

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 6/29/2022 **Approx Start Time:** 10:00 am **Approx Length:** 90 min

Presentation Title: New County Courthouse Public-Private Partnership (P3) Approval

Department: County Administration

Presenters: Gary Barth, Courthouse Project Manager

Other Invitees: Presiding Judge Kathie Steele, County Finance Director Elizabeth Comfort, District Attorney John Wentworth, Sheriff Angie Brandenburg, Consultants Marcel Ham (Rebel), Tom Kness (WT Partnerships), and Eric Peterson (Hawkins, Delafield & Wood).

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Acceptance or rejection of Fengate PCL Progress Partners (FP3) as the successful proposer to the Request for Proposal (RFP) to design, build, partially finance and maintain a new county courthouse.

EXECUTIVE SUMMARY:

At a Policy Session on May 5, 2021 the Board authorized staff to proceed with a Public-Private Partnership (P3) delivery approach to design, build, partially finance, operate and maintain a new County courthouse. At a subsequent Business Meeting on May 20, 2021 the Board adopted a Resolution authorizing the P3 procurement approach providing staff with the approvals necessary to undertake the P3 procurement effort. On June 23, 2021 the State Legislature authorized the issuance of \$94.5 million in bonds to cover 50% of authorized courthouse design and construction costs based on a preliminary, high-level cost estimates.

The County issued a Request for Qualifications (RFQ) on July 1, 2021 for P3 development teams interested in pursuing the courthouse project and eight teams submitted Statements of Qualifications (SOQ's). The County formed a Selection Committee to evaluate and score the SOQ's. Committee members were:

- Jim Edwards, Clackamas County resident, experience commercial developer
- Gary Barth, Courthouse Project Manager,
- Patrick Williams, Deputy Director, County Finance
- Jeff Jorgensen, Facilities Manager
- Mike Bezner, Deputy Director, Transportation and Development

The Selection Committee identified the top three qualifying teams to advance to the RFP Phase based on the following criteria:

RFP SELECTION CRITERIA	WEIGHTING
General Qualifications (Section 1-2 of Package 1)	10%
Design Qualifications and Experience (Section 1-3 of Package 1 and Package 2)	25%
Construction Qualifications and Experience (Section 1-4 of Package 1 and Package 2)	20%
Facilities Management Qualifications and Experience (Section 1-5 of Package 1 and Package 2)	20%
Project Financing Qualifications and Experience (Section 1-6 of Package 1 and Package 2)	15%
Project Understanding and Approach (Section 1-7 of Package 1)	10%
Total	100%

The County issued a draft Request for Proposal (RFP) and draft Project Agreement to the three top qualifying teams who advanced through the RFP phase as outlined in the following schedule:

P3 Procurement Schedule	Due Date
Issue RFP and initial Draft Project Agreement to Proposers	September 14, 2021
Kickoff Meetings with Proposers	September 28, 2021
Proposers Schedule Project Site Visit	September 29, 2021
First Round of Individual Meetings with Proposers	October 26-28, 2021
Interim Technical Submittal due	November 11, 2021
Interim Financial Submittal due	November 11, 2021
Second Round of Individual Meetings with Proposers	December 7-9, 2021
Third Round of Individual Meetings with Proposers	January 11-13, 2022
Final Day to Submit any Questions or Comments to the County Procurement	January 19, 2022
Issue Final Draft Project Agreement and Final RFP	February 10, 2022
Technical Proposal Due	April 6, 2022
Technical Proposal Scored	May 11, 2022
Financial Proposal Due	June 1, 2022
Financial Proposal Scored; Selection of Preferred Proposer	June 6, 2022
BCC Policy Session to Present the Preferred Proposer	June 22, 2022

The 11-month procurement process concluded with the scoring of the responses to the RFP by the Selection Committee based on the following criteria:

Criterion	Maximum Points Possible
TECHNICAL PROPOSAL	70
Project Approach (Packages A-1, A-2 and A-3)	10
Design (Package B-1)	30
Construction Approach (Package B-2)	10
Facilities Management Approach (Package B-3)	20
FINANCIAL PROPOSAL (Package C) (Net Present Value of the Proposed Service Fee)	30
TOTAL	100

The scoring results were as follows:

	Fengate	Plenary
Technical Score (70 possible)	57.00	53.20
Financial Score (30 possible)	30.00	11.01
Total Score (100 possible)	87.00	64.21

Note: The third proposer withdrew from the RFP process in December 2021.

With the highest combined score Fengate PCL Progress Partners (FP3) was selected as the Preferred Proposer. On June 6, 2022 County Procurement posted a Notice of Intent to Award naming Fengate PCL Progress Partners as the Apparent Successful Proposer to the Courthouse P3 RFP subject to Board acceptance and approval.

The final step in this P3 procurement effort is for the Board to accept or reject FP3 as the Preferred Proposer at this Policy Session. If the Board accepts FP3 as the Preferred Proposer, the following high-level actions would occur:

Board of County Commissioners Approves Execution of the Contract (Project Agreement)	June 30, 2022
Estimated Commercial Close of the Project Agreement	August 2022
Estimated Financial Close of the Project Agreement	August 2022
Complete final design and develop construction documents	Aug. - Dec 2022
Secure Land Use Approval and Building Permits	December 2022
Begin construction phase	January 2023
Substantial Completion, Occupancy Readiness and Commencement of Facilities Management Period	May 2025

If the Board rejects the Preferred Proposer, the County would then withdraw the RFP for a P3 Project Team to design, build, partially finance and maintain the courthouse and the procurement will close out. The Board would then need to determine an alternative course of action to address the strategic priority to replace the current courthouse.

FINANCIAL IMPLICATIONS (current year and ongoing):

If the Board accepts the Preferred Proposer, the County will incur approximately \$24 million in direct costs. The majority of those direct costs include an estimated \$15 million for transportation and parking improvements that the City of Oregon City will require as a Condition of Approval for the courthouse project as well as an estimated \$5.3 million for System Development Charges for the project. These costs are in addition to the \$6.8 million the Board previously approved and the County has incurred on this project in the prior seven years since project inception in FY 14/15 and concluding with this procurement effort.

FP3 has proposed a total of \$282.4 million in fixed costs for the design and construction of the new courthouse and related site work. FP3 is guaranteeing this cost and will bear 100% responsibility for any cost overruns.

The combined cost of the County and FP3 is \$313.3 million. Approximately 46% or \$143 million is eligible for a State match from the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF), leaving the County responsible for approximately 54% of the total costs or \$170 million. The primary reason the County pays a higher share of the project cost is that the District Attorney space in the new courthouse is not eligible for the State OCCCIF match. The County has received authorization of \$94.5 million in OCCCIF for FY 21/23 biennium. Subject to the County and Chief Justice of the Oregon Judicial Department (OJD) approval of the FP3 proposal, the County and OJD will jointly request the additional OCCCIF for FY 23/25 in the 2023 Legislative Session.

Upon project completion in 2025, FP3 will receive a Milestone Payment of \$130 million from the County to cover a significant portion of the project costs using funds provided by the State from the OCCCIF. The County will repay the remainder of the project costs over the 30-year term of

the Project Agreement in the form of an annual Availability Payment (AP), also referred to as a Service Fee. The AP is comprised of the following:

- A Capital Charge
 - \$9.8 million per year fixed over the 30-year term subject to a final adjustment at financial close based on benchmark interest rates in effect at that time.
- A Facility Management Charge - for ordinary Operations and Maintenance (O&M)
 - \$3.2 million in year one, inflation indexed
- A Facility Management Charge to fund capital repairs, refurbishment or replacement of building components based on a schedule outlined in the Project Agreement
 - An average of \$0.7 million a year

The total year one AP for all three components is \$13.8 million. This payment repays the County share of the capital cost to design and build the courthouse and funds the on-going maintenance over the 30-year term of the project agreement. The County will directly pay utility costs as incurred.

The County is currently paying the following annual costs for the current courthouse, the Holman Building (Jury Assembly and the Law Library) and rented space occupied by the District Attorney:

- Rent to the external property owner - \$162,000 a year, indexed
- County allocated O&M - \$1.4 million

The annual AP paid to FP3 will replace these costs.

Is this item in your current budget? YES NO

If the BCC approves FP3 as the preferred proposer, the projected County direct costs for FY 22/23 are included in the adopted budget. Costs in the following years are included in the long-range General Fund budget forecast for planning for these future expenditures.

The State OCCIF matching grant proceeds will also be included in future General Fund budget forecast as outlined in the Master Funding Agreement and the Phase II Funding Agreement between the County and the State. The Master Funding Agreement has been executed and the draft Phase II Agreement is near completion by County Counsel and will be provided to the Board for approval and execution at the June 30, 2022 Business Meeting should the Board accept the FP3 proposal.

STRATEGIC PLAN ALIGNMENT:

- Build a new County courthouse
 - Build public trust through good government
 - Grow a vibrant economy
 - Build a strong infrastructure
 - Conform with the County Climate Action Plan

LEGAL/POLICY REQUIREMENTS: The Project RFQ, RFP, Project Agreement and Funding Agreements are all being produced by County counsel in collaboration with State DOJ and with support from our outside P3 legal counsel

PUBLIC/GOVERNMENTAL PARTICIPATION: County Public & Government Affairs (PGA) is leading the public and governmental participation and will work closely with FP3 during all phases of the project.

OPTIONS:

1. **Accept** Fengate PCL Progress Partners as the successful proposer to design, build, partially finance, operate and maintain the new Clackamas County Courthouse subject to receipt of a letter of approval from the Chief Justice of the Oregon Judicial Department approving the project as proposed and supporting the County request for additional OCCCIF funding in the 2023 Legislative Session. This option provides the greatest amount of certainty in completing the project at a known cost that is \$40 million less than the competing proposal with a very attractive cost of capital.
2. **Reject** Fengate PCL Progress Partners proposal and withdraw the RFP, closing out this procurement effort. Withdraw the OCCCIF application to the State and defer action until an alternative approach to replacing the current courthouse can be determined.

RECOMMENDATION:

Staff recommends **Option 1 Accept**.

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval GBarth

County Administrator Approval _____

For information on this issue, please contact Gary Barth, Courthouse Project Manager, gbarth@clackamas.us
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Attachments:

1. Notice of Intent to Award Contract
2. Draft Project Agreement with Summary of Terms
3. Project Cost Summary
4. State and County Cost Share Summary
5. Phase II Funding Agreement between the County and the State
6. Debt Service Forecast
7. P3 Procurement FAQs
8. Estimated Allocated Costs of District Attorney Space in the New Courthouse



Department of Finance

Elizabeth Comfort
Finance Director

Procurement & Contracting Services

Public Services Building
2051 Kaen Road, Oregon City, OR 97045

NOTICE OF INTENT TO AWARD CONTRACT

DATE: June 06, 2022

REQUEST FOR PROPOSAL #: 2021-35

TITLE: Public-Private-Partnership to Design-Build-Partially Finance-Operate-Maintain the New Clackamas County Courthouse

APPARENT SUCCESSFUL PROPOSER: Fengate PCL Progress Partners

In accordance with Local Contract Review Board Rule C-047-0740 and the above referenced RFP, Clackamas County ("County") intends to award a contract to the above named apparent successful proposer. The above named apparent successful proposer shall not acquire any legal or equitable rights relative to the contract services until a contract containing terms and conditions acceptable to the County is executed. If the apparent successful proposer fails to negotiate and execute a contract with the County, the County may revoke the award and award the contract to the next highest ranked proposer or withdraw the RFP.

This Notice of Intent to Award Contract starts the seven (7) calendar day period in which an unsuccessful proposer may file a protest in accordance with Rule C-047-0740. Unsuccessful proposers may review the procurement file at the above Oregon City address upon appointment. Any protest must be in writing and must be delivered by email to the below address.

Ryan Rice
rrice@clackamas.us

Clackamas County appreciates the time and effort by proposers to submit for this solicitation and looks forward to receiving other proposals in the future. Please contact Ryan Rice if you have any questions.

Ryan Rice
Clackamas County Procurement



Department of Finance

Elizabeth Comfort
Finance Director

Procurement & Contracting Services

Public Services Building
2051 Kaen Road, Oregon City, OR 97045

RFP # 2021-35

Evaluation Scores Averages

Firm	Project Approach (0-15 Points)	Design (0-30 Points)	Construction Approach (0-10 Points)	Facilities Management Approach (0-15 Points)	Financial Proposal (0-30 Points)	Total (0-100 Points)	Rank
Fengate PCL Progress Partners	12.20	22.80	8.40	13.60	30.00	87.00	1
Plenary Justice Red Soils	12.00	21.20	6.80	13.20	11.01	64.21	2

PROJECT AGREEMENT

FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

BETWEEN

CLACKAMAS COUNTY, OREGON

AND

[_____]

DATED

[_____] , 2022

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REFERENCE DOCUMENT 3	GEOTECHNICAL INVESTIGATION REPORT
REFERENCE DOCUMENT 4	PRELIMINARY TITLE REPORT

PROJECT AGREEMENT
FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

THIS PROJECT AGREEMENT FOR THE DESIGN, CONSTRUCTION, FINANCING, OPERATION AND MAINTENANCE OF THE CLACKAMAS COUNTY CIRCUIT COURTHOUSE is entered into on [_____], 2022, between Clackamas County, Oregon (the “**County**”), and [_____], a [limited liability company] organized and existing under the laws of the State of [_____] (the “**Project Company**”).

RECITALS

WHEREAS, on May 5, 2021, the Board of County Commissioners approved the County proceeding with a public-private partnership procurement for the delivery of a new Clackamas County courthouse to replace the county’s existing aging court building;

WHEREAS, on May 20, 2021, the Board of County Commissioners, acting as the local contract review board pursuant to Section 279C.335 of the Oregon Revised Statutes, approved a resolution to exempt the procurement for the new courthouse from the ordinary competitive bidding requirements and instead engage in a two-step competitive proposal process composed of (1) a request for expressions of interest seeking qualified respondents, and (2) a request for proposals in which the County would make a best value determination;

WHEREAS, on June 24, 2021, the Joint Ways and Means Committee of the Oregon State legislature recommended to the full legislature the issuance of \$94.5 million in Article XI-Q bonds to fund the State of Oregon’s contribution to the new courthouse project and the inclusion of such bond issuance request in the State’s 2021-2023 biennium budget;

WHEREAS, on June 26, 2021, the full State legislature approved the State’s 2021-2023 biennium budget, including an authorization for the recommended \$94.5 million bond issuance, which budget and bond issuance authorization was approved by the State Governor on July 16, 2021;

WHEREAS, on July 1, 2021, the County issued a request for qualifications for the new courthouse;

WHEREAS, on August 12, 2021, the County received seven submittals in response to the request for qualifications;

WHEREAS, the County shortlisted three of the eight interested private entities as eligible to receive a request for proposals;

WHEREAS, the Project Company was one of the three shortlisted respondents;

WHEREAS, on September 14, 2021, the County issued a request for proposals to the three shortlisted respondents;

WHEREAS, on [_____], the County received technical proposals from [each of the three] shortlisted respondents, and on [_____], the County received financial proposals from each of the three shortlisted respondents;

WHEREAS, on [_____], after evaluating the proposals in accordance with the criteria set forth in the request for proposals, the County determined that the Project Company's proposal offered the best value to the County;

WHEREAS, in [_____], final negotiations were initiated with the Project Company, which negotiations have concluded with this Project Agreement;

WHEREAS, on [_____], the State and the County executed (1) a funding agreement addressing disbursement of the State's capital contribution to the new courthouse; and (2) lease agreements addressing the relationship between the County as owner, and the State as tenant, of the new courthouse;

WHEREAS, on [_____], the County Board of Commissioners approved [County Resolution No. _____], authorizing the execution and delivery of this Project Agreement between the County and the Project Company; and

WHEREAS, the County desires to receive and the Project Company desires to provide the services set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Project Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Project Agreement whether or not this Article contains a cross-reference to such definitions.

“Affiliate” in respect of a person means any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person. In the case of a Unit Holder, if the Unit Holder is an investment fund, “Affiliate” includes such Unit Holder’s general partner, but does not include any other investment fund in which its general partner is an equity investor as a general partner.

“Appendix” means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Project Agreement and identified as such in the Table of Contents.

“Applicable Law” means:

- (1) Any federal, State or local law, statute, code or regulation;
- (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and
- (3) Any Governmental Approval,

in each case having the force of law and applicable from time to time to the Project.

“Architect” means [_____], which has been engaged by the Design-Builder to have primary responsibility for the design of the Project.

“Avoidable Costs” when used in relation to an event or circumstance, means all costs and expenditures which:

- (1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
- (2) If the Project Company acted reasonably and in accordance with this Project Agreement (including subsection 25.5(A) (Mitigation by the Project Company)) would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Base Case Equity IRR” means the Initial Base Case Equity IRR, as updated at the Financial Close Date pursuant to Appendix 3 (Financial Close Procedures and Conditions).

“Base Case Financial Model” means the Initial Base Case Financial Model, as updated at the Financial Close Date and accepted by the County according to the terms of Appendix 3 (Financial Close Procedures and Conditions), and delivered in electronic format to the County pursuant to Article 17 (Financial Model).

“Billing Period” means each month of a Contract Year except that:

- (1) The first Billing Period shall begin on the Scheduled Occupancy Readiness Date, unless an earlier date is negotiated by the parties pursuant to Section 8.10(B) (Early Occupancy), and shall continue to the last day of the month in which such date occurs, and
- (2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Bond” means any taxable bond or note issued by the Project Company for the purpose of financing the Project.

“Bond Pricing Date” means, with respect to any Bonds included in the Project Company’s Financial Plan, the date of the signing of the bond purchase agreement between the Project Company and the bond purchasers, or an earlier date on which the Bond interest rates are fixed by the bond purchasers.

“Business Day” means any day other than a Saturday, Sunday, or an official County holiday.

“C2P2 Implementation Plan” means the Project Company’s Construction Career Pathways Project (C2P2) implementation plan set forth in Attachment 15B (C2P2 Implementation Plan) of Appendix 15 (Project Company and Project Contractors Information).

“Café” means the in-building part of the New Courthouse providing food services, as further described in the Design and Construction Requirements.

“Capital Charge” has the meaning set forth in Section 16.3 (Capital Charge).

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“Capital Modification” means any material change to any part of the physical assets constituting the Project occurring after the Occupancy Readiness Date, including the alteration, addition, demolition or extension of the physical assets constituting the Project or the

installation of new structures, equipment, systems or technology, provided that any major maintenance, repair and replacement work as described in Section 9.6(A) (Major Maintenance, Repair and Replacements Generally) and any Handback Work shall not be considered a Capital Modification. If a replacement of any part of the Project is made by the Project Company under Article 9 (Facilities Management), or a capital investment, improvement or modification is required to be made by the Project Company in order to remedy a Project Company Remediable Breach, and can be reasonably expected to result in a material change to the physical assets constituting the Project, then such replacement, capital investment, improvement or modification shall constitute a Capital Modification.

“Central Utility Plant Assumed Operating Performance Parameters” means the assumed operating performance parameters of the Central Utility Plant set forth in Appendix 4 (Central Utility Plant Description and Assumed Operating Performance Parameters).

“Central Utility Plant” or **“CUP”** means the existing central utility plant owned and operated by the County, located in the Red Soils Campus in Oregon City, Oregon, proximate to the Project Site, and used for the production of heated and chilled water for thermal comfort in the adjacent County public buildings. The Central Utility Plant is described in Appendix 4 (Central Utility Plant Description and Assumed Performance Parameters).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Change in Control” has the meaning set forth in subsection 23.2(A) (Change in Control Defined).

“Change in Law Event” means the coming into effect of:

- (1) Any Applicable Law enacted after the Technical Proposal Submittal Date;
- or
- (2) Any modification (including repeal) of any Applicable Law existing on the Technical Proposal Submittal Date that comes into effect after the Technical Proposal Submittal Date;

compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays or increases the cost of performing the Contract Services.

It is specifically understood, however, that none of the following shall constitute a “Change in Law Event”:

- (1) Any law, statute, code or regulation that has been enacted or adopted on or before the Technical Proposal Submittal Date to take effect after the Technical Proposal Submittal Date;
- (2) The denial or imposition of any term or condition in connection with, any Governmental Approval required for the Contract Services;
- (3) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Technical Proposal Submittal Date;

(4) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Technical Proposal Submittal Date; or

(5) Any change in Tax law (except that the Project Company shall be entitled to relief on account of (a) a Discriminatory Change in Tax Law; (b) a Specified Change in Tax Law as and to the extent provided in Section 15.2 (Discriminatory or Specified Changes in Tax Law), or (c) a change in duties, levies, imposts or tariffs imposed by the United States on imported goods).

“Change Order” means a written order signed by the County and the Project Company prior to Substantial Completion under this Project Agreement, making a Design and Construction Requirement Change. A Change Order shall be deemed to constitute a Project Agreement Amendment.

“CMMS” means the computerized maintenance management system to be provided by the Project Company, as further described in Section 3.3.3 (Computerized Maintenance Management System) of Appendix 8 (Facilities Management Standards).

“Collateral Agent” means [_____], in its capacity as collateral agent for the Senior Lenders under the Senior Financing Agreements.

“Commissioning” means the commissioning of the Project conducted pursuant to Section 7.19 (Commissioning) and Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Commissioning Fine Tuning Period” means the period commencing after the Occupancy Readiness Date, at a time when the New Courthouse can be operated under fully loaded occupancy cycles for four complete seasons after the Occupancy Readiness Date (or such earlier time as the County may reasonably agree) whereby the Project Company verifies through various testing that all key systems in the New Courthouse, including heating, air conditioning, and ventilation, are functioning in accordance with the Design and Construction Requirements and the Facilities Management Requirements.

“Commissioning Plan” means the commissioning plan for the Project prepared pursuant to Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Commissioning Tests” means the commissioning tests set forth in Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Confidential Information” means Personal Information, and information of a party that the party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information.

“Contract Administration Memorandum” has the meaning set forth in Section 25.7 (Project Agreement Administration).

“Contract Services” means the Design-Build Work and the Facilities Management Services.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Design and Construction Requirements;
- (3) Good Design-Build Practice;
- (4) The Facilities Management Requirements;
- (5) Good Facilities Management Practice;
- (6) The Design-Build Plans;
- (7) The Facilities Management Plans;
- (8) Applicable written equipment manufacturers’ specifications;
- (9) Applicable Insurance Requirements; and
- (10) Any other standard, term, condition or requirement specifically provided in this Project Agreement to be observed by the Project Company.

Subsection 1.2(S) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability, consistency and stringency of the Contract Standards.

“Contract Year” means each of:

- (1) The period from the Financial Close Date to the next June 30th;
 - (2) Each subsequent period of 12 calendar months commencing on July 1st;
- and
- (3) The period from July 1st in the year in which this Project Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Cost Substantiation” has the meaning described in Section 16.12 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation).

“County” means Clackamas County, Oregon.

“County Activities” means any activities carried on or to be carried on by the County, or other persons permitted by the County (including the State Courthouse Tenants), in the New Courthouse related to the administration of justice and any other lawful County purpose.

“County Conditions Precedent” has the meaning set forth in Section 3.2 (County Conditions Precedent) of Appendix 3 (Financial Close Procedures and Conditions).

“County Design-Build Period Payment Obligation” has the meaning set forth in subsection 7.22(A) (County Payment Obligations).

“County Event of Default” has the meaning set forth in Section 21.1 (County Events of Default).

“County Fault” means:

- (1) A breach by the County of any of its obligations (other than payment obligations) under this Project Agreement;
- (2) A breach of any representation or warranty by the County under this Project Agreement;
- (3) Willful misconduct of a County Indemnitee; or
- (4) A negligent act or omission of a County Indemnitee.

“County Indemnitee” means:

- (1) The County;
- (2) The State, including any State Courthouse Tenants; or
- (3) Any representative, agent or advisor (including legal and financial advisors) of any person referred to in items (1) or (2) above or any manager, official, employee (including an elected or appointed judge, judicial officer, subordinate judicial officer, director, officer, member or other employee of the County or the State, including any State Courthouse Tenants), contractor or subcontractor (of any tier) thereof, in any such person’s capacity as a provider of services directly or indirectly to the County or the State, including any State Courthouse Tenants, in connection with the Project, other than the Project Company, Project Contractors or Subcontractors.

“County Moveable FF&E Allowance Account” has the meaning set forth in subsection 7.16(D) (Payment for County Moveable Furniture, Fixtures and Equipment).

“County Moveable Furniture, Fixtures and Equipment” means the Moveable Furniture, Fixtures and Equipment to be utilized by the County and funded by the County, as identified in Attachment 6B (Preliminary List of County Moveable Furniture, Fixtures and Equipment) of Appendix 6 (Design and Construction Standards) or otherwise agreed to by the parties.

“County Representative” means the individual specified in writing by the County as the representative of the County from time to time for all purposes of this Project Agreement.

“D/M/W/ESB/SDVBE Subcontracting Plan” means the Project Company’s disadvantaged minority-owned, women-owned, emerging small businesses, service disabled veterans business enterprises subcontracting plan set forth in Attachment 15D (D/M/W/ESB/SDVBE Subcontracting Plan) of Appendix 15 (Project Company and Project Contractors Information).

“Debt” of any person at any date means, without duplication:

- (1) All obligations of such person for borrowed money;
- (2) All obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (3) All obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (4) All obligations of such person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;
- (5) All obligations of such person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (6) All deferred obligations of such person to reimburse any bank or other person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (7) All Debt (as otherwise defined in this definition) of others secured by a charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature, including any claims of a Governmental Body, on any asset of such person, provided such Debt (as otherwise defined in this definition) is assumed by such person; and
- (8) All Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such person or as to which such person has an obligation substantially the economic equivalent of a guarantee.

“Deductions” means those deductions from the otherwise applicable Service Fee that the County is permitted to take as offsets on account of specified instances of non-performance as described in Appendix 11 (Deductions). A “Deduction” can refer to either an Unavailability Deduction or a Performance Failure Deduction, as such terms are defined in Appendix 11.

“Deductions Credit” has the meaning set forth in Section 16.5 (Deductions Credit).

“Deliverable Material” has the meaning set forth in subsection 7.1(H) (Deliverable Material).

“Demolition Work” means the work described in Section 7.3 (Demolition Work).

“Design and Construction Proposal Extracts” means extracts from the Proposal pertaining to the design and construction of the Project, including clarifications issued by the County after the date of submittal, as negotiated by the parties and appended hereto as Appendix 7 (Design and Construction Proposal Extracts).

“Design and Construction Requirement Change” means a change in the Design and Construction Requirements made by a Change Order:

- (1) As a result of a Project Company request agreed to by the County pursuant to Section 7.10 (Design and Construction Requirement Changes Made at Project Company Request);
- (2) On account of Relief Events pursuant to Section 7.11 (Design and Construction Requirement Changes Made Due to Relief Events); or
- (3) At the direction of the County pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction).

“Design and Construction Requirements” means the requirements for the design and construction of the Project as set forth in the Design and Construction Standards and the Design and Construction Proposal Extracts, as modified from time to time in accordance with the provisions of Article 7 (Design and Construction) and Appendix 5 (General Design, Construction and Facilities Management Technical Requirements) and as construed in accordance with the provisions of Section 1.2(S) (Applicability, Stringency and Consistency of Contract Standards).

“Design and Construction Standards” means the standards for the design, construction and performance of the Project as set forth in Appendix 6 (Design and Construction Standards).

“Design-Build Contract” means the design-build agreement between the Project Company and the Design-Builder, a certified copy of which has been delivered by the Project Company to the County.

“Design-Build Contract Price” means \$[_____], the lump sum price payable by the Project Company to the Design-Builder under the Design-Build Contract for the Design-Build Work as of the Effective Date. **[NOTE TO PROPOSERS: The Design-Builder’s final design-build price set forth in the Proposal will be included here.]**

“Design-Build Governmental Approvals” means all Governmental Approvals required from time to time during the Design-Build Period for the commencement and continuance of the Design-Build Work.

“Design-Build Period” means the period from and including the Financial Close Date through the Occupancy Readiness Date.

“Design-Build Plans” means the Design-Build Health and Safety Plan, the Design-Build Communication Plan, the Design-Build Quality Management Plan, and the Commissioning Plan, each as established in preliminary draft form on the Effective Date in Appendix 7 (Design and Construction Proposal Extracts) and as further developed pursuant to Section 5 (Submittal Review Procedures) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), as well as the C2P2 Implementation Plan, the Local Business Plan, the D/M/W/ESB/SDVBE Subcontracting Plan and any other plan required to be provided during the Design-Build Period pursuant to Appendix 6 (Design and Construction Standards).

“Design-Build Project Manager” has the meaning set forth in subsection 4.3(B) (Design-Build Project Manager).

“Design-Build Quality Management Plan” means the Project Company’s plan for quality assurance and quality control in implementing the Design-Build Work to be developed in

accordance with the requirements set forth in Section 26.3.3 (Design-Build Quality Management Plan) of Appendix 6 (Design and Construction Standards).

“Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Project Company pursuant to this Project Agreement during the Design-Build Period, including the Demolition Work.

“Design-Builder” means [_____], or any assignee or replacement permitted under this Project Agreement.

“Design Documents” means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Design-Build Work.

“Differing Site Conditions” means (a) actual subsurface or latent physical conditions (including man-made conditions and Utilities) at the Project Site that differ materially from the soil, bedrock, and geological conditions described in the Geotechnical Investigation Report, or (b) physical conditions at the Project Site which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character required herein; provided, however, that the term “Differing Site Conditions” excludes conditions, other than those described in the Geotechnical Investigation Report, (1) of which the Project Company had actual knowledge as of the Technical Proposal Submittal Date; and (2) that come into existence after the Technical Proposal Submittal Date which are introduced to the Project Site by the Project Company or a Project Company Person.

“Disclosed Data” means the information and data contained in the documents listed in Reference Document 1 (List of Additional Project-Related Documents Made Available to the Project Company).

“Discriminatory Change in Tax Law” means a Change in Law Event which results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against:

- (1) The Project or the Project Company with respect to the Project and not other projects or persons;
- (2) Other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;
- (3) Persons that have contracted with the County or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or
- (4) Persons holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

“Dispute” means any disagreement, failure to agree or other dispute between the County and the Project Company arising out of or in connection with this Project Agreement,

including in respect of the interpretation, breach, performance, validity or termination of this Project Agreement, whether in the law of contract or any other area of law.

“Dispute Resolution Procedure” means the Dispute resolution procedures set forth in Article 18 (Dispute Resolution);

“Distribution” means, without duplication or double counting:

Whether in cash or in kind, any:

- (1) Distribution to Unit Holders or other distribution in respect of Units;
- (2) Redemption or purchase of Units or reduction of limited liability company capital or the amount of a Unit Holder’s contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;
- (3) Payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
- (4) Payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business and on commercially reasonable terms including to any current or former Unit Holder, or any current or former Affiliate of any current or former Unit Holder;
- (5) Conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Project Company; and
- (6) Other payment to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Project Company howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Units or other securities of or interests in the Project Company if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or
- (7) The early release of any reserves or any Contingent Funding Liabilities (as defined in Appendix 13 (Compensation on Termination)), the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Base Case Equity IRR in the Financial Model.

“Effective Date” means the date this Project Agreement is executed and delivered by the parties hereto.

“Employee Payments” means any liability that has been reasonably incurred by the Project Company or any Project Contractor (without duplication) arising as a result of termination of this Project Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project Company, including

severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“Equity IRR” means the Project Company's Nominal blended equity internal rate of return calculated on an after-tax basis at the level of the Project Company in accordance with the Financial Model as shown in Cell [] of the “[]” tab, having regard to Distributions made and projected to be made.

“Exempt Refinancing” means:

- (1) A change in taxation or change in accounting treatment pursuant to changes in Applicable Law or GAAP;
- (2) The exercise of rights, waivers, consents and similar actions that are solely in respect of:
 - (a) breach of representations, warranties, covenants or undertakings;
 - (b) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (c) late or non-provision of information or consents;
 - (d) amendments to Project Contracts;
 - (e) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (f) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to the Project Company under the Senior Financing Agreements, and which are given as a result of any failure by the Project Company to ensure that the Design-Build Work is carried out in accordance with the Project Schedule and which are notified in writing by the Project Company or the Senior Lenders to the County prior to being given;
 - (g) changes to milestones for drawdown set forth in the Senior Financing Agreements and which are given as a result of any failure by the Project Company to ensure that the Design-Build Work is carried out in accordance with the Project Schedule and which are notified in writing by the Project Company or the Senior Lenders to the County prior to being given;
 - (h) failure by the Project Company to obtain any consents from Governmental Bodies required by the Senior Financing Agreements; or
 - (i) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;

- (3) An amendment, variation or supplement of an agreement approved by the County as part of any Capital Modification, Design and Construction Requirement Change or Facilities Management Change;
- (4) A sale of Junior Debt or Units in the Project Company by Unit Holders or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights or interests attaching to Junior Debt or Units in the Project Company;
- (5) A Qualifying Bank Transaction;
- (6) A conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to the Project Company by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to the Project Company by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion;
- (7) A secondary transaction in the Bond market; or
- (8) An amendment, modification or supplement to any Financing Document which does not provide a financial benefit to the Project Company.

“Existing Facilities” means the entirety of the OC Hilltop Building, located at 998 Library Court, Oregon City, OR and the Stewart Community Center, located at 1002 Library Court, Oregon City, OR, all as described in Reference Document 2 (Red Soils Master Plan) and identified in Attachment 1B (Site Plan of Existing Facilities and Developable Area) to Appendix 1 (Site-Related Information), and all other existing structures and improvements located at the Project Site as of the Technical Proposal Submittal Date.

“Expiration Date” means the date that is 30 years following the Scheduled Occupancy Readiness Date.

“Extended Relief Event” has the meaning set forth in Section 15.4 (Termination for Extended Relief Events).

“Extraordinary Item” has the meaning set forth in Section 16.6 (Extraordinary Items).

“Facilities Condition Index” has the meaning set forth in Section 1.3.2 (Facilities Condition Index) of Appendix 8 (Facilities Management Standards).

“Facilities Management Charge” means the portion of the Service Fee payable for the performance of Facilities Management Services, which is composed of the Ordinary O&M Component and the Renewal Component.

“Facilities Management Notice” means a notice given by one party to the other hereunder relating to routine operational matters arising under this Project Agreement following the Occupancy Readiness Date specifically required hereunder to be given as a “Facilities Management Notice”.

“Facilities Management Period” means the period between the Occupancy Readiness Date and the Termination Date.

“Facilities Management Plans” means the Master Maintenance Plan, the Renewal Work Plan, the Facilities Management Health and Safety Plan, the Facilities Management Communication Plan, and the Facilities Management Emergency Management Plan, and the Environmental Management Plan, each as established in preliminary draft form on the Effective Date in Appendix 9 (Facilities Management Proposal Extracts) and as further developed pursuant to Section 5 (Submittal Review Procedures) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), as well as any other plans required to be provided during the Facilities Management Period pursuant to Appendix 8 (Facilities Management Standards).

“Facilities Management Proposal Extracts” means extracts from the Proposal pertaining to the operation, maintenance, repair, replacement and management of the Project, including clarifications issued by the County after the date of submittal, as negotiated by the parties and appended hereto as Appendix 9 (Facilities Management Proposal Extracts).

“Facilities Management Requirements” means the requirements for the operation and maintenance of the Project as set forth in the Facilities Management Standards and the Facilities Management Proposal Extracts.

“Facilities Management Services” means everything required to be furnished and done for and relating to the operation and maintenance of the New Courthouse by the Project Company pursuant to this Project Agreement during the Facilities Management Period.

“Facilities Management Services Agreement” means the agreement between the Project Company and the Facilities Manager, a certified copy of which has been delivered by the Project Company to the County.

“Facilities Management Services Change” means a change, including an addition, deletion, alteration, substitution or modification, to the Project Company’s Facilities Management Services obligations under this Project Agreement, made pursuant to Section 10.8 (Facilities Management Services Changes).

“Facilities Management Services Change Certificate” means a certificate issued by the County describing and authorizing a Facilities Management Services Change, the value or method of valuation of the Facilities Management Services Change, and the adjustment, if any, to the Service Fee associated with the Facilities Management Services Change.

“Facilities Management Services Change Report” has the meaning set forth in subsection 10.8(B) (Project Company Facilities Management Services Change Report).

“Facilities Management Standards” means the standards for the operation and maintenance of the Project as set forth in Appendix 8 (Facilities Management Standards).

“Facilities Management Supervisor” has the meaning set forth in Section 4.4(B) (Facilities Management Supervisor).

“Facilities Manager” means [_____], or any assignee or replacement permitted under this Project Agreement.

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Final Completion” means completion of the Design-Build Work in compliance with the Design and Construction Requirements and the requirements of Section 7.20 (Final Completion).

“Financial Close” means satisfaction or waiver of the Financial Close Conditions in accordance with Appendix 3 (Financial Close Procedures and Conditions).

“Financial Close Conditions” means the Project Company Conditions Precedent and the County Conditions Precedent.

“Financial Close Date” means the date on which Financial Close occurs.

“Financial Close Deadline” has the meaning set forth in Section 5.2 (Financial Close Deadline).

“Financial Close Security” means the one or more letters of credit required of the Project Company pursuant to Section 5.3 (Financial Close Security) as security for the achievement of Financial Close in substantially the form set forth in Transaction Form A (Financial Close Security).

“Financial Model” means:

- (1) For purposes of the Project Company’s representations as to the financial model as of the Effective Date and prior to the Financial Close Date, the Initial Base Case Financial Model; and
- (2) For all other purposes, including the Project Company’s representations as to the financial model as of the Financial Close Date, the Base Case Financial Model, as updated and replaced from time to time in accordance with the terms of this Project Agreement.

“Financing Period” means the period, if any, from and including the Effective Date through the Financial Close Date.

