



Board of County Commissioners  
 Clackamas County

Members of the Board:

**Approval of a Contract with Hawkins Delafield & Wood, LLP  
 to serve as a P3 Legal Advisor**

<b>Purpose/Outcome</b>	Contract will provide P3 Legal advisory services as part of a sub-team within the Technical Advisory Team (“TAT”) implementing the county strategic goal of building a new Clackamas County courthouse.
<b>Dollar Amount and Fiscal Impact</b>	Contract total \$500,000 which is in the 2020/2021 FY adopted budget.
<b>Funding Source</b>	County General Fund for 50% of the contract amount with 50% match from the State General Fund through the Oregon Judicial Department
<b>Duration</b>	June 30, 2021
<b>Previous Board Action/Review</b>	July 7, 2020 Board Policy Session where Board directed staff to proceed with the P3 Procurement Preparation effort
<b>Strategic Plan Alignment</b>	The building of a new county courthouse is one of 12 Strategic Priorities of the county and is listed under the category Build Public Trust through Good Government. The project will take advantage of the State Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) legislation and ensure that essential court services are safe and accessible to all residents.
<b>Counsel Review</b>	3. 11/19/20 4. Counsel Initials: AN
<b>Procurement Review</b>	Was the item processed through Procurement? Yes
<b>Contact Person</b>	Gary Barth, Project Manager, 503-754-2050
<b>Contract No.</b>	3378

**Background:**

The Clackamas County Courthouse is home to the Fifth Circuit Court of the Oregon Judicial Department. The current courthouse was built in 1937 to house county offices and a single courtroom. The courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms. Due to the insufficient amount of space available in the building, services in support of the courthouse are located off-site, creating numerous operational inefficiencies. The courthouse is greater than 90 years old, requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services.

Recognizing the need for new county courthouses, the Oregon State Legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013 administered through the Oregon Judicial Department (the “OJD”). Counties that meet OCCCIF requirements and are approved will receive OCCCIF funding for 50% of the cost of a new county courthouse. Clackamas County (the “County”) applied to the OCCIF for its courthouse replacement project (the “Project”) and was approved by the state in 2017.

The County and the OJD have decided to utilize a Public-Private Partnership (“P3”) delivery approach to design, build, partially finance, operate and maintain (“DBfOM”) the Project. This determination was driven by a recently completed Value-for-Money (VFM) analysis that compared five project delivery approaches and showed the P3 Availability Model approach as providing the greatest Value-for-Money to the county and the state.

To execute the P3 procurement effort, Clackamas County is forming a Project Technical Advisory Team (“TAT”) to include representatives of the County, the OJD and external consultants with experience in the procurement and structuring of P3’s for similar social infrastructure projects.

The Legal Advisor will work with County Counsel to assemble, lead, manage, and coordinate a sub-team within the TAT focused on the development of the Request for Qualifications, the Request for Proposals and the draft Project Agreement required in procuring a private-sector developer for the P3 Courthouse Project. The P3 Legal Advisor will advise the County on all legal issues associated with the successful preparation, procurement and closing of the P3 for the Clackamas County Courthouse.

**Procurement Process:**

This project was advertised in accordance with ORS and LCRB Rules on August 17, 2020. Proposals were opened on September 15, 2020. The County received three (3) Proposals: Ball Janik and Ashurst, LLP; Hawkins Delafield & Wood, LLP; and NOSSAMAN, LLP. An evaluation committee comprised of three County personnel scored Hawkins Delafield & Wood, LLP. the highest.

**Recommendation:**

Staff respectfully recommends that the Board approve and execute the Contract with Hawkins Delafield & Wood, LLP for the P3 Legal Advisor contract.

Sincerely,

Gary Barth  
Project Manager

Placed on the BCC Agenda \_\_\_\_\_ by Procurement and Contract Services

**Clackamas County  
Agreement for Legal Services  
Contract #3524**

This Agreement for Legal Services (“Agreement”) is entered into between Clackamas County, a political subdivision of the State of Oregon (“County”) and **Hawkins Delafield & Wood, LLP**. (“Firm”) in consideration of the mutual covenants and conditions stated below.

