Agency intends to hold an Agency-sponsored or co-sponsored event on the Colocation Premises or in the Courthouse Common Areas outside of Normal Business Hours, Agency shall deliver a notice to County at least thirty (30) days prior to the proposed event. Upon delivery of the notice, the Parties shall work together to determine what County services are needed for the event.

(b) *Costs.*

(i) *Agency Events.* For events outside of Normal Business Hours that are sponsored by Agency, Agency will bear the costs incurred for additional security provided by County, additional operational costs and additional janitorial services directly related to

the event. Agency shall not charge any third party for use of the Colocation Premises without County's consent.

(ii) *Agency-County Events.* For events outside of Normal Business Hours that are sponsored by both County and Agency, the Parties shall proportionally bear the costs incurred for additional security provided by County, additional operational costs and additional janitorial services directly related to the event.

10. Access to Colocation Premises; Key Cards.

10.1 Access. Agency shall have access to the Colocation Premises 24 hours per day, 7 days per week, 365 days per year. County and Agency agree to provide updated lists of authorized personnel with access to the Courthouse each quarter (July 1, October 1, January 1, April 1).

10.2 Key Cards. County shall provide Agency with electronic access to the County-controlled Courthouse access control system.

11. Furniture, Fixtures and Equipment.

11.1 County's Obligations. County shall, throughout the Initial Term of this Lease, maintain, repair and replace the following (except for items that are Agency's personal property):

- (a) all fixtures and built-in equipment not owned by Agency, as shown on the as-built plans and record drawings for the Courthouse; and
- (b) all Courthouse security equipment, including magnetometers and x-ray equipment.

11.2 Agency's Obligations. The Agency shall submit a work request to the County in accordance with the procedures established by the County and Honeywell, as applicable.

12. Supplies.

12.1 County. County shall, at its own expense and throughout the Initial Term of this Lease, provide supplies for the Colocation Premises related to the every-day use of same, including, without limitation:

- (a) light bulbs;
- (b) fire extinguishers;
- (c) automated external defibrillators (AEDs), as located on the egress maps;
- (d) filters for bottle filling water stations; and
- (e) toilet paper, paper towels, soap and other such consumables reasonably related to the ordinary operation of the Colocation Premises and the Courthouse Common Areas.

12.2 Agency. Except as required to be supplied by County for the Courthouse pursuant to Section 12.1 above, Agency shall, at its own expense, purchase all supplies, materials, equipment and other such personal property needed for the operation of the Colocation Premises.

13. Utilities and Services.

13.1 Availability. County shall, subject to interruption by a Force Majeure Event (as defined in Section 24 below) or emergency repairs, and except for those services Agency will provide under Subsections 13.3 and 13.4, provide all utilities and services, including maintenance and janitorial services, to the Courthouse.

13.3 Internet and Telephone Service and Equipment.

(a) Agency shall, at its own cost and expense, obtain its own internet and telephone service for the Colocation Premises, including installation and monthly charges, and shall communicate directly with the providers of same regarding service issues or upgrades. County and Agency shall cooperate with each other, and with OJD, in connection with Agency's obtaining and installing new or additional internet or telephone services and equipment.

(b) Any additional or replacement internet or telephone service and equipment for the Colocation Premises will require County's confirmation that County's vaults have sufficient capacity to allow same.

13.4 Other Utilities and Services. In addition to the internet and telephone providers described in Section 13.3 above, Agency may, at its sole cost and expense (including any long-term operating costs), obtain other utilities and services for the Colocation Premises. County and Agency shall coordinate and cooperate with each other in connection with Agency's obtaining and installing additional utilities or services.

14. County's Maintenance, Repair and Replacement Obligations.

14.1 Generally. Pursuant to ORS 1.185, and except as specifically set forth in Section 14.2 below, County shall provide suitable and sufficient courtrooms, offices and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury room.

14.2 Exclusions from County's Obligations. County's maintenance, repair and replacement obligations Section 14.1 above do not include the following, which Agency shall maintain, repair and replace at Agency's sole cost and expense:

- (a) Agency's audio-video equipment, switch equipment and telephone equipment;
- (b) window treatments within the Colocation Premises that are provided by Agency.