“Fitch” means Fitch Ratings, Inc., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

“Force Majeure Event” means the occurrence of:

- (1) Landslides, underground movement, earthquakes, tidal waves, fires, tornadoes, hurricanes, floods and lightning;
- (2) Certified acts of terrorism as defined by the Terrorism Risk Insurance Act occurring during any period in which TRIA or a substantially identical federal law is in effect;

(3) Pressure waves caused by aircraft or other aerial devices traveling at supersonic speeds;

(4) Unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration, measured from the Technical Proposal Submittal Date) for the time of year and locality of the Project Site, and other acts of God not described in item (1) above;

(5) Terrorism arising from nuclear, biological or chemical materials, or any act which would constitute a certified act of terrorism (as defined by the Terrorism Risk Insurance Act) occurring during any period in which TRIA or a substantially identical federal law is not in effect;

(6) War, civil war, armed conflict, riot, insurrection, civil commotion or disturbance (including armed violence and hostage taking), blockade, embargo, sabotage and related causes;

(7) Nuclear explosion or nuclear, radioactive, chemical or biological contamination; or

(8) Epidemics, pandemics (excluding the COVID-19 pandemic, unless the impacts of COVID-19 or variants thereof are materially different from the impacts of COVID-19 as of the Technical Proposal Submittal Date), quarantine, or health alerts issued by a Governmental Body relating thereto;

the response to which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“Geotechnical Investigation Report” means the Geotechnical Investigation Report dated November 19, 2021 and prepared by Landslide Technology, a Division of Cornforth Consultants, Inc., as set forth in Reference Document 3 (Geotechnical Investigation Report).

“Good Design-Build Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the delivery of public or institutional buildings serving purposes similar to the Project on a design-build basis as observed in the State, as such practices exist as of the Technical Proposal Submittal Date and, only in circumstances described in Section 4.8 (Good Design-Build Practice and Good Facilities Management Practice), as such practices evolve over the Term.

“Good Facilities Management Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices for public or institutional buildings serving purposes similar to the Project as observed in the State, as such practices exist as of the Technical Proposal Submittal Date and, only in circumstances

described in Section 4.8 (Good Design-Build Practice and Good Facilities Management Practice), as such practices evolve over the Term.

“Governmental Approvals” means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including the County, acting in its governmental capacity other than as a party to this Project Agreement), or any official thereof, having jurisdiction in the United States in any way over or in respect of any aspect of the performance of this Project Agreement or the Project.

“Grant Funding Agreements” means the Master Funding Agreement and the Project Phase Funding Agreements.

“Handback Requirements” has the meaning set forth in subsection 9.13(A) (Required Project Condition).

“Handback Retainage Account” has the meaning specified in subsection 9.13(D) (Establishment and Use of Handback Retainage Account).

“Handback Survey” has the meaning set forth in subsection 9.13(B) (Handback Survey).

“Handback Work” has the meaning set forth in subsection 9.13(B) (Handback Survey).

“Handback Work Plan” has the meaning set forth in subsection 9.13(B) (Handback Survey).

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous goods, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“Health and Safety Plan” has the meaning set forth in Section 7.13(B) (Safety and Security).

“Help Desk” means the contact point to be established by the Project Company in respect of Section 3.2.2 (Help Desk Services) of Appendix 8 (Facilities Management Standards) for the notification of all matters arising in relation to the provision of Facilities Management Services.

“Income Tax” means any Tax imposed on the income of a person by any federal, State or local Governmental Body.

“Independent Building Expert” means the consultant appointed by the parties pursuant to subsection 8.1(A) (Engagement), or any assignee or replacement permitted under this Project Agreement and the Independent Building Expert Agreement.

“Independent Building Expert Agreement” means the agreement to be entered into between the County, the Project Company and the Independent Building Expert in substantially the form set forth in Transaction Form D (Independent Building Expert Agreement).

“Index-Linked” means, with respect to an amount at any time, that the amount is adjusted as of each July 1 commencing July 1, 20[23] by:

- (1) Multiplying it by the Inflation Index for the immediately preceding April;
- and
- (2) Dividing it by [____], the Inflation Index for April 20[22].

“Inflation Index” means the All Items Consumer Price Index for All Urban Consumers (CPI-U) in the West region (Series CUUR0400SA0), not seasonally adjusted, as published by the Bureau of Labor Statistics using a reference year of 1982-1984 that equals 100.0, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably.

“Initial Base Case Equity IRR” means [____]%, being the Nominal post-Income Tax internal rate of return on equity investment over the full Term assuming no early termination or extension of this Project Agreement, projected for the Project under the Initial Base Case Financial Model. **[NOTE TO PROPOSERS: To be inserted from the Initial base Case Financial Model.]**

“Initial Base Case Financial Model” means the Project Company’s financial model for the Project as of the Effective Date, and delivered in electronic format to the County pursuant to Article 17 (Financial Model).

“Insurable Force Majeure Event” means the occurrence of any of the events or circumstances set forth in items (1), (2) or (3) of the definition of Force Majeure Event.

“Insurance Proceeds” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under this Project Agreement.

“Insurance Receivables” means Insurance Proceeds which a person is entitled to receive but which have not yet been received.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Project Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Insurance Trust Account” has the meaning set forth in subsection 14.1(E) (Insurance Trust Account).

“Insurance Trust Agreement” means the agreement between the County, the Project Company, and [_____] in substantially the form set forth in Transaction Form E (Insurance Trust Agreement).

“Insurance Unavailability Event” has the meaning set forth in Section 14.6(A) (Insurance Unavailability Event).

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (1) National, international and foreign patents, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (2) Inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (3) Copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (4) Industrial designs and any registrations and applications therefor throughout the world;
- (5) Rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world;
- (6) Databases and data collections and all rights therein throughout the world;
- (7) Moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (8) Any similar or equivalent rights to any of the foregoing anywhere in the world.

“Joint Technical Performance Review” has the meaning set forth in Section 9.7(B) (Joint Technical Performance Review).

“Junior Debt” means indebtedness owing by the Project Company to any of its Unit Holders or Affiliates of Unit Holders which ranks subordinate in all respects to the Senior Debt, excluding:

- (1) All amounts not actually paid to the Project Company by cash advance, rights entitling the Project Company to a cash advance, or other consideration;
- (2) All fees, including commitment fees, standby fees or other fees, paid or to be paid by the Project Company, other than to any Unit Holder or any Affiliate of a Unit Holder; and
- (3) Capitalized interest, and interest on overdue interest.

“Key Individuals” has the meaning set forth in Appendix 15 (Project Company and Project Contractors Information).

“LEED BD+C Gold Certification” means the formal certification by the U.S. Green Building Council that the Project meets the requirements for a Leadership in Energy and Environmental Design (LEED) “Gold” rating for new building design and construction.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Project Agreement, and all appeals therefrom.

“Lenders’ Remedies Agreement” means the agreement between the County, the Collateral Agent for the benefit of the Senior Lenders and the Project Company in substantially the form set forth as Transaction Form B (Lenders’ Remedies Agreement).

“Lien” means any and every lien against the Project or against any monies due or to become due from the County to the Project Company under this Project Agreement, for or on account of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Liquidated Damages Right” has the meaning set forth in subsection 19.2(A) (County Liquidated Damages Rights Defined).

“Local Business Plan” means the Project Company’s local business plan set forth in Attachment 15C (Local Business Plan) of Appendix 15 (Project Company and Project Contractors Information).

“Longstop Date” has the meaning set forth in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date).

“Loss-and-Expense” means, and is limited to, (in each case subject to Section 19.11 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify the County hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Project Agreement.

“Maintained Element” means all elements of the Project, constructed or installed pursuant to this Project Agreement, excluding Moveable Furniture, Fixtures and Equipment.

“Maintenance Services” has the meaning set forth in Section 3.1.2(b) of Appendix 8 (Facilities Management Standards).

“Master Funding Agreement” means the Clackamas County Courthouse Master Funding Agreement, dated [_____], between the County and the State.

“Material Contracts” means:

- (1) The Project Contracts; and
- (2) Any agreement between or among (a) the Project Company, (a) an Affiliate of the Project Company, (c) **[NOTE TO PROPOSERS: Equity Sponsors to be identified here.]** or (d) an Affiliate of **[NOTE TO PROPOSERS: Equity sponsors to be identified here.]**, with respect to the performance of the Contract Services.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings).

“Moody’s” means Moody’s Investors Service, Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

“Moveable Furniture, Fixtures and Equipment” means the State Moveable Furniture, Fixtures and Equipment and the County Moveable Furniture, Fixtures and Equipment.

“New Courthouse” means the new Clackamas County Circuit Courthouse and related structures and equipment to be designed, constructed, operated and maintained on the Project Site pursuant to this Project Agreement, including all utility connections and other Project Site improvements connected to or related to the new Clackamas County Circuit Courthouse and related structures, as further described in the Design and Construction Requirements and Facilities Management Requirements.

“Nominal” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings) for addressing disputes arising under this Project Agreement.

“Occupancy Readiness” means satisfaction of the Occupancy Readiness Conditions.

“Occupancy Readiness Certificate” means a certificate delivered by the Independent Building Expert in accordance with subsection 4.3(B) of the Independent Building Expert Agreement.

“Occupancy Readiness Conditions” has the meaning set forth in Section 8.4 (Occupancy Readiness Conditions).

“Occupancy Readiness Date” means the date on which Occupancy Readiness of the Project occurs or is deemed to have occurred under Article 8 (Occupancy Readiness).

“Occupancy Readiness Milestone Payment” means a one-time lump sum payment of \$90,000,000 to be paid by the County to the Project Company upon achieving Occupancy Readiness pursuant to Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment).

“Operating Hours” means 6:30 A.M. to 6:30 P.M., Pacific time, on Business Days.

“Orderly Cleanliness” means, in general, a level of cleanliness representative of the industry standard for similar structures and includes: (a) floors and base moldings that shine or are bright and clean with no buildup in corners or along walls, but with up to two days’ worth of dirt, dust, stains, or streaks allowed; (b) all vertical and horizontal surfaces that are clean, but with marks, dust, smudges, and fingerprints are noticeable with close observation allowed; (c) washroom, kitchenettes, locker rooms, and shower tile and fixtures that gleam and are odor-free; (d) supplies that are adequate; (e) trash containers and pencil sharpeners that are empty, clean, and odor-free; and (f) exterior fixtures, walls, windows that are in good condition.

“Ordinary O&M Component” means the portion of the Facilities Management Charge reflecting compensation for all aspects of the Facilities Management Services except for Renewal Work, as further described in Section 16.4(A) (Ordinary O&M Component).

“Oregon Judicial Department” means the Oregon Judicial Department, constituting the judicial branch of the State government, including the State Circuit Court and any state court of appeals or superior court.

“ORS” means the Oregon Revised Statutes.

“OSHA” means the Oregon Occupational Safety and Health laws, codified as Chapter 654 of the Oregon Revised Statutes, and the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Other Relief Event” means the occurrence of any of the following events or circumstances:

(1) The existence of a Differing Site Condition, to the extent provided in Section 7.4 (Differing Site Conditions);

(2) The existence of a Regulated Site Condition, to the extent provided in Section 7.5 (Regulated Site Conditions);

(3) A delay by a Governmental Body in issuing a Governmental Approval required for the performance of the Design-Build Work, as and to the extent provided in subsection 7.6(D) (Relief for Delays in the Issuance of Governmental Approvals Caused by Governmental Bodies);

(4) At any time after (a) the issuance of a final Governmental Approval, and (b) the further issuance or granting of an approval or consent thereunder or pursuant thereto upon which the Project Company relied in good faith in incurring costs in performing Design-Build Work, the modification, revision or revocation of such further approval or consent by subsequent administrative action by the issuing Governmental Body;

(5) Compliance by the Project Company, pursuant to subsection 9.1(E) (Emergency Orders and Directives) or otherwise, with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;

(6) An official or unofficial strike, lockout, work rule or other labor dispute by:

(a) public sector employees, or

(b) private sector employees (other than solely with respect to employees of the Project Company, a Project Contractor or a Subcontractor that are working at the Project Site) (i) which (x) is regional or national in nature and affects the judicial system, the construction, building maintenance or facilities management industry generally or (y) takes place at a facility manufacturing materials or equipment for the Project and is not directed at the Project, and (ii) which event lasts for more than 15 days;

(7) Any failure of title to the Project or any placement or enforcement of any Encumbrance, including any Encumbrances placed of record subsequent to the date of the Preliminary Title Report (Reference Document 4) described in Section 2(d) of Appendix 1 (Site-Related Information), on the Project Site or the Project not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;

(8) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project;

(9) A change in the requirements to obtain LEED BD+C Gold Certification of the New Courthouse as provided in Section 7.21 (LEED BD+C Gold Certification);

(10) The failure (including delays) of any Governmental Body or utility company having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project that are required to perform this Project Agreement (including if such failure is as a result of the County's breach of its payment obligations under subsection 9.2(C) (Payment for Utilities));

(11) Any act of prevention, hindrance, obstruction, or other non-cooperation by a third party or the County or any defect or non-compliance with Applicable Law or the Contract Standards, in carrying out a Capital Modification, as contemplated by Section 10.7 (Alternative Procedures for Implementing Capital Modifications);

(12) The closure, due to an accident, construction or otherwise, of a road necessary for direct access to the Project by order of a Governmental Body having police power;

(13) Any other event that, under a specific provision of this Project Agreement, constitutes or is deemed to constitute or to be caused by an Other Relief Event, including:

(a) events referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes);

(b) a direction by the County to comply with revised professional and technical standards as provided in Section 7.1(G) (Technical Standards and Codes);

(c) a delay caused by County-directed testing, inspections and uncovering as provided in Section 7.14(F) (Notice of Covering Design-Build Work);

(d) a failure by the County to maintain, repair and replace Moveable Furniture, Fixtures and Equipment as provided in subsection 7.16(C) (No Project Company Obligation to Maintain, Repair or Replace Moveable Furniture, Fixtures and Equipment);

(e) operating performance by the Central Utility Plant that is not consistent with the Central Utility Plant Assumed Operating Performance Parameters;

(f) an act of prevention, hindrance or obstruction by the County or an outsourced service provider in operating the Café, as provided in subsection 9.9(B) (Café); and

(g) any special services that the Project Company is required to render with respect to the installation, protection, maintenance (such as anti-vandalism), or otherwise in connection with the Public Art;

(14) The issuance of an injunction (whether temporary or permanent) or any other final order by a court of competent jurisdiction, with the result that the County or the Project Company becomes unable to perform its material obligations under this Project Agreement;

(15) Any disruption, interference, delay or other material effect on the performance of the Contract Services caused by the construction, operation or use of any facilities on the Red Soils Campus, so long as such construction, operation or use was not existing on or before the date that is 30 days prior to the Technical Proposal Submittal Date;

(16) Conduct by an employee of the County or a State Courthouse Tenant or by any person visiting or otherwise present in the New Courthouse that constitutes an unwarranted, material disruption of or interference with the performance by the Project Company of the Facilities Management Services;

(17) A County Fault;

the response to which or compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Overdue Rate” has the meaning set forth in Section 16.15 (Interest on Overdue Amounts).

“Parking and Road Improvements” means the new surface parking and road improvements located on the Project Site to be constructed pursuant to this Project Agreement, as further described in the Design and Construction Requirements. The “Parking and Road Improvements” do not include secure parking located in the New Courthouse.

“Performance Failure” has the meaning set forth in Appendix 11 (Deductions).

“Performance Monitoring Report” means the report that the Project Company will prepare and deliver to the County’s Representative within five Business Days of the end of each Billing Period during the Facilities Management Period and which provides the supporting detail for the Service Fee, as further described in Section 3.6.3 (Periodic Reporting) of Appendix 8 (Facilities Management Standards).

“Permitted Debt” means:

(1) Trade or other similar indebtedness incurred in the ordinary course of business;

(2) Taxes and governmental charges, salaries, related employee payments and trade payables;

(3) Contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Governmental Approvals, the Project Contracts or this Project Agreement; and

(4) Debt incurred by way of loans from Unit Holders;

but does not include any Senior Debt (other than the Senior Debt incurred or issued on the Financial Close Date).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves in accordance with GAAP;

(2) Any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company to construct the Project or operate the Project;

(3) Any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves;

(4) Servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company;

(5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Project and operation of the Project by the Project Company;

(6) Encumbrances which are created on or before the Technical Proposal Submittal Date;

(7) Encumbrances which are created by a Change in Law Event on or after the Technical Proposal Submittal Date;

(8) Any encumbrance created by an act or omission by any Governmental Body or with respect to which the County has given its consent; and

(9) Any servitudes, licenses, easements, restrictions, rights-of-way, rights and encumbrances specifically identified in Appendix 1 (Site-Related Information).

“Personal Information” means “personal information” as described in the Public Meetings and Records Law, which is collected, acquired or obtained by the Project Company or

the County in relation to or in the course of providing the Contract Services, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address or business email of the individual.

“Post-Refinancing Financial Model” has the meaning set forth in Section 3.1 (Refinancing Financial Models) of Appendix 18 (Calculation and Payment of Refinancing Gains).

“Pre-Refinancing Equity IRR” means the Equity IRR calculated in the Pre-Refinancing Financial Model, and calculated for the entire Term taking into account:

- (1) Timing and amounts of the investment by Unit Holders;
- (2) Actual Distributions received by the Unit Holders up the estimated Refinancing date; and
- (3) Project Distributions as shown in the Pre-Refinancing Financial Model.

“Pre-Refinancing Financial Model” has the meaning set forth in Section 3.1 (Refinancing Financial Models) of Appendix 18 (Calculation and Payment of Refinancing Gains).

“Project” means the New Courthouse and includes the performance of the Contract Services with respect thereto. The Project also includes the Parking and Road Improvements and the Café, but only to the extent provided in Section 9.9 (Parking and Road Improvements and Café). Moveable Furniture, Fixtures and Equipment shall constitute part of the Project only to the extent provided in subsection 7.16(C) (No Project Company Obligation to Maintain, Repair or Replace Moveable Furniture, Fixtures and Equipment).

“Project Agreement” means this Project Agreement, and includes the Transaction Forms, Appendices and Reference Documents (as applicable).

“Project Agreement Amendment” has the meaning set forth in Section 25.8 (Project Agreement Amendments).

“Project Company” means [_____], a [limited liability company] organized and existing under the laws of [_____], which is registered to do business in and is in good standing in the State, and its permitted successors and assigns.

“Project Company Bankruptcy-Related Event” has the meaning set forth in subsection 20.1(C) (Project Company Bankruptcy-Related Event Defined).

“Project Company Conditions Precedent” has the meaning set forth in Section 3.1 (Project Company Conditions Precedent) of Appendix 3 (Financial Close Procedures and Conditions).

“Project Company Event of Default” has the meaning set forth in subsection 20.1(A) (Project Company Events of Default Defined).

“Project Company Fault” means:

- (1) A breach by the Project Company of any of its material obligations under this Project Agreement;

- (2) A breach of any representation or warranty made by the Project Company under this Project Agreement;
- (3) Willful misconduct of the Project Company or any Project Company Person; or
- (4) A negligent act or omission of the Project Company or a Project Company Person.

“Project Company Hazardous Substances” means the presence of Hazardous Substances in, on or under the Project Site (including presence in air, surface water, groundwater, soils, or subsurface strata) which is introduced to the Project Site by and caused by or attributable to any acts or omissions of the Project Company or any Project Company Person.

“Project Company Person” means:

- (1) Any director, officer, employee or agent of the Project Company in each case acting as such; or
- (2) Any Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

“Project Company Remediable Breach” has the meaning set forth in subsection 20.1(B) (Project Company Remediable Breach Defined).

“Project Company Representative” means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Project Agreement.

“Project Component” means each of the Project Components identified as such in Section 6.2.3 (Project Condition and Remaining Useful Life) to Appendix 8 (Facilities Management Standards).

“Project Contractor” means the Design-Builder or the Facilities Manager.

“Project Contractor Collateral Agreement” means the agreement to be entered into among the County, a Project Contractor and the Project Company in substantially the form set forth in Transaction Form C (Project Contractor Collateral Agreement).

“Project Contracts” means the Design-Build Contract and the Facilities Management Services Agreement.

“Project Equipment” means all manufactured equipment, systems, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, excluding Moveable Furniture, Fixtures and Equipment.

“Project Intellectual Property” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Project Company, any Project Contractor, any Subcontractor or any other third party, directly or indirectly, for the purposes of the Contract Services, but does not include the Financial Model.

“Project Phase Funding Agreements” means the Project Phase 1 Funding Agreement, the Project Phase 2 Funding Agreement, and the Project Phase 3 Funding Agreement.

“Project Phase 1 Funding Agreement” means the Clackamas County Courthouse Phase 1 Funding Agreement, dated [_____] between the County and the State.

“Project Phase 2 Funding Agreement” means the Clackamas County Courthouse Phase 2 Funding Agreement, dated [_____], between the County and the State.

“Project Phase 3 Funding Agreement” means the Clackamas County Courthouse Phase 3 Funding Agreement, dated [_____], between the County and the State.

“Project Requirements” means the Design and Construction Requirements and the Facilities Management Requirements.

“Project Schedule” has the meaning set forth in Section 2.4.1 (Scope of Application) of Appendix 6 (Design and Construction Standards).

“Project Site” means the real property described in Appendix 1 (Site-Related Information) on which the New Courthouse and Parking and Road Improvements is to be constructed by the Project Company.

“Project User” means any person employed at or visiting the Project for any authorized purpose.

“Proposal” means the proposal made by the Project Company in response to the submittal requirements of the RFP.

“Public Art” has the meaning set forth in subsection 7.1(T) (Installation of Public Art).

“Public Meetings and Records Law” means Oregon’s public meetings and records laws codified as Chapter 192 of the Oregon Revised Statutes, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Punch List” has the meaning set forth in subsection 8.6(A) (Punch List).

“Punch List Items” means any defects, deficiencies and items of outstanding work that would not materially impair court activities or the performance of the Facilities Management Services and could be rectified with minimal interference to the occupancy, use and lawful operation of the Project.

“Qualified Commercial Bank” means a reputable domestic or foreign commercial bank:

- (1) Whose long-term debt has at least two of the following ratings: “A2” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch; and
- (2) Which maintains a banking office, branch or agency in the United States.

“Qualified Insurer” has the meaning set forth in Section 4.1 (Policy Requirements) of Appendix 10 (Insurance Requirements).

“Qualifying Bank Transaction” means:

- (1) The disposition by a Senior Lender to a Qualifying Institution, any other Senior Lender or an Affiliate of such Senior Lender of any of its rights or interests in the Senior Financing Agreements;
- (2) The assignment of its interest in or grant by a Senior Lender of any rights of participation in respect of the Senior Financing Agreements in favor of:
 - (a) any of its Affiliates or another Senior Lender;
 - (b) any Qualifying Institution or any trustee thereof; or
 - (c) a local authority or public authority; or
- (3) The disposition or grant by a Senior Lender to a Qualifying Institution, any other Senior Lender or an Affiliate of such Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Project Company, whether by way of security or otherwise.

“Qualifying Institution” means:

- (1) A United States trust company, insurance company, investment company, pension fund or institution which has at least \$500 million in assets, including entities wholly-owned by any of the foregoing;
- (2) A bank regulated by the Board of Governors of the Federal Reserve System of the United States or a United States bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under United States securities law, including entities wholly-owned by any of the foregoing;
- (3) An institution which is recognized or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (4) An institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly-owned by any such institution;
- (5) any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(6) (a) any pension fund, hedge fund, foundation or university or college endowment fund, (b) any entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (c) any person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (provided, that an entity described in this clause only qualifies if it is subject to the jurisdiction of state and federal courts in the State in any actions), each of (a) through (c) that have at least \$500 million in assets, including entities wholly owned by any of the foregoing;

(7) (a) any “qualified institutional buyer” under Rule 144(a) of the Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms and (b) the holders of debt issued by any conduit issuer or the trustee for such holders, so long as the indenture trustee for such holders of debt itself is an Qualifying Institution; or

(8) Any other institution the County designates in writing as a “Qualifying Institution”.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Re-Commissioning Plan” means the re-commissioning plan for the Project prepared pursuant to Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Red Soils Campus” means the Clackamas County Red Soils Campus, located in Oregon City, Oregon as described in Reference Document 2 (Red Soils Master Plan). The Project Site is located at the Red Soils Campus.

“Reference Documents” means those documents listed as Reference Documents in the Table of Contents.

“Refinancing” means:

(1) The Project Company incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;

(2) Any transaction in which the County, with the consent or at the request of the Project Company, grants rights to any person under an agreement similar to the Lenders’ Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such person, other than the Lenders’ Remedies Agreement entered into on the Effective Date, any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;

(3) The exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;

(4) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the

creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of the Project Company whether by way of security or otherwise;

(5) The execution and delivery by the Project Company of any agreement or instrument relating in any way to the financing of the Project or the Contract Services, other than the Senior Financing Agreements, instruments relating to the Junior Debt and the organizational agreement governing the Project Company; or

(6) Any other arrangement put in place by the Project Company or another person which has an effect which is similar to any of (1) through (5) above or which has the effect of limiting the Project Company's ability to carry out any of the actions referred to in (1) through (5) above.

"Refinancing Gain" has the meaning set forth in Section 3.2 (Refinancing Gain Calculation) of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Regulated Site Condition" means, and is limited to,

(1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, paleontological, religious or similar significance;

(2) Any wetlands or habitat of an endangered or protected species as provided in Applicable Law;

(3) The presence anywhere in, on or under the Project Site on the Technical Proposal Submittal Date of wells or underground storage tanks for the storage of Hazardous Substances;

(4) The presence of Hazardous Substances (other than Project Company Hazardous Substances) in, on or under the Project Site (including presence in air, surface water, groundwater, soils or subsurface strata); and

(5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in, any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment.

"Reinstatement Plan" has the meaning set forth in subsection 14.3(C) (Delivery of Reinstatement Plan).

"Reinstatement Works" has the meaning set forth in subsection 14.3(A) (Draft Reinstatement Plan).

"Renewal Component" means the portion of the Facilities Management Charge reflecting compensation for Renewal Work exclusively, as further described in subsection 16.4(B) (Renewal Component).

"Renewal Work" means, as further described in the Renewal Work Plan, all work required (other than the Maintenance Services) for the renewal, repair, or replacement of worn-out, obsolete, damaged, or under-performing Project Components so that the New Courthouse does not prematurely deteriorate and otherwise remains fully functional in accordance with the Contract Standards.

“Relief Event” means:

- (1) An Insurable Force Majeure Event;
- (2) An Uninsurable Force Majeure Event;
- (3) A Change in Law Event; or
- (4) An Other Relief Event.

“Required Design-Build Period Insurance” means the insurance specified in part 1 of Appendix 10 (Insurance Requirements).

“Required Facilities Management Period Insurance” means the insurance specified in part 2 of Appendix 10 (Insurance Requirements).

“Required Insurance” means the Required Design-Build Period Insurance and the Required Facilities Management Period Insurance.

“Response Action” means any action taken in the investigation, removal, confinement, remediation, transportation, disposal or cleanup of a release of any Hazardous Substance, or to otherwise correct any non-compliance with Applicable Law pertaining to the environment or address any environmental condition as may be required by any relevant Governmental Body. “Response Action” includes any action which constitutes a “removal”, “response”, or “remedial action” as defined by Section 101 of CERCLA.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (1) Is debarred, suspended, or otherwise disqualified from federal, State, or County contracting for any services similar in nature to the Design-Build Work or the Facilities Management Services;
- (2) Was or is subject to any material claim of the United States, State, or County in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the County’s view, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Project Agreement;
- (3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;
- (4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;
- (5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent.

“RFP” means the County’s Request for Proposals for a Public-Private Partnership to Design, Build, Partially-Finance, Operate and Maintain the New Clackamas County Circuit Courthouse, issued on September 14, 2021, as amended.

“Scheduled Occupancy Readiness Date” has the meaning set forth in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date), and includes (1) extensions for Relief Events as provided in subsection 8.7(C) (Extension for Relief Events), and (2) any other extensions provided for in a Change Order, Contract Administration Memorandum or Project Agreement Amendment).

“Secure Website” has the meaning set forth in subsection 17.1(A) (Access to the Financial Model).

“Senior Debt” means:

(1) All amounts outstanding, including interest and default interest accrued, from the Project Company to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by the Project Company for any reason other than a failure by the Project Company to pay any amount when due;

(2) Senior Debt Breakage Amounts payable by the Project Company (but not Senior Debt Breakage Amounts payable or credited to the Project Company); and

(3) All other reasonable transaction fees, costs and expenses for which the Project Company is responsible under the Senior Financing Agreements.

“Senior Debt Breakage Amounts” means any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of any hedging arrangement, that the Project Company must pay, or that may be payable or credited to the Project Company, under any Senior Financing Agreement or otherwise as a result of the payment, redemption, acceleration or reduction of all or any portion of the principal amount of Senior Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

“Senior Financing Agreements” means, collectively, the “Financing Documents”, as defined in the Lenders’ Remedies Agreement or, in the event of any Refinancing, any agreements replacing the Senior Financing Agreements, such security agreements and such other agreements in connection with such Refinancing.

“Senior Lenders” means the lenders to whom Senior Debt is owed.

“Service Fee” means the fee to be paid by the County to the Project Company as compensation for the Project Company’s performance of the Contract Services, calculated in accordance with Article 16 (Service Fee and Other Payments).

“Specified Change in Tax Law” means a Change in Law Event which results in:

(1) A change in the sales Tax imposed by the State or by the County and paid by the Project Company, the Project Contractor or any Subcontractors with respect to sales of goods purchased for the performance of the Contract Services; or

(2) A new Tax imposed by the United States, the State or the County and paid by the Project Company, the Project Contractor or any Subcontractors with respect to the performance of the Contract Services, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; any unincorporated business, payroll, franchise or employment Tax; or any Taxes imposed by a foreign government or any of their agencies.

“Standard & Poor’s” means Standard & Poor’s Financial Services LLC (d/b/a S&P Global Ratings), a division of S&P Global Inc., or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

“State” means the State of Oregon.

“State Article XI-Q Bonds” means the general obligation bonds of the State authorized to be issued under Article XI-Q of the State Constitution in the amount of \$94,500,000 pursuant to Senate Bill 5505, effective on July 16, 2021, to finance a portion of the costs of the Project.

“State Courthouse Tenants” means the Oregon Judicial Department, the Oregon Department of Human Services and the Oregon Office of Public Defense Services.

“State Funding Agreement Payment” means the payment of \$90,000,000 that is payable by the State to the County under the Project Phase 2 Funding Agreement.

“State Lease Agreements” means the respective lease agreements, each dated [_____], between the County and the State Courthouse Tenants.

“State Moveable FF&E Allowance Account” has the meaning set forth in subsection 7.16(E) (Payment for State Moveable Furniture, Fixtures and Equipment).

“State Moveable Furniture, Fixtures and Equipment” means the Moveable Furniture, Fixtures and Equipment to be utilized by the State and funded by the State, as identified in Attachment 6C (Preliminary List of State Moveable Furniture, Fixtures and Equipment) of Appendix 6 (Design and Construction Standards) or otherwise agreed to by the parties.

“Subcontract” means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of a Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Project Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor” means any person that enters into a Subcontract.

“Substantial Completion” has the meaning set forth in Section 7.18 (Substantial Completion).

“Superior Cleanliness” means, in general, a level of cleanliness intended for corporate site, donated building or historical focal points and includes: (a) floors and base moldings that shine or are bright and clean with fresh colors; (b) no buildup of dirt in corners or along walls; (c) vertical and horizontal surfaces that have a freshly cleaned or polished appearance and have no accumulation of dust, dirt, marks, streaks, smudges, or fingerprints; (d) washrooms, kitchenettes, locker rooms, and shower tile and fixtures that gleam and are odor-free; (e) supplies that are adequate; (f) trash containers and pencil sharpeners that are empty, clean, and odor-free; and (g) exterior fixtures, walls, and windows that are like new.

“Tax” means, from time to time, all taxes, surtaxes, duties, levies, imposts, tariffs, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges.

“Technical Proposal Submittal Date” means [_____].

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term).

“Termination Amount” means the measure of compensation owing from the County to the Project Company upon termination of this Project Agreement prior to the Expiration Date, as set forth in Appendix 13 (Compensation on Termination).

“Termination Amount Due Date” means the date on which the County must pay the Termination Amount to the Project Company as provided for in Appendix 13 (Compensation on Termination).

“Termination by Court Ruling” means the issuance of a final, non-appealable court order by a court of competent jurisdiction:

(1) To the effect that this Project Agreement is void, unenforceable or impossible to perform in its entirety, except where void, unenforceable or impossible to perform by reason of Project Company Fault; or

(2) Upholding the binding effect on the Project Company or the County of a Change in Law that causes impossibility of performance of a fundamental obligation by the Project Company or the County under this Project Agreement or impossibility of exercising a fundamental right of the Project Company or the County under this Project Agreement.

“Termination Date” means the earlier of the Expiration Date or the date of termination of this Project Agreement provided in subsection 22.2(E) (Termination Date).

“Termination for an Extended Relief Event” has the meaning set forth in Section 15.4 (Termination for an Extended Relief Events).

“Termination for Convenience” has the meaning specified in subsection 22.2(A)(1) (County Termination Rights).

“Terrorism Risk Insurance Act” or **“TRIA”** means the Terrorism Risk Insurance Act of 2002.

“Total Constructive Loss” means the occurrence of damage or destruction to all or substantially all of the Project occurring after the Occupancy Readiness Date.

“Total Courthouse Unavailability” has the meaning set forth in Section 1.1 (Definitions) of Appendix 11 (Deductions).

“Transaction Form” means any of the Transaction Forms appended to this Project Agreement and identified as such in the Table of Contents.

“Transfer Restriction Date” has the meaning set forth in Section 23.1 (Limitation on Assignment by Project Company).

“Unavailability Event” has the meaning set forth in Section 1.1 (Definitions) of Appendix 11 (Deductions).

“Uninsurable Force Majeure Event” means the occurrence of any of the events or circumstances set forth in items (4), (5), (6), (7) or (8) of the definition of Force Majeure Event.

“Unit Holders” means the holder or owner of Units.

“Units” means units or other equity interests of any class in the capital of the Project Company.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, internet telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Vandalism” means willful or malicious damage to the Project (including all mechanical equipment, structures, improvements, grounds and all other property constituting the Project) that is caused by a Project User or any person visiting the Project, except to the extent such damage arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Vandalism Reserve Account” has the meaning set forth in Section 9.5(B) (Vandalism).

SECTION 1.2. INTERPRETATION.

This Project Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Agreement otherwise require.

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Project Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Project Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or legal entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) Entire Project Agreement. This Project Agreement, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Project Agreement. Without limiting the generality of the foregoing, this Project Agreement, shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(M) Counterparts and Delivery by Electronic Mail. This Project Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Project Agreement. Any party may deliver an executed copy of this Project Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that party will promptly deliver via mail or courier to the other parties an originally executed copy of this Project Agreement.

(N) Governing Law. This Project Agreement shall be governed by and construed in accordance with the applicable laws of the State and the County.

(O) Severability. Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as nearly as possible to its original intent and effect.

(P) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(Q) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(R) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(S) Applicability, Stringency and Consistency of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. For example, as between the requirements of Article 7 (Design and Construction), Appendix 6 (Design and Construction Standards), and the Design and Construction Proposal Extracts and as between the requirements of Article 9 (Facilities Management), Appendix 8 (Facilities Management Standards), and the Facilities Management Proposal Extracts, those provisions which provide better or greater Project size, quantity, quality, integrity, durability and reliability shall take precedence. Any reference in this Project Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Project Agreement.

(T) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third-party expense unless requested and reimbursed by the assisted party. Any failure of a party entitled to assistance hereunder to perform an obligation under this Project Agreement shall not be excused on account of any failure of the party obligated to provide assistance.

(U) Imputation of Knowledge to County. The County will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the County Representative) who have responsibilities or would be expected to supervise or monitor the performance of the Contract Services or any material aspect of the Project.

(V) Imputation of Knowledge to Project Company. The Project Company will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its agents, employees or workers (including the Project Contractors and the Subcontractors) who have responsibilities or would be expected to supervise or monitor the performance of the Contract Services or any material aspect of the Project.

(W) Third-Party Rights. This Project Agreement is exclusively for the benefit of the County and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party County Indemnitees as provided in Section 24.1 (Project Company's Obligation to Indemnify) and of the Senior Lenders as provided in the Lenders' Remedies Agreement) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(X) Discretion. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Project Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE COUNTY.

The County represents and warrants, as of the Effective Date, that:

(A) Existence and Powers. The County is a political subdivision duly organized and existing under and by virtue of the laws of the State and has full legal right, power and authority to execute, deliver and perform its obligations under this Project Agreement.

(B) Due Authorization. This Project Agreement has been duly authorized, executed and delivered by the County, and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. Neither the execution and delivery by the County of this Project Agreement nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by the County of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the County; or

(2) Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the County of this Project Agreement or the performance by the County of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Project Company, there is no Legal Proceeding before or by any Governmental Body pending or, to the best of its knowledge, overtly threatened or publicly announced against the County, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the County or the validity, legality or enforceability of this Project Agreement against the County, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby or on the ability of the County to perform its obligations hereunder or under any such other agreement or instrument.

(F) County Ownership Interest in the Project Site; Existing Facilities. The County owns the Project Site in fee simple, subject to the easements and other exceptions to title indicated or referred to in Appendix 1 (Site-Related Information). The County has vacated the Existing Facilities.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Effective Date, that:

(A) Existence and Powers. The Project Company is a [limited liability company] duly organized, validly existing and in good standing under the laws of the State of [____], and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Project Agreement.

(B) Due Authorization and Binding Obligation. This Project Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Project Company of this Project Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company; or

(2) Conflicts with, violates or results in a material breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Agreement by the Project Company except as such have been duly obtained or made.

(E) No Litigation Affecting the Project Company. Except as disclosed in writing to the County, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the Project Company or the validity, legality or enforceability of this Project Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. Except as disclosed in writing to the County, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against any Project Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a

material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of any Project Contractor to perform its obligations under its respective Project Contract.

(G) Intellectual Property. The Project Company owns, has express rights to use, or can acquire on reasonable terms all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(H) Information Supplied by the Project Company. The information supplied and representations and warranties made by the Project Company in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Project Company (and to the Project Company's knowledge, all information supplied in such submittals with respect to the Project Contractors and the Subcontractors) is true, correct and complete in all material respects.

(I) Project Company Reviews. The Project Company has carefully reviewed the whole of this Project Agreement and has taken all steps it considers reasonably necessary to satisfy itself that nothing contained herein inhibits or prevents the Project Company from performing and completing the Project in accordance with the Contract Standards.

(J) Compliance with Applicable Law Generally. The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company's business and services. In addition and as required by ORS 305.385, the Project Company, under penalty of perjury, is to the best of its knowledge not in violation of any tax laws described in ORS 305.380.