**1.0 Purpose, Scope, Duration**

1.1 County hires Firm to act as an attorney for County for the provision of non-litigation legal services related to the County’s anticipated utilization of a public-private partnership (“P3”) to fund, design, construct, and ultimately deliver a new County courthouse (the “Project”), as further described in the County’s Request for Proposals (“RFP”), attached hereto and incorporated by this reference as Exhibit A. Firm will provide legal services described in Exhibit B, and Firm’s Response to the RFP, attached hereto and incorporated by this reference herein as Exhibit C, together with any additional legal reasonably related to the same. County expressly engages Firm on a “time-and-charges” basis, not on a retainer basis.

1.2 Firm shall not begin to perform legal services with respect to any matter without consultation with and authorization from County.

1.3 This Agreement shall be effective upon the date of last signature, and continue until terminated.

1.4 It is understood that County, and not Firm, shall handle all communications with the public or media on County matters.

1.5 The County Representative for this Agreement is: **Nate Boderman**.

**2.0 Relationship between Firm and County**

2.1 The relationship of Firm to County arising out of this Agreement shall be that of attorney and client. Firm shall assist the County in the provision of legal services, including consultation with the officers of County as necessary.

2.2 County staff shall assist Firm in locating, developing and providing any documentation necessary to support the legal services provided by Firm.

**3.0 Personnel and Staffing**

3.1 Firm agrees that **Eric S. Petersen**, a partner of Firm, shall have primary supervisory responsibility for the legal services performed hereunder, shall have discretion to use additional professionals of Firm to provide needed support, shall be available and designated as the contact person with County or designee during the term of this Agreement, and shall arrange for work to be handled efficiently and productively considering cost and expertise.

3.2 Where additional staff is needed to substitute or fill in due to Firm’s staffing problems, County will not be billed for the start-up cost of educating them in the case. Firm will minimize costs by relying on junior attorneys or legal assistants for less demanding tasks, and upon partners where their skill and experience will result in more effective, economical efforts.

3.3 Where staff from outside the Firm is needed in the best judgment of the supervisory partner, prior approval of County or designee must be obtained before such additional staff is retained. County will not be responsible for the fees and costs of such additional staff if prior approval has not been given.

## **4.0 Billing and Compensation**

4.1 Firm shall submit for County's approval bills for legal services rendered and expenses incurred. Such bills shall contain a daily log with the name of each partner, associate, or legal assistant who worked on the matter, the hourly rate of each, the number of hours worked by each, a reference to the matter worked on, a brief description of the work done, and any expenses, all in sufficient detail to provide meaningful explanation. In addition, such bills shall be clearly marked "attorney-client communication, privileged and confidential," and shall include a summary cover sheet listing only the monthly amount to be paid for legal services rendered.

Bills shall be submitted to the County by mail or email to: [nboderman@clackamas.us](mailto:nboderman@clackamas.us) or US Mail to: Clackamas County Counsel, 2051 Kaen Road, Oregon City, 97045.

4.2 Subject to audits, County shall pay Firm as compensation for the legal services described above, fees and disbursements for out-of-pocket expenses as described in this Agreement. This amount shall be paid at the hourly billing rates set forth in Attachment A, which is incorporated into this Agreement. The hourly rates listed in Attachment A will remain in effect until at least June 30, 2022. Subject to the not to exceed amount set forth in section 4.5 below, the rates set forth above shall be increased every January 1, regardless of the date of execution of this agreement, by 3% to account for general inflation. Out-of-pocket disbursements are additional.

4.3 Firm shall be reimbursed for all out-of-pocket expenses reasonably incurred while rendering the legal services described in this Agreement, including long distance telephone, delivery, photocopying, filing fees, and charges for transcripts. Charges for transportation, meals, and lodging are expected to be reasonable and may not exceed the County Contractor Travel Reimbursement Policy. Firm shall not incur travel expenses without first obtaining the approval of the County Representative or designee. No overtime or special staff or clerical services costs shall be billed to County unless it is otherwise agreed prior to the rendering of those services.