14.3 Standards.

(a) County shall perform all maintenance, repair and replacement work promptly; ensure that such work is performed in a good and workmanlike manner and consistent with the maintenance of other County facilities and in accordance with all applicable federal, State and local laws, ordinances, codes, regulations and rules (“**Laws and Ordinances**”); and obtain all required permits and inspections for such work.

(b) County shall perform all maintenance, repair and replacement work in accordance with County’s maintenance standards and protocols as set forth in that certain [REDACTED] dated [REDACTED], as may be revised from time to time during the Term of this Lease (“**County’s Facilities Standards**”), and in accordance with Honeywell’s maintenance standards and protocols set forth in that certain Client Specific Operation Procedures dated [REDACTED] (“**Honeywell Facilities Standards**”) where applicable. County shall provide Agency with prior notice of any revisions to County’s Facilities Standards. Promptly after revision, County shall provide Agency with a copy of the updated County’s Facilities Standards.

15. Reserved.

16. Reserved.

17. Reserved.

18. Additional Services for Colocation Premises.

18.1 Additional Services. For any work or services on the Colocation Premises that are not included in County’s maintenance, repair or replacement obligations under Sections 14 above (such work or services being “**Additional Services**”), County may, in its sole discretion, and at Agency’s request, perform such Additional Services pursuant to this Section 18. All Additional Services will be performed in accordance with the standards set forth in Sections 14 above.

18.2 Estimates. If Agency requests Additional Services, and County agrees to provide such Additional Services, County shall provide, at no cost to Agency, an estimate of the costs to perform such Additional Services, based on County’s then-current service rates. Upon Agency’s acceptance of the estimate, and the Parties agreement on a not-to-exceed amount for the Additional Services, County shall perform the Additional Services.

18.3 County’s Service Providers. the Additional Services may be performed by a third party, such as County’s Service Providers (as defined in Section 19.1 below).

19. Parties’ Service Providers.

19.1 Service Providers. Each Party may contract with service providers (“**Service Providers**”) to perform any of that Party’s maintenance, repair or replacement obligations for the Colocation Premises under Sections 14 above or any Additional Services (the “**Building Services**”).

19.2 Selection. Each Party shall exercise due care to select and manage its Service Providers such that only suitably responsible and professionally competent personnel perform Building Services on the Colocation Premises.

19.3 Current List of Services Providers. At all times during the Term of this Lease, each Party shall maintain, and promptly provide the other Party with, a current listing of all of that Party's Service Providers.

19.4 Criminal Background Checks. No individuals who will be providing Building Services for a Party's Service Provider will perform Building Services on, or have access to, the Colocation Premises unless that individual has passed a background check to Agency's standards; and prior to a Party's Service Provider performing Building Services on the Colocation Premises, and at other times upon the other Party's request, the first Party shall deliver to the other Party a verification that the first Party has performed a criminal background check on each Service Provider.

19.5 Training. Each Party shall provide training to its Service Providers to address the performance, safety and security expectations as required under this Lease, and to ensure that Service Providers use appropriate equipment and supplies and follow correct operating procedures and work practices when performing the Building Services.

19.6 Supervision. Each Party shall ensure that its Service Providers provide appropriate supervision of all the Service Providers' employees and contractors performing the Building Services, during all shifts and during all work hours.

19.7 Insurance. For any Service Provider engaged by a Party to perform Building Services work on the Colocation Premises, that Party shall require such Service Provider to obtain the insurance specified in Exhibit E before the Service Provider performs the Building Services, and to maintain such insurance in full force throughout the duration of the Building Services.

19.8 County's Contacts for Emergency Services. If any of County's maintenance, repair or replacement obligations as set forth in Sections 14-17 necessitate immediate work in order to prevent imminent and material damage to the Colocation Premises or Agency's property thereon, and Agency is unable to reach County within an hour after giving County notice of such imminent damage (include by telephone or text), Agency may contact County's Service Providers to perform the emergency work at County's cost and expense.