(K) Representations as to the Initial Base Case Financial Model. The Project Company represents that the Financial Model:

- (1) Was prepared by or on behalf of the Project Company in good faith;
- (2) Was audited and verified by an independent recognized model auditor prior to the Effective Date;
- (3) Fully discloses all cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Project Agreement and by Unit Holders in purchasing Units;
- (4) Is substantially identical to the financial model presented to and relied upon by the Senior Lenders in entering into the Senior Financing Agreements; and
- (5) Is the only financial model used by the Project Company for the purposes described in items (3) and (4) of this subsection.

SECTION 2.3. CONTINUING ACCURACY OF PROJECT COMPANY REPRESENTATIONS AND WARRANTIES.

During the Term, the Project Company shall not take any action, or omit to perform any act, that results in a representation and warranty made in subsections 2.2(A), (B), (C), (D), (G), (H), (I), (J) and (K) (Representations and Warranties of the Project Company) becoming untrue. The Project Company shall promptly notify the County if any such representation and warranty becomes untrue. From time to time, the Project Company shall

provide the County, upon the County's request, with information reasonably requested by the County to substantiate the continuing accuracy of these representations and warranties.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Project Agreement shall become effective, and the term hereof (the “**Term**”) shall commence, on the Effective Date. The Term shall continue to the Expiration Date or, if this Project Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Project Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Project Agreement, the following provisions hereof will survive the expiration or any earlier termination of this Project Agreement:

(1) Section 4.10 (Financial Books and Records);

(2) Section 9.13 (Project Handback); provided that the survival of Section 9.13 (Project Handback) is limited to circumstances where this Project Agreement expires without an earlier termination of this Project Agreement;

(3) Article 18 (Dispute Resolution);

(4) Article 21 (County Events of Default);

(5) Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;

(6) Section 24.2 (Indemnification Procedures);

(7) Section 25.12 (Confidentiality);

(8) Section 25.13 (Personal Information); and

(9) Section 1.2 (Professional Liability Insurance) of Appendix 10 (Insurance Requirements), to the extent the 10-year extended reporting or discovery “tail” period provided therein has not expired on the Termination Date;

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

CONTRACT SERVICES GENERALLY

SECTION 4.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Project Company. The Project Company shall, subject to the terms and conditions of this Project Agreement, design, construct, finance, operate and maintain the Project. The Project Company's operating rights and responsibilities shall not include any matter pertaining to the administration of justice, which shall remain the exclusive right and responsibility of the County and the State.

(B) County. The County shall, subject to the terms and conditions of this Project Agreement, pay the Service Fee and the other amounts required to be paid by the County hereunder to the Project Company for the performance of the Contract Services.

(C) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Service Fee.

SECTION 4.2. STATE FUNDING AND USE AND OCCUPANCY OF THE NEW COURTHOUSE.

(A) State Funding of the Occupancy Readiness Milestone Payment. Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment) obligates the County to make the Occupancy Readiness Milestone Payment to the Project Company in the amount of \$90,000,000 following the achievement of Occupancy Readiness. The State is obligated, pursuant to the Grant Funding Agreement, to make the State Grant Agreement Payment to the County in an amount not-to-exceed \$94,500,000 and in a time frame that will allow the County to use such proceeds to pay the Occupancy Readiness Milestone Payment in a timely manner. The County, based on these back-to-back commitments, expects to pay the Occupancy Readiness Milestone Payment from the proceeds of the State Funding Agreement Payment. As provided in subsection 8.11(B) (Payment Not Contingent on County's Receipt of the State Funding Agreement Payment), however, receipt by the County of the State Funding Agreement Payment is not a condition to the County's Occupancy Readiness Milestone Payment obligation.

(B) State and County Use and Occupancy of the New Courthouse. The Project Company acknowledges that the New Courthouse is being built and will be operated for conducting the judicial business of the Oregon Fifth Judicial Circuit and that the County has leased the New Courthouse to the State Courthouse Tenants as for such purposes pursuant to the State Lease Agreements. The Project Company further acknowledges that the County, as owner of the Project, will also use and occupy the New Courthouse for County governmental functions supporting conduct of judicial business by the State, including use by the Sherriff's Office and the District Attorney. This Project Agreement does not confer on the Project Company any rights or responsibilities with respect to the performance by the State and the County with respect to their respective judicial and governmental duties.

(C) State, County and Project Company Communications. During the Facilities Management Period, as provided in Section 25.7 (Project Agreement Administration) and notwithstanding the State's role as the primary user and occupant of the New Courthouse, all communications relating to the performance of this Project Agreement shall be between the County, through the County Representative, and the Project Company, through the Project

Company Representative. The County shall handle all matters of interest or concern to the State Courthouse Tenants, and conveying to the Project Company any such matters that it believes are relevant to the performance of the Facilities Management Services. The Project Company shall not be obligated to take direction from the State (or the State Courthouse Tenants) or to respond to any communication received from the State (or the State Courthouse Tenants). The Project Company acknowledges and agrees that the County may provide to the State, in its discretion, copies of all Contract Administration Memoranda, Contract Amendments and other communications and documents delivered to the County pursuant to this Project Agreement. In addition, the County may, at its discretion, identify representatives of the State to receive all Project Company communications related to the Facilities Management Services.

SECTION 4.3. DESIGN-BUILD WORK PERSONNEL.

(A) Staffing Requirements. The Project Company shall enforce discipline and good order during the Design-Build Period among the Project Company's employees and the Design-Builder. All persons engaged by the Project Company for Design-Build Work shall have requisite skills for the tasks assigned. The Project Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. All firms and personnel performing Design-Build Work, including Project Contractor and Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Design-Build Project Manager. The Project Company shall designate from time to time an employee of the Project Company or any Affiliate or an employee of the Project Contractor as the Project Company's construction manager (the "**Design-Build Project Manager**"), who shall be present on the Project Site with any necessary assistants on a full-time basis when the Project Company or any Project Contractor or Subcontractor is performing the Design-Build Work. The Design-Build Project Manager shall be appropriately trained, experienced and knowledgeable in all aspects of the Design-Build Work so as to knowledgeably interact and communicate with the County and the Project Contractors and all Subcontractors regarding the Project and appropriately oversee the day-to-day performance of the Design-Build Work. The Design-Build Project Manager shall, among other things:

- (1) Be familiar with the Design-Build Work and all requirements of this Project Agreement;
- (2) Coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision;
- (3) Maintain a daily status log of the Design-Build Work;
- (4) Attend all monthly construction progress meetings with the County; and
- (5) Coordinate, where appropriate, with the Independent Building Expert.

The Project Company shall keep the County continuously informed of all business telephone, mobile telephone, e-mail addresses and other means by which the Design-Build Project Manager may be contacted. The Design-Build Project Manager (or their designee with equal authority to bind and represent the Project Company) shall be available to be contacted by the County on a continuous 24-hours per day, 7 days per week, 365 days per year basis during the Design-Build Period for emergency response, information, coordination or any other purpose hereunder.

SECTION 4.4. FACILITIES MANAGEMENT SERVICES PERSONNEL.

(A) Staffing Requirements. The Project Company shall staff the Project during the Facilities Management Period in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of Applicable Law. The Project Company shall discipline or replace, as appropriate, any employee of the Project Company or any Subcontractor engaging in unlawful, unruly, offensive or significantly objectionable conduct. The Project Company shall notify the County of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely affect the ability of the Project Company to provide the Facilities Management Services in accordance with the Contract Standards.

(B) Facilities Management Supervisor. The Project Company shall appoint a full-time manager of the Project during the Facilities Management Period (the “**Facilities Management Supervisor**”) who shall be licensed, trained, experienced and proficient in the management and operation of institutional public buildings comparable to the Project, shall be appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Project Company’s performance of the Facilities Management Services. The Project Company acknowledges that the performance of the individual serving from time to time as the Facilities Management Supervisor will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the County and the Facilities Management Supervisor will be essential to effectuating the intent and purposes of this Project Agreement. Accordingly, not fewer than 15 days prior to the date on which any candidate for Facilities Management Supervisor from time to time during the Term is proposed by the Project Company to assume managerial responsibility for the Project, the Project Company shall:

- (1) Provide the County with a comprehensive resume of the candidate’s licenses, training, experience, skills and approach to management and customer relations; and
- (2) Afford the County an opportunity to interview the candidate with respect to such matters.

The County shall have the right to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The County shall provide notice of its approval or disapproval within 15 days following the interview, together with a reasonably detailed written explanation of the grounds of any disapproval. Failure of the County to deliver such notice within such 15-day period shall be deemed an approval of the proposed Facilities Management Supervisor by the County. The initial Facilities Management Supervisor, a Key Individual, shall not be replaced, unless otherwise approved by the County, acting reasonably, for a period of three years from the Occupancy Readiness Date, absent death, disability, retirement, resignation or cessation of employment with the Project Company. The Project Company shall replace the Facilities Management Supervisor at the request of the County, after notice and a reasonable opportunity for corrective action, in the event the County determines, acting reasonably, that an unworkable relationship has developed between the Facilities Management Supervisor and the County.

SECTION 4.5. KEY INDIVIDUALS.

(A) In General. Attached as Appendix 15 (Project Company and Project Contractors Information) is a list of persons (the “**Key Individuals**”) that the Project Company shall utilize in undertaking the Contract Services. With respect to each of the Key Individuals:

(1) The Project Company, while the Key Individuals remain within its employment or the employment of a Project Contractor or Subcontractor, shall use all reasonable efforts to deploy the Key Individuals to perform the duties for the Contract Services described in Appendix 15 (Project Company and Project Contractors Information); and

(2) If for any reason a Key Individual resigns, retires, dies, becomes disabled, receives maternity, parental or sick leave, is promoted or is terminated for cause, then the Project Company shall retain a replacement with equivalent expertise and experience to the unavailable Key Individual satisfactory to the County acting reasonably, and the Project Company shall not replace such Key Individual without the County's consent, acting reasonably.

(B) Replacement of Certain Key Individuals Prior to the Occupancy Readiness Date; Liquidated Damages. If certain Key Individuals are not available for the Design-Build Work, or do not maintain active involvement in the prosecution and performance of the Design-Build Work, the Project Company acknowledges that the County and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to determine the actual damages that would accrue in such an event. As a result, if the Project Company, prior to the Occupancy Readiness Date, formally or informally replaces the Project Manager, Design Manager or Design-Build Project Manager absent a reason identified in subsection (A)(2) of this Section or at the direction of the County, then the Project Company agrees to pay liquidated damages, in the amount of \$50,000 per substitution, in addition to obtaining the required approval of the substituted Key Individual from the County pursuant to subsection (A)(2) of this Section. Any liquidated damage amount to be applied pursuant to this subsection shall be paid as an Extraordinary Item credit against the first Service Fee payment. The County may, in its discretion, waive the assessment of liquidated damages if the Project Company provides sufficient documentation that demonstrates that such Key Individual substitution has equal or better qualifications to the original Key Individual and will not have an adverse effect on the Project.

SECTION 4.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Project Company shall perform the Contract Services in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law, including:

- (1) the workers' compensation laws set forth in ORS Chapter 656;
- (2) the wages, hours and records laws set forth in ORS Chapter 652;
- (3) the conditions of employment laws set forth in ORS Chapter 653;
- (4) the safety and health regulations set forth in ORS Chapter 654;
- (5) the unemployment insurance laws set forth in ORS Chapter 657;
- (6) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
- (7) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (8) the Americans with Disabilities Act of 1990, as amended;

- (9) the Health Insurance Portability and Accountability Act of 1996;
- (10) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (11) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (12) discrimination against disabled persons, as set forth ORS 659A.142;
- (13) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (14) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (15) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (16) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (17) any other nondiscrimination provisions in the specific statutes if application for Federal assistance is being made;
- (18) the requirements of any other nondiscrimination statutes which may apply;
- (19) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations not set forth in this subsection; and
- (20) HB 2007 (2019 Oregon Laws, Chapter 645), relating to the use of diesel engines and non-road diesel engines.

(B) Governmental Approvals. The Project Company shall make all filings, applications and reports necessary to be made in order to obtain and maintain all Governmental Approvals required for the performance of the Contract Services and shall comply with the terms of all Governmental Approvals.

(C) Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Services, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) Investigations of Non-Compliance. In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Contract Services, the Project Company shall, in addition to any other duties which Applicable Law may impose:

- (1) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;

- (2) Attend all meetings and hearings with respect to the Project required by any Governmental Body;
- (3) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to the County; and
- (4) Promptly upon receipt thereof, provide the County with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and written summaries of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish the County with a prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. To the greatest extent practicable, the Project Company shall provide the County an opportunity to review and comment on any proposed Project Company response to any non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) Fines, Penalties and Remediation. Except to the extent excused by Relief Events, in the event that the Project Company, a Project Contractor or any Subcontractor fails at any time to comply with Applicable Law with respect to the Contract Services, the Project Company shall:

- (1) Immediately correct such failure and resume compliance with Applicable Law;
- (2) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (3) Indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
- (4) Make all changes in performing the Contract Services which are necessary to assure that the failure of compliance with Applicable Law will not recur; and
- (5) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, a Project Contractor or any Subcontractor to comply with Applicable Law.

(F) Tax Compliance. The Project Company represents and warrants that it has complied, and will continue to comply throughout the Term of this Project Agreement and any extensions, with all Tax laws of the State or any political subdivision of the State, including ORS 305.620 and ORS chapters 316, 317, and 318. The Project Company further represents and warrants that it will require the Design-Builder during the Design-Build Period and Facilities Manager during the Facilities Management Period to similarly comply with all Tax laws of the State or any political subdivision of the State, including ORS 305.620 and ORS Chapters 316, 317 and 318. Any violation of this subsection shall constitute a Project Company Event of Default pursuant to subsection 20.1(A)(4).

SECTION 4.7. RESTRICTIONS ON COUNTY-DIRECTED DESIGN AND CONSTRUCTION REQUIREMENT CHANGES, CAPITAL MODIFICATIONS AND FACILITIES MANAGEMENT SERVICES CHANGES.

The County shall not at any time during the Term require, and the Project Company may refuse to implement, a Change Order (relating to a County-Directed Design and Construction Requirement Change or a Design and Construction Requirement Change made due to a Relief Event), a Capital Modification or a Facilities Management Services Change which:

- (1) Would be contrary to Applicable Law;
- (2) Would render any policy of Required Insurance void or voidable unless the County agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;
- (3) Would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Project Agreement, and such Governmental Approval would not, using reasonable efforts, be capable of amendment or renewal;
- (4) Would require a new Governmental Approval for the Project Company to perform its obligations under this Project Agreement, which Governmental Approval would not, using reasonable efforts by the Project Company or the County, as applicable, be obtainable;
- (5) Would materially and adversely affect the risk allocation and payment regime under this Project Agreement with respect to the Design-Build Work or the Facilities Management Services, unless the material and adverse effects of such a Change Order on the Design-Build Work or the Facilities Management Services Change (as the case may be) are remedied by the County to the Project Company's reasonable satisfaction;
- (6) Would result in a change to the essential nature of the Project; or
- (7) The Project Company would not, using commercially reasonable efforts, be able to implement within the time specified.

SECTION 4.8. GOOD DESIGN-BUILD PRACTICE AND GOOD FACILITIES MANAGEMENT PRACTICE.

Good Design-Build Practice and Good Facilities Management Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Design-Build Practice or Good Facilities Management Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall be relieved of its obligation to comply with such evolved Good Design-Build Practice and Good Facilities Management Practice (but not Good Design-Build Practice and Good Facilities Management Practice as of the Technical Proposal Submittal Date) unless the County agrees to adjust the Service Fee on a lump sum or reimbursable basis (subject to Cost Substantiation), as appropriate, to account for such additional costs.

SECTION 4.9. DEVELOPMENT OF FINAL DESIGN-BUILD PLANS AND FACILITIES MANAGEMENT PLANS BASED ON PRELIMINARY PLANS.

The Project Company prepared and submitted certain preliminary plans with its Proposal, which describe the Project Company's approach for delivering certain Contract Services during the Term. Such preliminary plans were a material part of the County's selection of the Project Company's Proposal and have been incorporated as attachments to Appendix 7 (Design and Construction Proposal Extracts) and Appendix 9 (Facilities Management Proposal Extracts). In accordance with the applicable requirements of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), Appendix 6 (Design and Construction Standards) and Appendix 8 (Facilities Management Standards), the Project Company shall prepare final Design-Build Plans and Facilities Management Plans for the County that are consistent with the respective preliminary plans set forth in the attachments to Appendix 7 and Appendix 9.

SECTION 4.10. FINANCIAL BOOKS AND RECORDS.

(A) Recordkeeping Requirements. The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Services, this Project Agreement, the Project Contracts, any Subcontract or any transactions in which the County has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design and Construction Requirement Changes, Relief Event costs, or other changes in or additions to the Service Fee for which the County is or may be responsible under this Project Agreement. The Project Company shall produce such financial books and records for examination and copying for all such purposes promptly upon request by the County. All such information upon delivery to the County shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP. The Project Company shall not be required to provide the County any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the County through the Cost Substantiation process, through the use of the Financial Model as contemplated hereunder, or otherwise upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the seventh anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Project Agreement.

(B) Delivery of the Project Company's Internal Budget. Not later than March 31 of each Contract Year during the Facilities Management Period, the Project Company shall deliver to the County the Project Company's internal capital and operating annual budget for the forthcoming year, in at least as much detail as any similar budget required by the Senior Lenders, together with:

- (1) its internal capital and operating budgets, as applicable, for the immediately preceding three Contract Years during the Facilities Management Period (or for the total number of Contract Years including partial Contract Years since the Occupancy Readiness Date, whichever is less); and

(2) a detailed itemization of all capital and operating costs and expenses for the immediately preceding three Contract Years during the Facilities Management Period (or for the total number of Contract Years including partial Contract Years since the Occupancy Readiness Date, whichever is less), organized by the line items in the budgets.

(C) Inspection, Audit and Adjustment. The County shall have the right to perform or commission an inspection or independent audit of the financial information required to be kept under this Section. The County shall give the Project Company reasonable advance notice (at least three Business Days) prior to any such audit, and such audit shall be performed during business hours. The County shall, or shall cause the party conducting the inspection or audit, to provide a complete copy of the inspection or audit report to the Project Company following receipt of such report. If an inspection or audit reveals that the Project Company has overstated any component of the Service Fee, a County Design-Build Period Payment Obligation or any other County payment obligation arising out of this Project Agreement, then the Project Company shall, at the election of the County, either immediately reimburse to the County or offset against Service Fee payments, as a Service Fee adjustment, the overstated amount plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to the County. If the overpayment exceeds 1% of the total amount that should have been properly paid by the County during the period audited, then the Project Company shall, in addition, reimburse the County for any and all fees and costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the County may have, including remedies for a Project Company Event of Default.

SECTION 4.11. DELIVERY OF DOCUMENTS.

(A) Project Company. In this Project Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to the County both in printed form (in the number of copies indicated) and, at the County's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the County may reasonably request to facilitate the administration and enforcement of this Project Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) County. The County shall make available to the Project Company upon request copies of all information relating to the Project which is in the possession of the County and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

ARTICLE 5

FINANCING PERIOD

SECTION 5.1. FINANCIAL CLOSE.

(A) Financial Close Process. The Project Company shall finance the Project in accordance with the requirements of Article 6 (Project Financing and Refinancing) and, in connection therewith, the parties shall comply with their respective obligations for the achievement of Financial Close, as set forth in Appendix 3 (Financial Close Procedures and Conditions). Without limiting anything set forth in Appendix 3, Financial Close shall not occur until each of the Financial Close Conditions has been satisfied by the Project Company or the County, as applicable or waived in writing by the County or the Project Company, as applicable, in its discretion.

(B) Satisfaction of Financial Close Conditions on or Prior to Effective Date. The parties acknowledge the potential simultaneous occurrence of the Effective Date and the Financial Close Date as the result of the satisfaction of the Financial Close Conditions by the Project Company or the County, as applicable, on or before the Effective Date. In such event, the provisions of this Article 5 (Financing Period) and Appendix 3 (Financial Close Procedures and Conditions) shall have no applicability.

SECTION 5.2. FINANCIAL CLOSE DEADLINE.

The “**Financial Close Deadline**” is the date that is 90 days following the Effective Date. If, however:

(1) There shall be any Legal Proceeding, at law or in equity, before or by any court or Governmental Body, pending or threatened, which challenges, or might challenge, directly or indirectly, (a) the authorization, execution, delivery, validity or enforceability of this Project Agreement, or (b) the interest of the County in the Project Site, which can reasonably be expected to materially and adversely affect the ability of the County or the Project Company to comply with their respective obligations hereunder;

(2) Any Change in Law Event shall have occurred after the Effective Date and before the Financial Close Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Project Agreement a violation of Applicable Law;

(3) Any Relief Event occurs, which under the terms of an applicable commitment letter issued to the Project Company by the Senior Lenders, would be the basis for an extension of the loan commitment thereunder beyond the date that is 90 days following the Effective Date; or

(4) Any event described in Appendix 3 (Financial Close Procedures and Conditions) occurs permitting an extension of the Financial Close Deadline;

then the Financial Close Deadline shall, contingent upon a commensurate extension of the Financial Close Security, be extended for such period of time as any of the foregoing events shall be continuing; provided, however, that the Financial Close Deadline shall not be extended beyond 180 days following the Effective Date for any reason, except as such date may be extended by agreement of the parties and contingent upon a commensurate extension of the Financial Close Security. The parties shall execute a Contract Administration Memorandum as of the Effective Date to memorialize the Financial Close Deadline for all purposes of this Project Agreement and

such Contract Administration Memorandum may be amended to reflect any extension of the Financial Close Deadline. The failure to achieve Financial Close by the Financial Close Deadline may result in termination of this Project Agreement, as and to the extent provided in Appendix 3 (Financial Close Procedures and Conditions).

SECTION 5.3. FINANCIAL CLOSE SECURITY.

(A) Requirements. On the Effective Date (subject to subsection 5.1(B) (Satisfaction of Financial Close Conditions on or Prior to Effective Date)), the Project Company shall provide security for the performance of its obligations to achieve Financial Close by delivering to the County one or more irrevocable direct pay letters of credit meeting the requirements set forth in this subsection (the **“Financial Close Security”**). The Financial Close Security shall be:

- (1) Issued or confirmed by a Qualified Commercial Bank;
- (2) Substantially in the form set forth in the Transaction Forms and with an expiration date no earlier than 10 Business Days following the Financial Close Deadline; and
- (3) In an aggregate amount equal to \$10,000,000.

(B) County Drawing Rights. The County shall have the right to draw upon the Financial Close Security in the full stated amount thereof solely under the circumstances specified in Section 8.1 (County Termination for Failure to Achieve Financial Close by the Financial Close Deadline) of Appendix 3 (Financial Close Procedures and Conditions). The parties acknowledge and agree that the County’s rights to retain for its own account the proceeds of a drawing on the Financial Close Security under the circumstances specified in Appendix 3 are in the nature of liquidated damages and subject to the terms and conditions of Section 19.2 (County Liquidated Damages Rights).

(C) Return of Financial Close Security. The County shall return the Financial Close Security to the Project Company in accordance with Appendix 3 (Financial Close Procedures and Conditions) unless it has the right (including the contingent right) to draw on the Financial Close Security in accordance with subsection 5.3(B) (County Drawing Rights).

ARTICLE 6

PROJECT FINANCING AND REFINANCING

SECTION 6.1. PROJECT COMPANY RIGHT AND RESPONSIBILITY TO FINANCE PROJECT.

(A) Project Company Financing; County Occupancy Readiness Milestone Payment. The Project Company is solely responsible for obtaining and repaying all construction and other financing necessary for the Project at its own cost and risk and without recourse to the County and, following the Financial Close Date, exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms and conditions of its financing. The County shall make the Occupancy Readiness Milestone Payment to the Project Company as provided in Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment).

(B) Project Company Liability. Notwithstanding any foreclosure or other enforcement of any security interest created by a Senior Financing Agreement, the Project Company shall remain liable to the County for the payment of all sums owing to the County under this Project Agreement and the performance and observance of all of the Project Company's covenants and obligations under this Project Agreement.

(C) Project Company Cooperation with County Financings. The Project Company shall provide reasonable assistance to the County in connection with any County financing for any capital costs the County is obligated to pay pursuant to subsection 6.6(A) (County Financing) and Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment), including cooperating with the County with respect to any continuing disclosure requirements that apply to the County in accordance with any Applicable Law.

SECTION 6.2. SENIOR DEBT NON-RECOURSE TO COUNTY.

All Senior Debt or other obligations issued or incurred by the Project Company in connection with this Project Agreement or the Project shall be issued or incurred only in the name of the Project Company. The County shall have no obligation to pay debt service on any Senior Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company or the Senior Financing Agreement.

SECTION 6.3. COMPLIANCE WITH SENIOR FINANCING AGREEMENTS.

The Project Company shall keep the Senior Financing Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent the Project Company from performing its obligations under this Project Agreement. If at any time the Project Company receives a notice that an "event of default", any event entitling the Senior Lenders to enforce any security or any other similar event has occurred under the Senior Financing Agreements, the Project Company shall forthwith deliver to the County a copy of such notice.

SECTION 6.4. CHANGES TO SENIOR FINANCING AGREEMENTS.

The Project Company shall not, without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed, terminate, amend or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements if such action would materially adversely affect the Project Company's

ability to perform its obligations under this Project Agreement or have the effect of materially increasing any liability or potential liability of the County. If at any time any material amendment is made to any Senior Financing Agreement or the Project Company enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), the Project Company shall deliver to the County a copy of each such material amendment or agreement within 10 Business Days of the date of its execution and creation, certified as a true copy by an officer of the Project Company.

SECTION 6.5. REFINANCING.

(A) Consent Required for Refinancing. The Project Company shall not enter into any Refinancing other than an Exempt Refinancing or, without the prior written consent of the County, a Qualifying Refinancing. Such consent will not be unreasonably withheld or delayed if such Qualifying Refinancing occurs after the Occupancy Readiness Date, has no material and adverse effect on the Project Company's ability to perform its obligations under this Project Agreement and does not increase any liability or potential liability of the County (unless the County is specifically compensated for such liability or potential liability).

(B) County's Share of Refinancing Gain. The County shall be entitled to receive a 50 percent share of any Refinancing Gain arising from a Qualifying Refinancing, to be determined as set forth in Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. The County shall not require a share greater than 50 percent of the Refinancing Gain as a condition of receiving its consent to a Qualifying Refinancing.

(C) Project Company Proposal to Refinance. The Project Company shall promptly provide the County with full details of any proposed Qualifying Refinancing, as set forth in Section 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. The County shall (before, during and within two years after any Qualifying Refinancing) have unrestricted rights of audit over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Qualifying Refinancing.

(D) Payment to the County. Payment to the County of its portion of any Refinancing Gain shall be made as set forth in Section 5 (Payment of the County's Portion of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement.

(E) Calculation of Refinancing Gain. The Refinancing Gain shall be calculated as set forth in Section 3 (Calculation of the Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement.

(F) Transaction Expenses. The Project Company will pay its own transaction costs incurred in connection with a Qualifying Refinancing. The Project Company shall pay the County's reasonable and properly incurred out-of-pocket professional costs in connection with a Qualifying Refinancing. If the County delivers to the Project Company a written invoice therefor at least two Business Days prior to the scheduled date of closing, then the Project Company shall reimburse such costs at closing. If County does not deliver a written invoice at least two Business Days prior to closing, then it may deliver such invoice within 30 days after receiving written notice of closing and the Project Company shall reimburse the County for such costs within ten days after the County delivers the invoice to the Project Company. If for any reason the Qualifying Refinancing does not close, the Project Company shall reimburse such incurred County costs within 30 days after the County delivers to the Project Company a written invoice therefor. The

amounts payable under this subsection are payable even if the Refinancing Gain is determined to be zero.

(G) County Cooperation. The County shall cooperate, as reasonably requested by the Project Company, in connection with the closing of any Refinancing, including entering into a Lenders' Remedies Agreement in connection therewith and providing customary legal opinions and instruments and other documents.

SECTION 6.6. FINANCING CAPITAL COSTS FOR WHICH THE COUNTY IS RESPONSIBLE.

(A) County Financing. This Project Agreement obligates the County to pay: (1) costs of Capital Modifications required due to a Relief Event pursuant to Section 10.4 (Capital Modifications Required Due to Relief Events) or at the County's direction pursuant to Section 10.5 (Capital Modifications at County Direction); and (2) certain costs for Design-Build Work or Reinstatement Works required due to Uninsurable Force Majeure Events pursuant to Section 14.2 (Uninsurable Force Majeure Events), Section 15.1 (Change in Law Events) and Section 15.3 (Other Relief Events). All such costs shall be paid on a negotiated lump sum basis in accordance with Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 16.12 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation), to the Project Company or to the third party entitled to receive such payments. The County shall pay any such costs from currently available funds or from the proceeds of a County financing. The Project Company shall have no obligation to finance any such costs and adjust the Service Fee on account of any Project Company financing except following any agreement of the parties with respect thereto entered into based on a County request made pursuant to subsection (B) of this Section.

(B) Project Company Financing. At the County's request, and subject to the agreement of the parties as to the amount of the applicable costs and related terms and conditions, the Project Company shall use all reasonable efforts to obtain the financing required to pay the capital costs that the County is obligated to pay for as referred to in subsection (A) of this Section, on commercially reasonable terms and subject to the consent of the Senior Lenders, acting reasonably. To the extent the Project Company is able to obtain such financing, the cost of the financing will be taken into consideration by the parties in the negotiation of the adjustment of the Service Fee resulting from the implementation of the Capital Modification. The County shall pay the Project Company, as an Extraordinary Item, an amount equal to the reasonable out-of-pocket expenses incurred by the Project Company in seeking such financing, provided that the County approved such expenses prior to the Project Company incurring them.

(C) No Senior Lender Obligation. The County acknowledges that the Senior Lenders have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

ARTICLE 7

DESIGN AND CONSTRUCTION

SECTION 7.1. DESIGN-BUILD WORK GENERALLY.

(A) Commencement and Prosecution of Design-Build Work. On the Financial Close Date, the Project Company shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards. The Project Company's failure to satisfy the Occupancy Readiness Conditions by or before the Scheduled Occupancy Readiness Date shall result in the loss of Service Fee payments scheduled to be made by the County under Section 16.1 (Service Fee Generally) during the period of delay. Failure to satisfy the Occupancy Readiness Conditions by the Longstop Date shall constitute a Project Company Event of Default upon which the County may terminate this Project Agreement for cause in accordance with subsection 22.2(A) (County Termination Rights).

(B) Project Company Control of the Design-Build Work; No County Responsibility. The Project Company shall have total control of the Design-Build Work and shall effectively direct and supervise the Design-Build Work so that it is undertaken in compliance with the terms of this Project Agreement. The Project Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the fact that the RFP included certain minimum conceptual design criteria for the Design-Build Work and the Design and Construction Standards that the Project would be required to meet or the fact that in negotiating this Project Agreement, between the date the Project Company was selected as the preferred proposer pursuant to the RFP and the Effective Date, the County participated in certain design development activities that resulted in the finalization of the Design and Construction Requirements. The Project Company acknowledges that such minimum conceptual design criteria do not in any manner or to any degree impair the Project Company's ability to perform the Design-Build Work and the Facilities Management Services in compliance herewith. Nothing in this Project Agreement shall be interpreted as giving any responsibility for the Design-Build Work to the County, any County Indemnitee, or to the Independent Building Expert. The County's rights of review and comment with respect to any aspect of the Design-Build Work shall be for the County's benefit only, and no review or comment by the County Representative or any other representative of the County or the State shall in any way relieve the Project Company of its obligation for all aspects of the Design-Build Work of the Project. If, however, the County and the Project Company agree to specific changes to the Contract Standards, such agreement shall be binding on the parties.

(C) Materials, Labor and Services. The Project Company shall furnish all necessary architectural, design and engineering services, labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and utilities, completed structures, assemblies, fabrications, acquisitions, installations, testing, accounting, recordkeeping and other things and services of every kind whatsoever necessary for the full performance and completion of the Project Company's design, engineering, construction, start-up, Commissioning, obtaining and maintaining Governmental Approvals and related obligations with respect to the design, construction and Commissioning of the Project during the Design-Build Period under this Project Agreement. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Work shall be new, of recent manufacture, and meet or exceed the Design and Construction Requirements.

(D) Project Sequencing, Schedule and Reports. The Project Company shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. Throughout the Design-Build Period, the Project Company shall submit to the County a monthly progress schedule and report in accordance with the requirements of Section 27.2 (Monthly Progress Report) of Appendix 6 (Design and

Construction Standards). The Project Company's submittal of the monthly progress schedule and report (or any revised progress schedule and report) is for the County's information only and shall not limit or otherwise affect the Project Company's obligations to achieve Occupancy Readiness by the Scheduled Occupancy Readiness Date. The County's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the County in any manner and shall not imply County approval or consent to any of the matters set forth therein.

(E) Design and Construction Requirements. The Project Company shall perform the Design-Build Work in compliance with the Design and Construction Requirements. The Design and Construction Requirements are intended to include the basic design principles, concepts and requirements for the Design-Build Work but do not include the final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work or for achieving Occupancy Readiness. The Project Company agrees to prepare and furnish all necessary detailed designs, plans, drawings and specifications in conformity with the Design and Construction Requirements. The Project Company further agrees that it shall not have the right to bring any claim whatsoever against the County or any of its consultants or subcontractors, arising out of any designs, plans, drawings or specifications included in the RFP or made available during the procurement process.

(F) Standards of Workmanship and Materials. Where this Project Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Project Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Design and Construction Requirements, and the Design and Construction Requirements are to be interpreted accordingly.

(G) Technical Standards and Codes. References in this Project Agreement to all professional and technical standards, codes and specifications, except as otherwise provided in Appendix 6 (Design and Construction Standards), are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Technical Proposal Submittal Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Design and Construction Requirements, and (2) if any material revision occurs, to the Project Company's knowledge, after the Technical Proposal Submittal Date, and prior to completion of the applicable Design-Build Work, the Project Company shall notify the County. If so directed by the County, the Project Company shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code or specification, and such direction shall be deemed to be an Other Relief Event.

(H) Deliverable Material. The Project Company shall deliver to the County all design documents, reports, submittals and other materials ("**Deliverable Material**") required to be delivered under Appendix 6 (Design and Construction Standards), Appendix 8 (Facilities Management Standards), Appendix 10 (Insurance Requirements) and Appendix 14 (Reports and Records). With respect to those Deliverable Materials required to be delivered within a certain number of days after the Financial Close Date under Appendix 6 (Design and Construction Standards), Appendix 10 (Insurance Requirements) and Appendix 14 (Reports and Records), such obligation to provide such Deliverable Materials shall be counted from the Effective Date. The County shall have the right from and after the Effective Date to use (or permit use of) all such Deliverable Material, all oral information received by the County in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. The County's use of any such Deliverable Material for any purpose

other than the Project shall be at its own risk, and the Project Company shall have no liability therefor.

(I) Payment of Costs. Except as otherwise expressly provided or referred to in Section 7.22 (Payment Obligations of the County During the Design-Build Period), the Project Company shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including: (1) all costs of permitting (regardless of permittee); (2) regulatory compliance and Legal Proceedings brought against the Project Company; (3) obtaining and maintaining the Financial Close Security and the Required Insurance; (4) financing costs; (5) payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; (6) legal, financial, engineering, architectural and other professional services of the Project Company; (7) sales, use and similar Taxes on building supplies, materials and equipment; (8) general supervision by the Project Company of all Design-Build Work; (9) the preparation of schedules, budgets and reports; (10) keeping all construction accounts and cost records; and (11) all other costs required to achieve Substantial Completion, Occupancy Readiness and Final Completion.

(J) Quality Assurance and Quality Control. The Project Company shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan, which shall be developed by the Project Company in accordance with Section 26.3.3 (Design-Build Quality Management Plan) of Appendix 6 (Design and Construction Standards).

(K) Naming and Signs. The County shall have the exclusive right to name the Project and any parts thereof. The Project Company shall provide and maintain temporary Project identification and information signs during the Design-Build Period. No signs shall be erected (other than those required pursuant to subsection 7.13(B)(2) (Safety and Security)) until their appearance, content, and location have been fully reviewed and approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed. The Project Company shall remove temporary signs from the Project Site when they are no longer necessary.

(L) Laydown and Staging Areas. Laydown and staging areas for construction materials shall be located on the Project Site or at other locations arranged and paid for by the Project Company.

(M) Construction Office Space; Use of Existing Facilities. The County hereby licenses, without fee or charge, the Existing Facilities, located on the Project Site, to the Project Company, for use as a construction office by the Project Company, the Design-Builder and Subcontractors, as reasonably required. Following the demolition of the Existing Facilities, the Project Company shall arrange and pay for the use of all required construction trailers or other facilities and buildings requested for the management of the remainder of the Design-Build Work at any construction office subsequently used by the Project Company during the Design-Build Period, as further described in Section 3.12 (Construction Office) of Appendix 6 (Design and Construction Standards). The Project Company shall also provide (1) discreet construction office space for three County employees and the Independent Building Expert, separate and apart from the staff of the Project Company, the Design-Builder and other Subcontractors, and (2) furniture and communications services in such County Construction Office, as further described in Section 3.12 (Construction Office) of Appendix 6 (Design and Construction Standards).

(N) Maintenance of the Project Site. During performance of the Design-Build Work following the Financial Close Date, the Project Company shall be responsible for the overall maintenance of the Project Site. The Project Company shall keep the Project Site neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Site as they accumulate in accordance with the Contract Standards.

(O) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to the County upon incorporation into the Project, free and clear of all Liens as provided in subsection (P) of this Section. The Project Company shall, however, subject to the Relief Event provisions hereof, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until Substantial Completion, regardless of the extent to which the loss was insured or the availability of Insurance Proceeds.

(P) Encumbrances. The Project Company shall not directly or indirectly, without the County's consent, create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance arising on the Project, the Project Site or the Design-Build Work, other than Permitted Encumbrances, arising out of the Project Company's construction of the Project.

(Q) Compliance with Easements and Limits; Surveying. The Project Company shall: (1) construct the Project in compliance with the requirements of the easements, exceptions to title, limits and setback requirements identified in Appendix 1 (Site-Related Information); (2) perform all construction surveying necessary in connection therewith; and (3) preserve or replace as necessary all existing property line and corner survey monuments encountered.

(R) Utilities. The Project Company shall make all arrangements necessary to secure the availability of all Utilities required to construct and operate the Project in the capacities required hereunder.