4.4 Unless approved by County Representative or designee in advance, time spent by more than one Firm attorney to attend meetings, witness interviews, depositions, hearings, etc. will not be paid by County. County specifically requests Firm to minimize occasions where more than one attorney is involved in a telephone conference.

4.5 The Project is anticipated to progress in phases (Phases 1 – 3), as described in Exhibit A. The amount payable by County to Firm under this Agreement for Phase 1, shall not exceed five hundred thousand dollars (\$500,000.00). Firm shall not submit bills for, and County will not pay, any amount in excess of the maximum compensation amount set forth above, regardless of whether the legal services have already been performed. Firm may only perform legal services for Phases 2 and 3 upon execution of a written amendment to this Contract on terms and conditions acceptable to both parties.

## **5.0 Termination**

This Agreement may be terminated for the following reasons: 1) This Agreement may be terminated at any time by mutual consent of the parties, or by County for convenience upon thirty (30) days' written notice to the Firm; 2) County may terminate this Agreement effective upon delivery of notice to Firm, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Agreement is prohibited or County is prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Firm to provide the services required by this Agreement is for any reason denied, revoked, or not renewed; 3) This Agreement may also be immediately terminated by County for default (including breach of contract) if (i) Firm fails to provide services or materials called for by this Agreement within the time specified herein or any extension thereof; or (ii) Firm fails to perform any of the other provisions of this Agreement or so fails to

pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of notice from County, fails to correct such failure within ten (10) business days; 4) If sufficient funds are not provided in future approved budgets of County (or from applicable federal, state, or other sources) to permit County in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, County may terminate this Agreement without further liability by giving Firm not less than thirty (30) days' notice.

## **6.0 Attorney-Client Privilege**

The parties will use their best efforts to protect the attorney-client privilege, the attorney work product privilege and any other privileges available to the full extent allowed by law.

## **7.0 Governing Law and Venue**

This Agreement shall be governed by and construed under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and the Firm that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. FIRM, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **8.0 Non Waiver**

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

## **9.0 Entire Agreement; Modification**

This Agreement and its attachments constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto. Any amendment hereof must be in a writing signed by both parties.

## **10.0 Assignment**

This Agreement may not be assigned by either party.

## **11.0 Notice**

Any notice to either party hereunder must be in writing signed by the party giving it and delivered postage prepaid by U.S. Postal Service or Canada Post first class, certified, or express mail, or other overnight delivery service, or hand delivered, as follows:

To County:                      Clackamas County Counsel  
    2051 Kaen Road  
    Oregon City, OR 97045

To Firm:                              Delafield Hawkins & Wood, LLP  
    200 SW Market Street  
    Portland, Oregon 97201

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

## **12.0 Indemnity and Responsibility for Damages**

Firm shall be responsible for all damage to property, injury to persons, loss, and expense which may be caused by, or result from any negligent or willful act or omission of Firm, its subcontractors or employees acting under this Contract, except to the extent caused by the negligence or willful act or omission of any other person. Firm shall save, defend, indemnify, and hold harmless the County and its elected officials, directors, employees, and agents from all liability, loss, expense, claims, suits and actions of any nature resulting from or arising out of any negligent or willful act or omission of Firm, its subcontractors, officers, agents, or employees acting under this Contract, except to the extent caused by the negligence or willful act or omission of any other person.

The foregoing obligations of Firm are conditioned upon and limited to the extent that the County provides Firm with prompt written notice of any such claim, suit, action or proceeding and reasonable assistance, at Firm's expense, in the defense thereof. Firm shall have control of the defense and settlement thereof, but neither Firm nor any attorney engaged by Firm shall defend the claim in the name of the County, without the prior written consent of the County Counsel. The County may, at its election and expense, assume its own defense and settlement in the event that the County determines that Firm is prohibited from defending County, is not adequately defending its interests, or that an important governmental principle is at issue and County desires to assume its own defense.

## **13.0 Insurance**

Firm shall provide insurance as indicated on Exhibit D, attached and hereby incorporated by reference. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a duration of 24 months.