20. County's Entry onto Colocation Premises.

20.1 Notice and Escort.

(a) In order to perform necessary or appropriate maintenance, repair or replacement pursuant to this Lease, and subject to Section 20.1(b) below, County, its agents, employees and contractors may enter the Colocation Premises with at least two (2) business days' prior notice. Upon receipt of such notice, Agency may require those entering the Colocation Premises pursuant to this

Section 20.1 be escorted by designated Agency personnel.

(b) The notice and escort procedures described in Section 20.1(a) above are not required for County's facilities personnel or for janitorial Service Providers to enter the Colocation Premises for their performance of scheduled and routine services required by this Lease.

20.2 Emergency Entry. In the event of an emergency and in order to address such emergency, County, its agents, employees and contractors may enter the Colocation Premises at any time without prior notice, provided that County notifies Agency of such entry and such emergency as soon as reasonably possible.

20.3 Scheduling. County shall use its reasonable best efforts to coordinate the scheduling of any non-emergency maintenance, repair or replacement with Agency in order to minimize interference with Agency's use of the Colocation Premises.

21. Improvements and Alterations to Colocation Premises.

21.1 Improvements and Alterations: Nonstructural. Agency may, at its sole cost and expense:

(a) make nonstructural improvements and alterations to the Colocation Premises, including revising the systems furniture layout in the Colocation Premises, in coordination with the County.

(b) without notice to County or County's consent, place personal property, equipment and the like in the Colocation Premises. Agency shall retain ownership of all such personal property, equipment, trade fixtures and the like.

21.2 Improvements and Alterations: Structural.

(a) Agency shall not make any improvements or alterations to the Colocation Premises that modify or affect the Courthouse structure or the proper operation of any major building system. Agency shall request and obtain County consent to any structural improvements or alterations. Any such improvements or alterations will become part of the Colocation Premises and will be surrendered with the Colocation Premises upon the expiration or earlier termination of this Lease.

(b) If Agency's improvements or alterations to the Colocation Premises entail modifications to the Courthouse's electrical, HVAC, low-voltage or security systems, County shall, at Agency's cost and expense, perform or manage the service contracts for such modifications, except for Agency-owned and controlled equipment.

(c) If Agency's improvements or alterations to the Colocation Premises entail changes to the Colocation Premises' egress pathways, County shall, at Agency's cost and expense, construct any associated changes to emergency egress signage or lighting.

21.3 Performance of Work. Any improvements or alterations that a Party makes to the

Colocation Premises or the Courthouse will be made in a good and workmanlike manner, in accordance with all applicable Laws and Ordinances, with all required permits and inspections for such work, and with all applicable provisions of this Lease.

21.4 **Liens.** Neither Party will permit any liens to attach to the Courthouse as a result of any work performed by or at such Party's request. If any such lien shall at any time be filed against the Courthouse, or any portion thereof, the applicable Party shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after such Party's receipt of written notice of same.

22. Confidential Information. County understands and acknowledges that Agency's use of the Colocation Premises may include the creation, management and retention of business information of a personal or confidential nature ("**Confidential Information**"), and that the unauthorized acquisition or disclosure of Confidential Information may be grounds for civil and criminal liability. County shall reasonably cooperate with Agency in protecting the confidentiality of all information that Agency notifies County is Confidential Information and shall ensure that its employees, Service Providers, agents and contractors do not, through any acts or omissions, jeopardize the confidentiality of such Confidential Information or disclose it to any unauthorized parties.

Notwithstanding anything to the contrary, County's confidentiality obligations under this Lease are expressly subject to the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 et. seq., and any other applicable state or federal law. While County will make good faith efforts to perform under this agreement, County's disclosure of Confidential Information, in whole or in part, will not be a breach of the Lease if such disclosure was pursuant to a request under the Oregon Public Records Law, or any other state or federal law, or if such disclosure was compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar processes.

If County is subject to such a disclosure order or receives from a third party any public records request for the disclosure of Confidential Information, County shall notify Agency within a reasonable period of time of the request. Agency is exclusively responsible for defending Agency's position concerning the confidentiality of the requested information. County is not required to assist Agency in opposing disclosure of Confidential Information, nor is County required to provide a legal opinion as to whether the Confidential Information is protected under ORS Chapter 192, et. seq., or other applicable state or federal law.