(S) Relocation of Existing Utilities. The Project Company shall be responsible for all construction activities required with regard to existing utility services and installations (e.g., conduits, pipelines, transmission mains and other utility equipment and appurtenances), including any relocation of Utilities, whether such construction activities are performed by the Project Company or by the owner of the existing utility. Residents shall be informed in advance of work that affects their utility service. A reasonable effort shall be made to coordinate with the needs of the affected residents.

(T) Installation of Public Art. The County may from time to time identify and select, in its discretion and in consultation with the Project Company, all works of art ("**Public Art**") that are not described in the Design and Construction Requirements as works of art that the Project Company shall be required to install as part of the Project. Public Art may consist of any statues, paintings and other objects or creations determined by the County as appropriate to enhance the aesthetic character of the Project. Public Art shall be funded by and furnished by the County, and the Project Company shall have no obligation to furnish any Public Art except following agreement with the County on the terms of County funding and payment.

(U) Notice of Default. The Project Company shall provide to the County, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, or Project Contract pertaining to the Design-Build Period, that may have a material and adverse effect on performance by the Project Company of its obligations under this Project Agreement.

SECTION 7.2. ACCESS TO AND SUITABILITY OF THE PROJECT SITE.

(A) Familiarity with the Project Site. The Project Company acknowledges: (1) that the Project Company's agents and representatives have visited, inspected and are familiar with the Project Site, its surface physical conditions relevant to the obligations of the Project Company pursuant to this Project Agreement, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions;

(2) that the Project Company is familiar with all local and other conditions which may be material to the Project Company's performance of its obligations under this Project Agreement (including transportation, seasons and climate, access, availability, disposal, handling and storage of materials and equipment, and availability and quality of labor and Utilities), and has received and reviewed all information regarding the Project Site provided to it hereunder or obtained in the course of performing its obligations under this Project Agreement, has made any other investigations that it deems necessary to make a determination as to the suitability of the Project Site; and (3) that based on the foregoing, the Project Site constitutes an acceptable and suitable site for the construction of the Project in accordance herewith, and the Project can be constructed on the Project Site by the Scheduled Occupancy Readiness Date and within the construction cost upon which the Service Fee is based.

(B) Access to Project Site Prior to Commencement of Construction. The execution of this Project Agreement shall be deemed to constitute the granting of a license to the Project Company for full access to the Project Site for the purposes of this Project Agreement, including mobilization and performing engineering, analysis and such additional subsurface and geotechnical studies or tests as deemed necessary by the Project Company prior to commencement of construction. The Project Company shall assume all risks associated with such activities (except to the extent provided otherwise in Section 7.5 (Regulated Site Conditions)) and shall, to the extent and in proportion to the degree of fault or negligence by the Project Company in causing any harm, indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company's Obligation to Indemnify) from and against all Loss-and-Expense arising therefrom.

SECTION 7.3. DEMOLITION WORK.

The Project Company shall demolish the Existing Facilities, including all existing buildings, existing parking lots, existing paving and other existing site improvements, and associated utilities; properly remove and dispose all demolition debris; and prepare the Project Site for construction of the Project, all in accordance with this Section, Section 3.7 (Demolition Work) of Appendix 6 (Design and Construction Standards) and Appendix 7 (Design and Construction Proposal Extracts) (the "**Demolition Work**"). As required by ORS 279C.510(1), the Project Company shall salvage or recycle construction and demolition debris, if feasible and cost-effective. The Project Company shall pay the cost of all such Demolition Work and have the right to any economic benefit associated with the sale or reuse of the demolition debris. The Demolition Work shall include the restoration of all undeveloped areas of the Project Site to a stabilized condition, which at a minimum shall include an established stand of grass with minimal landscape plantings. The Project Company shall determine the sequence and timing of the Demolition Work in accordance with the Project Schedule.

SECTION 7.4. DIFFERING SITE CONDITIONS.

(A) Further Investigations and Protection of Utilities. Prior to commencing any trenching or excavations, the Project Company shall, taking into account the information in the Project Site Geotechnical Investigation Report and in compliance with Good Design-Build Practice, conduct further site investigations, including exploratory excavations and further borings, to confirm the location and type of underground structures that could be damaged as a result of the excavations. Such underground structures include all sewer, water, gas, and other piping, and manholes, chambers, electrical conduits, wires, tunnels and other existing subsurface work located within or adjacent to the Project Site. The Project Company shall carefully sustain in their places and support, or if necessary relocate, all underground and surface structures located within or adjacent to the Project Site. The Project Company shall notify the County seven days in advance of any work that might impact utilities at the Red Soils Campus and businesses or residents in the area surrounding the Project Site so that the County can notify such businesses or residents of such work.

(B) Discovery of Differing Site Conditions. The Project Company and the County recognize the existence of certain surface and subsurface geotechnical conditions at the Project Site, as reflected in the Geotechnical Investigation Report. Upon discovering an alleged Differing Site Condition and before the condition is further disturbed, the Project Company shall immediately, after taking appropriate measures to secure the affected Design-Build Work, notify the County of the alleged Differing Site Condition. The Project Company's notice to the County shall be issued by telephone or in person and followed within 24 hours thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. The Project Company's written notice shall describe the specific subsurface geotechnical condition encountered that is alleged to constitute a Differing Site Condition and the measures taken to deal with such Differing Site Condition. Promptly upon receipt of the Project Company's notice, the County will investigate or cause to be investigated the alleged Differing Site Condition set out in the Project Company's notice. Notwithstanding anything set forth in subsection (C) (Relief for Differing Site Conditions) of this Section or in Article 13 (Relief Event Procedures), no relief based on the occurrence of a Relief Event shall be allowed for any alleged Differing Site Condition unless the Project Company provides the County with notice in accordance with this subsection.

(C) Relief for Differing Site Conditions. If the actual conditions encountered during construction (1) meet the criteria for a Differing Site Condition, and (2) have a direct and material adverse impact on the Project Company's cost or time of performance (or both), then the Project Company shall be entitled to relief based on the occurrence of an Other Relief Event as and to the extent provided in Article 13 (Relief Event Procedures).

SECTION 7.5. REGULATED SITE CONDITIONS.

(A) No Project Site Environmental Assessment. No environment assessment has been performed with respect to potential Hazardous Substances that may be present at the Project Site. Based on the County's long term ownership of the Project Site, and on the Phase 1 Environmental Assessment performed with respect to the adjacent Development Services Building site, the County is not aware of the presence of any Hazardous Substances at the Project Site.

(B) Avoidance of Exacerbation. In performing the Design-Build Work, the Project Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition that becomes actually known by the Project Company through physical observation (including any such observation made during excavations).

(C) Certain Regulated Site Conditions; County Obligations. If at any time the County receives written notice from a Governmental Body or the Project Company, or the Project Company receives a written notice from a Governmental Body, that a Regulated Site Condition has been determined to exist which:

- (1) Reasonably requires a Response Action or other action in order to comply with Applicable Law;
- (2) Interferes or delays with the performance of the Design-Build Work;
- (3) Increases the cost to the Project Company of performing the Design-Build Work; or
- (4) If not remediated or otherwise corrected, would reasonably be expected to result in the Project Company incurring costs, liabilities or obligations;

then the County shall promptly commence and diligently prosecute Response Actions or other actions as may be necessary under Good Design-Build Practice to dispose of, remediate, rectify or otherwise correct such Regulated Site Condition in compliance with Applicable Law. The County shall have the right to contest any determination of such a Regulated Site Condition and shall not be required to take any action under this subsection so long as: (1) the County is contesting any determination of a Regulated Site Condition in good faith by appropriate proceedings conducted with due diligence; (2) Applicable Law permits continued design or construction of the Project pending resolution of the contest, so that the Project Company shall have no liability as a result of the failure of the County to remediate or otherwise correct such a Regulated Site Condition during the period of contest; and (3) unless the County affords the Project Company appropriate relief, the pendency of the County's contest is not otherwise having a material and adverse effect on the Project Company.

(D) Relief for Certain Regulated Site Conditions. The existence of a Regulated Site Condition constitutes an Other Relief Event, and the Project Company shall be entitled to (1) relief on account thereof as provided herein and (2) compensation for any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims in connection with a Regulated Site Condition; provided, however, that no relief shall be provided to the Project Company to the extent (i) covered by the Required Insurance and (ii) such Regulated Site Condition relates to the demolition of the Existing Facilities and such Regulated Site Condition was disclosed to the Project Company in the as-built documents made available to the Project Company during the RFP process.

(E) Hazardous Substances Generator, Operator, Arranger and Transporter Status. The parties acknowledge and agree that the Project Company (1) is not the generator, operator, arranger or transporter of any Hazardous Substances present in, on or under the Existing Facilities and the Project Site prior to the Effective Date (irrespective of when such Hazardous Substances are discovered) and shall not be identified as such on any waste manifests and documentation relating thereto required under Applicable Law, (2) is not (other than in respect of Project Company Hazardous Substances) the generator, operator, arranger or transporter of any Hazardous Substances present in, on or under the Existing Facilities or the Project Site on or after the Technical Proposal Submittal Date (irrespective of when such Hazardous Substances are discovered), and shall not be identified as such on any waste manifests and documentation required under Applicable Law, and (3) other than in respect of Project Company Hazardous Substances, shall have no liability for any Hazardous Substances. In the event the Project Company, by reason of performing its responsibilities with respect to Hazardous Substances in connection with the Demolition Work or otherwise hereunder, is nonetheless deemed to be a generator, operator, arranger or transporter of such Hazardous Substances by any Governmental Body having jurisdiction, the County shall indemnify and hold the Project Company harmless therefrom and pay the Project Company an amount equal to all reasonable costs and expenses incurred by the Project Company as a result thereof. The parties further agree that the Project Company, a Subcontractor or another party responsible under Applicable Law (and not the County) will be the generator, operator, arranger and transporter of any Project Company Hazardous Substances and shall be identified as such on all waste manifests and documentation relating thereto required under Applicable Law. In the event the County is nonetheless deemed to be a generator, operator, arranger or transporter of any Project Company Hazardous Substances by any Governmental Body having jurisdiction, the Project Company shall pay the County an amount equal to all reasonable costs and expenses incurred by the County as a result thereof.

SECTION 7.6. DESIGN-BUILD GOVERNMENTAL APPROVALS.

(A) Generally. The Project Company shall make all applications and take all other action necessary to obtain and maintain all Design-Build Governmental Approvals and shall pay all fees, costs and charges due in connection therewith. Where required under

Applicable Law, such applications shall be made in the name of the County, subject to the County's rights hereunder. The Project Company shall manage the process of obtaining the Design-Build Governmental Approvals in a manner which affords the County a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith. The Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Design-Build Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or burden on the County or that would contravene any County policies with respect to the matters contained therein. The County reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence.

(B) Limited Permitting Assistance by the County. The County shall provide reasonable assistance to the Project Company in connection with the Project Company's obligation to obtain and maintain the Design-Build Governmental Approvals required under this Section, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Design-Build Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within the County's custody or control or are reasonably obtainable by the County and which are reasonably required for such purpose; provided, however, that the County's obligation to provide such reasonable assistance shall be limited, in light of the Project Company's primary role in the permitting and development of the Project, only to those actions which are legally required to be taken by the County as permittee or which involve providing information which is in the possession of or reasonably obtainable by the County. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to the County, and the County shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the County to staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Design-Build Governmental Approvals.

(C) Project Company General Assumption of Permitting Risk for Design-Build Work. Except as provided in subsection (D) of this Section, the Project Company explicitly assumes the risk of obtaining and maintaining the Design-Build Governmental Approvals, including the non-issuance or imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Project Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Relief Event (including relief from the risk of delay to the extent provided in item (3) of the definition of an Other Relief Event)). In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Design-Build Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company.

(D) Relief for Delays in the Issuance of Governmental Approvals Caused by Governmental Bodies. If in seeking to obtain a required Design-Build Governmental Approval set forth in Table 2-2 (Assumed Design-Build Governmental Approval Application Submittal and Approval Dates) of Appendix 2 (Governmental Approvals), (1) the Project Company has complied with the requirements of this Project Agreement and has in all respects used its commercially reasonable efforts to obtain the Design-Build Governmental Approval in a timely manner consistent with the Project Schedule; (2) the Project Company in a reasonably timely manner, based on the anticipated Project Schedule, has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Design-Build Governmental Approval; (3) the Project Company has consistently maintained a professional relationship with the staff

and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar permits in a timely manner in light of the discretion accorded Governmental Bodies under administrative law; (4) the Project Company has submitted a complete application for the Design-Build Governmental Approval by the “Assumed Governmental Approval Application Date” set forth in Table 2-2 of Appendix 2; and (5) there has been a failure by the Governmental Body to issue a Design-Build Governmental Approval by the “Assumed Governmental Approval Issuance Date” set forth in Table 2-2 of Appendix 2, then any such delay shall constitute an Other Relief Event.

SECTION 7.7. PROJECT COMPANY DESIGN – GENERAL.

(A) Design Considerations. The design for the Project undertaken and performed by the Project Company shall:

(1) Be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the date of this Project Agreement, and the Project Company shall appoint a design team that:

(a) is so qualified;

(b) includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner in accordance with the Contract Standards set out in this Project Agreement;

(2) Include specific consideration of “constructability” and “life cycle” cost issues at all stages of design, as appropriate; and

(3) Include consideration of efficient and cost-effective operation and maintenance.

(B) County Review and Comment on Design Documents. The Project Company shall comply with the design submittal and review procedures specified requirements set forth in Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements). The County shall have the right to review and comment on all Design Documents as provided in Section 5.2 (Comments) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements) in order to confirm the compliance and consistency of the Design Documents with the Design and Construction Requirements. In no event shall the Project Company proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the design submittal requirements and Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements); provided, however, that in the event extraordinary materials delivery or construction circumstances occur which in the good faith judgment of the Project Company warrant proceeding with physical construction of a particular segment of the Design-Build Work prior to making required design submittals, the Project Company may proceed with physical construction of the particular segment prior to complying with such design submitted requirements and with Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirement) at its own cost and risk, and shall undo, remove, replace and restore, as applicable, any parts of the Design-Build Work that do not comply with this

Project Agreement. The Project Company shall give due consideration and provide written responses in the time and manner provided in Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements) to any comments delivered by the County as to the Project Company's design submittals. Save to the extent the Project Company is entitled to an Other Relief Event pursuant to Section 7.14(F) (Notice of Covering Design-Build Work), neither compliance by the Project Company with the Design and Construction Requirements, nor review and comment by the County of the Project Company's Design Documents, nor any failure or delay by the County in commenting on any design submittals shall in any way relieve the Project Company of full responsibility for the design, construction, performance, operation and maintenance of the Project in accordance with the Contract Standards, subject to the last sentence of subsection 7.1(B) (Project Company Control of the Design-Build Work; No County Responsibility).

(C) Documents at the Project Site. The Project Company shall maintain at the Project Site all design and construction documents, including a complete set of record drawings. These documents shall be available to the County for reference, copying and use, and a complete set thereof shall be delivered to the County upon completion of the Design-Build Work.

(D) Ownership of Design. The County shall own the Design Documents upon making the Occupancy Readiness Milestone Payment or, if earlier, upon paying the Termination Amount. Except for reference purposes, the Design Documents shall not be used by the County or the Project Company on any other project. The County is the owner of the Proposal and the Design and Construction Requirements.

SECTION 7.8. PROJECT COMPANY DESIGN – REQUIREMENTS.

The Project Company shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. As of the Effective Date, the Project Company's design for the Project is not complete. The Design and Construction Requirements shall form the basis of design for the Project and all design work shall be completed in accordance therewith. The Project Company shall ensure that all of the working and final Design Documents comply with the Design and Construction Requirements and that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Design and Construction Requirements, subject to the last sentence of subsection 7.1(B) (Project Company Control of the Design-Build Work; No County Responsibility).

SECTION 7.9. CHANGES TO DESIGN AND CONSTRUCTION REQUIREMENTS GENERALLY.

The Project Company acknowledges the County's material interest in each provision of the Design and Construction Requirements, and agrees that, subject to Section 7.11 (Design and Construction Requirement Changes Made Due to Relief Events), no material change to the Design and Construction Requirements shall be made except with the consent of the County, which may be withheld or conditioned in its reasonable discretion taking into account the standards of quality, integrity, durability and reliability established for the Project by the Contract Standards. Any such changes shall be evidenced by a Contract Administration Memorandum, Project Agreement Amendment, or Change Order, as applicable. The County reserves the right to review and comment upon the final design of the Project insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Project is in compliance with the Design and Construction Requirements applicable to such matters. The parties acknowledge that reasonable, minor variations from the Design and Construction Requirements shall be permitted in the final design of the Project without the need for County approval or consent to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Project. Examples of elements

of the Design and Construction Requirements from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms (to the extent overall functionality is not impaired or total square footage decreased); exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical cables, and control panels.

SECTION 7.10. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES MADE AT PROJECT COMPANY REQUEST.

The Project Company shall give the County written notice of, and reasonable opportunity to review and comment upon, any Design and Construction Requirement Changes proposed to be made at the Project Company's request. The notice shall contain sufficient information for the County to determine that the Design and Construction Requirement Change:

- (1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity, durability and reliability of the Project;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

The County shall have the right, acting reasonably, to accept, reject or modify any Design and Construction Requirement Change proposed by the Project Company. Any such Design and Construction Requirement Change accepted or modified by the County, and any related change in the terms and conditions of this Project Agreement, shall be reflected in a Change Order.

SECTION 7.11. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES, REPAIRS AND REPLACEMENTS REQUIRED DUE TO RELIEF EVENTS OCCURRING PRIOR TO THE OCCUPANCY READINESS DATE.

Upon the occurrence of a Relief Event occurring prior to the Occupancy Readiness Date, the Project Company shall promptly proceed to make or cause to be made any Design and Construction Requirement Changes, repairs and replacements reasonably necessary to address the Relief Event, as provided in Article 13 (Relief Event Procedures), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events), as applicable. The Project Company and the County shall consult concerning possible means of addressing and mitigating the effect of the Relief Event, and the Project Company and the County shall cooperate in order to minimize any delay, lessen any additional cost and repair, replace or modify the Project so as to permit the Project Company to continue providing the Contract Services in light of the Relief Event. The design and construction costs resulting from any such work shall be paid by the County as and to the extent provided in Section 6.6 (Financing Capital Costs for which the County is Responsible), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events). Any related operation, maintenance, repair and replacement costs shall be borne by the County (through an adjustment of the Service Fee payable solely following the Occupancy Readiness Date, subject to Article 15 (Change in Law Events and Other Relief Events)). The Project Company shall not be required to undertake any Design and Construction Requirement Change under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Design and Construction Requirement Change in accordance with all applicable provisions of this Project Agreement, and (2) the County has provided written assurances acceptable to the Project Company, acting reasonably, that

funds necessary to pay the cost of any such work (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 7.12. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES
MADE AT COUNTY DIRECTION.

The County shall have the right, but not the obligation, to make Design and Construction Requirement Changes at any time prior to the Occupancy Readiness Date at its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Project Agreement so long as such Design and Construction Requirement Change does not contravene the limitations referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes). The design and construction costs resulting from any such Design and Construction Requirement Change made at the County's direction under this Section shall be paid directly by the County during the Design-Build Period, unless otherwise financed by the Project Company pursuant to subsection 6.6(B) (Project Company Financing). Any related operation, maintenance, repair and replacement costs shall be borne by the County through an adjustment to the Service Fee. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Project Agreement shall be reflected in a Change Order. The Project Company's obligation to perform the work related to a Design and Construction Requirement Change is subject to the conditions set forth in Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date).

SECTION 7.13. CONSTRUCTION PRACTICE, SAFETY AND SECURITY.

(A) Means and Methods. The Project Company shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Project Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Project Company to provide the following construction requirements: (1) temporary offices and construction trailers; (2) required design certifications; (3) required approvals; (4) weather protection; (5) clean-up and housekeeping of the Project Site; (6) construction trade management; (7) temporary parking; (8) vehicle traffic; (9) safety and first aid facilities and equipment; (10) correction of or compensation for defective work or equipment; (11) Project Contractor and Subcontractors' insurance; (12) storage areas; (13) workshops and warehouses; (14) temporary fire protection; (15) security of the Project Site; (16) temporary utilities; (17) potable water; (18) sanitary services; (19) Project Contractor, Subcontractor and vendor qualification; (20) receipt and unloading of delivered materials and equipment; (21) erection rigging; (22) temporary supports; and (23) construction coordination.

(B) Safety and Security. The Project Company shall maintain safety and security at the Project Site at all times at a level consistent with the Contract Standards. Without limiting the foregoing, the Project Company shall:

(1) Take all necessary precautions for the safety and security of the Design-Build Work and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Design-Build Work, for:

(a) workers at the Project Site and all other persons who may be involved with deliveries or inspections;

- (b) visitors to the Project Site;
 - (c) passersby, neighbors and adjacent properties;
 - (d) materials and equipment under the care, custody or control of the Project Company or Subcontractors on the Project Site;
 - (e) other property constituting part of the premises or the Project under construction; and
 - (f) County property;
- (2) Establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
- (3) Implement a comprehensive safety program in accordance with Applicable Law;
- (4) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
- (5) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
- (6) Provide for safe and orderly vehicular movements; and
- (7) Develop and implement a written site-specific health and safety plan (the "**Health and Safety Plan**") that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections which shall:
- (a) designate an appropriately certified safety professional with a minimum of five years of construction safety experience who is to develop and sign the Health and Safety Plan including all safety rules at the Project Site;
 - (b) designate a qualified safety professional stationed full-time at the Project Site during on-site construction activities whose primary/only duty shall be the implementation of safety rules at the Project Site, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with the County and all Governmental Bodies having jurisdiction;
 - (c) require the Project Contractors and all Subcontractors to implement the Health and Safety Plan; and
 - (d) comply with the Project Company's on-site safety requirements and designate a qualified safety professional whose duty shall be the implementation of safety rules at the Project Site and monitoring compliance of Project Contractor and Subcontractor employees with the Health and Safety Plan.

SECTION 7.14. CONSTRUCTION MONITORING, OBSERVATIONS,
TESTING AND UNCOVERING OF WORK.

(A) Observation and Design Review Program. During the progress of the Design-Build Work through Final Completion, the Project Company shall at all times afford the County every reasonable opportunity for observing all Design-Build Work, and shall comply with the Design-Build Work review procedures set forth in Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements). The Project Company shall use all reasonable efforts to provide County employees with safe access to the Design-Build Work. During any such observation, all representatives of the County shall comply with the Health and Safety Plan for the Design-Build Work applicable to areas visited and all reasonable instructions or directions made by the Design-Builder in this respect, and shall not interfere with the Project Company's performance of any Design-Build Work. The Project Company shall, upon reasonable notice, cooperate with the County to arrange for tours of the Project Site at reasonable times during normal working hours during construction for interested judges and other representative of the County and the State, provided that all such tours do not interfere with the progress of the Design-Build Work.

(B) Project Company Tests and Inspections. The Project Company shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Project Company shall give the County reasonable advance notice (at least one Business Day), prior to the conduct thereof, of those tests and inspections agreed to by the parties, acting reasonably, that are of a material nature warranting such advance notice; provided, however, that in no event shall the County's inability, failure or refusal to attend or be present at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design-Build Work. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the County or federal agency having jurisdiction and shall be subject to the approval of the County, which approval shall not be unreasonably withheld. In addition to the foregoing, Commissioning Tests of the completed Project shall be conducted in accordance with Section 7.19 (Commissioning) and Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

(C) County Tests, Observations and Inspections. The County, its employees, agents, representatives and contractors (which may be selected in the County's discretion) may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the County deems necessary or desirable to ascertain whether the Design-Build Work complies with this Project Agreement. The County's costs of any such test, observation or inspection shall be borne by the County, unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Project Agreement or Applicable Law, in which event the Project Company shall pay all reasonable costs and expenses of such observation, inspection or test within 30 Business Days of receipt of an invoice from the County. In the event that any requested test, observation or inspection causes a material delay in the Project Schedule, such delay shall be treated as having been caused by an Other Relief Event, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Project Company shall secure and deliver to the County promptly, at the Project Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract Standards. The Project Company shall provide to the County, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Project Company under or in connection with any Governmental Approval, Project Contract or Subcontract pertaining to the Design-Build Period.

(E) Independent Building Expert Responsibility for Testing and Inspections. The parties acknowledge that the Independent Building Expert Agreement allows the Independent Building Expert, on the terms provided therein, to: (1) review the Design Documents to confirm compliance of the Project with the Design and Construction Requirements and the County building code; (2) conduct structural peer reviews; (3) test construction materials; and (4) inspect the Project during construction. The rights of the County to review, comment on, test or inspect the Design-Build Work shall apply notwithstanding the performance by the Independent Building Expert or its subcontractors of similar duties. In the event that any test, observation or inspection by the Independent Building Expert causes a material delay in the Project Schedule, such delay shall be treated as having been caused by an Other Relief Event. The costs of any such test, observation or inspection shall be borne as provided in subsection (C) of this Section.

(F) Notice of Covering Design-Build Work. The Project Company shall give the County reasonable advance notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. The County shall give the Project Company reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the County a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the County's written request, the Project Company shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the County's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the County as to whether the disputed Design-Build Work complies with the requirements of this Project Agreement. The cost of uncovering, taking apart or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) By the Project Company, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which the County was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

(2) In all other cases, as follows:

(a) by the Project Company, if such observation or test reveals a material failure of the Design-Build Work to comply with this Project Agreement; or

(b) by the County, promptly following receipt of an invoice therefor from the Project Company, if such observation or test reveals that the Design-Build Work complies with this Project Agreement.

In the event such Design-Build Work does comply with this Project Agreement, the delay caused by such observation or test shall be treated as having been caused by an Other Relief Event.

(G) Meetings and Design-Build Work Review. During the Design-Build Period, the Project Company and the County shall conduct periodic meetings in accordance with Section 2.1 (Project Meetings) of Appendix 6 (Design and Construction Standards).

SECTION 7.15. CORRECTION OF DESIGN-BUILD WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Project Company shall promptly complete, repair, replace, restore, re-

perform, rebuild and correct any Design-Build Work which does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming Design-Build Work. The County may elect by Change Order, at the Project Company's request, to accept non-conforming Design-Build Work and charge the Project Company (through an adjustment to the Service Fee) an amount agreed upon by the parties by which the value of the Project Company's services or Design-Build Work has been reduced.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Project Company's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Project Company under this Project Agreement. This Section is intended to supplement (and not limit) the Project Company's obligations under the Commissioning Tests, Occupancy Readiness Conditions and any other provisions of this Project Agreement or Applicable Law.

SECTION 7.16. FURNITURE, FIXTURES AND EQUIPMENT.

(A) Base Furniture, Fixtures and Equipment. The Project Company shall furnish, pay for, build-in and install all furniture, fixtures and equipment required for the Project under the Contract Standards, other than Moveable Furniture, Fixtures and Equipment.

(B) County Selection and Project Company Procurement and Financing of Moveable Furniture, Fixtures and Equipment. The County shall identify and select, in its discretion and in consultation with the Project Company, all furniture, fixtures and equipment the County requires for the Project that are not described in the Design and Construction Requirements as furniture, fixtures and equipment that the Project Company is required to furnish, finance and pay for (within the limits set forth in this Section) and install as part of the Project (the "**Moveable Furniture, Fixtures and Equipment**"). A preliminary list of expected Moveable Furniture, Fixtures and Equipment is set forth Attachment 6B (Preliminary List of County Moveable Furniture, Fixtures and Equipment) and Attachment 6C (Preliminary List of State Moveable Furniture, Fixtures and Equipment) of Appendix 6 (Design and Construction Standards). The Project Company shall procure the Moveable Furniture, Fixtures and Equipment identified and selected by the County, and the County shall determine the locations for the placement of the Moveable Furniture, Fixtures and Equipment. The parties shall agree on a schedule for the selection, procurement, delivery, placement and installation of the Moveable Furniture, Fixtures and Equipment that is consistent with and will not cause a material delay in the Project Schedule. In the event that the selection, procurement, delivery, placement and installation of the Moveable Furniture, Fixtures and Equipment causes a material delay in the Project Schedule, such delay shall be treated as having been caused by an Other Relief Event. The costs incurred by the Project Company in purchasing the Moveable Furniture, Fixtures and Equipment, shipping it to the Project Site, and installing it in the Project are for the account of the County and shall be payable as provided in subsections (D) and (E) of this Section. The costs incurred by the Project Company in assisting the County in selecting the Moveable Furniture, Fixtures and Equipment and scheduling and coordinating shipments are for the account of the Project Company and have been priced into the Capital Charge.

(C) No Project Company Obligation to Maintain, Repair or Replace Moveable Furniture, Fixtures and Equipment. Moveable Furniture, Fixtures and Equipment shall be deemed to be part of the Project only to the extent of the Project Company's obligations with respect thereto as provided in subsection (B) of this Section, and the Project Company shall have no maintenance, repair or replacement obligations with respect thereto; provided, however that the Project Company shall have maintenance, repair and replacement obligations with respect to the Moveable Furniture, Fixtures and Equipment identified as the responsibility of the Project

Company in Attachment 5A (Courthouse Equipment and Systems Responsibility Matrix) for the Facilities Management Period. The Project Company shall be entitled to claim the occurrence of an Other Relief Event during the Facilities Management Period to the extent that the County does not maintain, repair or replace the Moveable Furniture, Fixtures and Equipment (including any State Moveable Furniture, Fixtures and Equipment) in accordance with Good Facilities Management Practice and such failure has a material and adverse effect on the performance of, or the cost of providing, the Contract Services.

(D) Payment for County Moveable Furniture, Fixtures and Equipment. Prior to the Scheduled Occupancy Readiness Date, the Project Company shall establish and fund, as part of the consideration for the County's obligation to pay the Service Fee, an allowance account with a Qualified Commercial Bank in the amount of \$3,200,000 (the "**County Moveable FF&E Allowance Account**"). The County Moveable FF&E Allowance Account shall be utilized to pay for the out-of-pocket costs incurred by the Project Company that (i) relate to purchasing, shipping and installing any County Moveable Furniture, Fixtures and Equipment (including applicable sales tax, if any); and (ii) are customarily payable to the supplier or vendor of such County Moveable Furniture, Fixtures and Equipment. Amounts on deposit in the County Moveable FF&E Allowance Account shall not be used for any other purpose, including any mark-up. In the event the County directs the Project Company to purchase County Moveable Furniture, Fixtures and Equipment exceeding \$3,200,000 in aggregate cost, the Project Company shall not be obligated to fund such excess costs or purchase the additional County Moveable Furniture, Fixtures and Equipment except following agreement and documentation by way of Change Order with the County as to the terms (including funding and payment) for such additional County Moveable Furniture, Fixtures and Equipment. Any amounts remaining on and after the Occupancy Readiness Date in the County Moveable FF&E Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the County, to the costs of purchasing County Moveable Furniture, Fixtures and Equipment paid or incurred following the Occupancy Readiness Date, to the payment of the Service Fee, or to any other cost or expense for which the County is responsible pursuant to this Project Agreement. If this Project Agreement is terminated prior to the Occupancy Readiness Date, any amounts remaining in the County Moveable FF&E Allowance Account at such time shall be immediately applied to the Termination Payment.

(E) Payment for State Moveable Furniture, Fixtures and Equipment. Prior to the Scheduled Occupancy Readiness Date, the Project Company shall establish and fund, as part of the consideration for the County's obligation to pay the Service Fee, an allowance account with a Qualified Commercial Bank in the amount of \$8,200,000 (the "**State Moveable FF&E Allowance Account**"). The State Moveable FF&E Allowance Account shall be utilized to pay for the out-of-pocket costs incurred by the Project Company that (i) relate to purchasing, shipping and installing any State Moveable Furniture, Fixtures and Equipment (including applicable sales tax, if any); and (ii) are customarily payable to the supplier or vendor of such State Moveable Furniture, Fixtures and Equipment. Amounts on deposit in the State Moveable FF&E Allowance Account shall not be used for any other purpose, including any mark-up. In the event the County directs the Project Company to purchase State Moveable Furniture, Fixtures and Equipment exceeding \$8,200,000 in aggregate cost, the Project Company shall not be obligated to fund such excess costs or purchase the additional State Moveable Furniture, Fixtures and Equipment except following agreement and documentation by way of Change Order with the County as to the terms (including funding and payment) for such additional State Moveable Furniture, Fixtures and Equipment. Any amounts remaining on and after the Occupancy Readiness Date in the State Moveable FF&E Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the County, to the costs of purchasing State Moveable Furniture, Fixtures and Equipment paid or incurred following the Occupancy Readiness Date, to the payment of the Service Fee, or to any other cost or expense for which the County is responsible pursuant to this Project Agreement. If this Project Agreement is terminated prior to the Occupancy Readiness Date, any amounts remaining in the State

Moveable FF&E Allowance Account at such time shall be immediately applied to the Termination Payment.

SECTION 7.17. WARRANTIES OF DESIGN-BUILD WORK.

The Project Company shall, for the protection of the County, obtain from the Project Contractors, all Subcontractors, vendors, suppliers and other persons from which the Project Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Project such warranties and guarantees as are normally provided with respect thereto or, to the extent superior in scope or length, as are specifically required in Appendix 6 (Design and Construction Standards) and the Contract Standards, each of which shall be assigned to the Facilities Manager to the full extent of the terms thereof and subject to the security interest of the Senior Lenders under the Senior Financing Agreements. No such warranty shall relieve the Project Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or excuse any non-performance of the Project Design-Build Work unless such failure is itself attributable to a Relief Event. The Project Company shall enforce such warranties and guarantees as provided in Section 9.12 (Enforcement of Project Warranties).

SECTION 7.18. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. “**Substantial Completion**” shall occur only when all of the following conditions have been satisfied, as determined by the Independent Building Expert, except to the extent that any or all of such conditions have been waived by the County:

(1) Physical Completion. Construction of the Project is physically complete and all Design-Build Work pertaining to the Project, except the Commissioning Tests and the items on the Punch List, is complete and in all respects is in compliance with this Project Agreement;

(2) Project Equipment. The Project Equipment is installed such that the Project Equipment is ready for use and defect free, except for Punch List Items;

(3) Safety and Security Systems. The Project’s security and safety systems are functional in accordance with the requirements set forth in this Project Agreement; and

(4) Utilities. All Utilities specified or required under this Project Agreement to be arranged for by the Project Company are connected and functioning properly.

(B) Notice of Substantial Completion. The Project Company shall give the County Representative and the Independent Building Expert at least 30 days prior written notice of the expected date of Substantial Completion.

SECTION 7.19. COMMISSIONING.

(A) Commissioning Generally. The Project Company shall comply with the Commissioning requirements of Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards) and shall, as provided therein:

(1) Prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests, meeting the minimum requirements set forth therein;

- (2) Include criteria for achieving LEED BD+C Gold Certification for the Project;
- (3) Conduct Commissioning activities during design and construction;
- (4) Perform Commissioning Tests necessary to demonstrate Occupancy Readiness; and
- (5) Conduct Commissioning Tests during the Commissioning Fine Tuning Period.

(B) Commissioning Tests Report. Promptly upon its completion of the Commissioning Tests, the Project Company shall deliver to the County and the Independent Building Expert a copy of the Commissioning Tests report prepared by or on behalf of the Project Company pursuant to Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

SECTION 7.20. FINAL COMPLETION.

(A) Requirements. “**Final Completion**” shall occur when all of the following conditions have been satisfied:

- (1) Occupancy Readiness. The Project Company has achieved Occupancy Readiness in accordance with Article 8 (Occupancy Readiness);
- (2) Design-Build Work Completed. All Design-Build Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Project Agreement;
- (3) Deliverable Material. The Project Company shall have delivered to the County all Deliverable Material required by subsection 7.1(H) (Deliverable Material);
- (4) Equipment Warranties and Manuals. The Project Company shall be in possession of, and shall have delivered to the County, copies of the warranties of equipment and fixtures constituting a part of the Project required to be obtained under Section 7.17 (Warranties of Design-Build Work), together with copies of all related operating manuals supplied by the equipment supplier;
- (5) Spare Parts In Storage. All spare parts required by the applicable Design and Construction Requirements have been delivered and are in storage at the Project;
- (6) Record Drawings. The Project Company has delivered to the County a final and complete red-lined set of construction record drawings;
- (7) Equipment Manufacturers’ Certificate. The Project Company has delivered to the County written certification from the equipment manufacturers (including manufacturers of information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers’ recommendations and requirements; and
- (8) Claims Statement. The Project Company has delivered to the County a claims statement setting forth in detail all outstanding claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Design-Build

Work, and arising out of or based on events prior to the date when the Project Company gives such statement to the County.

(B) Obligation to Achieve Final Completion; Punch List Items. The Project Company shall achieve Final Completion within 120 days after the Occupancy Readiness Date, and shall complete and rectify all Punch List Items as provided in Section 8.6 (Punch List Items).

SECTION 7.21. LEED BD+C GOLD CERTIFICATION.

The Project Company shall obtain a LEED BD+C Gold Certification of the Project in accordance with Section 6.2 (USGBC LEED Gold Certification) of Appendix 6 (Design and Construction Standards) and further as follows:

(1) Registration. Within 10 Business Days of the Effective Date, the Project Company shall register the Project with the U.S. Green Building Council. If, at any time after the Effective Date and before such registration, the requirements necessary to achieve LEED BD+C Gold Certification change, no such change shall be deemed to modify the Design and Construction Requirements, which shall only be modified by agreement of the parties, each acting in its discretion.

(2) Required Rating. The Project Company shall achieve all necessary prerequisites, record keeping, standards, credits and points necessary to achieve at least a LEED BD+C Gold Certification for the Project.

(3) Failure to Obtain Certification. The Project Company shall formally obtain LEED BD+C Gold Certification of the Project within three years following the Occupancy Readiness Date. In the event a certification is not obtained within three years of the Occupancy Readiness Date, or a certification less favorable than LEED BD+C Gold Certification is obtained, the Project Company shall, upon written demand from the County, immediately pay to the County \$2,000,000, which amount shall be paid as an Extraordinary Item credit against the Service Fee. Upon such payment, the Project Company shall have no further obligations in respect of obtaining LEED BD+C Gold Certification, except to provide the County with such information and administrative assistance as the County may reasonably require in relation to obtaining LEED BD+C Gold Certification of the Project. The failure to obtain LEED BD+C Gold Certification shall not be a Project Company Event of Default.

SECTION 7.22. PAYMENT OBLIGATIONS OF THE COUNTY DURING THE DESIGN-BUILD PERIOD.