## **14.0 Tax Compliance**

Firm must, throughout the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Agreement. Further, any violation of Firm's warranty in this Agreement that Firm has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Agreement. Any violation shall entitle County to terminate this Agreement, to pursue and recover any and all damages that arise from the breach and the termination of this Agreement, and to pursue any or all of the remedies available under this Agreement, at law, or in equity, including but not limited to: (A) Termination of this Agreement, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Firm, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Firm's breach of this Agreement, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Firm represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Firm, to Firm's property, operations, receipts, or income, or to Firm's performance of or compensation for any work performed by Firm; (C) Any tax provisions imposed by a political subdivision of this state that applied to Firm, or to goods, services, or property, whether tangible or intangible, provided by Firm; and (D) Any rules, regulations, charter provisions, or

ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**15.0 Public Contracting Provisions**

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

**16.0 Counterparts/Facsimile Signatures**

This Agreement may be executed in counterparts and each counterpart shall be deemed an original, together constituting one agreement.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement by and through their duly authorized representatives as set forth below.

Hawkins Delafield & Wood, LLP  
200 SW Market Street, Suite 350  
Portland, Oregon 97201

Clackamas County

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Chair Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Recording Secretary

81766-99/ FLLP/ New York  
\_\_\_\_\_  
Oregon Business Registry #

Approved as to Form

County Counsel

**EXHIBIT A**  
**RFP #2020-78 P3 LEGAL ADVISOR**  
**Published September 17, 2020**



## **EXHIBIT B**

### **SCOPE OF WORK**

Firm will provide legal services for all Phases of the Project, as described in Exhibit A of the Contract, and generally described in the categories described below and in Exhibit C of the Contract. Such legal services may include the following: attendance at meetings; participation in telephone and conference calls with multiple working group members; legal research; drafting of memoranda, reports and analyses; contract and document drafting; internal meetings and discussions; preparation for calls, conferences and meetings; reviewing and commenting on drafts, reports and documents prepared by the owner and other consultants and professionals; attendance at discussion and negotiating sessions; review of the results of meetings, calls and conferences; review of correspondence; and transaction administration.

#### **I. PLANNING PHASE SERVICES**

##### **Legal Review and Analysis**

- > Reviewing current law governing applicable procurement and contracting powers and procedures
- > Reviewing potential tax-exempt financing options
- > Assistance in legal reviews conducted by other counsel as to real estate, permitting, environmental, labor and related legal matters
- > Preparation of memoranda of law on procurement and contracting issues
- > Drafting and review of legislation required for project implementation

##### **Project Planning and Delivery Method Selection**

- > Advising regarding project definition, planning, goals, objectives and outcomes
- > Assistance in the overall conceptualization and organization of the procurement for the project
- > Assistance in structuring the environmental, commercial, contract and financing elements of the project
- > Developing strategies for reasonably maximizing competition among proposers
- > Assistance in conducting industry outreach
- > Assistance in assuring compliance with required procurement procedures
- > Assistance in the review of alternative project delivery methods
- > Advising concerning project risk retention and transfer
- > Participation in preparing the business case, multiple criteria analysis and value-for-money analysis and report
- > Legal review of potential financing plans and transaction structures
- > Coordinating with stakeholders in project planning and delivery method selection
- > Assistance with any market sounding survey and request for expressions of interest, and the review of any responsive submittals

#### **II. TRANSACTION PHASE SERVICES**

##### **RFQ Preparation, Issuance and Evaluation**

- > Reviewing and commenting on the draft RFQ
- > Advising regarding commercial and other issues that should be considered prior to RFQ issuance to ensure the RFQ includes all required information for participants to consider at this stage
- > Advising regarding relationship and intergovernmental matters
- > Advising regarding evaluation issues

- > Assisting in preparation of correspondence with respondents, including correspondence advising of the results of the RFQ evaluation

### **Preparation and Issuance of RFP and Draft Project Agreement**

- > Preparing the draft project agreement, all appendices and related agreements for release with the RFP, including:
  - Initial review of each element of the project agreement
  - Receiving, discussing and incorporating comments from the project team
  - Identifying areas where further consideration and input is necessary
  - Coordinating input from the various content providers and specialists, including other consultants and advisors
  - Incorporating the preferred risk and responsibility allocation
  - Assuring consistent drafting and minimizing redundancy
- > Reviewing and revising the RFP and proposal forms, including proposal requirements
- > Advising regarding commercial issues that have arisen in other similar alternative delivery and public private partnership projects
- > Legal review of issues, and advice related to project insurance
- > Participating in discussions and decisions regarding interface issues between the project and other components of the infrastructure system and reflecting those decisions in the RFP and draft project agreement
- > Legal review of issues, and advice related to labor, employment and DBE programs.