23. Quiet Enjoyment. Subject to the terms and conditions of this Lease, Agency shall peaceably and quietly have, hold and enjoy the Colocation Premises during the Term, without any interruption or disturbance from County or any party claiming by, through or under County. County shall ensure that neither County nor County's agents, employees or contractors access the Colocation Premises without Agency's consent, except as expressly permitted pursuant to the terms of this Lease.

24. Force Majeure. If the performance by either Party of any provision of this Lease is prevented or delayed by any strikes, lockouts, labor disputes, acts of God, fire or other casualty

or other cause beyond the reasonable control of the Party from whom performance is required (a “**Force Majeure Event**”), the Party will be excused from such performance for the period of time equal to the time of that prevention or delay. The Party so excused shall, upon cessation of the cause, diligently pursue performance of its obligations under this Lease.

25. Interest Rate. Except as otherwise specifically provided in this Lease, any payment due hereunder by one Party to the other Party shall accrue interest at the maximum rate permitted under ORS 293.462, as it may be amended or replaced from time to time, from the date the payment is past due until the past-due payment and all interest thereon are paid in full.

26. Parties’ Contribution for Third-Party Claims; Indemnification by Third Parties.

26.1 Generally. If any third party makes any tort claim or brings any action, suit or proceeding relating to this Lease and 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 26.1, 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 26.1 with respect to the Third-Party Claim.

26.2 Agency Contribution. With respect to a Third-Party Claim for which Agency is jointly liable with County (or would be if joined in the Third-Party Claim), Agency 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 Agency on the one hand and of 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 Agency on the one hand and of County on the other hand will 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. Agency’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if Agency had sole liability in the proceeding.

26.3 County Contribution. With respect to a Third-Party Claim for which County is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of County on the one hand and of Agency 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 Agency on the other hand will 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 County had sole liability in the proceeding.

26.4 Other Claims. The Parties shall take all reasonable steps to cause their contractor(s) that are not units of County or Agency 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, 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 the contractor's fault.

27. Records Maintenance and Review.

27.1 Each Party shall maintain all records pertinent to this Lease in accordance with generally-accepted accounting principles (as applicable) and in such a manner as to clearly document the Party's performance hereunder. Such records may include, without limitation, financial records, books, documents, papers, plans, records of shipments and payments and writings that are pertinent to this Lease, whether in paper, electronic or other form.

27.2 Each Party shall retain and keep accessible all records described in Section 27.1 above for a minimum of six (6) years, or such longer period as may be required by applicable Law or Ordinance, following expiration or earlier termination of this Lease, or until the conclusion of any audit, controversy or litigation arising out of or related to this Lease, whichever is later.

27.3 Each Party shall provide the other Party with access to the records described in Section 27.1 above within fifteen (15) business days after the other Party's request. Each Party understands and acknowledges that the other Party and its duly authorized representatives will have access to such records and may use the records to perform examinations and audits and make excerpts and transcripts.

28. Dispute Resolution.

28.1 Before Notice of Nonperformance. If one Party wishes to resolve a dispute with the other Party regarding any matter arising under this Lease, regardless of whether the dispute arises from a matter that may lead to a Default by one Party (as defined in Section 29.1 below), then, before giving notice of nonperformance pursuant to Section 29.2 or 29.3 below (if applicable), the first Party shall give notice to the other Party, and the Parties shall attempt in good faith to resolve the dispute within thirty (30) days after delivery of such notice by the first Party. Such dispute resolution may be conducted at any management level, including at a level higher than persons directly responsible for administration of this Lease, such as County's Manager of Business

Services Facilities Management and Agency's Administrator of the Office of Facilities Management, or County's Chair of the County Board of Commissioners and Agency's Director.