(A) County Payment Obligations. The County shall pay the Project Company pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation) during the Design-Build Period, at the times provided for herein (each a “**County Design-Build Period Payment Obligation**”):

(1) The amounts specified in subsection 7.5(E) (Hazardous Substances Generator, Operator, Arranger and Transporter Status);

(2) The amounts specified in Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date);

- (3) The amounts specified in Section 7.12 (Design and Construction Requirement Changes Made at County Direction);
- (4) The amounts specified in subsection 7.14(C) (County Tests, Observations and Inspections) and subsection 7.14(F) (Notice of Covering Design-Build Work);
- (5) The costs of equipment for, and fitting out, the Café, as provided in subsection 9.9(B) (Café);
- (6) The amounts specified in subsection 14.2(E) (Compensation Relief);
- (7) The amounts specified in subsection 15.1(C) (Compensation Relief);
- (8) The amounts specified in subsection 15.2(A) (Changes Prior to the Occupancy Readiness Date), relating to a Discriminatory Change in Tax Law or Specified Change in Tax Law;
- (9) The amounts specified in subsection 15.3(C) (Compensation Relief); and
- (10) Any other amounts specified in this Project Agreement as payable during the Design-Build Period.

(B) Limitations. Except as provided or referred to in this Section, and without limiting in any way the County's obligation to make the Occupancy Readiness Milestone Payment in accordance with Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment), the County shall have no payment obligations to the Project Company during the Design-Build Period.

ARTICLE 8

OCCUPANCY READINESS

SECTION 8.1. INDEPENDENT BUILDING EXPERT.

(A) Engagement. The Project Company shall select prior to the Financial Close Date, and the County shall approve, acting reasonably, a suitably qualified and experienced consultant to act as the Independent Building Expert for the purposes of this Project Agreement upon substantially the same terms set forth in Transaction Form D (Independent Building Expert Agreement). The Independent Building Expert shall act impartially and independently of the County and the Project Company in the performance of its duties as contemplated in this Project Agreement and the Independent Building Expert Agreement. In connection with the selection of the Independent Building Expert, the Project Company shall utilize a competitive bidding or competitive proposal process approved by the County in its discretion.

(B) Qualifications. The Independent Building Expert shall possess skills in: (1) design review (including architectural review, structural peer review, and mechanical, electrical and plumbing) for compliance with design requirements and technical specifications similar to the Design and Construction Requirements; (2) institutional building construction involving complex structural systems similar to the New Courthouse; (3) construction cost consulting; and (4) construction claims adjusting and structural retrofit construction. Such skills may be acquired through a joint venture, association or, with the approval of the County and the Project Company, a subcontractor.

(C) Limitations. Nothing in this Project Agreement shall be interpreted as giving the Independent Building Expert any responsibility or authority for any aspect of the Design-Build Work, or as relieving the Project Company of its responsibility for the Design-Build Work as set out in this Project Agreement, and neither the Project Company nor the Design-Builder nor any Subcontractor shall be entitled to rely on any advice or approvals that the Independent Building Expert may give with respect to the Design-Build Work.

SECTION 8.2. ACTIONS BY THE COUNTY AND PROJECT COMPANY AFFECTING THE INDEPENDENT BUILDING EXPERT.

(A) Joint Approval Required. The County and the Project Company shall not, without the other's prior written approval, which approval shall not be unreasonably withheld or delayed:

- (1) Terminate, repudiate or discharge the Independent Building Expert for any reason;
- (2) Waive, settle, compromise or otherwise prejudice any rights or claims which the other may have from time to time against the Independent Building Expert;
- (3) Amend or vary the terms of the Independent Building Expert Agreement or the services to be performed by the Independent Building Expert; or
- (4) Enter into a separate agreement with the Independent Building Expert in connection with the Project.

(B) Cooperation and Costs. The County and the Project Company shall cooperate with one another generally in relation to all matters within the scope of or in connection with the appointment of the Independent Building Expert. All instructions and representations

issued or made by either the County or the Project Company shall be simultaneously copied to the other and both the County and the Project Company shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Building Expert. Except as otherwise provided in the Independent Building Expert Agreement, all costs (including legal fees of any counsel retained by the Independent Building Expert) of the Independent Building Expert shall be borne equally by the Project Company and the County; provided that, the Independent Building Expert shall be required to separately send invoices to the Project Company and the County for their respective costs and the Project Company shall in any event bear the full cost of the third-party material test and inspections firm, pursuant to subsection 7.1(l) (Payment of Costs).

(C) Replacement of Independent Building Expert. In the event that the Independent Building Expert Agreement expires (and is otherwise not extended), is terminated by the County and the Project Company or the Independent Building Expert is otherwise unable or unavailable to perform its duties under the Independent Building Expert Agreement, the County and the Project Company shall cooperate with one another in order to appoint, in accordance with this Section, a replacement consultant to act as the Independent Building Expert as soon as reasonably practicable. The replacement Independent Building Expert shall be agreed to by both the County and the Project Company, acting reasonably. In the event that the County and the Project Company are unable to agree within 20 Business Days of the previous Independent Building Expert's appointment expiring or being terminated, or within 20 Business Days of the Independent Building Expert's inability to perform its duties under the Independent Building Expert Agreement, the matter may be referred to Non-Binding Mediation. To the extent possible, the County and the Project Company shall work with the Independent Building Expert in order for such Independent Building Expert to continue to fulfill its obligations under the Independent Building Expert Agreement until a replacement Independent Building Expert is appointed by the County and the Project Company.

SECTION 8.3. INDEPENDENT BUILDING EXPERT AS MEDIATOR PRIOR TO FINAL COMPLETION.

Prior to Final Completion, the Independent Building Expert shall be the Mediator for purposes of any Non-Binding Mediation conducted under Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings) with respect to any request made by either the County or the Project Company relating to the interpretation of:

- (1) This Project Agreement as it relates to design development matters and construction matters generally, including particularly time-sensitive determinations relating to the occurrence of a Relief Event during the Design-Build Period;
- (2) The schematic design and whether any Design and Construction Requirements are being complied with and interpretation of the intent of the Design and Construction Requirements;
- (3) Any proposed Design and Construction Requirement Change and delays in construction of the Project resulting from such Design and Construction Requirement Change; and
- (4) The cost impact associated with any proposed Design and Construction Requirement Change pursuant to Section 7.10 (Design and Construction Requirement Changes Made at Project Company Request), Section 7.11 (Design and Construction Requirement Changes Made Due to Relief Events) and Section 7.12 (Design and Construction Requirement Changes Made at County Direction).

SECTION 8.4. OCCUPANCY READINESS CONDITIONS.

(A) Conditions. The following conditions shall constitute the “**Occupancy Readiness Conditions**”, each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Occupancy Readiness and establish the Occupancy Readiness Date:

- (1) Substantial Completion. Substantial Completion has occurred;
- (2) Ready for Use. The Project in its entirety is ready for use for the purposes of normal courtroom, court office and other related County operations, except for Punch List Items, which in each case shall be in shell and core in accordance with the Design and Construction Requirements;
- (3) Architect Letter. The Architect has issued a letter of confirmation to the County and the Independent Building Expert indicating that all buildings and systems at the Project are ready for use, except for Punch List Items, and to the best of its knowledge have been designed and built in accordance with this Project Agreement;
- (4) No Encumbrances. There are no Encumbrances registered or recorded on the Project Site or any part of the Project other than Permitted Encumbrances;
- (5) Successful Commissioning. The Project Company has completed Commissioning the Project in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the Occupancy Readiness Date);
- (6) Certificate of Occupancy. A temporary or final certificate of occupancy has been issued for the Project by the City of Oregon City;
- (7) Governmental Body Readiness Confirmations. All other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures on the Project Site are ready for occupancy;
- (8) Required Facilities Management Period Insurance. The Project Company has obtained and submitted to the County certificates of insurance for all Required Facilities Management Period Insurance specified in Appendix 10 (Insurance Requirements);
- (9) Master Maintenance Plan. The Project Company has delivered to the County a reasonable Master Maintenance Plan as required by Appendix 8 (Facilities Management Standards);
- (10) Renewal Work Plan. The Project Company has delivered to the County a reasonable Renewal Work Plan as required by Appendix 8 (Facilities Management Standards); and
- (11) Moveable Furniture, Fixtures and Equipment. The Project Company has properly installed all Moveable Furniture, Fixtures and Equipment which it is required to procure under this Project Agreement.

(B) “Ready for Use”. For purposes of subsection (A) of this Section, in determining whether the Project or Project Equipment are “ready for use,” the following factors shall be taken into account:

- (1) The requirements of this Project Agreement;
- (2) The ability of the public to access the Project, and the risk of injury to members of the public and all Project Users;
- (3) The security requirements set forth in the Design and Construction Requirements are operational;
- (4) Any apparent hazard or nuisance;
- (5) The need to conduct court operations in a reasonably quiet and stable environment free from dust, chemical, smoke and other health and safety concerns;
- (6) The proper installation of all Project Equipment and Moveable Furniture, Fixtures and Equipment, and the functionality of all Project Equipment; and
- (7) Such other considerations as a reasonable person of ordinary prudence would take into account if asked to decide whether the Project is suitable for the commencement of court proceedings and ancillary government functions performed at the New Courthouse, all so that, subject to the Punch List Items, the Project in its entirety is ready to use for the purposes of normal courtroom, court office and other related County operations. This factor shall not be construed to impose additional obligations on the Project Company beyond the Contract Standards.

SECTION 8.5. OCCUPANCY READINESS CERTIFICATE.

(A) Generally. Upon request by the Project Company, the Independent Building Expert shall inspect the Project as soon as possible, but no later than two Business Days following such a request, and determine whether to issue the Occupancy Readiness Certificate in accordance with the Independent Building Expert Agreement and this Project Agreement.

(B) Certificate Issuance. If the Independent Building Expert determines that the Occupancy Readiness Conditions have been satisfied, the Independent Building Expert shall deliver, within two Business Days from the inspection referred to in subsection (A), a duplicate signed original Occupancy Readiness Certificate to the County and the Project Company pursuant to the Independent Building Expert Agreement.

(C) Deficiencies. If upon inspection and review, the Independent Building Expert determines that any of the Occupancy Readiness Conditions have not been satisfied, the Independent Building Expert shall identify any deficiencies in a written report delivered as soon as possible but no later than three Business Days following the date of the inspection performed under subsection (A) and pursuant to Section 4.4 (Occupancy Readiness Conditions Relating to the Design-Builder) of the Independent Building Expert Agreement. The Project Company shall thereupon rectify all such matters. Upon the Project Company’s notification of such rectification to the Independent Building Expert, the Independent Building Expert shall confirm such rectification and issue a duplicate signed original Occupancy Readiness Certificate to the County and the Project Company pursuant to the Independent Building Expert Agreement as soon as possible but no later than three Business Days following the date the Project Company informs the Independent Building Expert that such rectification has been completed.

(D) Effect of Issuance. The Occupancy Readiness Certificate shall establish the Occupancy Readiness Date and be final and binding on the County and the Project Company with respect to the occurrence of the Occupancy Readiness Date.

(E) Matters Not Affected By Certificate Issuance. Neither the issuance of the Occupancy Readiness Certificate, nor any use by the County of any part of the Project or the commencement of any court activities under the terms of this Project Agreement, shall:

(1) Be final or conclusive as to whether any of the matters certified are correct, or whether the Occupancy Readiness Conditions have in fact been satisfied;

(2) Limit the obligations of the Project Company under this Project Agreement, including its obligation to complete the Design-Build Work in accordance with this Project Agreement and to remedy any defects, deficiencies or items of outstanding Design-Build Work existing or discovered prior to or after the date of the Occupancy Readiness Certificate or the date of the Punch List;

(3) Be construed as an approval by the County of the Project or the manner in which the Design-Build Work has been carried out by the Project Company; or

(4) Have any effect other than as specified in subsection (D) of this Section.

The County shall retain all of its rights with respect to any matter not affected by the issuance of the Occupancy Readiness Certificate.

SECTION 8.6. PUNCH LIST ITEMS.

(A) Punch List. The Independent Building Expert, in consultation with the County and the Project Company, shall, prior to inspection of the Project to determine whether the Project has met the Occupancy Readiness Conditions, prepare a list of all Punch List Items (the "**Punch List**") identified at that time and an estimate of the cost and the time for rectifying such Punch List Items. The Independent Building Expert shall not withhold the Occupancy Readiness Certificate by reason solely that there are Punch List Items. The Punch List shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Independent Building Expert's opinion:

(1) The Project Company can complete before the Final Completion deadline provided in Section 7.20 (Final Completion), and with minimal interference to the occupancy and use of the Project; and

(2) Would represent, to perform or complete, a total cost of not more than 1% of the portion of the price payable under the Design-Build Contract (unless the County determines that a higher percentage is acceptable).

(B) Minimal Impact on Project Operations. The Punch List shall contain the schedule for the completion and rectification of the Punch List Items. In determining the relevant time for rectifying Punch List Items, the Project Company shall schedule the completion and rectification of Punch List Items so as to minimize, to the greatest extent reasonably possible, any impairment of Project Users' use and enjoyment of the Project, disruption of the Facilities Management Services and the court activities.

(C) Waiver of Occupancy Readiness Requirements. The County may, in its discretion, waive any Occupancy Readiness Condition, and the failure to meet any such requirement shall constitute a Punch List Item.

(D) Rectification of Punch List Items. The Project Company shall complete and rectify all Punch List Items within 120 days of the Occupancy Readiness Date or such other period as the Independent Building Expert may specify in the Punch List. The Project Company acknowledges and agrees that the completion and rectification of Punch List Items may require work outside of normal working hours in order to accommodate the efficient operation of the Project and conduct of County Activities.

(E) Failure to Rectify Punch List Items; Service Fee Holdback. In the event that the Project Company fails to complete and rectify the Punch List Items specified in the Punch List within the time period specified pursuant to subsection (D) of this Section, except as provided in subsection (F) of this Section:

(1) The County may withhold from the Service Fee a holdback amount that is 200% of the amount estimated by the Independent Building Expert for the County to complete and rectify Punch List Items (to the extent then outstanding); and

(2) The County may engage others to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of the Project Company, and the County may deduct such cost from the holdback amount set forth in subsection (E)(1) of this Section.

Upon completion and rectification of all of the Punch List Items pursuant to this subsection, the County shall release to the Project Company the then-remaining amount of the holdback. If the cost of such completion and rectification exceeds the amount of such holdback, then the Project Company shall reimburse the County for all such excess costs.

(F) Letter of Credit Alternative. The Project Company shall have the right to post a letter of credit from a qualified Commercial Bank with the County in an amount equal to the amount described in subsection (E)(1) of this Section in lieu of any Punch List Items holdback. In such event, upon completion and rectification of all Punch List Items pursuant to subsection (D) of this Section, the County shall cancel and return to the Project Company the letter of credit.

SECTION 8.7. SCHEDULED OCCUPANCY READINESS DATE AND LONGSTOP DATE.

(A) Scheduled Occupancy Readiness Date Defined. The Scheduled Occupancy Readiness Date is the date that is [_____] days following the Financial Close Date, as such date may be extended as provided in subsection (C) of this Section. **[NOTE TO PROPOSERS: To be completed based on the Selected Proposer's Proposal Form 10.]**

(B) Longstop Date Defined. The Longstop Date is the date 365 days following the Scheduled Occupancy Readiness Date, as such date may be extended as provided in subsection (C) of this Section.

(C) Extension for Relief Events. If a Relief Event occurs between the Financial Close Date and the Scheduled Occupancy Readiness Date, the Scheduled Occupancy Readiness Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Relief Event. If a Relief Event occurs after the Scheduled Occupancy Readiness Date, the Longstop Date shall be extended for such time as is reasonable to take into account the effect of the delay on the satisfaction of the Occupancy Readiness Conditions remaining to be satisfied.

SECTION 8.8. FAILURE TO ACHIEVE OCCUPANCY READINESS BY THE SCHEDULED OCCUPANCY READINESS DATE.

The obligation of the County to pay the Service Fee shall commence upon the Occupancy Readiness Date, but no earlier than the Scheduled Occupancy Readiness Date unless otherwise negotiated by the parties pursuant to Section 8.10(B) (Early Occupancy), as further described in Section 16.1 (Service Fee Generally). The Project Company acknowledges, accordingly, that any delay in achieving Occupancy Readiness beyond the Scheduled Occupancy Readiness Date will result in the loss of Service Fee payments to which the Project Company otherwise would have been entitled during the period of delay.

SECTION 8.9. FAILURE TO ACHIEVE OCCUPANCY READINESS BY THE LONGSTOP DATE.

In the event the Project Company fails to satisfy the Occupancy Readiness Conditions by the Longstop Date, a Project Company Event of Default hereunder shall be deemed to have occurred, and the County may pursue all remedies available under Article 19 (Remedies of the Parties and County Step-In Rights) and Article 22 (Termination) in accordance with the terms thereof.

SECTION 8.10. COUNTY RIGHT OF OCCUPANCY.

(A) Commencement of Use and Occupancy. The right of the County to occupy and use the Project under this Project Agreement shall commence on the Occupancy Readiness Date, except as provided in subsection (B) of this Section.

(B) Early Occupancy. The Project Company shall keep the County regularly apprised as to the date on which the Project Company reasonably expects the Occupancy Readiness Date to occur. Not later than 60 days prior to the Scheduled Occupancy Readiness Date, the Project Company shall notify the County in writing as to the date on which the Occupancy Readiness Date is definitively expected to occur. The County may rely on such notice in planning its move-in activities. If the proposed Occupancy Readiness Date is earlier than the Scheduled Occupancy Readiness Date, and the Project Company wishes to offer early occupancy of the Project, it shall so advise the County. The County shall be under no obligation to take early occupancy of the Project or commence payment of the Service Fee prior to the Scheduled Occupancy Readiness Date but may do so in its discretion under terms and conditions negotiated by the parties. The County shall notify the Project Company within 30 days of receipt of notice as to whether it intends to accept the Project Company's offer of early occupancy on such proposed Occupancy Readiness Date. If, after the parties negotiate and agree to establish a new proposed Occupancy Readiness Date, the Project Company fails to achieve Occupancy Readiness by the proposed Occupancy Readiness Date (as such proposed Occupancy Readiness Date may be extended on account of Relief Events) and the County incurs additional incremental direct, arm's length out-of-pocket costs (above those it would have incurred had the Project Company had achieved Occupancy Readiness by the newly agreed-upon Occupancy Readiness Date) as a result of reliance on the proposed Occupancy Readiness Date (such costs to be reasonably incurred and evidenced to the Project Company through reasonable substantiation of costs related to the move of court personnel and equipment into the New Courthouse), the Project Company shall pay an amount equal to such costs to the County. If the proposed Occupancy Readiness Date is earlier than the Scheduled Occupancy Readiness Date and the County does not notify the Project Company that it intends to take occupancy on such proposed Occupancy Readiness Date, then the Project Company shall not incur any liability under this Section unless and until the actual Occupancy Readiness Date occurs after the Scheduled Occupancy Readiness Date. Notwithstanding anything contained in this Project Agreement, the liability of the Project Company under this subsection for failure to achieve Occupancy Readiness by the agreed-upon proposed early Occupancy Readiness Date shall not exceed \$3,000 per day.

SECTION 8.11. COUNTY OBLIGATION TO MAKE THE OCCUPANCY READINESS MILESTONE PAYMENT.

(A) County Payment Obligation. Within five Business Days following the Occupancy Readiness Date, but no earlier than the Scheduled Occupancy Readiness Date unless otherwise negotiated by the parties pursuant to Section 8.10(B) (Early Occupancy), the County shall pay to the Project Company the Occupancy Readiness Milestone Payment.

(B) Payment Not Contingent on Receipt of the State Funding Agreement Payment. The obligation of the County to make the Occupancy Readiness Milestone Payment pursuant to this Section is not contingent on receipt by the County of the State Funding Agreement Payment. The County shall not be relieved of such obligation on account of any delay or failure, in whole or in part and for any reason, of the State in making the State Funding Agreement Payment.

ARTICLE 9

FACILITIES MANAGEMENT

SECTION 9.1. PROJECT COMPANY OBLIGATIONS GENERALLY.

(A) Responsibility. Commencing on the Occupancy Readiness Date, the Project Company shall operate, maintain, repair, and replace the Project and perform the Facilities Management Services on a 24-hour per day, 7-day per week basis during the Term in accordance with the Facilities Management Requirements and the other Contract Standards, except to the extent the Project Company is relieved hereunder based on the occurrence of a Relief Event.

(B) Scope. The Project Company shall furnish all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery, accounting, record-keeping and other things and kinds of services whatsoever necessary for the full performance of the Project Company's operation, maintenance, repair, replacement, management, obtaining and maintaining Governmental Approvals and related obligations under this Project Agreement.

(C) Moveable Furniture, Fixtures and Equipment and Public Art. The Facilities Management Services do not include the obligation to provide ordinary maintenance or major maintenance, repair or replacement of Moveable Furniture, Fixtures and Equipment or Public Art, the costs and responsibility for which shall be borne by the County.

(D) Special Events. The County shall have the right to utilize the New Courthouse for planned, special events or activities outside of normal courtroom and court office operations upon reasonable notice to the Project Company and in a manner that does not materially interfere with or materially increase the cost of performing the Contract Services.

(E) Emergency Orders and Directives. The Project Company shall comply with all orders and directives given or issued by the County or any Governmental Body having police power or regulatory jurisdiction based on an emergency condition.

SECTION 9.2. UTILITIES GENERALLY.

(A) Supply. The Project Company shall arrange for and establish the supply of all Utility services required for the Project in accordance with Appendix 6 (Design and Construction Standards).

(B) Alternative Suppliers. The County shall have the right, following the Occupancy Readiness Date and upon reasonable notice, to direct the Project Company to change electricity or gas suppliers, and to negotiate and establish electric or gas rates with the replacement supplier. The Project Company shall cooperate with and assist the County in making such arrangements, and the County shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity or gas supply. The County shall pay the Project Company, as an Extraordinary Item, an amount equal to the reasonable out-of-pocket expenses incurred by the Project Company in making such arrangements, subject to Cost Substantiation.

(C) Payment for Utilities. The County, following the Occupancy Readiness Date, shall timely pay all utility bills for the Project.

(D) Energy Efficiency. The Project Company shall maintain the Project in accordance with the requirements of Section 6 (Sustainability Requirements) of Appendix 6

(Design and Construction Standards) and Section 3.4 (Utility Management Services) and Section 3.4.4 (Energy Consumption and Efficiency) of Appendix 8 (Facilities Management Standards) and as set forth in Appendix 9 (Facilities Management Proposal Extracts). Any failure of the Project Company to perform its maintenance and other obligations relating to the energy efficiency of the New Courthouse shall result in a Deduction as provided in Appendix 11 (Deductions).

SECTION 9.3. BUILDING HEATING AND COOLING.

(A) Central Utility Plant. The County owns and operates the existing Central Utility Plant on the Red Soils Campus. The Central Utility Plant was designed with a capacity expected to be sufficient to supply heated and chilled water for building heating and cooling purposes to the existing Development Services Building, Public Services Building and other smaller ancillary buildings also located on the Red Soils Campus, and for the planned New Courthouse.

(B) Interconnection. The Project Company is obligated, as part of the Design-Build Work, to interconnect New Courthouse with the Central Utility Plant in such a manner as will allow the Central Utility Plant to supply heated and chilled water to the New Courthouse and enable the Project Company to meet its heating and cooling performance obligations under this Project Agreement.

(C) Maintenance. The Project Company's responsibilities to operate and maintain the New Courthouse extend to the point of interconnection described in Section 2 (Utilidor Existing Conditions, Generally) in Appendix 4 (Central Utility Plant Description and Assumed Operating Performance Parameters).

(D) Central Utility Plant Service. The County, operating the Central Utility Plant, shall provide heated and chilled water to the Project Company for the Term of this Project Agreement without separate charge. The County acknowledges and agrees that the Project Company's ability to meet the Facilities Management Requirements is in part dependent on the operation of the Central Utility Plant in conformity with the Central Utility Plant Assumed Operating Performance Parameters. In the event that at any time the County fails for any reason to operate the Central Utility Plant in conformity with the Central Utility Plant Assumed Operating Performance Parameters, any such failure has a material and adverse effect on the Project Company's costs or ability to perform under this Project Agreement, such failure shall constitute an Other Relief Event and the Project Company shall be entitled to relief in accordance with the Relief Event provisions hereof. No such failure, however, shall constitute a breach of this Project Agreement or entitle the Project Company to damages or any other relief hereunder.

SECTION 9.4. DOCUMENTS AND REPORTS.

(A) Plans, Programs, Reports and Documents. The Project Company shall provide the County with the plans, programs, reports and documentation required with respect to the Facilities Management Services under Appendix 8 (Facilities Management Standards).

(B) Default Reports. The Project Company shall provide to the County, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Material Contract with respect to the Facilities Management Services.

SECTION 9.5. ORDINARY MAINTENANCE.

(A) Ordinary Maintenance and Repair. The Project Company, except as provided in subsection 9.1(C) (Moveable Furniture, Fixtures and Equipment) and subsection (B)

of this Section, shall perform all normal and ordinary maintenance of the mechanical equipment, structures, improvements and all other property constituting the Project, and shall keep the Project in good working order, condition and repair and in a neat and orderly condition, all in accordance with the Facilities Management Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the Project, as required by the Facilities Management Requirements.

(B) Vandalism.

(1) If any maintenance, repair or replacement of the Project is required due to Vandalism from any cause or to any extent, the Project Company shall perform such maintenance, repair or replacement. The County shall continue to have the right to impose Deductions for Unavailability Events and Performance Failures caused by Vandalism, in accordance with Appendix 11 (Deductions).

(2) No later than the Occupancy Readiness Date, the Project Company shall establish and fund a reserve account ("**Vandalism Reserve Account**") to remediate acts of Vandalism, that is not otherwise covered by the property insurance required by Section 2.1 (Property) of Appendix 10 (Insurance Requirements). The Project Company shall allocate such funds to the Vandalism Reserve Account at the rate of \$10,000 (Index-Linked) per Contract Year (such amount to be prorated to accommodate any partial Contract Year of operation of the Project by the Project Company). Amounts in the Vandalism Reserve Account that remain unused in any Contract Year will roll into the next Contract Year. Unused funds upon the Termination Date will be deducted from the final Service Fee payment or otherwise credited to the County in the final Annual Settlement Statement or calculation of the Termination Amount, as applicable. Subject to paragraph (3) of this subsection, the Project Company may withdraw funds from the Vandalism Reserve Account in such amounts and at such times as needed to pay amounts attributable to the reasonable, actual costs that have been incurred by the Project Company in respect of maintenance, repair or replacement activities that are required to remediate acts of Vandalism. If such costs exceed the total funds available in the Vandalism Reserve Account at any time, the cost of additional remediation shall be paid by the County as an Extraordinary Item.

(3) The Project Company shall provide the County on a monthly basis (or at other times as reasonably requested by the County) with a written report indicating: (i) any amounts that have been withdrawn from the Vandalism Reserve Account during the month, together with evidence of the costs that are the subject of such drawings; (ii) the purpose for which funds have been used; (iii) evidence that all Project Contractors and Subcontractors have waived any rights to Liens; (iv) the balance remaining in the Vandalism Reserve Account; and (v) such other supporting information as the County may reasonably require. Any amounts that are found to have been improperly withdrawn shall, at the election of the County, either be immediately returned to the Vandalism Reserve Account or offset against Service Fee payments, as a Service Fee adjustment. For purposes of this paragraph, the term "improperly withdrawn" refers to the Project Company's withdrawal of funds in circumstances where the Project Company cannot provide evidence establishing that the funds were used to remediate acts of Vandalism in accordance with paragraph (2) of this subsection and a finding of improper withdrawal is not being disputed in good faith by the Project Company.

SECTION 9.6. MAJOR MAINTENANCE, REPAIR AND REPLACEMENTS.

(A) Major Maintenance, Repair and Replacements Generally. The Project Company, in addition to its ordinary maintenance obligations described in Section 9.5 (Ordinary

Maintenance), and except as provided in subsection 9.1(C) (Moveable Furniture, Fixtures and Equipment), shall prepare, maintain and comply with its obligations under the Facilities Management Plans required pursuant to Appendix 8 (Facilities Management Standards) and shall perform all major maintenance, repair and replacement of the equipment, systems, structures, improvements and all other property constituting the Project during the Term required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The County’s approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification under Article 10 (Capital Modifications and Facilities Management Services Changes). The obligations of the Project Company under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency, and that in any event the Project is returned to the County at the end of the Term in a condition which fully complies with the Handback Requirements.

(B) Major Equipment Repair and Replacement Schedule and Schedule Changes. The parties acknowledge that, in light of the long-term nature of this Project Agreement and the practical limitations on predicting with specificity the life cycle of any particular asset of the Project, it may be appropriate from time to time to alter the Master Maintenance Plan and the Renewal Work Plan. Accordingly, the Project Company shall have the right to request County approval of alterations to the Master Maintenance Plan and the Renewal Work Plan at any time during the Term, provided that no such alterations shall be made unless the Project Company demonstrates to the satisfaction of the County that the sum of all major maintenance, repairs and replacements performed to date by the Project Company, and all major maintenance, repairs and replacements to be performed under any such alterations, shall result in a standard of overall Project maintenance, repair and replacement which is equal to or better than the standard represented by the activities to be performed under the current Master Maintenance Plan and Renewal Work Plan. Any alterations to the Master Maintenance Plan and the Renewal Work Plan shall be identified and justified in a Contract Administration Memorandum and shall be subject to the County’s approval, acting reasonably. The Project Company shall cooperate with the County in identifying any such alterations which may be desirable in order to anticipate or address the technical obsolescence or inefficient operation of any component, system or process of the Project, and in proposing such alterations for the County’s approval. In no event shall any such alteration of the Master Maintenance Plan or the Renewal Work Plan result in a change to the Service Fee. The Facilities Management Charge shall constitute the only compensation available to the Project Company for the performance of its major maintenance, repair and replacement obligations under this Article.

SECTION 9.7. MAINTENANCE INSPECTIONS AND JOINT TECHNICAL PERFORMANCE REVIEW.

(A) Maintenance Inspections. The County may at any time perform a limited or full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment and systems to determine their physical and operational condition. Any such inspection and review shall be performed at the County’s expense, and shall take place at such time as the County shall determine upon reasonable notice to the Project Company. The inspection may include a concurrent review of all relevant data, records and reports. The Project Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Project Company’s performance of the Contract Services.

(B) Joint Technical Performance Review. In accordance with Section 1.3.1 (Joint Technical Performance Review) of Appendix 8 (Facilities Management Standards), at the end of each five-year period through the first 15 years and at the end of each three-year period throughout the remaining Facilities Management Period, the Project Company and the County, supported by a duly qualified independent inspector and such technical resources as are

mutually deemed necessary, will conduct a Joint Technical Performance Review (the “**Joint Technical Performance Review**”) of the Project. The independent inspector shall be experienced in conducting facility condition assessments for courthouses. The Joint Technical Performance Review will assess the performance and effectiveness of both the maintenance, repair, replacement and life cycle works completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the then-current Master Maintenance Plan and Renewal Work Plan as further described in Appendix 8 (Facilities Management Standards). The cost of the independent inspector engaged to conduct a Joint Technical Performance Review will be split equally between the County and the Project Company.

SECTION 9.8. UNAVAILABILITY EVENTS AND PERFORMANCE FAILURES.

(A) Deductions. The County shall have the right to impose Deductions for Unavailability Events and Performance Failures as and to the extent provided in Article 16 (Service Fee and Other Payments) and Appendix 11 (Deductions).

(B) Additional Project Company Obligations. In the event the same Unavailability Event or Performance Failure occurs repeatedly or persistently, and the Project Company is not excused from performance as a result of a Relief Event, the Project Company shall, in addition to incurring Deductions, take any action (including making all capital investments, improvements or modifications or repairs, replacements and operating and management practices changes) necessary in order to continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of such Unavailability Event or Performance Failure. Further, if any such Unavailability Event or Performance Failure involves a violation of Applicable Law, the Project Company shall (1) promptly provide the County, within 24 hours, with copies of any notices sent to or received from any Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law and (2) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom.

(C) Minimizing Interruption to County Activities. The Project Company shall perform its maintenance, repair, replacement and related obligations, including such maintenance, repair, replacement and related obligations required in response to an Unavailability Event or Performance Failure, in a manner that minimizes disruption or interference with County Activities. Notwithstanding anything to the contrary in Section 25.5(B) (Mitigation by the County), the County has no obligation to conduct County Activities at a time or location or otherwise to accommodate any maintenance, repair, replacement or related activities, including such maintenance, repair, replacement and related obligations required in response to an Unavailability Event or Performance Failure.

SECTION 9.9. PARKING AND ROAD IMPROVEMENTS AND CAFÉ.

(A) Parking and Road Improvements. Following the completion of the design and construction of the Parking and Road Improvements by the Project Company, the County shall be responsible for the operation, maintenance and administration of the Parking and Road Improvements and, if applicable, the collection of any parking fee revenue. Any parking fee revenues shall be the property of the County.

(B) Café. The costs of equipment for, and fitting out, the Café are not priced into the Service Fee, and the County shall pay such costs directly as provided in Section 7.22 (Payment Obligations of the County During the Design-Build Period). The Café shall be operated and the Café equipment shall be maintained by the County or an outsourced service provider. The Project Company shall coordinate the Facility Management Services with the Café operator, but otherwise shall have no responsibility with respect thereto. Acts of the County or an

outsourced service provider in respect of Café operations that materially prevent, hinder or obstruct the performance of the Facility Management Services shall constitute an Other Relief Event.

SECTION 9.10. FUTURE COUNTY FACILITIES AT THE RED SOILS CAMPUS.

The County shall have the right to develop, construct, operate and use additional County office and ancillary facilities at the Red Soils Campus in proximity to the Project Site. The County shall keep the Project Company reasonably apprised of its plans for any such facilities. Any material interference with, or effect on, the performance of the Contract Services of the Project Company that is caused by the County's development, construction, operation or use of any new facilities shall constitute an Other Relief Event.

SECTION 9.11. DISPOSAL OF SURPLUS EQUIPMENT.

The Project Company may, at the direction of the County, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Project that is unused or obsolete and no longer needed. All proceeds from any sale, net of the Project Company's expense in removing the equipment and arranging the sale, shall be the property of the County.

SECTION 9.12. ENFORCEMENT OF PROJECT WARRANTIES.

During the Term, the Project Company shall be responsible for meeting the maintenance obligations under all manufacturers' warranties on new equipment purchased and installed in the Project by the Project Company (other than those warranties relating to (1) Moveable Furniture, Fixtures and Equipment, (2) any Parking and Road Improvements, or (3) any equipment provided as part of the Café pursuant to subsection 9.9(B) (Café), and shall be the agent of the County in enforcing all equipment warranties and guarantees, including warranties and guarantees of the Design-Build Work obtained by the Project Company pursuant to Section 7.17 (Warranties of Design-Build Work). The Project Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Project Company shall cooperate with and assist the County if the County seeks to enforce warranties and guarantees through litigation.

SECTION 9.13. PROJECT HANDBACK.

(A) Required Project Condition. On the Expiration Date (and not on any earlier Termination Date), the Project and each Project Component shall be in a condition which is:

(1) Consistent with the Project and each such Project Component having been designed and constructed in accordance with the applicable design life requirements set forth in Appendix 6 (Design and Construction Standards) and Appendix 7 (Design and Construction Proposal Extracts); and

(2) Consistent with the Project Company having performed the Facilities Management Services in accordance with the Facilities Management Requirements.

In any event:

(3) The Facilities Condition Index for the Project shall be no worse than 0.10;
and

(4) The remaining useful life of each Project Component shall be no less than the required useful life of Project Component set forth in Section 6.2.3 (Project Condition and Remaining Useful Life) of Appendix 8 (Facilities Management Standards).

The requirements of this subsection (A) constitute the “**Handback Requirements**”.

(B) Handback Survey. In conjunction with the Joint Technical Performance Review for the Contract Year commencing three years prior to the Expiration Date, the Project Company and the County shall perform a joint inspection and survey of the Project (the “**Handback Survey**”). If the Handback Survey indicates that any element of the Project, on the Expiration Date, shall not be in a condition consistent with the Handback Requirements upon the Project Company implementing the plans and programs required under Appendix 8 (Facilities Management Standards) over the remainder of the Term, within 90 days of completion of the Handback Survey, the Project Company shall deliver to the County:

(1) A description of the additional work (the “**Handback Work**”) necessary to meet the Handback Requirements;

(2) The Project Company’s plan to perform the Handback Work (the “**Handback Work Plan**”), including the method and schedule for performing the Handback Work outside of normal working hours; and

(3) A cost estimate for the Handback Work.

(C) Determination of Handback Retainage. Upon submittal of the items required by subsection (B) of this Section, the County:

(1) May review and comment on the Project Company’s Handback Work Plan in accordance with Section 5.8 (Submittal Review Procedures During the Facilities Management Period) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements); and

(2) Shall, after giving due consideration to the Project Company’s cost estimate, determine in good faith the amount (the “**Handback Retainage**”) it reasonably believes necessary to complete the Handback Work.

(D) Establishment and Use of Handback Retainage Account. The County shall hold back and retain from the Service Fee an amount equal to the Handback Retainage, and deposit such amount in an interest-bearing account held by a Qualified Commercial Bank (the “**Handback Retainage Account**”). The account shall be the property of the County, subject to the Project Company’s withdrawal rights under this Section. The Project Company shall have the right, upon the submittal of certified requisitions to the County with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the Handback Work. Notwithstanding the foregoing, the Project Company shall be entitled to (i) post a letter of credit from a Qualified Commercial Bank with the County, or (ii) request that the County accept other cash collateral satisfactory to the County, acting in its discretion, in lieu of posting such a letter of credit, in each case in an amount equal to the Handback Retainage in lieu of such holdback from the Service Fee.

(E) Performance of the Handback Work and Further Inspection. The Project Company shall implement the Handback Work Plan and take all other steps necessary to assure compliance with the Handback Requirements, notwithstanding the County’s participation in the Handback Survey or review of the Handback Work Plan or the fact that the actual cost of

compliance may be higher than the Handback Retainage or other agreed-upon security. At least 180 days prior to the Expiration Date, the Project Company and the County shall conduct a further joint inspection and survey of the condition of the Project and the progress of the Handback Work. Notwithstanding the County's participation in the Handback Survey or review of the Handback Work Plan, the Handback Retainage or other agreed-upon security, or the complete or partial performance of the Handback Work, the Project Company shall not be released from any obligation to conduct any other inspection or to provide any other Facilities Management Services in accordance with this Project Agreement.