### **Proposal Development and Submittal**

- > Reviewing and advising on proposer inquiries
- > Reviewing and advising on proposer comments on draft project agreement
- > Attending collaborative meetings at which commercial and technical matters relating to the project agreement are discussed
- > Preparing revised drafts of the project agreement, including a final draft for issuance one month before submission deadline

### **Proposal Evaluation**

- > Advising regarding evaluation process and issues, and selection criteria
- > Review legal confidentiality requirements and proposer responsiveness
- > Assistance in conducting pre-selection proposal clarifications and negotiations
- > Reviewing and commenting on the proposal review and evaluation report
- > Assisting in preparation of correspondence with proposers, including correspondence advising of the results of the proposal evaluation

### **Contract Negotiations**

- > Assistance in developing the negotiating strategy and negotiating the final project agreement, appendices and related agreements
- > Coordinating with the project team regarding ongoing developments and strategies
- > Legal review of the financing documents
- > Incorporating the technical and financial proposals in the project agreement and appendices
- > Legal review of the project agreement, appendices and other agreements
- > Participating in presentations concerning the procurement process and the resulting project agreement

### **Closing**

- > Identifying tasks required to close, including final amendments to the project agreement
- > Working with preferred proposer's legal counsel to confirm closing requirements, closing agenda and closing process

- > Working with the owner’s financial and technical advisors to finalize financial close arrangements
- > Conducting a due diligence review of, and commenting on as appropriate, the project company’s subcontract and financing documents
- > Preparing closing documents
- > Attending to closing
- > Preparing closing report, including digital document book

**Post-Contract Execution**

- > Addressing issues of contract application, implementation, and administration that arise following commercial and financial close
- > Drafting contract administration memoranda and amendments to the project agreement, as necessary.

**III. RATE SCHEDULE**

The hourly rates for the remainder of 2020 and all of 2021 for the lawyers assigned to the Project are set out below:

TITLE	HOURLY RATE
Partner/Counsel	\$600
Senior Associate (5 to 7 years experience)	\$550
Mid-level Associate (3 to 4 years experience)	\$500
Junior Associate (Less than 3 years experience)	\$425
Law Clerk (An associate not yet admitted to a bar)	\$325
Legal Assistant/Paralegal	\$200

**Travel and other expenses**

Travel expenses are reimbursable in accordance with the County Contractor Travel Reimbursement Policy, hereby incorporated by reference. Travel and expense reimbursement is not in addition to the not to exceed amount.

**EXHIBIT C**  
**VENDOR'S PROPOSAL**

## EXHIBIT D INSURANCE

During the term of this Agreement, Firm shall maintain in full force at its own expense, each insurance noted below:

**1. Required by County of Firms with one or more workers, as defined by ORS 656.027.**

**Firm, its subcontractors, if any, and all employers providing work, labor, or materials under this Agreement are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.**

**2.  Required by County     Not required by County.**

**Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract.

**3.  Required by County     Not required by County.**

**General Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Agreement.

**4.  Required by County     Not required by County.**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than \$500,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

**5. Certificates of Insurance.** As evidence of the General Liability and Automobile Liability insurance coverage required by this Agreement, the Firm shall furnish an endorsement from the insurance company naming the County and its elected officials, directors, employees and agents as additional insureds with respect to the work of this Agreement. Insuring companies or entities are subject to State acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Firm shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

**6. Notice of cancellation or change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Firm or its insurer(s) to County at the following address: Procurement Division, 2051 Kaen Road, Oregon City, OR 97045.