28.2 Mediation.

- (a) If a dispute is not timely resolved pursuant to Section 28.1 above, then the Parties may agree to submit the dispute to a mediator (the "**Mediator**"), to be chosen by the Parties as follows: within fifteen (15) business days after expiration of the 30-day period set forth in Section 28.1 above, County shall deliver to Agency a list of at least three (3) independent and experienced mediators, and within fifteen (15) business days after such delivery, Agency shall notify County of its choice of the Mediator from said list. Notwithstanding the foregoing, if County fails to timely deliver the list to Agency, then Agency's choice of a mediator will be deemed the Mediator; and if County does timely deliver the list to Agency, and Agency fails to timely respond, then County's choice of a mediator will be deemed the Mediator. Each Party will pay half the cost of a retained mediator.
- (b) If the parties are unable to resolve the dispute during mediation, the parties may proceed to litigation or, if the Parties agree, other dispute resolution procedures.
- (c) Notwithstanding the dispute resolution process set forth above, nothing prevents a Party from immediately resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

28.3 After Notice of Nonperformance. In the event of a dispute in which notice of a failure to comply with or fulfill any term, condition or obligation of this Lease has been given by one Party to the other Party pursuant to Section 28.1 above or Section 29.2 or 29.3 below, then during the thirty (30)-day period prior to a Default occurring, the Parties may use the process set forth in Section 28.2 above to resolve the dispute.

29. **Default.**

29.1 Default. A "**Default**" is an Agency Default or a County Default, as defined in Sections 29.2 and 29.3 below.

29.2 Agency Default. The following will be events of default by Agency ("**Agency Default**"):

- (a) Agency's failure to comply with or fulfill any term, condition or obligation of this Lease within thirty (30) days after notice from County specifying the nature of the failure with reasonable particularity; or, if Agency cannot reasonably cure such failure within such 30-day period, then within such time as Agency can cure the failure with reasonable good faith and diligence; provided, however, that such cure period shall not exceed one hundred eighty (180) days; or
- (b) if County notifies Agency of an emergency condition or other safety hazard in the Colocation Premises (such emergency condition or other safety hazard being one that is directly

caused by Agency and presents an immediate risk of substantial harm to the Colocation Premises, the rest of the Courthouse or any contents therein or any of Agency's, County's or another tenant's agents, employees or invitees), Agency's failure to promptly commence and diligently pursue to completion a cure of such emergency condition or other safety hazard.

29.3 County Default. The following will be events of default by County ("**County Default**"):

- (a) County's failure to comply with or fulfill any term, condition or obligation of this Lease within thirty (30) days after notice from Agency specifying the nature of the failure with reasonable particularity; provided, however, that if County cannot reasonably cure such failure within such 30-day period, then within such time as County can cure the failure with reasonable good faith and diligence, provided, however, that such cure period shall not exceed one hundred eighty (180) days; or
- (b) if Agency notifies County of an emergency condition or other safety hazard in the Colocation Premises or the Courthouse (such emergency condition or other safety hazard being one that is not directly caused by Agency and presents an immediate risk of substantial harm to the Colocation Premises, the rest of the Courthouse or any contents therein or any of Agency's, County's or another tenant's agents, employees or invitees), County's failure to promptly commence and diligently pursue to completion a cure of such emergency condition or other safety hazard.

30. Remedies.

Upon any Default, the non-defaulting Party may exercise any or all of the following remedies:

30.1 Cure: the non-defaulting Party may perform the defaulting Party's unperformed obligations that gave rise to the Default, and charge all such costs and expenses to the defaulting Party pursuant to this Lease, which the defaulting Party shall pay within thirty (30) days after the other Party delivers an invoice therefor, together with reasonable supporting documentation of such costs and expenses.

30.2 Right to Sue: the non-defaulting Party may sue periodically to recover damages as they accrue without barring a later action for further damages.

30.3 Damages: the non-defaulting Party may recover from the defaulting Party any and all damages arising from the Default.

31. Notice.

31.1 Generally. Any notices, demands, deliveries, consents or other communications required under this Lease will be made in writing and delivered by one of the methods set forth in Section 31.2 below to the address of the Parties set forth beneath their respective signatures on this Agreement, unless a Party modifies its address by notice to the other Parties. The phone numbers provided on the Parties' signature pages to this Agreement are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Lease.

31.2 Delivery.

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Facsimile	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or facsimile will 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 Lease for delivery of a notice is a Saturday, Sunday or federal or State holiday, such deadline will be deemed extended to the next business day.

32. **Miscellaneous.**

32.1 Time is of the Essence. Time is of the essence in the performance of the terms of this Lease.

32.2 Calculation of Days. Any reference in this Lease to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or State holiday.