(F) Final County Condition Assessment. On, or within five Business Days after the Expiration Date, the County shall either:

(1) Issue to the Project Company a handback certificate confirming compliance with the Handback Requirements and return any remaining amount in the Handback Retainage Account to the Project Company; or

(2) Notify the Project Company of its decision not to issue the handback certificate, setting out each respect in which the Handback Work was not properly performed or the Project does not comply with the Handback Requirements and stating the County's reasonable estimate of the cost it reasonably believes is necessary to complete all work required for the Project to comply with the Handback Requirements.

(G) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with subsection (F) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company's proposals in respect of such matters.

(H) Final Compliance. If the Project did not, at the Expiration Date, comply in all respects with the Handback Requirements, the Project Company shall complete any work necessary to cause such compliance within 60 days following the Expiration Date or pay to the County no later than 60 days after the Expiration Date an amount equal to the cost of completing any outstanding Handback Work based on the County's cost estimate pursuant to subsection 9.13(F)(2) (Final County Condition Assessment), net any amount remaining in the Handback Retainage Account, so that the Project is in a condition which complies with the Handback Requirements.

(I) Termination Prior to Expiration. If the Termination Date occurs prior to the Expiration Date, the amount standing to the credit of the Handback Retainage Account shall be taken into account in the calculation of any Termination Amount in accordance with Appendix 13 (Compensation on Termination).

ARTICLE 10

CAPITAL MODIFICATIONS AND FACILITIES MANAGEMENT SERVICES CHANGES

SECTION 10.1. CAPITAL MODIFICATIONS GENERALLY.

(A) County Approval. The County shall have the right, in its discretion, to accept, reject, approve or modify all Capital Modifications. All Capital Modifications and related changes to the terms and conditions of this Project Agreement shall be reflected in a Project Agreement Amendment.

(B) Conditioned Approvals. The County shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom or upon any further term or condition that the County may seek to establish with respect thereto.

(C) Responsibility for Costs. All Capital Modifications shall be made and implemented in accordance with this Article. The Project Company shall bear the cost and expense of all Capital Modifications required in accordance with Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Project Company Fault). The responsibility for the cost and expense of any Capital Modifications requested by the Project Company in accordance with Section 10.2 (Capital Modifications at Project Company Request) shall be determined by the County in its discretion in accordance with its approval rights under this Article. The County shall bear the cost and expense of all Capital Modifications made pursuant to Section 10.4 (Capital Modifications Required Due to Relief Events) and pursuant to Section 10.5 (Capital Modifications at County Direction).

(D) No Project Company Ownership. In no event shall the Project Company have any ownership interest in the Project as a result of any Capital Modification.

SECTION 10.2. CAPITAL MODIFICATIONS AT PROJECT COMPANY REQUEST.

The Project Company shall give the County written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company's request. To assist the County in the exercise of its approval rights under Section 10.1 (Capital Modifications Generally), the notice shall contain sufficient information for the County to determine that the Capital Modification:

- (1) Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not materially impair the quality, integrity, durability and reliability of the Project;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

SECTION 10.3. CAPITAL MODIFICATIONS ARISING FROM REPAIRS AND REPLACEMENTS OR REQUIRED TO REMEDY A PROJECT COMPANY FAULT.

In the event that (1) any repair or replacement proposed to be performed by the Project Company in satisfaction of its obligations under Article 9 (Facilities Management), or (2) any capital investment, improvement or modification required to be made by the Project Company in order to remedy a breach of this Project Agreement, can be reasonably expected to result in a material change to the Project, such repair, replacement, capital investment, improvement or modification shall constitute a Capital Modification. In no event shall the rejection or modification of any such Capital Modification by the County relieve the Project Company of its obligation to perform maintenance, repair and replacement required under Article 9 (Facilities Management) or perform any other obligation hereunder. Except as otherwise agreed to by the County, the design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Project Company.

SECTION 10.4. CAPITAL MODIFICATIONS, REPAIRS AND REPLACEMENTS REQUIRED DUE TO RELIEF EVENTS OCCURRING FOLLOWING THE OCCUPANCY READINESS DATE.

Upon the occurrence of a Relief Event occurring following the Occupancy Readiness Date, the Project Company shall promptly proceed to make or cause to be made all Capital Modifications, repairs and replacements and to the Project reasonably necessary to address the Relief Event, as provided in Section 10.6 (Primary Procedure for Implementing Capital Modifications), Article 13 (Relief Event Procedures), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events), as applicable. The Project Company and the County shall consult concerning possible means of addressing and mitigating the effect of the Relief Event, and the Project Company and the County shall cooperate in order to minimize any delay, lessen any additional cost and repair, replace or modify the Project so as to permit the Project Company to continue providing the Contract Services in light of the Relief Event. The design and construction costs resulting from any such work shall be paid by the County as and to the extent provided in Section 6.6 (Financing Capital Costs for which the County is Responsible), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events). Any related operation, maintenance, repair and replacement costs shall be borne by the County (through an adjustment of the Service Fee payable solely following the Occupancy Readiness Date, subject to Article 15 (Change in Law Events and Other Relief Events)). The Project Company shall not be required to undertake any Capital Modification, repair or replacement under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification, repair or replacement, as applicable, in accordance with all applicable provisions of this Project Agreement, including Section 10.6 (Primary Procedure for Implementing Capital Modifications), and (2) the County has provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of any such work (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 10.5. CAPITAL MODIFICATIONS AT COUNTY DIRECTION.

The County shall have the right to make Capital Modifications at any time and for any reason whatsoever after the Occupancy Readiness Date, whether and however the exercise of such rights affects this Project Agreement so long as the implementation of such Capital Modification does not contravene the limitations referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes). The design and construction costs of any such Capital Modification made at the County's direction under this Section, and any related operation,

maintenance, repair and replacement costs, shall be borne by the County, and financed as provided in Section 6.6 (Financing Capital Costs for Which the County is Responsible). The Project Company shall not be required to undertake any Capital Modification under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Project Agreement including Section 10.6 (Primary Procedure for Implementing Capital Modifications), and (2) the County has provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Capital Modification (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 10.6. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. Subject to Section 10.7 (Alternative Procedures for Implementing Capital Modifications), the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications.

(B) Initial Assessment. When a Capital Modification is required or is proposed by either party, the Project Company, at its cost and expense, shall prepare and deliver to the County an initial assessment of the matter. The initial assessment shall describe the need for or objective of the Capital Modification, set forth an overview of potential approaches to addressing the need or objective, and contain a preliminary assessment of potential cost and schedule considerations. The purpose of the initial assessment shall be to furnish the County with a reasonable basis for authorizing funds to pay for a conceptual plan and implementation proposal provided for in subsections (C) and (D) of this Section.

(C) Project Company Conceptual Plan and County Review. Following the initial assessment made pursuant to subsection (B) of this Section, at the request of the County and, except with respect to Capital Modifications made pursuant to Section 10.3 (Capital Modifications Arising from Repairs or Replacements, or Required to Remedy a Project Company Event of Default) at the cost and expense of the County, the Project Company shall prepare and deliver to the County a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project Company is recommending. The County shall review the Project Company's conceptual plan and recommendations and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(D) Project Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the County and, except with respect to Capital Modifications made pursuant to Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Project Company Fault), at the County's expense, the Project Company shall submit a formal implementation proposal to the County for its consideration. With respect to any Capital Modification to be undertaken at the County's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Project Company services element, to be implemented through a Project Agreement Amendment and (2) a third-party services element, to be implemented through third-party contracting.

(1) Project Company Services Element. The Project Company services element shall contain: (a) the Project Company's offer to perform design, construction management and commissioning test services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a commissioning test and a guaranteed maximum construction price if so requested by the County and agreed to by the Project Company; and (b) as applicable, the Project Company's offer to operate, maintain, repair, replace, permit and manage the Capital Modification following construction and commissioning for compensation paid as an adjustment to the Facilities Management Charge with a revision of the composition or weighting of the inflation index or indices used to adjust the Facilities Management Charge, as appropriate, and shall include long-term performance guarantees appropriate to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Project Company to conduct, as allowed by Applicable Law, either a qualifications-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Project Company, unless required to be held by the County under Applicable Law. A "competitive proposal process" referred to herein may include a qualifications-based request for proposals and a design-build contract award to the most advantageous proposer.

(E) Negotiation and Finalization of Project Company Implementation Proposal. The parties shall proceed, promptly following the County's review of the Project Company's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Project Agreement resulting from the Capital Modification. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

- (1) Design requirements;
- (2) Construction management services;
- (3) Commissioning tests, standards and procedures;
- (4) A guarantee of completion;
- (5) Performance guarantees;
- (6) Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
- (7) A payment schedule for the design and construction management-related services;
- (8) Any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
- (9) A financing plan; and

- (10) Any other appropriate amendments to this Project Agreement.

The Project Company shall not be obligated to undertake any Capital Modification under Section 10.4 (Capital Modifications Required Due to Relief Events) or Section 10.5 (Capital Modifications at County Direction) except following agreement as to scope, price and schedule and the delivery by the County of assurances as to the availability of funds, as provided in such Sections. The County shall have no obligation to reimburse the Project Company for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Project Agreement.

(F) Implementation Procedures. With respect to each Capital Modification to be made by the Project Company, the County shall have the same substantive and procedural rights that it has with respect to the design, construction, commissioning, final completion and handback of the Project, as set forth in this Project Agreement.

SECTION 10.7. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS.

With respect to any Capital Modification to be undertaken at the County's expense and as otherwise required by Applicable Law, the County shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 10.6 (Primary Procedure for Implementing Capital Modifications), and may instead, in its discretion, utilize any other implementation procedure available to it or required under Applicable Law. Alternative implementation procedures may include contracting with the Project Company or any third party to implement the Capital Modification on a sole source or any competitive basis using any project delivery method available under Applicable Law. The County may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Project Company under the primary implementation procedure specified under Section 10.6 (Primary Procedure for Implementing Capital Modifications). No alternative implementation procedure for Capital Modifications shall contravene the limitations referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes).

SECTION 10.8. FACILITIES MANAGEMENT SERVICES CHANGES.

(A) Generally. The County may, on a quarterly basis each Contract Year during the Term (except more frequently as may be appropriate to address urgent County governmental circumstances), subject to Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes), require the Project Company to implement a Facilities Management Services Change in accordance with this Section. The implementation procedure set forth in this Section shall apply with respect to all Facilities Management Services Changes which the County may require during the Term. In the event the County requests a Facilities Management Services Change, the County shall issue to the Project Company a written notice including a sufficient description of the contemplated Facilities Management Services Change.

(B) Project Company Facilities Management Services Change Report. Within 15 Business Days, or such longer period as the parties agree acting reasonably, after receipt of the County's notice delivered pursuant to subsection (A) of this Section, the Project Company shall prepare and deliver to the County a report for the contemplated Facilities Management Services Change ("**Facilities Management Services Change Report**"). A Facilities Management Services Change Report shall include, to the extent that it is relevant to the proposed Facilities Management Services Change:

- (1) A description of the scope of the contemplated Facilities Management Services Change with respect to the Facilities Management Services;
- (2) A comparison of the scope of Facilities Management Services as a result of the contemplated Facilities Management Services Change as compared to the scope prior to the Facilities Management Services Change;
- (3) An estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Facilities Management Services Change, as further described in subsection (C) of this Section, including the following, as applicable:
 - (a) all Facilities Management Services labor, material and equipment costs, supported as the case may be by quotations from the applicable Facilities Manager and Subcontractors;
 - (b) any costs related to the Project Company's management and oversight of the Project that should reasonably be included in the contemplated Facilities Management Services Change;
 - (c) all costs of an amendment or renewal of a Governmental Approval required by the contemplated Facilities Management Services Change;
 - (d) all financing costs; and
 - (e) all insurance costs;
- (4) An estimate of the cost savings, if any, resulting from the contemplated Facilities Management Services Change;
- (5) A description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Facilities Management Services Change and an estimate of costs, if any, reasonably necessary for and directly associated therewith;
- (6) A description of any changes to the Service Fee that are required to reflect any costs or cost savings described in items (3), (4) and (5) above;
- (7) Identification of any amounts payable by the County to the Project Company, if any, other than the Service Fee;
- (8) The Project Company's proposal as to how any increased costs to the Project Company resulting from the contemplated Facilities Management Services Change may be funded;
- (9) The value of the loss or reduction of benefits resulting from the contemplated Facilities Management Services Change;
- (10) A description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated Facilities Management Services Change;
- (11) A description of any impact on the obligations of the Project Company under any Material Contracts;

(12) A description of the extent to which the contemplated Facilities Management Services Change or the implementation thereof would interfere with the Project Company's ability to comply with any of its obligations under this Project Agreement, the Material Contracts and any Governmental Approvals;

(13) The name of the Subcontractor, if any, which the Project Company intends to engage for the purposes of implementing the contemplated Facilities Management Services Change;

(14) A description of any further effects (including, without limitation, benefits and impairments) which the Project Company foresees as being likely to result from the contemplated Facilities Management Services Change or the implementation thereof;

(15) A description of any actions that would be reasonably required by the County to implement the contemplated Facilities Management Services Change;

(16) A description of the steps the Project Company will take to implement the contemplated Facilities Management Services Change, in such detail as is reasonable and appropriate; and

(17) A description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years.

If the Project Company prepares a Facilities Management Services Change Report pursuant to this subsection and the County elects not to proceed with the contemplated Facilities Management Services Change, then the County shall pay the Project Company's Facilities Management Services Change Report preparation costs subject to Cost Substantiation. Notwithstanding the foregoing, the County shall not be responsible for any Project Company costs associated with a Facilities Management Services Change Report prepared pursuant to subsection (J) of this Section.

(C) Valuation of Facilities Management Services Changes. The County and the Project Company shall negotiate in good faith the costs or savings associated with any Facilities Management Services Change in accordance with subsection (E) of this Section. If the parties fail to agree on the costs or savings of such Facilities Management Services Change, the costs or savings shall be determined as set forth in this subsection. The costs or savings of a Facilities Management Services Change shall be the net incremental additional costs or savings of implementing the Facilities Management Services Change, calculated as the aggregate cost, if any, of any additions to the Project Company's Facilities Management Services obligations required to implement the Facilities Management Services Change minus the aggregate cost savings, if any, from all reductions in the Project Company's Facilities Management Services obligations resulting from the implementation of such Facilities Management Services Change. A Facilities Management Services Change may have a net cost, a net saving, or may result in no net cost or saving. The costs of a Facilities Management Services Change are the aggregate of the costs reasonably incurred by the Project Company or the Facilities Manager to implement the Facilities Management Services Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:

(1) The amounts of all Subcontractor or supplier agreements;

(2) The direct costs incurred for the Facilities Management Services personnel, based on the number of personnel hours required to undertake the Facilities Management Services Change;

(3) The direct costs incurred for the procurement of materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment, including the costs of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering costs;

(4) The costs incurred for the evaluation of proposals and award of a contract for work associated with the Facilities Management Services Change, and the supervision and management of such contracts;

(5) All direct costs incurred by the Project Company in procuring and managing the Facilities Management Services Change (including costs of advisers and extra costs under any management services agreements entered into by the Project Company); and

(6) All other additional direct costs pertaining to the Facilities Management Services Change, including disposal, insurance, bonding, financing, Governmental Approvals and directly attributable overheads, calculated at the direct cost to the entity that directly incurs such costs, and the costs incurred or borne by the Project Company in preparing a Facilities Management Services Change Report.

The costs applied pursuant to this subsection shall be no greater than the market rates prevailing at the time of the implementation of the Facilities Management Services Change paid between parties contracting at arm's length. In addition to the costs incurred by the Project Company or Facilities Manager described above in this subsection, a mark-up shall be applied without duplication to such aggregate costs as full payment for all other costs, including indirect overhead costs and profit in accordance with subsection 16.12(E) (Mark-Ups).

(D) Justification and Supporting Documentation. The Project Company shall use, or will cause the Facilities Manager to use, reasonable efforts to obtain competitive quotations and proposals for all work, equipment and materials required to implement a Facilities Management Services Change. The cost estimates included in a Facilities Management Services Change Report shall be in sufficient detail to allow evaluation by the County and will include such supporting information and justification as is necessary to demonstrate that:

(1) The Project Company has used all reasonable efforts, including utilizing competitive quotes or proposals, to minimize the cost of a contemplated Facilities Management Services Change and maximize potential related cost savings;

(2) The Project Company and Facilities Manager have valued the Facilities Management Services Change as described in subsection (C) of this Section, and have not included other margins or mark-ups;

(3) The full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and

(4) The Project Company has mitigated or will mitigate the impact of the contemplated Facilities Management Services Change, including on the performance of the Facilities Management Services, the expected usage of Utilities, and the direct costs to be incurred.

(E) Agreement on a Facilities Management Services Change. Within 15 Business Days, or such longer period as the parties agree acting reasonably, following receipt by the County of a Facilities Management Services Change Report prepared in accordance with

subsection (B) of this Section, the County may deliver to the Project Company any requests for clarifications or amendments, and the parties' representatives shall meet and use all reasonable efforts to agree to the Facilities Management Services Change Report. Such agreement shall include the costs, payments (including payment of direct costs and adjustments to the Service Fee, if any) and other information contained in the Facilities Management Services Change Report. If the County would be required by Applicable Law to require the Project Company to competitively solicit any contract in relation to a contemplated Facilities Management Services Change, the County may require the Project Company to seek and evaluate competitive proposals for the proposed Facilities Management Services Change. The County may modify any Facilities Management Services Change request notice delivered pursuant to subsection (A) of this Section, in writing, at any time prior to the parties reaching an agreement on the Facilities Management Services Change Report pursuant to this subsection. In the event the County delivers notice of any such modification to the Project Company, the Project Company shall notify the County of any significant changes to the Facilities Management Services Change Report within 20 Business Days after receipt of such modification notice.

(F) Facilities Management Services Change Certificate. Upon agreement of the parties with respect to the Facilities Management Services Change in accordance with subsection (E) of this Section, the County shall issue a signed Facilities Management Services Change Certificate to the Project Company. In the event the County and the Project Company do not agree on the Facilities Management Services Change, the County may issue a Facilities Management Services Change Certificate in accordance with subsection (G) of this Section. The Project Company shall not proceed with a Facilities Management Services Change prior to receiving a signed Facilities Management Services Change Certificate from the County. A Facilities Management Services Change Certificate issued in accordance with this subsection shall be binding upon the County and the Project Company. Upon receipt of a Facilities Management Services Change Certificate the Project Company shall implement the Facilities Management Services Change, without prejudice to the Project Company's right to refer any dispute concerning the Facilities Management Services Change to Non-Binding Mediation, including valuation of the Facilities Management Services Change in accordance with subsection (C) of this Section.

(G) Disagreement on Facilities Management Services Change Report. In the event the County and the Project Company cannot agree on a Facilities Management Services Change Report, the County may elect not to proceed with the Facilities Management Services Change described in the notice delivered to the Project Company in accordance with subsection (A) of this Section. Alternatively, the County may issue the Facilities Management Services Change Certificate to the Project Company stating the County's determination of the matters referred to in the Facilities Management Services Change Report, and if the Project Company disagrees with all or any of the determinations set forth in the Facilities Management Services Change Certificate, then the Project Company may deliver the County a notice identifying any such disagreements within 10 Business Days of receipt of the Facilities Management Services Change Certificate. Following delivery of the notice to the County identifying any points of disagreement to the Facilities Management Services Change Certificate, the Project Company may, (1) pursuant to its rights under Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes) refuse to implement the Facilities Management Services Change, or (2) without prejudice to its rights with respect to such disagreements, use all reasonable efforts to implement the Facilities Management Services Change as directed in the Facilities Management Services Change Certificate. If the Project Company fails to timely deliver the notice to the County identifying any points of disagreement with the Facilities Management Services Change Certificate as set forth in this subsection, the Project Company shall be deemed to have waived any such objections to the Facilities Management Services Change Certificate.

(H) Responsibility and Payment for Facilities Management Services Changes. Except as specifically provided in this Project Agreement, the County shall bear no risk or liability whatsoever arising from any Facilities Management Services Change other than the liability to make payment in connection therewith. The County shall bear the cost and expense of all Facilities Management Services Changes made pursuant to this Section. Payments by the County and any adjustments to the Service Fee with respect to Facilities Management Services Changes shall be made in accordance with Sections 16.6 (Extraordinary Items) and 16.12 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation).

(I) Cost Savings. In the event any Facilities Management Services Change is reasonably expected to result in a net cost savings to the Project Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the County, and the Service Fee shall be reduced accordingly.

(J) Facilities Management Services Changes at Project Company Request. The Project Company may give the County written notice of, and reasonable opportunity to review and comment upon, any Facilities Management Services Change proposed to be made at the Project Company's request. The County shall have the right, in its discretion, to accept, reject, approve or modify all such Facilities Management Services Change requests made by the Project Company. The responsibility for the cost and expense of any Facilities Management Services Change requested by the Project Company in accordance with this subsection shall be determined by the County in its discretion. The written notice provided by the Project Company shall contain sufficient information for the County to determine that the Facilities Management Services Change:

- (1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity and reliability of the Operation Services;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

The County shall not unreasonably deny any Facilities Management Change request made by the Project Company that complies with the requirements of this subsection and will result in cost savings to both the County and the Project Company. Any Facilities Management Change proposed to be made at the Project Company's request, and accepted by the County, shall be implemented as set forth in this Section, except that the notice provided by the Project Company pursuant to this subsection shall take the place of the notice provided by the County pursuant to subsection (A) of this Section.

ARTICLE 11

CONTRACTING AND LABOR PRACTICES

SECTION 11.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. The County acknowledges that the Project Company may carry out the Design-Build Work and the Facilities Management Services by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Local Business Participation. The Project Company acknowledges the County's policy of seeking to maximize the participation of local businesses in the Project and, accordingly, agrees to use all commercially reasonable efforts to comply with and carry out the Local Business Plan.

(C) Use of Project Contractors and Key Individuals. The Project Company shall use the Project Contractors and Key Individuals listed in Appendix 15 (Project Company and Project Contractors Information) or such others as the County may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Services in the roles indicated in Appendix 15 (Project Company and Project Contractors Information).

(D) Restricted Persons. In providing the Contract Services, the Project Company shall not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any person that at the time of such contracting, in the reasonable opinion of the County, is a Restricted Person.

(E) Oregon Construction Contractors Board. The Project Company shall ensure that all Subcontractors performing Contract Services described in ORS 701.005(2) will be registered with the Oregon Construction Contractors Board in accordance with ORS 701.035 to ORS 701.055 before the Subcontractors commence any Contract Services.

SECTION 11.2. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to the County under this Project Agreement for all matters related to the Contract Services. No failure of any Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Services shall relieve the Project Company from its obligations hereunder to perform the Contract Services. The Project Company shall be responsible for settling and resolving with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Project Company or a Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the Project Contractors and all Subcontractors all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against the County for labor, services, materials or equipment furnished for the Contract Services. The Project Company acknowledges that its indemnity obligations under Section 24.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by any Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services to the extent that those claims fall within the scope of the indemnity in Section 24.1 (Project Company's Obligation to Indemnify).

(C) Assignability. All Project Contracts or Subcontracts entered into by the Project Company with respect to the Project shall be assignable to the County, solely at the County's election and without cost or penalty, upon the expiration or termination of this Project Agreement, subject to the terms of the Project Contractor Collateral Agreement and provided that no Termination Amount is outstanding.

(D) Assurance of Project Completion. **[NOTE TO PROPOSERS: Proposed assurances as to performance bonds, letters of credit or other mechanisms, as provided in the Financial Proposal, to assure Project completion to be included here.]**

(E) Payment Bond. The Project Company shall cause the Design-Builder to furnish a labor and materials payment bond within 15 days following the Financial Close Date in an amount equal to the Design-Build Contract Price. The payment bond shall be in a form and from a surety acceptable to the County, acting reasonably. The Project Company shall cause the County to be named, upon issuance of such payment bond, as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to the County within 10 days after issuance. The County's rights in respect of any such security shall be subject to the rights of the Senior Lenders under the Lenders' Remedies Agreement.

(F) Project Company Payment Requirements in General. As required in ORS 279C.505(1), the Project Company shall (1) make payment promptly, as due to all persons and Subcontractors supplying the Project Company labor or material for the performance of the Contract Services, (2) pay all contributions or amounts due to the Oregon Industrial Accident Fund from the Project Company or Subcontractor incurred in the performance of the Contract Services; (3) not permit any lien or claim to be filed or prosecuted against the County, the State or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and (4) pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167.

(G) Design-Builder and Subcontractor Timely Payment Requirements. As required by ORS 279C.515(2), the Project Company shall obligate the Design-Builder, and shall obligate the Design-Builder to include in each Subcontract entered into by the Design-Builder, a payment clause that obligates the applicable contractor to pay its Subcontractors for satisfactory performance under its Subcontract within ten days out of such amounts as are paid by the Project Company to the Design-Builder. If the Design-Builder or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Project Agreement within 30 days after receiving payment from the Project Company, then the Design-Builder or first-tier Subcontractor shall owe such person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be 9% per annum. The amount of interest may not be waived.

(H) Right to File a Complaint with the Oregon Construction Contractors Board. As required by ORS 279C.515(3), if the Project Company or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Project Agreement, such person may file a complaint with the Oregon Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

SECTION 11.3. MATERIAL CONTRACTS.

(A) County Consents. Unless the Project Company has, at its earliest practicable opportunity, submitted to the County notice of the proposed course of action (and

any relevant documentation) and the County has consented to such course of action, such consent not to be unreasonably withheld or delayed, the Project Company shall not:

- (1) Terminate, or agree to or permit the termination of, all or any material part of any Material Contract;
- (2) Make, or agree to or permit the making of:
 - (a) any material amendment of any Material Contract; or
 - (b) any departure by any party from any material provision of any Material Contract;
- (3) Permit any Project Contractor to assign or transfer to any person any of such Project Contractor's rights or obligations under a Material Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Material Contract; or
- (4) Enter into, or permit the entering into, any Material Contract other than those entered on or before the Effective Date.

(B) Timeframe for Consents. The County shall give or deny such consent within:

- (1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Material Contract immediately; and
- (2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

If the County fails to give or deny its consent within such time periods it shall be deemed to have given its consent. The giving or denial of consent by the County shall not create any liability of the County to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, the County's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request, the Project Company shall make a payment to the County against its obligation under this Section of \$15,000 (Index-Linked). After the County's decision is rendered, the County will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section with reasonable substantiation of such costs.

SECTION 11.4. REPLACEMENT MATERIAL CONTRACTS.

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project, the Project Company:

- (1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and

- (2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

SECTION 11.5. DELIVERY OF AMENDED OR REPLACEMENT MATERIAL CONTRACTS.

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, the Project Company shall deliver to the County a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 11.6. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Contract Services. The Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. The County shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company's Obligation to Indemnify) from any and all Loss-and-Expense resulting from any such labor dispute, except to the extent that such labor dispute is an Other Relief Event.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that may affect any of the Contract Services, the Project Company shall promptly:

- (1) Give notice thereof to the County, including all relevant information related to the dispute of which the Project Company has knowledge; and
- (2) Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Services including by applying for relief to appropriate tribunals or courts.

The Project Company acknowledges that if the labor dispute involves workers of a Project Contractor or Subcontractor, or of anyone employed by or through them, the County will not be required to provide any facilities, space or assistance in the Project or on the Project Site for the purposes of such workers or any applicable union.

SECTION 11.7. CONSTRUCTION CAREER PATHWAYS PROJECT (C2P2) REQUIREMENTS.

(A) Construction Career Pathways Project (C2P2) Workplace Environment Requirements. The Project Company and its Subcontractors, in accordance with the C2P2 Implementation Plan, shall:

- (1) promote a positive and inclusive workplace culture and implement a written jobsite-wide program promoting positive workplace culture,
- (2) enforce a zero tolerance policy for job site bullying, including bullying and harassment of women and minority workers; and

(3) implement a project for the benefit of regional trade/technical training program or school as part of the Project.

(B) Construction Career Pathways Project (C2P2) Allocation of Apprenticeable Work Requirements. The Project Company, in accordance with the C2P2 Implementation Plan, shall make a good faith effort to achieve: (1) 20% of apprenticeable total work hours for the Project being performed by state-registered apprentices, (2) 14% of total journey and apprentice-level work hours for the Project being performed by women and women-identified persons, and (3) 25% of total journey and apprentice-level work hours for the Project being performed by persons of color. The Project Company shall provide updates during the Design-Build Period with respect to the efforts being made to meet the above goals in accordance with Section 2.8 (C2P2 and D/M/W/ESB/SDVBE Reporting Requirements) of Appendix 6 (Design and Construction Standards).

(C) Disadvantaged Minority-Owned, Women-Owned, Emerging Small Businesses, Service Disabled Veterans Business Enterprises (D/M/W/ESB/SDVBE) Subcontracting Requirements. The Project Company, in accordance with the D/M/W/ESB/SDVBE Subcontracting Plan, shall make a good faith effort to subcontract 20% of the hard construction costs of the Project to D/M/W/ESB/SDVBE subcontractors, as properly certified within the State of Oregon Certification Office of Business Inclusion and Diversity, with a sub-goal that 14% of all Project hard construction costs be subcontracted to D/M/W subcontractors and 6% to ESB/SDVBE subcontractors, as certified within the State of Oregon Certification Office of Business Inclusion and Diversity. The Project Company shall provide updates during the Design-Build Period with respect to the efforts being made to meet the above goals in accordance with Section 2.8 (C2P2 and D/M/W/ESB/SDVBE Reporting Requirements) of Appendix 6 (Design and Construction Standards).

SECTION 11.8. PREVAILING WAGES.

(A) Payment of Prevailing Wages; Recordkeeping Requirements. The Project Company shall comply fully with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870. Pursuant to ORS 279C.830(1)(d), the Project Company shall pay workers at not less than the specified minimum hourly rate of wage for workers at the Project Site in the job classifications covered thereto, and shall include such requirement in all Subcontracts. The Project Company shall cause a copy of the prevailing rates of wages to be posted at the Project Site, shall keep and maintain payroll and other relevant information in order to permit the County to monitor compliance with this requirement, and shall furnish certified copies of such payrolls and other information to the County or its designee upon request.

(B) Public Works Bond to Assume Payment of Prevailing Wages. As required by ORS 279C.830(2) and ORS 279C.836, the Project Company shall file with the Oregon Construction Contractors Board, and maintain in full force and effect, a public works bond in the stated amount of \$30,000. The Project Company shall also include in every Subcontract a provision requiring the Subcontractor to have a public works bond filed with the Oregon Construction Contractors Board before starting any Design-Build Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to commence any Design-Build Work. Such public works bonds shall be subject to the notice of claim requirements set forth in ORS 279.605.

SECTION 11.9. OVERTIME.

(A) Employee Overtime Requirements. As required by ORS 279C.520(1)(a), ORS 279C.520(5), ORS 279C.540 and ORS 279C.545, the Project Company may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases

of necessity, emergency or when the public policy absolutely requires otherwise, and in such exceptional cases, the Project Company shall pay the employee at least time and a half pay for: (A)(1) all overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or (2) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and (B) all work the employee performs on Saturday and on any legal holiday specified in a collective bargaining agreement or pursuant to ORS 279C.540.

(B) Overtime Notice Requirements. As required by ORS 279C.520(2), the Project Company and Subcontractors shall give notice in writing to employees either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Project Company or Subcontractor may require the employees to work.

SECTION 11.10. OTHER LABOR REQUIREMENTS.

(A) Prohibition of Discriminatory Wage Rates Based on Sex. As required by ORS 279C.520(1)(b), the Project Company shall comply with the prohibition set forth in ORS 652.220. Compliance is a material element of this Project Agreement and a failure to comply shall constitute a Project Company Remediable Breach.

(B) Compensation Discussion Prohibitions Restricted. As required by ORS 279C.520(1)(c), the Project Company may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

SECTION 11.11. WORKERS' COMPENSATION.

As required by ORS 279C.530(2), the Project Company and all Subcontractors that employ subject workers who work under this Project Agreement in the State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such entity is exempt under ORS 656.126.

SECTION 11.12. EMPLOYEE HEALTH REQUIREMENTS.

(A) Employee Drug Testing Program. As required by ORS 279C.505(2), the Project Company shall, upon request, demonstrate that each Project Contractor has an employee drug testing program in place.

(B) Payment of Medical Care. As required by ORS 279C.530(1), the Project Company shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Project Company, of all sums that the Project Company agrees to pay for the services and all moneys and sums that the Project Company collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

ARTICLE 12

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 12.1. INSURANCE.

(A) Required Insurance. At all times during the Design-Build Period and the Operating Period, as applicable, the Project Company shall obtain or cause to be obtained, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

(B) Project Contractors and Subcontractors. The Project Company shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Project Company and the County shall comply promptly with the requirements of all insurers pertaining to the Project Site and the Project under any policy of Required Insurance to which such is a named insured, a co-insured, or an additional insured party. Neither party to this Project Agreement shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or the reduction of coverage under any policy of Required Insurance to which such party is an insured in accordance with Appendix 10 (Insurance Requirements).

(D) Failure to Provide Insurance Coverage. If the Project Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, or if the Project Company fails to provide evidence of Required Insurance to the County in accordance with Appendix 10 (Insurance Requirements), the County may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer, and upon such payment by the County, the amount thereof shall be immediately reimbursable to the County by the Project Company. Subject to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third-Party Liability), the failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses intended to be insured thereby, be a satisfaction of any Project Company liability under this Project Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

(E) Reductions for Insurance Proceeds and Insurance Receivables. Whenever this Project Agreement obligates the County to pay any amount to the Project Company in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Project Company under the Required Insurance, the amount which the County is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which the Project Company recovers or would have been entitled to recover if it had complied with the requirements of this Project Agreement or any policy of Required Insurance.

(F) Property Insurance Proceeds. Insurance Proceeds available from any policy of Required Insurance relating to property shall be deposited, held and applied as provided in subsection 14.1(E) (Insurance Trust Account) and subsection 14.1(F) (Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration).

SECTION 12.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) Protection. The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to the County and the insurers, immediately upon obtaining knowledge thereof, any damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to the County. The Project Company shall also submit to the County within 24 hours of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, claim adjuster or Governmental Body.

(B) Repair of Property. The Project Company shall promptly repair or replace all property owned by the County or any other public or private owner that is damaged by the Project Company or any Project Company Person in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

(C) Damage or Destruction from Uninsurable Force Majeure Events. Where damage or destruction of the Project is caused by the occurrence of an Uninsurable Force Majeure Event, the County shall be responsible for paying the cost of the Reinstatement Works (including debt service and expenses) in accordance with Section 14.2 (Uninsurable Force Majeure Events).

(D) Damage or Destruction from Other Relief Events. Where damage or destruction of the Project is caused by the occurrence of an Other Relief Event, the County shall be responsible for paying the cost of the Reinstatement Works (including debt service and expenses) in accordance with Section 15.3 (Other Relief Events).

(E) Damage or Destruction from Insurable Force Majeure Events. Where damage or destruction to the Project is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may, prior to the Termination Date, withdraw any Insurance Proceeds standing to the credit of the Insurance Trust Account, together with interest accrued thereon, from the Insurance Trust Account as required to enable it to comply with its obligations under Section 14.3 (Reinstatement Plan), and the parties shall comply with the signatory requirements governing the Insurance Trust Account to permit such payments to be made.

SECTION 12.3. PROJECT AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.

Except as provided in Section 22.2(C) (Required Termination Upon Total Constructive Loss Following the Occupancy Readiness Date) or otherwise as expressly provided herein or (with respect to the use of insurance proceeds) in the Lenders' Remedies Agreement, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Project Agreement or entitle the Project Company to surrender possession of the Project or to demand any increase in any amounts payable to the Project Company under this Project Agreement.

ARTICLE 13

RELIEF EVENT PROCEDURES

SECTION 13.1. RELIEF EVENTS GENERALLY.

(A) Extent of Relief Available to the Project Company. If a Relief Event occurs, the Project Company may seek relief from its obligations to perform the Contract Services and may seek extensions of time, may claim compensation, and may exercise a termination right under this Project Agreement, as and to the extent provided in this Article, Article 14 (Force Majeure Events), and Article 15 (Change in Law Events and Other Relief Events) and in accordance with Section 14.3 (Reinstatement Plan).

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Article on account of Relief Events shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 25.5 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Relief Events, to perform its obligations under this Project Agreement in compliance with Applicable Law.

SECTION 13.2. PROCEDURES UPON THE OCCURRENCE OF A RELIEF EVENT.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of a Relief Event, the Project Company shall give notice of the occurrence of the Relief Event to the County as soon as practicable, and in any event within 10 Business Days of the date the Project Company has knowledge that the Relief Event has caused or is likely to cause an entitlement under this Project Agreement. The Project Company's notice shall include a written report:

- (1) Describing the Relief Event and the cause thereof, to the extent known;
- (2) Stating the date on which the Relief Event began and its estimated duration;
- (3) Summarizing the consequences of the Relief Event and the expected impact on the performance of the Project Company's obligations under this Project Agreement; and
- (4) Indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company shall provide the County with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in subsection (A) of this Section. In particular, the Project Company shall notify the County as soon as the Relief Event has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Project Company shall submit to the County a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in subsection (A) of this Section. If the specific relief cannot reasonably be ascertained within such 30-day period,

the Project Company at the conclusion of such 30-day period shall furnish a further notice to the County establishing the date by which the appropriate relief is expected to be definitively requested and the basis for such extension. An additional notice shall be provided at the end of each 30-day period for the duration of the event. The Project Company shall then specify the specific requested relief by the date established in the final notice delivered following the conclusion of the event.

(D) Delay in Notification. If any Relief Event notice or any required information is submitted by the Project Company to the County after the dates required under this Section, then the Project Company shall be entitled to relief provided due to the occurrence of the Relief Event except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Project Company may make multiple but not duplicative claims with respect to a Relief Event.

(F) Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of a Relief Event and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 25.5 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of a Relief Event, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Project Agreement.

(H) Project Company Information. The County shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert a Relief Event claim.

(I) County Response. Within 30 days after receipt of a relief request by the Project Company pursuant to subsection (C) of this Section, the County shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of a Relief Event shall be evidenced by a Contract Administration Memorandum, a Project Agreement Amendment or a Change Order, as applicable. Either party may refer any dispute to the Dispute Resolution Procedure.

ARTICLE 14

FORCE MAJEURE EVENTS

SECTION 14.1. INSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Insurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition with materials of like kind and quality and without deduction for depreciation at the time and place of loss, and in compliance with Applicable Law, and in accordance with the requirements of Section 14.3 (Reinstatement Plan).

(B) Schedule Relief. If an Insurable Force Majeure Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of the Insurable Force Majeure Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(C) Performance Relief. If an Insurable Force Majeure Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by the Insurable Force Majeure Event.

(D) No Compensation Relief. If an Insurable Force Majeure Event occurs, the Service Fee shall continue to be payable, but shall:

(1) Be adjusted as provided in subsection 16.2(B) (Service Fee During the Continuance of an Insurable Force Majeure Event); and

(2) Not be increased to account for any costs resulting from the occurrence of the Insurable Force Majeure Event, it being understood that the Project Company shall be obligated to comply with its obligations under subsection 14.1(A) of this Section and otherwise perform the Contract Services notwithstanding the insufficiency for any reason of any Insurance Proceeds.

(E) Insurance Trust Account. The parties shall cause an insurance trust account ("**Insurance Trust Account**") to be created and held pursuant to the terms of the Insurance Trust Agreement.

(F) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. Upon the occurrence of an Insurable Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in the Insurance Trust Account and applied to such repair, replacement or restoration purposes in accordance with the terms of this Project Agreement or released to the agent of the Senior Lender, as provided in Article 7 of the Lenders' Remedies Agreement and following the procedures set forth in the Insurance Trust Agreement.

(G) Insurance Deductibles and Exceedances. The Project Company shall be responsible for and bear all costs associated with insurance deductibles; provided, however, the County shall bear such costs with respect to any insurance required under Appendix 10 (Insurance Requirements) to the extent such costs result from County Fault. The Project Company shall be responsible for any claims exceeding policy limits and sublimits to the extent any such costs and claims result from an Insurable Force Majeure Event; provided, however, the County shall be responsible for any claims exceeding the policy sublimits in Section 1.1(c) (Builder's Risk) of Appendix 10 (Insurance Requirements) or Section 2.1(c) (Property) of Appendix 10 (Insurance Requirements).

(H) County Remedies and Termination Right. The failure of the Project Company to comply with its obligations under subsection (A) of this Section shall constitute a Project Company Remediable Breach which, if not remedied by the Project Company, shall entitle the County to exercise all of its remedies, including the right, by notice to the Project Company, to terminate this Project Agreement in accordance with subsection (A)(2) of Section 20.4 (County Termination Right).

SECTION 14.2. UNINSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Uninsurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction and in compliance with Applicable Law and in accordance with subsections (D) through (F) of this Section and Section 14.3 (Reinstatement Plan). The obligation of the Project Company to perform work (including under any Reinstatement Plan), as it pertains to Uninsurable Force Majeure Events occurring prior to the Occupancy Readiness Date, is conditioned on the availability of funds as provided in Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date), and the County shall make all payments relating to such work provided for in subsection (D) of this Section. Compensation with respect to work described in this subsection (including under a Reinstatement Plan), as it pertains to an Uninsurable Force Majeure Event occurring on and after the Occupancy Readiness Date, shall be paid by the County as provided for in subsection (D) of this Section.

(B) Schedule Relief. If an Uninsurable Force Majeure Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of an Uninsurable Force Majeure Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(C) Performance Relief. If an Uninsurable Force Majeure Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by the Uninsurable Force Majeure Event.

(D) Compensation Relief. If an Uninsurable Force Majeure Event occurs, the parties shall comply with their respective obligations under Section 7.11 (Design and

Construction Changes made Due to Relief Events Occurring Prior to the Occupancy Readiness Date) and Section 10.4 (Capital Modifications Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, and the County shall pay the Project Company:

(1) An amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder) or making the Capital Modification, as applicable, to the extent resulting from the Uninsurable Force Majeure Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost or other appropriate relief measures; provided, however, that if the Project Company finances such costs pursuant to Section 6.6 (Financing Capital Costs for which the County is Responsible), then in lieu of such direct payment the additional amount negotiated by the parties pursuant to Section 6.6 reflecting such costs and the related financing costs shall be payable as an Extraordinary Item pursuant to Section 16.6 (Extraordinary Items); and

(2) If the Uninsurable Force Majeure Event occurs prior to the Scheduled Occupancy Readiness Date, an amount equal to the amount of debt service payable with respect to the Senior Debt (including debt service on borrowings made to finance the Project that were intended to be repaid from the proceeds of the Occupancy Readiness Milestone Payment) from the Scheduled Occupancy Readiness Date without taking into account the extension of such date in accordance with subsection 8.7(C) (Extension for Relief Events) through the Scheduled Occupancy Readiness Date extended in accordance with subsection 8.7(C) upon the occurrence of the Uninsurable Force Majeure Event, which amount shall be invoiced by the Project Company for each month by the fifteenth day following the end of such month and paid by the County within 30 days of receipt of the invoice.

Such amounts shall be paid by the County to the Project Company separate from and in addition to the Service Fee, except as provided in item (D)(1) above. In addition, the Facilities Management Charge shall be reduced by an amount equal to Avoidable Costs, and increased by an amount necessary to compensate the Project Company for any increase in the cost of performing the Facilities Management Services to the extent resulting from the Uninsurable Force Majeure Event.

(E) Disaster Relief Funds. Upon the occurrence of an Uninsurable Force Majeure Event, the County shall promptly apply for and use all reasonable efforts to obtain any available State and federal disaster relief funds in order to repair, replace or rebuild the Project. The County shall deposit any such funds it receives into the Insurance Trust Account promptly upon receipt.

(F) County and Project Company Termination Rights. If (1) the Project is completely or substantially destroyed, or if an Uninsurable Force Majeure Event occurs and is continuing and persists, or its effects are continuing and persisting so as to render the New Courthouse, or a substantial part thereof, unusable, and (2) a period of 180 days expires during which (a) the County or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, (b) the parties have not agreed upon a scope, price and schedule for the Reinstatement Plan, as applicable, and (c) the County has not provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Reinstatement Plan will be available for such purposes in the amounts and on the schedule agreed upon by the parties, as contemplated by Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date) or Section 10.4 (Capital Modifications, Repairs

and Replacements Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, then either party may, by notice to the other party, terminate this Project Agreement, in which case the County shall pay compensation to the Project Company in accordance with Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination).

SECTION 14.3. REINSTATEMENT PLAN.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction, whether on account of an Insurable Force Majeure Event or an Uninsurable Force Majeure Event, that is likely to cost more than \$1,000,000 (Index-Linked), to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of having been provided access to the site of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued provision of the Facilities Management Services to other parts of the Project, provide the County with a draft plan (the “**Draft Reinstatement Plan**”) for the carrying out of the works necessary (the “**Reinstatement Works**”) to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under subsection (C) of this Section.

(B) No Reinstatement in Same Form. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, the County:

(1) Shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan; and

(2) If it has decided that the Project is not required to be reinstated in the same form as prior to the damage or destruction, will issue a preliminary Capital Modification instruction to that effect.

(C) Delivery of Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of the County’s comments, the Project Company shall deliver to the County a revised plan (the “**Reinstatement Plan**”) to reasonably take into account the comments received from the County and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works.

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Facilities Management Services to be fully provided);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under this Project Agreement and on the payment obligations of the Project Company under the Project Contracts, including in respect of life cycle requirements;

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and

(5) The impact of any Capital Modification requested by the County as part of the reinstatement.

Thereafter, unless the damage or destruction was caused by an Uninsurable Force Majeure Event and a party elects to terminate this Project Agreement in accordance with the provisions of Section 22.2 (Termination), the Project Company shall repair, replace or restore the Project, subject to Applicable Law and, if the Uninsurable Force Majeure Event occurred prior to the Occupancy Readiness Date, to Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date) or Section 10.4 (Capital Modifications, Repairs and Replacements Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable.

SECTION 14.4. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Sections 14.1 (Insurable Force Majeure Events) or 14.2 (Uninsurable Force Majeure Events) shall be made or done in compliance with the Design and Construction Requirements, subject to any agreement made between the County and the Project Company to revise the Design and Construction Requirements as they pertain to the replacement, repair or reconstruction work.

SECTION 14.5. AVAILABILITY OF INSURANCE FOR UNINSURABLE FORCE MAJEURE EVENTS.

(A) Additional Insurance. If during the Term insurance is or has become available for a risk constituting an Uninsurable Force Majeure Event, the County may itself, or may direct the Project Company to, take out and maintain insurance on terms which are in accordance with the requirements of this Project Agreement and have been accepted by the Project Company, acting reasonably. The premiums for such additional insurance coverage shall be paid, as applicable, by the County to the insurer or by an adjustment to the Service Fee pursuant to Section 16.6 (Extraordinary Items).

(B) Additionally Insured Risk to Constitute an Insurable Force Majeure Event; Qualifications. In any period during which additional insurance is maintained pursuant to subsection (A) of this Section, the occurrence of the additionally insured risk shall be deemed to constitute an Insurable Force Majeure Event for the purposes hereof, and any Insurance Proceeds available due to the occurrence thereof shall be applied as provided in subsection 14.1(F) (Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration).

SECTION 14.6. UNAVAILABILITY OF INSURANCE FOR INSURABLE FORCE MAJEURE EVENTS OR FOR THIRD-PARTY LIABILITY.

(A) Insurance Unavailability Event. If during the Term the Project Company demonstrates to the County that:

(1) Any Required Insurance is not available to the Project Company with any Qualified Insurer; or

(2) The insurance premium payable or the terms and conditions for maintaining such Required Insurance at the levels and on the terms required by this Project Agreement with any Qualified Insurer are at such cost that the County, owners or others having a substantially similar interest in property such as the Project are not insuring against such risk with Qualified Insurers, and such premium payable, terms or conditions do not arise, directly or indirectly from Project Company Fault or the fault of any Project Contractor;

then such circumstance shall constitute an **“Insurance Unavailability Event”** hereunder.

(B) Termination by County. If and for so long as an Insurance Unavailability Event has occurred and is continuing and subject to subsection (C)(2)(b) of this Section, the County may by notice to the Project Company terminate this Project Agreement, whereupon the Project Company shall be entitled to compensation upon termination as provided in Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination).

(C) Continuance of Project Agreement. During any period prior to the Termination Date in which an Insurance Unavailability Event has occurred and is continuing, and the County has not exercised its termination right under subsection (B) of this Section or the County has exercised such right but the Termination Date has not yet occurred:

(1) The Project Company will not be obligated to maintain such Required Insurance and references in this Project Agreement to such Required Insurance will be construed accordingly. During such period the Service Fee shall be adjusted in accordance with Section 16.6 (Extraordinary Items) by agreement of the parties, acting reasonably, to reflect any savings in the Project Company’s insurance cost as a result of the Project Company not having to provide such Required Insurance; and

(2) On the occurrence of a loss with respect to which an Insurance Unavailability Event has occurred, the County will either:

(a) pay to the Project Company an amount equal to the insurance proceeds that would have been payable directly to the Project Company or to the relevant third party (in the case of third-party liability insurance) under the relevant policy of Required Insurance in respect of the loss had the relevant insurance continued to be available and in effect, and this Project Agreement will continue; or

(b) by notice to the Project Company, terminate this Project Agreement, whereupon the Project Company shall be entitled to compensation on termination as provided in Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination) together with an amount equal to the insurance proceeds that would have been payable directly to the Project Company or to the relevant third party (in the case of third-party liability insurance) under the relevant policy of Required Insurance in respect of the loss had the relevant insurance continued to be available and in effect; provided, however, that the County shall not have the right to terminate this Project Agreement under this subsection if the Project Company (1) releases the County from all obligations under subsection (C)(2)(a) of this Section, and (2) deposits into the Insurance Trust Account an amount equal, in the reasonable opinion of the County, to the Insurance Proceeds, and all amounts in respect of deductibles and waiting periods, that would have been the responsibility of the Project Company under Appendix 10 (Insurance Requirements), that would have been payable in respect of such claim that was made had the relevant insurance continued to be available

and in effect, and such payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant insurance continued to be available and in effect.

(D) Subrogation. If the County makes any payment to the Project Company pursuant to subsection (C)(2)(a) of this Section, then the County, to the extent of the amount paid, will be subrogated to the Project Company's rights against any third party (other than Project Company Persons) in respect of the occurrence or claim as a result of which the payment was made.

(E) County Right to Purchase Replacement Insurance Coverage. During the continuance of any Insurance Unavailability Event, the County may, but shall not be obligated to, purchase insurance policies in the commercial insurance market providing the coverage intended to be provided by the Required Insurance that is unavailable due to an Insurance Unavailability Event. The Service Fee shall be adjusted in accordance with Section 16.6 (Extraordinary Items) to reflect a credit in the amount of the cost to the County of any such replacement insurance coverage, but only to the extent that such costs would be considered commercially reasonable without giving effect to the occurrence of the Insurance Unavailability Event. By way of example, if the premium on a policy of Required Insurance was costing the Project Company \$5 and it suddenly jumps to \$100 due to an Insurance Unavailability Event, the Service Fee reduction would be \$5, not \$100.

SECTION 14.7. CONTINUING ATTEMPTS TO OBTAIN INSURANCE.

During any period when an Insurance Unavailability Event has occurred and is continuing, the Project Company shall approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Required Insurance remains unavailable. At the request of the County, the Project Company shall provide a list of Qualified Insurers it has approached, and their responses relative to the availability or cost of such unavailable Required Insurance.

ARTICLE 15

CHANGE IN LAW EVENTS AND OTHER RELIEF EVENTS

SECTION 15.1. CHANGE IN LAW EVENTS.

(A) Schedule Relief. If a Change in Law Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of a Change in Law Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(B) Performance Relief. If a Change of Law Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by a Change in Law.

(C) Compensation Relief. If a Change in Law Event occurs, the parties shall comply with their respective obligations under Section 7.11 (Design and Construction Changes made Due to Relief Events Occurring Prior to the Occupancy Readiness Date) and Section 10.4 (Capital Modifications Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, and the County shall pay the Project Company:

(1) An amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder) or making the Capital Modification, as applicable, to the extent resulting from the Change in Law Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost or other appropriate relief measures; provided, however, that if the Project Company finances such costs pursuant to Section 6.6 (Financing Capital Costs for which the County is Responsible), then in lieu of such direct payment the additional amount negotiated by the parties pursuant to Section 6.6 reflecting such costs and the related financing costs shall be payable as an Extraordinary Item pursuant to Section 16.6 (Extraordinary Items);

(2) If the Change in Law Event occurs prior to the Scheduled Occupancy Readiness Date, an amount equal to the amount of debt service payable with respect to the Senior Debt (including debt service on borrowings made to finance the Project that were intended to be repaid from the proceeds of the Occupancy Readiness Milestone Payment) from the Scheduled Occupancy Readiness Date without taking into account the extension of such date in accordance with subsection 8.7(C) (Extension for Relief Events) through the Scheduled Occupancy Readiness Date extended in accordance with subsection 8.7(C) upon the occurrence of the Change in Law Event, which amount shall be invoiced by the Project Company for each month by the fifteenth day following the end of such month and paid by the County within 30 days of receipt of the invoice; and

(3) If the Change in Law Event occurs prior to the Scheduled Occupancy Readiness Date and results in a delay to the Scheduled Occupancy Readiness Date

exceeding 90 days (measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events), an amount equal to the amount necessary to place the Project Company in a no better or worse position than the Project Company would have been had the Change in Law Event not delayed the Scheduled Occupancy Readiness Date by more than 90 days, by ensuring that:

(a) the Project Company is left in a position which is no better or worse in relation to the expected Equity IRR by comparing (i) the Financial Model applicable the date immediately prior to the relevant Change in Law Event, adjusted solely to reflect a 90 day delay to the Scheduled Occupancy Readiness Date (without reference to the actual financial performance of the Project), to (ii) the Financial Model applicable the date immediately prior to the relevant Change in Law Event adjusted solely to reflect the actual total number of days of delay to the Scheduled Occupancy Readiness Date caused by the Change in Law Event (without reference to the actual performance of the Project and measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events); and

(b) the ability of the Project Company to comply with this Project Agreement is not adversely affected or improved as a consequence of the relevant Change in Law Event.

Such amounts shall be paid by the County to the Project Company separate from and in addition to the Service Fee, except as provided in item (C)(1) above. In addition, the Facilities Management Charge shall be reduced by an amount equal to Avoidable Costs, and increased by an amount necessary to compensate the Project Company for any increase in the cost of performing the Facilities Management Services to the extent resulting from the Change in Law Event.

SECTION 15.2. DISCRIMINATORY OR SPECIFIED CHANGES IN TAX LAW.

(A) Changes Prior to the Occupancy Readiness Date. If a Discriminatory Change in Tax Law or a Specified Change in Tax Law occurs prior to the Occupancy Readiness Date, the Project Company or the County shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Unit Holder (as the case may be) directly attributable thereto, such additional compensation to the Project Company shall be payable by the County directly to the Project Company pursuant to Section 7.22 (Payment Obligations of the County During the Design-Build Period).

(B) Changes On or After the Occupancy Readiness Date. If a Discriminatory Change in Tax Law or a Specified Change in Tax law occurs on or after the Occupancy Readiness Date, the Project Company or the County shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Unit Holder (as the case may be) directly attributable thereto.

SECTION 15.3. OTHER RELIEF EVENTS.

(A) Schedule Relief. If an Other Relief Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of an Other Relief Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(B) Performance Relief. If an Other Relief Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by an Other Relief Event.

(C) Compensation Relief. If an Other Relief Event occurs, the parties shall comply with their respective obligations under Section 7.11 (Design and Construction Changes made Due to Relief Events Occurring Prior to the Occupancy Readiness Date) and Section 10.4 (Capital Modifications Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, and the County shall pay the Project Company:

(1) An amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder) or making the Capital Modification, repair or replacement as applicable, to the extent resulting from the Other Relief Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost or other appropriate relief measures; provided, however, that if the Project Company finances such costs pursuant to Section 6.6 (Financing Capital Costs for which the County is Responsible), then in lieu of such direct payment the additional amount negotiated by the parties pursuant to Section 6.6 reflecting such costs and the related financing costs shall be payable as an Extraordinary Item pursuant to Section 16.6 (Extraordinary Items);

(2) If the Other Relief Event occurs prior to the Scheduled Occupancy Readiness Date, an amount equal to the amount of debt service payable with respect to the Senior Debt (including debt service on borrowings made to finance the Project that were intended to be repaid from the proceeds of the Occupancy Readiness Milestone Payment) from the Scheduled Occupancy Readiness Date without taking into account the extension of such date in accordance with subsection 8.7(C) (Extension for Relief Events) through the Scheduled Occupancy Readiness Date extended in accordance with subsection 8.7(C) upon the occurrence of the Other Relief Event, which amount shall be invoiced by the Project Company for each month by the fifteenth day following the end of such month and paid by the County within 30 days of receipt of the invoice; and

(3) If the Other Relief Event occurs prior to the Scheduled Occupancy Readiness Date and results in a delay to the Scheduled Occupancy Readiness Date exceeding 90 days (measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events), an amount equal to the amount necessary to place the Project Company in a no better or worse position than the Project Company would have been had the Other Relief Event not delayed the Scheduled Occupancy Readiness Date by more than 90 days, by ensuring that:

(a) the Project Company is left in a position which is no better or worse in relation to the expected Equity IRR by comparing (i) the Financial Model applicable the date immediately prior to the relevant Other Relief Event, adjusted solely to reflect a 90 day delay to the Scheduled Occupancy Readiness Date (without reference to the actual financial performance of the Project), to (ii) the

Financial Model applicable the date immediately prior to the relevant Other Relief Event adjusted solely to reflect the actual total number of days of delay to the Scheduled Occupancy Readiness Date caused by the Other Relief Event (without reference to the actual performance of the Project and measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events); and

(b) the ability of the Project Company to comply with this Project Agreement is not adversely affected or improved as a consequence of the relevant Other Relief Event.

Such amounts shall be paid by the County to the Project Company separate from and in addition to the Service Fee, except as provided in item (C)(1) above. In addition, the Facilities Management Charge shall be reduced by an amount equal to Avoidable Costs, and increased by an amount necessary to compensate the Project Company for any increase in the cost of performing the Facilities Management Services to the extent resulting from the Other Relief Event.

SECTION 15.4. TERMINATION FOR EXTENDED RELIEF EVENTS.

(A) Termination Right. If any Relief Event occurs, which causes one or both parties to be unable to comply with its or their material obligations with respect to all or a material portion of the Project and such event and inability continues for a continuous period of at least 180 days (in each case, an “**Extended Relief Event**”), then either party may in its discretion, subject to subsection (B) of this Section, at any time thereafter during which such Extended Relief Event is continuing, terminate this Project Agreement by written notice to the other party (“**Termination for an Extended Relief Event**”).

(B) County Right to Reject. If the Project Company delivers notice of termination to the County pursuant to subsection (A) of this Section, the County may, in its discretion, reject such notice by written response to the Project Company within 10 Business Days following receipt, in which case:

(1) If prior to the Occupancy Readiness Date, such Extended Relief Event shall be deemed to be an Other Relief Event from the date on which termination of this Project Agreement would have otherwise been effective;

(2) If on or after the Occupancy Readiness Date, the County shall pay to the Project Company beginning on the date on which termination of this Project Agreement would have otherwise been effective:

(a) Service Fee payments as if the Contract Services were being fully performed during such period pursuant to the requirements of this Project Agreement net of:

(i) actual avoidable costs of the Contract Services not being performed as a result of the occurrence of such Extended Relief Event;

(ii) the amount the Project Company is (or, pursuant to Section 12.1 (Insurance), should be) entitled to recover under any “business interruption” or “loss of business income” coverage under the Required Insurance as a direct result of the occurrence of such Extended Relief Event; and

(iii) any Deductions the County was otherwise entitled to make pursuant to Appendix 11 (Deductions), but only to the extent the Project Company is not relieved from its obligation to pay Deductions under Article 14 (Force Majeure Events) or this Article; plus

(b) subject to Section 12.1 (Insurance), losses, costs and expenses reasonably incurred by the Project Company as a direct result of any damage or delay (including demobilization and remobilization costs) resulting from such Extended Relief Event;

(3) The Project Company shall remain responsible for the continuation of the Contract Services to the extent not relieved of its obligations under Article 13 (Relief Event Procedures) or as a result of the Extended Relief Event; and

(4) The County shall have the continued right to terminate this Project Agreement pursuant to this Section following any rejection of the Project Company's notice of termination.

ARTICLE 16

SERVICE FEE AND OTHER PAYMENTS

SECTION 16.1. SERVICE FEE GENERALLY.

(A) Service Fee Payment Obligation. From and after the Occupancy Readiness Date and through the Termination Date, except as provided in subsection (B) of this Section, the County shall pay the Service Fee to the Project Company as compensation for the Project Company's performance of the Contract Services.

(B) Service Fee Payments Where Occupancy Readiness Date Occurs Prior to Scheduled Occupancy Readiness Date. In the event the Occupancy Readiness Date occurs prior to the Scheduled Occupancy Readiness Date, except as may be otherwise agreed to by the parties in accordance with Section 8.10 (County Right of Occupancy), (1) the County shall have no obligation to pay the Service Fee and no right to occupy the Project during the period between the Occupancy Readiness Date and the Scheduled Occupancy Readiness Date, and (2) the Project Company shall have no obligation to provide the Facilities Management Services.

(C) Limitation on Payments. Other than the payments and compensation amounts expressly provided for herein, the Project Company shall have no right to any further payment from the County in connection with the Contract Services or otherwise in connection with the Project.

SECTION 16.2. SERVICE FEE FORMULA.

(A) Generally. Except as provided in subsection (B) of this Section, the Service Fee shall be calculated in accordance with the following formula:

$$SF = CC + FMO + FMR - DC \pm EI$$

Where,

SF = Service Fee

CC = Capital Charge

FMO = Facilities Management Charge – Ordinary O&M Component

FMR = Facilities Management Charge – Renewal Component

DC = Deductions Credit

EI = Extraordinary Items

(B) Service Fee Payable During the Continuance of an Insurable Force Majeure Event. If an Insurable Force Majeure Event occurs, then the Service Fee payable upon and during the continuance of the Insurable Force Majeure Event (determined as appropriate for each Billing Period) shall be the sum of (1) an amount equal to debt service payable by the Project Company with respect to the Senior Debt during the Billing Period (or if debt service is payable by the Project Company on a semi-annual basis, an amount for each Billing Period equal to one-sixth of the semi-annual debt service payment), and (2) the Facilities Management Charge, abated for the Billing Period in the proportion that the untenable area of the New Courthouse bears to the total area of the New Courthouse (each measured on a square footage basis). An area shall be considered untenable if the Insurable Force Majeure Event causes the area to

be out of compliance with the Availability Conditions, as set forth in Appendix 11 (Deductions). During the continuance of the Insurable Force Majeure Event, Deductions shall continue to be imposed with respect to the tenantable area, but not with respect to the untenable area.

SECTION 16.3. CAPITAL CHARGE.

The Capital Charge (the “**Capital Charge**”) shall be \$[_____], which amount shall be fixed for the Term, and shall not be Index-Linked. **[NOTE TO PROPOSERS: This paragraph will be used in the expected event of a simultaneous commercial and financial close. The Capital Charge amount to be inserted here will be the amount proposed in Proposal Form 18 of the Proposal, as adjusted as provided in Sections 11 (Revision of Capital Charge Prior to the Financial Close Date) and 12 (Capital Charge Update Protocol) of Appendix 3 (Financial Close Procedures and Conditions.)]**

The Capital Charge (the “**Capital Charge**”) shall be [\$_____], which amount shall be adjusted on the Financial Close Date as and to the extent provided in this Section, shall thereafter be fixed for the Term and shall not be Index-Linked. The Capital Charge shall be adjusted on the Financial Close Date as provided in Section 11 (Revision of the Capital Charge Prior to the Financial Close Date) of Appendix 3 (Financial Close Procedures and Conditions) and Section 12 (Capital Charge Update Protocol) of Appendix 3. The parties shall execute a Contract Administration Memorandum on the Financial Close Date reflecting the effect of any such adjustments as of the Financial Close Date. **[NOTE TO PROPOSERS: This paragraph will be used in the unexpected event of a commercial close and a financial close which are not simultaneous. The Capital Charge amount to be inserted here will be the amount proposed in Proposal Form 18 of the Proposal. On the Financial Close Date, the amount will be adjusted as described in this paragraph.]**

SECTION 16.4. FACILITIES MANAGEMENT CHARGE.

The Facilities Management Charge consists of two components: (a) the Ordinary O&M Component, and (b) the Renewal Component.

(A) Ordinary O&M Component. The Ordinary O&M Component of the Facilities Management Charge for the Contract Year ending June 30, 2023 shall be \$[_____]. **[NOTE TO PROPOSERS: The Ordinary O&M Component of the Facilities Management Charge proposed in Proposal Form 19 of the Proposal will be inserted here.]** The Ordinary O&M Component shall be adjusted annually (commencing on July 1, 2023) by utilizing the inflation indices (as identified and weighted below) and multiplying \$[_____] by such inflation indices for the immediately preceding April and dividing by the applicable inflation indices as they existed on April 2022.

Ordinary O&M Component Inflation Index	April 2022 Inflation Index Value	Percentage of Ordinary O&M Component to be Escalated by Such Inflation Index

[NOTE TO PROPOSERS: The proposed indexation of the Ordinary O&M Component of the Facilities Management Charge as indicated in Proposal Form 20 of the Proposal will be inserted here.]

(B) Renewal Component. The Renewal Component of the Facilities Management Charge in any given Billing Period shall be as provided in Appendix 19 (Facilities Management Charge – Renewal Component Payment Schedule). The Renewal Component values set forth in Appendix 19 shall be adjusted annually (commencing on July 1, 2023) by utilizing the inflation indices (as identified and weighted below) and multiplying the applicable values set forth in Appendix 19 to be paid in such Contract Year by such inflation indices for the immediately preceding April and dividing by the applicable inflation indices as they existed on April 2022.

Renewal Component Inflation Index	April 2022 Inflation Index Value	Percentage of Renewal Component to be Escalated by Such Inflation Index

[NOTE TO PROPOSERS: The proposed indexation of the Renewal Component of the Facilities Management Charge as indicated in Proposal Form 20 of the Proposal will be inserted here.]

SECTION 16.5. DEDUCTIONS CREDIT.

The Deductions Credit shall be the sum of all Deductions imposed pursuant to Appendix 11 (Deductions) hereunder. Examples of the calculation of Deductions are included in Appendix 12 (Example Calculations of Deductions from Service Fee).

SECTION 16.6. EXTRAORDINARY ITEMS.

The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the net amount of the following items (each an **“Extraordinary Item”** hereunder):

- (1) Any amount payable by the Project Company to the County under subsection 4.5(B) (Replacement of Certain Key Individuals Prior to the Occupancy Readiness Date; Liquidated Damages);
- (2) Any adjustments reflecting the County’s share of any Refinancing Gain payable under Section 6.5 (Refinancing);
- (3) Any amount payable by the County on account of reasonable out-of-pocket expenses incurred by the Project Company in seeking such financing contemplated by subsection 6.6(B) (Project Company Financing);
- (4) Any payment relating to Hazardous Substances to be made by or to the County pursuant to subsection 7.5(E) (Hazardous Substances Generator, Operator, Arranger and Transporter Status);
- (5) Any amount payable by the County on account of a County-directed Design-Requirement Charge which is chargeable to the County hereunder pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction), net of any Avoidable Costs incurred by the Project Company that would have been saved

or avoided if the Project Company had acted reasonably and in accordance with this Project Agreement;

(6) Any amount payable by the Project Company to the County under Section 7.21 (LEED BD+C Gold Certification) on account of a failure to achieve LEED BD+C Gold Certification by the time required;

(7) Any adjustment to the Service Fee resulting from Vandalism pursuant to subsection 9.5(B) (Vandalism);

(8) Any adjustment to the Service Fee resulting from a Capital Modification, from a repair or replacement, or from a Facilities Management Services Change under the provisions of Article 10 (Capital Modifications and Facilities Management Services Changes);

(9) Any adjustment reflecting additional insurance costs incurred pursuant to Section 14.5 (Availability of Insurance for Uninsurable Force Majeure Events);

(10) Any adjustment reflecting savings in insurance costs, or additional insurance costs paid by the County for replacement insurance coverage, pursuant to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third Party-Liability);

(11) Any amount payable by the County for increased design, construction, operation, maintenance, repair, replacement or other costs incurred on account of a Relief Event pursuant to Article 14 (Force Majeure Events), and Article 15 (Change in Law Events and Other Relief Events);

(12) Any amounts the County is entitled to set off as provided in Section 16.13 (County's Right of Set Off);

(13) Avoidable Costs achieved by the Project Company in mitigating the effects of the occurrence of a Relief Event;

(14) Any adjustment resulting from the exercise by the County of its rights under Article 19 (Remedies of the Parties and County Step-In Rights);

(15) Any indemnification payments owed by the Project Company pursuant to Section 24.1 (Project Company's Obligation to Indemnify) or any other provision hereof;

(16) As required by ORS 279C.515(1), any amount paid by the County in the event (a) the Project Company fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Project Company or a Subcontractor in connection with this Project Agreement as the claim becomes due, and (b) the proper officer that represents the County elects to pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against the Service Fee; and

(17) Any other payment or increase or reduction in the Service Fee provided for under any other provision of this Project Agreement.

SECTION 16.7. BILLING AND PAYMENT.

(A) Installments. The County shall pay the Service Fee in monthly installments in an amount equal to the sum of:

- (1) One-twelfth of the annual Capital Charge;
- (2) One-twelfth of the annual Ordinary O&M Component of the Facilities Management Charge;
- (3) The applicable Renewal Component of the Facilities Management Charge, if any for the corresponding Billing Period, as set forth in Appendix 19 (Facilities Management Charge – Renewal Component Payment Schedule)
- (4) Any Deductions Credit;
- (5) Any Extraordinary Items that are determined on a monthly basis; and
- (6) Any adjustments, plus or minus, to reconcile any prior Service Fee payments that may reasonably be made within the course of the Contract Year.

Any overpayment from prior monthly periods shall be credited against the next monthly Service Fee payment.

(B) Invoicing and Service Fee Payment Due Date. The Project Company shall provide the County with an invoice for each Billing Period by the fifteenth day following the end of such Billing Period. The invoice shall set forth the amount of the Service Fee due with respect to such Billing Period and, in addition, shall state the annual Service Fee and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such invoice and such other documentation or information as the County may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Project Agreement. The County shall pay the invoice within 30 days of receipt.

(C) Late Service Fee Payments. In the event the County fails to make a Service Fee Payment when due under subsection (B) of this Section:

- (1) Interest shall accrue thereon, as and to the extent provided in Section 16.15 (Interest on Overdue Amounts); and
- (2) If such failure continues for the period described in subsection 21.1(2) (County Events of Default), then such failure shall constitute a County Event of Default as provided in such subsection and the Project Company shall have the right to terminate this Project Agreement as provided in subsection 22.2(B) (Project Company Termination Rights).

SECTION 16.8. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Annual Service Fee Estimate for County Budgeting Purposes. For County budgeting purposes, no later than 90 days preceding each Contract Year (beginning with the

Contract Year in which Occupancy Readiness occurs) the Project Company shall provide to the County a written statement setting forth for such Contract Year (i) its reasonable estimate of the aggregate Service Fee, each component thereof, (ii) the inflation indices used to escalate the Ordinary O&M Component and Renewal Component of the Facilities Management Charge pursuant to subsection 16.4(A) (Ordinary O&M Component) and subsection 16.4(B) (Renewal Component), respectively; and (iii) the Inflation Index. The estimate shall not be binding on the Project Company but, upon concurrence by the County and finalization of how the Service Fee will be Index-Linked for such Contract Year, shall establish the basis for Billing Period invoicing for such Contract Year, subject to annual settlement pursuant to this Article.

SECTION 16.9. ANNUAL SETTLEMENT.

Within 60 days after the end of each Contract Year during the Facilities Management Period, the Project Company shall provide to the County an annual settlement statement (the “**Annual Settlement Statement**”) setting forth (A) the actual aggregate Service Fee payable with respect to such Contract Year; (B) a reconciliation of such amount with the amounts actually paid by the County with respect to such Contract Year (taking into account intra-Contract Year reconciliations pursuant to Section 16.7(A)(5) (Installments)); and (C) as required by ORS 305.385, a written certification, under penalty of perjury, that the Project Company is to the best of its knowledge not in violation of any tax laws described in ORS 305.380. The County or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Project Company shall file with the County an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 16.10. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

There shall be no adjustment of the Service Fee or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

(1) Except as provided in Section 15.1 (Change in Law Events) with respect to a Discriminatory Change in Tax Law, any change in any provision of Income Tax law to take effect after the Effective Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Service Fee or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Project Agreement or any Material Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person,

(2) Any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,

(3) Any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or

(4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

SECTION 16.11. NEGOTIATED LUMP SUM PRICING OF ADDITIONAL WORK.

This Project Agreement obligates the County to pay for certain additional costs resulting from Relief Events and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the County will pay for such costs on a lump sum basis, and that the lump sum price will be negotiated in advance of the Project Company's performance of the work. For example, if a Change in Law Event occurs, as required under Article 15 (Change in Law Events and Other Relief Events), the parties will assess the impact of the Change in Law Event, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Project Company shall furnish the County with all information reasonably required by the County regarding the Project Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Project Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Project Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 16.12. COST SUBSTANTIATION OF ADDITIONAL WORK NOT SUBJECT TO LUMP SUM PRICE NEGOTIATION.

(A) Cost Substantiation Generally. The Project Company shall provide a Cost Substantiation Certificate in accordance with subsection (C) of this Section for (1) costs paid from the County Moveable FF&E Allowance Account, (2) costs paid from the State Moveable FF&E Allowance Account, and (3) any additional costs for which the County is financially responsible hereunder which have not been subject to lump sum price negotiation. In incurring costs which are or may be subject to Cost Substantiation, the Project Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of \$50,000 (Index-Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and the County's potential obligation to pay for it; provided, however, that during the Design-Build Period, the Project Company shall not be required to utilize competitive practices for additional work self-performed by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Project Company is not required to utilize competitive practices, it shall instead demonstrate to the County that the costs for which the County is financially responsible are commercially reasonable.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Project Company. Examples of costs which require substantiation include:

(1) Work done on an emergency basis to respond to a Relief Event, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and

(2) Work done by the Project Company under Article 22 (Termination) upon the expiration or termination of this Project Agreement, to the extent such costs are the responsibility of the County under Article 22 (Termination).

Cost Substantiation shall also be required where the parties agree that the Project Company shall perform additional work on a guaranteed maximum price basis, subject to the limitations set forth in subsection (E) of this Section.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Project Agreement under which such cost is chargeable to the County, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Project Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid. Such documentation shall be in a format reasonably acceptable to the County and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

- (1) The amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes;
- (2) A statement of the equipment used and any rental payable therefor;
- (3) Employee hours, duties, wages, salaries, benefits and assessments; and
- (4) Profit, administration costs, bonds, insurance, Taxes, premiums overhead and other expenses.

The Project Company's entitlement to reimbursement for the costs of self-performed work shall be subject to Cost Substantiation and the limitations set forth in this Section.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the County, with the request for reimbursement of such costs.

(E) Mark-Ups. For any self-performed work requiring Cost Substantiation, the Project Company shall be entitled to a mark-up of 15% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 5% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors.

SECTION 16.13. COUNTY'S RIGHT OF SET OFF.

Once the County determines that any credits, payments, reimbursements or liquidated damages are owed to the County in accordance with the terms and conditions of this Project Agreement and have not been reflected in any previously submitted Billing Statement, the County shall notify the Project Company and the Project Company shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to the County under this Article. In the event the Project Company does not include such amounts in the next Billing Period invoice provided to the County in accordance with this Section, the County shall have the right to offset the Service Fee otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing,

the County shall have the right to offset the Service Fee otherwise payable to the Project Company for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to the County under this Project Agreement.

SECTION 16.14. BILLING STATEMENT DISPUTES.

If the County disputes in good faith any amount billed by the Project Company, the County shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to the County for the dispute. When any billing dispute is finally resolved, if payment by the County to the Project Company of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, with interest as provided in Section 16.15 (Interest on Overdue Amounts).