32.3 No Third-Party Beneficiaries. County and Agency are the only parties to this Lease and are the only parties entitled to enforce its terms. Nothing in this Lease gives, is intended to give or will 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 Lease.

32.4 Severability. If any term or provision of this Lease 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 will not be affected. The rights and obligations of the Parties will be construed and enforced as if this Lease did not contain the particular term or provisions held to be invalid.

32.5 Waiver. The failure by a Party to enforce any provision of this Lease shall not constitute a waiver of that or any other provision.

32.6 Consent. Unless otherwise specifically stated herein, any consent by a Party will not be unreasonably withheld, conditioned or delayed.

32.7 Governing Law; Consent to Jurisdiction. This Lease is governed by and construed in

accordance with the laws of the State without regard to principles of conflicts of law. Any Claim between Agency (or any other agency or department of the State) and County that arises from or relates to this Lease will be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State; provided, however, if a Claim is brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section 32.7 or any other provision of this Lease be construed as a waiver by the State 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.

32.8 Entire Agreement. This Lease constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease.

32.9 Amendments. No amendment, waiver, consent, modification or change of terms of this Lease will bind a Party unless in writing and signed by both Parties. Such amendment, waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given.

32.10 Electronic Signatures and Counterparts. This Lease and any amendments hereto may be executed via electronic signature and in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

32.11 Survival. All provisions of this Lease that would reasonably be expected to survive the expiration or earlier termination of this Lease shall do so.

32.12 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Lease, each party shall be responsible for its own attorneys' fees and expenses.

32.13. Limitation of Liabilities. This Lease is expressly subject to the debt limitation set forth in Article XI of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

32.12 Exhibits. The Exhibits listed below are incorporated as part of this Lease:

- Exhibit A: Colocation Premises
- Exhibit B: OJD Premises
- Exhibit C: OPDC Premises
- Exhibit D: Janitorial Specifications
- Exhibit E: Service Providers Insurance Requirements

[remainder of page intentionally left blank]

DRAFT

County and Agency, by execution of this Lease, hereby acknowledge that each Party has read this Lease, understands it and agrees to be bound by its terms and conditions.

COUNTY:

Clackamas County, an Oregon political subdivision

Signature _____
Name _____ Date _____
Title _____

Reviewed for County:

By: _____
_____, Assistant County Attorney

County

Clackamas County

ATTN: _____

Email: _____

Phone: _____

cc: _____

AGENCY:

State of Oregon, acting by and through its Oregon Public Defense Commission

Signature _____
Name _____ Date _____
Title _____

APPROVED BY OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES

Signature _____
Name Brady Ricks Date _____
Title Manager, Real Estate Services

Approved as to legal sufficiency for Agency:

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

Agency

Oregon Public Defense Commission

ATTN: _____

Email: _____

Phone: _____

cc: res.info@das.oregon.gov

#2(ser)

EXHIBIT A

Colocation Premises

DRAFT

EXHIBIT B

OJD Premises

DRAFT

EXHIBIT C

DHS Premises

DRAFT

EXHIBIT D

Janitorial Specifications

DRAFT

EXHIBIT E

Service Providers Insurance Requirements

Capitalized terms used but not defined in this Exhibit shall have the same definition as set forth in the Lease Agreement.

The insurance listed below will be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to both Parties. A Party shall not authorize its Contractor to begin work under the Contract until the insurance is in full force. Thereafter, the applicable Party shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. The Party shall incorporate appropriate provisions in its Contracts, permitting it to enforce Contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of “reasonable steps” include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Contracts as permitted by the Contracts, or pursuing legal action to enforce the insurance requirements. In no event shall a Party permit its Contractor to work under a Contract when such Party is aware that the Contractor is not in compliance with the insurance requirements.

1. Workers’ Compensation and Employers’ Liability

All employers, including a Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers’ compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). A Contractor shall require and ensure that each of its subcontractors complies with these requirements. If a Contractor is a subject employer, as defined in ORS 656.023, the Contractor shall also obtain employers’ liability insurance coverage with limits not less than \$1,000,000 each accident. If a Contractor is an employer subject to any other state’s workers’ compensation law, the Contractor shall provide workers’ compensation insurance coverage for its employees as required by applicable workers’ compensation laws including employers’ liability insurance coverage with limits not less than \$1,000,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

2. Commercial General Liability

☒ **Required**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State of Oregon and County. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under the Lease, and have no limitation of coverage to designated premises, project or operation. Coverage will be written on an occurrence basis in an amount not less than \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate.

3. Automobile Insurance

☒ **Required** ☐ **Not required**

Automobile Liability Insurance covering a Party's Contractor's business use including coverage for all owned, non-owned or hired vehicles with a combined single limit of not less than \$2,000,000.00 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

4. Professional Liability

☒ **Required** ☐ **Not required**

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under the Lease by a Party's Contractor in an amount not less than \$2,000,000.00 per occurrence. Annual aggregate limit will be not less than \$4,000,000.00. If coverage is on a claims made basis, then either an extended reporting period of not less than twenty-four (24) months will be included in the Professional Liability insurance coverage, or the Contractor shall provide tail coverage as provided below.

5. NETWORK SECURITY & PRIVACY LIABILITY

☒ **Required** ☐ **Not required**

Network Security and Privacy Liability Insurance for the duration of the Contract and for the period of time in which a Party's Contractor maintains, possesses, stores or has access to the other Party's data, whichever is longer, with a combined single limit of no less than \$2,000,000.00 per claim or incident covering the Contractor's liability for loss, theft, unauthorized disclosure, access or use of such Party's data (which may include, without limitation, Personally Identifiable Information (PII), Payment Card Data and Protected Health Information (PHI)) in any format including, without limitation, hard copy format, including coverage for accidental loss, theft, unauthorized disclosure access or use of such Party's data.

6. CRIME PROTECTION COVERAGE

☒ **Required** ☐ **Not required**

A Party's Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of the Contract, third party Employee Dishonesty or Fidelity Bond coverages for loss of the other Party's owned property by dishonest acts of an employee of the Contractor. Coverage limits will not be less than \$2,000,000.00.

7. EXCESS/UMBRELLA INSURANCE

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

8. ADDITIONAL COVERAGE REQUIREMENTS

A Party's Contractor's insurance will be primary and non-contributory with any other insurance. The Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

9. ADDITIONAL INSURED

All liability insurance, except for Workers' Compensation, Professional Liability and Network Security and Privacy Liability (if applicable), required under the Lease for a Party's Contractors shall include an additional insured endorsement specifying the other Party (the State of Oregon or County, as the case may be), its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only with respect to the Contractor's activities to be performed under the Contract. Coverage will be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of the Contractor's ongoing operations will be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations will be on ISO form CG 20 37 07 04 or equivalent.

10. TAIL COVERAGE

If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least twenty-four (24) months, a Party's Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of the Contract, for a minimum of twenty-four (24) months following the later of: (1) the Contractor's completion and the Party's acceptance of all services required under the Contract; (2) the Party's or the Contractor's termination of the Contract; or (3) the expiration of all warranty periods provided under the Contract.

11. CERTIFICATE(S) AND PROOF OF INSURANCE

The applicable Party shall obtain from its Contractor a Certificate(s) of Insurance for all required insurance before allowing its Contractor to perform any services required under the Contract. For County's Contractors, the Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. For Agency's Contractors, the Certificate(s) shall list County, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. In either case, the Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by the Lease. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance shall include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance, a Party has the right to request copies of insurance policies and endorsements relating to the insurance requirements in the Lease.

12. NOTICE OF CHANGE OR CANCELLATION

A Party's Contractor or its insurer shall provide at least thirty (30) days' written notice to both Parties before cancellation of, material change to, potential exhaustion of aggregate limits of or non-renewal of the required insurance coverage(s).

13. INSURANCE REQUIREMENT REVIEW

A Party's Contractor shall agree to periodic review of insurance requirements by either Party under the Contract and to provide updated requirements as agreed upon by the Contractor and the Parties.

14. PARTY ACCEPTANCE

All insurance providers of one Party are subject to the other Party's acceptance. If requested by a Party, the Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to the Party's representatives responsible for verification of the insurance coverages required under this Exhibit.