SECTION 16.15. INTEREST ON OVERDUE AMOUNTS.

If payment of any amount payable by either party under this Project Agreement is not made when due (including the Occupancy Readiness Milestone Payment and any Termination Amount), then interest shall be payable on such overdue amount at the rate of interest specified in ORS 279C.570(2) (the “**Overdue Rate**”). The party to whom payment is owed and overdue shall notify the other party at least monthly of the overdue amount.

SECTION 16.16. COUNTY APPROPRIATION OF PAYMENTS.

(A) All County Payment Obligations Subject to Appropriation. This Project Agreement is expressly subject to the debt and liability limitation on Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with Applicable Law are deemed inoperative to that extent.

(B) County Obligation to Include the Service Fee in Annual Budget Request. The County shall prepare, before the end of each fiscal year, its annual budget request to include funds necessary to make the full anticipated Service Fee payments to the Project Company for the coming fiscal year under this Project Agreement. The County shall use reasonable efforts to obtain the authorization and appropriation of the full anticipated Service Fee before the beginning of the coming fiscal year. If the County becomes aware that it will not obtain appropriations for any fiscal year sufficient, in combination with any other available funds, to pay all compensation owing to the Project Company under this Project Agreement for such fiscal year, the County shall promptly notify the Project Company regarding the anticipated shortfall, and shall consult with the Project Company to discuss the situation and possible solutions.

ARTICLE 17

FINANCIAL MODEL

SECTION 17.1. FINANCIAL MODEL.

(A) Access to the Financial Model. The following terms shall govern the placement, storage and access to the Financial Model:

(1) The Financial Model shall be posted by the Project Company on www.[_____] .com, or a similar secure website if www.[_____] .com is no longer available (the “**Secure Website**”), in a password-protected manner prior to or on the Effective Date. The Project Company shall also deliver to the County, prior to or on the Effective Date, (i) the web address to the Secure Website and (ii) access instructions for the Secure Website. To assist in confirming the validity of the Financial Model posted to the Secure Website, a printout summary of the Financial Model is attached hereto as Appendix 17 (Financial Model Summary). **[NOTE TO PROPOSERS: It is currently anticipated the Selected Proposer will host the secure website.]**

(2) The Project Company shall ensure that at all times during the Term, the Financial Model is available to the parties on the Secure Website. The Project Company shall at all times have exclusive responsibility for maintaining the Secure Website and providing any instruction to the Secure Website operator.

(3) The Secure Website shall allow access to the Financial Model to the persons designated from time to time by each of the parties, who shall obtain access to the Secure Website by way of an individual password and be provided a separate password to the Financial Model, which shall be provided by the Secure Website operator. The County and the Project Company shall not designate more than five persons at any time to have access to the Secure Website and each party shall notify the other in writing of any such change in designees.

(4) The Secure Website shall issue notifications to all designated users of the County and Project Company anytime a change, deletion or addition is made to the Secure Website.

(5) Access to the Secure Website shall include the ability of the County to download the Financial Model in its entirety.

(6) If requested by the County, or if necessary due to no Secure Website being available, the Project Company shall provide a flash drive (or similar format as reasonably requested by the County) containing the Financial Model. Any such physical copy shall held by the County in a location mutually agreed upon by the parties. The Project Company may access the Financial Model at such location between 8:00 AM and 5:00 PM on any Business Day, upon receipt of 24-hour advanced written notice from the Project Company between 8:00 AM and 5:00 PM on a Business Day or upon 48-hour advanced written notice at a time other than regular business hours.

(B) Liability and Indemnification. The parties agree that the County bears no responsibility in the event that the Secure Website is hacked or illegitimately accessed by any means, including misuse of any login credentials. The Project Company agrees to indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company’s Obligation to Indemnify) from and against all Loss-and-Expense arising from any claims relating to the Secure Website.

(C) Risk of Errors or Omissions. The Project Company shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation from or other redress against the County in relation to any loss or damage that it suffers in consequence of such error or omission.

(D) No Guaranteed Return. In no event shall the agreement of the parties to establish and maintain the Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

(E) Confidential Information. The Financial Model shall be treated as Confidential Information in accordance with Section 25.12 (Confidentiality).

SECTION 17.2. FINANCIAL MODEL UPDATES.

(A) Updates. The Financial Model shall only be updated in the following circumstances:

(1) In connection with a Qualifying Refinancing in accordance with Section 6.5 (Refinancing);

(2) In connection with certain Change in Law Events and Other Relief Events which delay the Scheduled Occupancy Readiness Date by more than 90 days, as further described in Section 15.1 (Change in Law Events) and Section 15.3 (Other Relief Events); and

(3) As otherwise required from time to time, to reflect changes as required by this Project Agreement, upon agreement of both parties.

The Financial Model update shall only incorporate (a) changes to revenues and expenses that arise directly from the circumstances described above, and (b) consequential changes to the Senior Debt draw down schedule, funding and release of reserves, financing costs, debt service profile, equity draw down schedule, and the Project Company's profile of Distributions. The Financial Model update shall not (i) generally update projections through the end of the Term based on current market conditions, or (ii) incorporate information or assumptions based on the Project Company's actual financial performance, except by mutual agreement as set forth in Section 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. Following approval by the County, the Financial Model update shall become the Financial Model and shall be attached to this Project Agreement.

(B) Financial Model Updates and Audit Reports on the Secure Website. Any update to the Financial Model shall be (i) uploaded to the same Secure Website as the prior version of the Financial Model, (ii) clearly labeled with the date of the update, and (iii) uploaded to the Secure Website within two Business Days of finalization of any update to the Financial Model. In addition, any Financial Model audit shall be uploaded to the Secure Website concurrently with the applicable Financial Model update.

(C) Financial Model Audits. Any Financial Model update required under subsection (A) of this Section shall be audited by an independent audit firm, and the Project Company shall deliver a copy of the firm's audit and opinion to the County prior to such Financial Model update becoming effective under this Project Agreement. In such a case, the Project Company shall solely bear the cost of the audit.

(D) Project Company Preparation. The Project Company shall prepare the Financial Model updates and shall provide the County with each Financial Model update and a complete set of the updated and revised assumptions, and other data that form a part of the Financial Model as updated, including updated and revised projections and calculations with respect to revenues, expenses, the repayment of Senior Debt and Distributions.

(E) Access and Challenges. The County shall have the right at all times to gain access, on an open book basis, to the Financial Model and each Financial Model update and the set of updated and revised assumptions and other data that form part of each such model. The County shall have the right to challenge the validity, accuracy or reasonableness of any Financial Model update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Financial Model version that has not been challenged shall remain in effect pending the outcome of the challenge or until a new Financial Model update is issued and unchallenged.

(F) Changes to Financial Model Formulas. In no event shall the Financial Model formulas be changed except with the prior written agreement of both parties.

(G) County Audit. Prior to making any use of the output of the Financial Model, the County may, at its own expense, review and audit the Financial Model and all amendments and updates thereto prepared by the Project Company. The Project Company shall provide such information as is reasonably required by the County to conduct such audit on an annual basis and as otherwise required from time to time.

ARTICLE 18

DISPUTE RESOLUTION

SECTION 18.1. FORUM FOR DISPUTE RESOLUTION.

The Project Company and the County each agree that the exclusive venue for all Legal Proceedings related to this Project Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be the appropriate federal or state court located within the State, and no other court. The parties further agree that the dispute resolution procedures under this Article exclusively govern claims under this Project Agreement.

SECTION 18.2. INFORMAL NEGOTIATIONS TO RESOLVE CONTRACT SERVICES DISPUTES.

Representatives of the County and the Project Company with day-to-day involvement in the administration of this Project Agreement and the performance of the Contract Services shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning the Contract Services to be performed under this Project Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation, and the parties shall meet to attempt to address and resolve the dispute no later than five Business Days following receipt of such information. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Project Agreement. At the County's request, the Project Company shall involve senior representatives of any of its Subcontractors in such negotiations. If a dispute is not resolved through such informal negotiations within 15 Business Days of the first meeting of the parties, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation in accordance with Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings).

SECTION 18.3. NON-BINDING MEDIATION GENERALLY; JUDICIAL LEGAL PROCEEDINGS.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Project Agreement, whether technical or otherwise. Except as provided in Section 18.5 (Non-Binding Mediation of Certain Technical Disputes During the Facilities Management Period), the non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the County and the Project Company.

(B) Procedure. The Mediator shall be a professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Project Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Project Agreement by the other party or in respect of any dispute under this Project Agreement, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 18.4. ROLE AND DECISIONS OF THE INDEPENDENT BUILDING EXPERT DURING THE DESIGN-BUILD PERIOD.

The parties acknowledge and agree that the Independent Building Expert shall serve as Mediator for any disputes arising during the Design-Build Period as and to the extent provided in Article 8 (Occupancy Readiness), and that the issuance of the Independent Building of the Occupancy Readiness Certificate shall be final and binding on the County and the Project Company with respect to the occurrence of the Occupancy Readiness Date as provided in subsection 8.5(D) (Effect of Issuance).

SECTION 18.5. NON-BINDING MEDIATION OF CERTAIN TECHNICAL DISPUTES DURING THE FACILITIES MANAGEMENT PERIOD.

(A) Obligation to Participate. In the event either party requests Non-Binding Mediation with respect to certain technical matters as described in subsection (B) of this Section, the non-requesting party shall participate in Non-Binding Mediation as and to the extent provided in Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings).

(B) Certain Technical Matters Defined. “Technical Matters”, for purposes of this Section, shall mean disputes arising under this Project Agreement relating to matters pertaining to the proper functioning or maintenance of the physical assets comprising the Project during the Facilities Management Period.

ARTICLE 19

REMEDIES OF THE PARTIES AND COUNTY STEP-IN RIGHTS

SECTION 19.1. REMEDIES FOR BREACH.

The parties agree, subject to all other terms and conditions of this Project Agreement, that in the event either party breaches this Project Agreement the other party may exercise any legal rights it may have under this Project Agreement and under Applicable Law. Neither party shall have the right to terminate this Project Agreement for breach except as provided or referred to in Section 20.4 (County Termination Right), Section 21.2 (Project Company Options Upon County Event of Default) or Article 22 (Termination). The foregoing is subject to the provisions of Section 19.2 (County Liquidated Damages Rights) and Section 19.11 (No Special, Consequential or Punitive Damages).

SECTION 19.2. COUNTY LIQUIDATED DAMAGES RIGHTS.

(A) County Liquidated Damages Rights Defined. The County's rights under this Project Agreement include the right (each of the following, a "**Liquidated Damages Right**"):

(1) To be paid \$2,000,000 in the event the Project Company fails to obtain LEED BD+C Gold Certification for the Project under the circumstances set forth in subsection 7.21(3) (Failure to Obtain Certification);

(2) To be paid \$50,000 per substitution of certain Key Individuals pursuant to subsection 4.5(B) (Replacement of Certain Key Individuals Prior to the Occupancy Readiness Date; Liquidated Damages);

(3) To retain the proceeds of a draw on the Financial Close Security under the circumstances set forth in Appendix 3 (Financial Close Procedures and Conditions); and

(4) To obtain the credit for the Project Company's loss of Service Fee payments arising from the delay in achieving Occupancy Readiness beyond the Scheduled Occupancy Readiness Date under the circumstances set forth in subsection 8.8 (Failure to Achieve Occupancy Readiness by the Scheduled Occupancy Readiness Date);

(5) To be paid \$3,000 per day under the circumstances set forth in subsection 8.10(B) (Early Occupancy); and

(6) To impose Deductions from the Service Fee under the circumstances set forth in Appendix 11 (Deductions).

The parties acknowledge and agree that the amounts referred to in items (1) through (5) above do not constitute Deductions.

(B) Sole Remedy; Exceptions. The parties acknowledge and agree that the County's actual damages or losses in each such circumstance are impossible to ascertain as of the Effective Date and that the amounts payable to, or to be retained by, the County through the exercise of any Liquidated Damages Right are a fair and reasonable estimate of fair compensation to the County for the intended circumstance, as applicable, shall constitute liquidated damages in each such circumstance and are not a penalty against the Project Company. The Project Company is expressly estopped from claiming, and waives any right to claim, that the exercise of any Liquidated Damages Right by the County amounts to a penalty or is not enforceable. The liquidated damages resulting from the County's exercise of a Liquidated Damages Right shall

constitute the only damages payable by the Project Company to the County to compensate the County for the damages or losses resulting from the specific circumstances contemplated by such Liquidated Damages Right, and the exercise of such right by the County shall constitute the County's sole remedy in respect of such circumstances; provided, however, that such limitation is subject and without prejudice to:

- (1) Any entitlement of the County to specific performance of any obligation of the Project Company under this Project Agreement;
- (2) Any right of the County under subsection 9.8(B) (Additional Project Company Obligations) to require the Project Company to take additional action upon the repeated or persistent occurrence of unexcused Unavailability Events or Performance Failures;
- (3) Any entitlement of the County to injunctive relief;
- (4) The County's step-in rights under this Article;
- (5) Any right of the County to declare the occurrence of a Project Company Remediable Breach under subsection 20.1(B) (Project Company Remediable Breach Defined), including a Remediable Breach resulting from the significant accumulation of Deductions based on the occurrence of Unavailability Events or Performance Failures;
- (6) The Project Company's indemnification obligations under Article 24 (Indemnification) in respect of third-party claims;
- (7) The determination of Project Company liability in respect of a termination for Project Company Event of Default made pursuant to Section 4.1 (Calculation) of Appendix 13 (Compensation on Termination); or
- (8) Any other express right of the County pursuant to this Project Agreement.

SECTION 19.3. COUNTY'S TEMPORARY STEP-IN RIGHTS DURING THE FACILITIES MANAGEMENT PERIOD.

If during the Facilities Management Period the County reasonably considers that a breach by the Project Company of any obligation under this Project Agreement or an event: (a) is likely to create an immediate and serious threat to the health or safety of any Project User, any property, the environment or the reputation, integrity of, or public confidence in, the Project and any related operations, or (b) is prejudicial to the ability to carry on County Activities to a material degree, then the County, acting reasonably, may either:

- (1) If it considers that there is sufficient time and that it is likely that the Project Company shall be willing and able to provide assistance, require the Project Company by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any terms or conditions of this Project Agreement, and the Project Company shall use all reasonable efforts to comply with the County's requirements as soon as reasonably practicable; or
- (2) If it considers there is not sufficient time, or that the Project Company is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Contract Services to the standards required by this Project Agreement (or as close as possible to those standards as the

circumstances permit). The County will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with the Project Company's performance of its obligations under this Project Agreement.

The Project Company shall ensure that all Project Contracts and Subcontracts permit the County to exercise its rights under this Article.

SECTION 19.4. COUNTY'S RECTIFICATION RIGHTS.

If the County gives notice to the Project Company under Section 19.3 (County's Temporary Step-In Rights During the Facilities Management Period) and the Project Company either:

(1) Does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the County to mitigate, rectify and protect against such circumstances then the County may, within a further five Business Days, accept or reject, acting reasonably; or

(2) Fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set forth in such notice or accepted alternate plan or within such time as the County, acting reasonably, will stipulate;

then the County may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Project Company to provide the relevant Contract Services, but only for so long as the circumstances referred to in Section 19.3 (County's Temporary Step-In Rights) subsist.

SECTION 19.5. NOTICE OF CAPITAL MODIFICATION.

The County shall notify the Project Company of any Capital Modification which the County intends to make pursuant to the exercise of the County's rights under Section 19.3 (County's Temporary Step-In Rights) or Section 19.4 (County's Rectification Rights) and provide the Project Company a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, the County will reasonably consider comments received in a timely manner from the Project Company on the proposed Capital Modification.

SECTION 19.6. NO EFFECT ON CONTRACT SERVICES.

The exercise by the County of any of its rights under this Article 19 (Remedies of the Parties and County Step-In Rights) shall not reduce or affect in any way the Project Company's responsibility hereunder to perform the Contract Services.

SECTION 19.7. ALLOCATION OF COSTS AND PROVISION OF RELIEF FOR COUNTY'S EXERCISE OF STEP-IN RIGHTS.

To the extent that any of the circumstances set forth in Section 19.3 (County's Temporary Step-In Rights) arise as a result of any breach by the Project Company of its obligations under this Project Agreement, then the Project Company shall pay the County the amount of all costs and expenses reasonably incurred by the County in exercising its rights under Section 19.3 (County's Temporary Step-In Rights) or Section 19.4 (County's Rectification Rights) and an additional mark-up of 20% of such costs and expenses in respect of indirect costs

and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, the County shall compensate the Project Company, and provide schedule and performance relief to the Project Company, for actions taken under Section 19.3 (County's Temporary Step-In Rights) or Section 19.4 (County's Rectification Rights) in the manner provided in Article 15 (Change in Law Events and Other Relief Events) as if such circumstances constituted a Relief Event affecting the Project Company.

SECTION 19.8. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Project Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 19.9. EXERCISE OF REMEDIES.

(A) Remedies Exclusive. The respective rights and remedies of the parties set out in this Project Agreement shall be the exclusive rights and remedies for breach of this Project Agreement, and the parties shall have no obligations or liabilities in connection with this Project Agreement and the Contract Services except as expressly set out in this Project Agreement.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 19.10. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE THIS PROJECT AGREEMENT.

Every right to claim compensation, indemnification or reimbursement under this Project Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Agreement. Notwithstanding any other provision of this Project Agreement to the contrary, neither party shall be entitled to recover compensation or make a claim under this Project Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Project Agreement.

SECTION 19.11. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Project Agreement, or any representation made in this Project Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory. This Section shall not limit the recovery of any such losses or damages under Article 24 (Indemnification) in respect of claims by third parties.

ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 20.1. PROJECT COMPANY EVENTS OF DEFAULT.

(A) Project Company Events of Default Defined. For the purposes of this Project Agreement, “**Project Company Event of Default**” means any of the following events or circumstances:

(1) The occurrence of a Project Company Remediable Breach that is not remedied in accordance with Section 20.3 (Project Company Remediable Breach Cure and Remedial Program);

(2) The occurrence of a Project Company Bankruptcy-Related Event;

(3) The Project Company abandons the Project by failing to perform a material part of the Contract Services for a continuous period in excess of 25 days where such failure is not consistent with the Project Schedule, as applicable, and is not expressly permitted or excused by the terms of this Project Agreement other than pursuant to its right to suspend performance or terminate in accordance with this Project Agreement, and the Project Company does not recommence such Contract Services within five days of notice from the County;

(4) The Project Company breaches subsection 4.6(F) (Tax Compliance), and has not cured such breach within 10 days of notice from the County;

(5) The Financial Close Date does not occur before the Financial Close Deadline as provided in Section 5.2 (Financial Close Deadline) and Appendix 3 (Financial Close Procedures and Conditions);

(6) The Occupancy Readiness Date does not occur on or before the Longstop Date as provided in Section 8.9 (Failure to Achieve Occupancy Readiness by the Longstop Date);

(7) The Project Company breaches Section 6.5 (Refinancing); or

(8) The Project Company breaches Section 23.1 (Limitation on Assignment by Project Company) or a Change in Control occurs which is prohibited by Section 23.2 (Limitation on Change in Control).

(B) Project Company Remediable Breach Defined. For purposes of this Project Agreement, “**Project Company Remediable Breach**” means any of the following breaches, unless the breach is due to the occurrence of a Relief Event:

(1) A failure by the Project Company to pay any amount due and owing to the County under this Project Agreement on the due date (which amount is not being disputed in good faith) where the Project Company has not remedied such failure to pay within 10 Business Days following notice from the County;

(2) A failure by the Project Company to maintain the policies of insurance required to be maintained by the Project Company under this Project Agreement and to comply with its obligation under Appendix 10 (Insurance Requirements) to name the County as an insured party;

(3) A failure by the Project Company to comply with its obligations under subsection 11.10(A) (Prohibition of Discriminatory Wage Rates Based on Sex).

(4) A failure by the Project Company to comply with its obligation under Section 14.1 (Insurable Force Majeure Events) to repair, replace or restore the Project following the occurrence of an Insurable Force Majeure Event;

(5) The Project Company fails to immediately take all appropriate action in the event that the County notifies the Project Company that a public health or safety emergency exists or is threatened due to the Project Company's failure to comply with the Contract Standards;

(6) Except as provided for in items (1) through (5) of this subsection (B), a breach, or series of breaches, by the Project Company of any agreement, covenant or undertaking made to the County or any representation or warranty made by the Project Company to the County in this Project Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(a) a material risk to the health or safety of the public;

(b) a risk of material liability of the County to third persons;

(c) an adverse effect on the performance of the Design-Build Work or the Facilities Management Services to the extent that the County is reasonably likely to be materially deprived of the benefit of this Project Agreement; or

(d) any material provision of this Project Agreement being unenforceable against the Project Company; or

(7) A material breach occurs (or series of breaches occur, including the occurrence of Unavailability Events or Performance Failures) which, due to their number, frequency or recurrence, demonstrates either a persistent inability, or a persistent unwillingness, of the Project Company to comply with its obligations under this Project Agreement.

(C) Project Company Bankruptcy-Related Event Defined. For purposes of this Project Agreement, "**Project Company Bankruptcy-Related Event**" means any of the following events:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Project Company and, if such appointment or process is commenced against the Project Company and is disputed by the Project Company, such appointment or process is not discontinued, withdrawn, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(2) Any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(3) The Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(4) The Project Company ceasing to carry on business.

SECTION 20.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify the County of the occurrence, and details, of any Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Company Event of Default, in either case promptly on the Project Company becoming aware of its occurrence.

SECTION 20.3. PROJECT COMPANY REMEDIABLE BREACH CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program. After the occurrence of a Project Company Remediable Breach and while it is subsisting, the County may serve a notice on the Project Company specifying in reasonable detail the type and nature of the Project Company Remediable Breach and:

(1) The Project Company shall remedy such Project Company Remediable Breach referred to in such notice (if it is continuing) within 20 Business Days of such notice; or

(2) If either the County (as set forth in its notice) or the Project Company reasonably considers that a Project Company Remediable Breach cannot reasonably be remedied within 20 Business Days of such notice, the Project Company shall deliver to the County within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Project Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Project Company Remediable Breach is proposed to be remedied.

(B) County Acceptance or Non-Acceptance. If the Project Company puts forward a program in accordance with subsection (A)(2) of this Section, the County will have 10 Business Days from receipt of the program within which to notify the Project Company that the County, acting reasonably, does not accept the program, failing which the County will be deemed to have accepted the program. If the County notifies the Project Company that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Company Remediable Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party to Non-Binding Mediation.

(C) Remediable Program Limited to Project Company Remediable Breaches. The Project Company Remediable Breach and remedial program provisions of this Section shall apply only to a Project Company Remediable Breach, and not to any other event or circumstance constituting a Project Company Event of Default.

SECTION 20.4. COUNTY TERMINATION RIGHT.

(A) Termination Right. If:

(1) Any Project Company Event of Default occurs (other than that with respect to a Project Company Remediable Breach as set forth in subsection 20.1(A)(1) (Project Company Events of Default Defined); or

(2) With respect to a Project Company Remediable Breach;

(a) a Project Company Remediable Breach is not remedied before the expiration of the period referred to in subsection 20.3(A)(1) (Notice and Remedy or Remedial Program) and no program has been put forward by the Project Company under subsection 20.3(A)(2) (Notice and Remedy or Remedial Program);

(b) the Project Company puts forward a program pursuant to subsection 20.3(A)(2) (Notice and Remedy or Remedial Program) which has been accepted by the County (including after agreement under Section 20.3 (Project Company Remediable Breach Cure and Remedial Program) to amendments to the program) and the Project Company fails to achieve any material element of the program or the end date for the program, as the case may be; or

(c) any program put forward by the Project Company pursuant to subsection 20.3(A)(2) (Notice and Remedy or Remedial Program), after good faith negotiations, is rejected by the County as not being reasonable;

then the County may (if the Project Company Event of Default continues unwaived and unremedied), subject to subsection 22.2(H) (Continued Performance) and the terms of the Lenders' Remedies Agreement, terminate this Project Agreement by notice to the Project Company. The right of the County to terminate this Project Agreement under this Section is in addition, and without prejudice, to any other right which the County may have in connection with the Project Company's non-compliance with this Project Agreement, including those set forth in Article 19 (Remedies of the Parties and County Step-In Rights).

(B) Relief Events Affecting Performance of Remedial Program. For the purposes of item (2)(b) of subsection (A) of this Section, if the Project Company's performance of the program is adversely affected by the occurrence of a Relief Event or a breach by the County of its obligations under this Project Agreement, then, subject to the Project Company complying with the mitigation and other requirements in this Project Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events.

(C) Lenders' Remedies Agreement. The rights of the County under this Section are subject to the terms of the Lenders' Remedies Agreement.

ARTICLE 21

COUNTY EVENTS OF DEFAULT

SECTION 21.1. COUNTY EVENTS OF DEFAULT.

For the purposes of this Project Agreement, “**County Event of Default**” means any of the following events or circumstances:

- (1) A failure by the County to pay the Occupancy Readiness Milestone Payment by the due date for the Occupancy Readiness Milestone Payment;
- (2) A failure by the County to pay the Service Fee within 5 days of the due date for the Service Fee;
- (3) A failure by the County to pay an amount due during the Design-Build Period as provided or referred to in Section 7.22 (Payment Obligations of the County During the Design-Build Period) within 5 days of the due date for such amount;
- (4) A failure by the County to pay the Termination Amount on the Termination Amount Due Date;
- (5) A failure by the County to pay any other amount due from the County to the Project Company hereunder within 5 days of the due date for such amount; or
- (6) Except as provided in subsections (1), (2), (3), (4) or (5) of this Section, a breach, or series of breaches, by the County of any term, covenant or undertaking to the Project Company or any representation or warranty made by the County to the Project Company in this Project Agreement being incorrect when made, which has a material and adverse effect on the Project Company.

SECTION 21.2. PROJECT COMPANY OPTIONS UPON COUNTY EVENT OF DEFAULT.

After the occurrence of a County Event of Default and while a County Event of Default is continuing, the Project Company may, at its option, serve notice on the County of the occurrence and specifying the details of such a County Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the County:

- (1) In the case of a County Event of Default under subsections 21.1(1),(2), (3), (4) or (5) within 30 days of such notice; or
- (2) In the case of a County Event of Default under subsection 21.1(6), within 30 days of such notice or within such longer period as is reasonably required for the County to rectify or remedy such County Event of Default as long as the County is diligently pursuing such rectification or remedy;

the Project Company may serve a further notice on the County either (i) suspending its performance of the Contract Services until the County rectifies or remedies such County Event of Default; or (ii) terminating this Project Agreement with immediate effect and, in the case of a County Event of Default under subsections 21.1(1), (2), (3), (4) or (5) within 30 days of such notice, the Project Company also may bring an action to enforce payment of the amount due.

ARTICLE 22

TERMINATION

SECTION 22.1. EXCLUSIVE RIGHTS OF TERMINATION.

(A) Termination Prior to Financial Close Date. Prior to the Financial Close Date, the parties' sole right to terminate this Project Agreement shall be as set forth in Appendix 3 (Financial Close Procedures and Conditions).

(B) Termination Subsequent to Financial Close Date. Subsequent to the Financial Close Date, the parties' sole right to terminate this Project Agreement shall be as set forth in this Article (other than subsection (A) of this Section).

(C) Exclusive Termination Rights. This Article, together with any other provisions of this Project Agreement expressly referred to in this Article and (subsequent to the Financial Close Date) the provisions of the Lender's Remedies Agreement, contain the entire and exclusive provisions and rights of the parties regarding termination of this Project Agreement, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Applicable Law; provided that termination of this Project Agreement shall not relieve the Project Company, insurer, surety or financial institution that provides security for performance hereunder of its obligation for claims arising prior to termination.

SECTION 22.2. TERMINATION.

(A) County Termination Rights. This Project Agreement may be terminated by the County prior to the Expiration Date:

(1) In its discretion and for its convenience at any time, by delivery of notice to the Project Company stating that the termination is for the convenience of the government (a "**Termination for Convenience**"), together with a written certification that the County has obtained the necessary legal authorization and approvals to issue County obligations and that the proceeds of such obligations will be in an amount sufficient to pay the applicable Termination Amount in full and in a timely manner, both of which must be delivered no less than 60 days prior to the intended Termination Date;

(2) In connection with a Project Company Event of Default, pursuant to Article 20 (Project Company Events of Default);

(3) In connection with an Uninsurable Force Majeure Event, pursuant to Section 14.2 (Uninsurable Force Majeure Events);

(4) In connection with the unavailability of Required Insurance for an Insurable Force Majeure Event or Third-Party Liability, pursuant to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third-Party Liability);

(5) In the event of a Termination by Court Ruling; or

(6) In connection with the occurrence and persistence of an Extended Relief Event pursuant to Section 15.4 (Termination for Extended Relief Events).

(B) Project Company Termination Rights. This Project Agreement may be terminated by the Project Company prior to the Expiration Date:

- (1) In connection with a County Event of Default, pursuant to Article 21 (County Events of Default);
- (2) In connection with an Uninsurable Force Majeure Event, pursuant to Section 14.2 (Uninsurable Force Majeure Events);
- (3) In the event of a Termination by Court Ruling; or
- (4) In connection with the occurrence and persistence of an Extended Relief Event pursuant to Section 15.4 (Termination for Extended Relief Events).

(C) Required Termination Upon Total Constructive Loss Following the Occupancy Readiness Date. Notwithstanding any other provision of this Project Agreement, this Project Agreement shall terminate automatically and without the election of either party upon the occurrence of a Total Constructive Loss following the Occupancy Readiness Date in circumstances where the average projected senior debt coverage ratio for the Project is lower than the required level, as more particularly described in Article 7 (Insurance) of the Lenders' Remedies Agreement and Section 3.2 (Determination of Average Projected Senior Debt Service Coverage Ratio) of the Insurance Trust Agreement. The Termination Amount payable in such circumstances pursuant to Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination) shall not be limited by the amount of any available Insurance Proceeds.

(D) Extent of Termination Rights. Except as provided or referred to in subsections (A) and (B) of this Section, neither party shall have the right to terminate this Project Agreement.

(E) Termination Date. The Termination Date for any early termination of this Project Agreement as provided in subsections (A) or (B) of this Section shall be the date specified in the table below, subject to the rights of the Senior Lenders under the Lenders' Remedies Agreement. It shall not be a condition to the establishment of the Termination Date that the County shall have paid the applicable Termination Amount.

<u>Termination Circumstance</u>	<u>Termination Date</u>
Termination for Convenience by the County	The date specified in the County's written notice of termination which shall be no less than 60 days after the date on which such termination notice is given
Termination Upon an Event of Default	The date notice of termination is delivered by the terminating party
Termination by Court Ruling	The date of issuance of a final, non-appealable court order by a court of competent jurisdiction
Termination for Extended Relief Events	The date that is 30 days from the delivery of notice thereof by the terminating party
Termination for Uninsurable Risk	The date that is 30 days from the delivery of notice thereof by the terminating party
Termination upon Total Constructive Loss	The date determined under Section 3.2 (Determination of Average Projected Senior Debt Service Coverage Ratio) of the Insurance Trust Agreement.

(F) Termination Amount Due Date. The County shall pay the Termination Amount by the date provided in Section 7.1 (Termination Amount Due Date) of Appendix 13 (Compensation on Termination).

(G) Consideration for Convenience Termination Amount. The right of the County to terminate this Project Agreement for its convenience and in its discretion in accordance with this Article constitutes an essential part of the overall consideration for this Project Agreement, and the Project Company shall not be entitled to any damages (other than damages for failure to pay the Termination Amount provided for in Appendix 13 (Compensation on Termination)) by reason of a County breach of this Project Agreement, including a breach of the County's implied covenant of good faith and fair dealing, in the exercise of its right to terminate this Project Agreement under subsection 22.2(A)(1) (County Termination Rights) for the convenience of the government.

(H) Continued Performance. The parties shall continue to perform their obligations under this Project Agreement (including the County continuing to pay the Service Fee) until the Termination Date, notwithstanding the giving of any notice of default or notice of termination.

(I) Completion or Continuance by County. After the Termination Date, subject to Section 22.4 (Transitional Arrangements), the County may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other operators and contractors.

SECTION 22.3. TRANSFER TO THE COUNTY OF ASSETS, CONTRACTS AND DOCUMENTS.

(A) Transfer Responsibilities. On or promptly after the Termination Date:

(1) If the Termination Date occurs prior to the Occupancy Readiness Date:

(a) the Project Company shall preserve and protect the structures, equipment, materials and other property comprising the Project as so far constructed; and

(b) insofar as any transfer will be necessary to fully and effectively transfer property to the County, the Project Company shall transfer to, and there will vest in, the County, free from all financial encumbrances, such part of the Project as has been constructed on or has become affixed to the Project Site and, subject to payment by the County of the Design-Builder's reasonable charges, if the County so elects:

(i) the construction plant and equipment will remain available to the County for the purposes of completing the Design-Build Work; and

(ii) all other Project-related plant and all materials on or near the Project Site will remain available to the County for the purposes of completing the Design-Build Work,;

(2) If the County so elects, the Project Company shall cause any or all of the Project Contracts (and any related contracts which govern the obligations between the Project Company and the Project Contractor whose obligations have been assigned (such as a coordination or interface agreement)) to be novated or assigned to the County,

provided that if termination occurs under Section 21.2 (Project Company Options Upon County Event of Default), the consent of the applicable Project Contractor will be required;

(3) The Project Company shall, or will cause any Project Contractor to, offer to sell to the County at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or any Project Contractor and reasonably required by the County in connection with the operation of the Project or the provision of the Contract Services;

(4) The Project Company shall deliver to the County (to the extent not already delivered to the County):

(a) all existing designs, plans and other documents produced in connection with the Project and in the control of the Project Company;

(b) one complete set of existing constructions drawings showing all alterations made to the Project since the commencement of operation of the Project;

(c) one complete set of existing, up-to-date maintenance, operation and training manuals for the Project, subject to reasonable generally applicable third-party licensing terms;

(d) relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Design-Build Work or the Facilities Management Services (or any Subcontracts); and

(e) copies of all Subcontracts, together with a statement of:

(i) the items ordered and not yet delivered pursuant to each agreement;

(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment;
and

(iv) the estimated cost of canceling each agreement;

(5) The Project Company shall use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment used or made available by the Project Company under this Project Agreement and included in the Project but not previously assigned or licensed to the County are assigned, licensed or otherwise transferred to the County to permit the operation, maintenance or improvement of the Project following termination of this Project Agreement;

(6) To the extent permitted by Applicable Law, the Project Company shall assign to the County all Governmental Approvals;

(7) The Project Company shall deliver to the County all books, records and files required to be kept by the Project Company hereunder (the Project Company having the right to retain copies thereof) unless such documents are:

(a) required by Applicable Law to be retained by the Project Company or a Project Contractor or Subcontractor, in which case complete copies will be delivered to the County; or

(b) privileged from production pending resolution of any outstanding dispute, in which case such records will be delivered forthwith upon resolution of such dispute, provided that any records that are necessary for the performance of the Contract Services will be delivered to the County no later than the Termination Date;

(8) The Project Company shall give written notice of termination, promptly under each policy of Required Insurance (with a copy of each such notice to the County), but permit the County to continue such policies thereafter at its own expense, if possible; and

(9) The Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the County's costs, and take no action which shall increase any amount payable by the County under this Project Agreement.

(B) No Additional Compensation. The Project Company shall ensure, subject to the security interest of the Senior Lenders, that provision is made in all applicable contracts to ensure that the County will be in a position to exercise its rights, and the Project Company shall be in a position to comply with its obligations, under this Section without (except to the extent expressly provided for in subsection (A) of this Section) additional payment or compensation to any person.

(C) Use of Design Documents Following Termination During the Design-Build Period. If this Project Agreement is terminated during the Design-Build Period and the County (or any designee of the County) uses any Design Documents or other Intellectual Property developed by or on behalf of the Project Company without the involvement of the Project Company, the Design-Builder and the Architect for such work, then:

(1) The Project Company, the Design-Builder and the Architect are hereby thereupon released from all liability on account of such use, except to the extent caused by any of the matters referred to in subsections (1) through (5), inclusive, of Section 24.1 (Project Company's Obligation to Indemnify); and

(2) The County shall reimburse the Project Company, the Design-Builder and the Architect for all losses, liabilities, damages, fines, costs and expenses that any of the Project Company, the Design-Builder, or the Architect may sustain in connection with any loss of or physical damage to property of any County Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property) or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any County Indemnitee, arising by reason of such use or the results of such use, except to the extent caused by any of the matters referred to in subsections (1) through (5), inclusive, of Section 24.1 (Project Company's Obligation to Indemnify).

SECTION 22.4. TRANSITIONAL ARRANGEMENTS.

The Project Company shall, in connection with the expiration or termination of this Project Agreement:

- (1) Stop the Contract Services on the Termination Date;
- (2) On the Termination Date deliver to the County:
 - (a) all keys, access codes or other devices required to operate the Project; and
 - (b) any Project Intellectual Property required to be delivered by the Project Company pursuant to subsection 22.3(A)(5) (Transfer Responsibilities);
- (3) As soon as practicable after the Termination Date vacate, and cause the Project Company Persons to vacate, the Project Site, and leave the Project Site and the Project in a safe, clean and orderly condition;
- (4) On request by the County and on payment of the Project Company's reasonable costs by the County, for a period not to exceed 90 days after the Termination Date, co-operate fully with the County and any successor providing to the County services in the nature of any of the Contract Services or any part of the Contract Services, in order to achieve a smooth transfer of the manner in which the County obtains services in the nature of the Contract Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the County and members of the public;
- (5) As soon as practicable following the Termination Date, remove from the Project Site all property of the Project Company or any Project Company Person that is not acquired by the County pursuant to Section 22.3 (Transfer to the County of Assets, Contracts and Documents) (or not belonging to the County) and if it has not done so within 60 days after any notice from the County requiring it to do so, the County may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and
- (6) Comply with all requirements of Section 9.13 (Project Handback).

SECTION 22.5. PROJECT COMPANY TO COOPERATE.

If the County wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Contract Services or any of them) following the Termination Date, the Project Company shall prior to the Termination Date co-operate with the County fully in such competition process, including by:

- (1) Providing any information in the Project Company's control or possession which the County may reasonably require to conduct such competition, except that information which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project

Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) Assisting the County by providing any participants in such competition process with access to the Project Site and the Project provided such access does not affect the Contract Services in a way that results in any reduction in Service Fee.

The Project Company shall be entitled to reimbursement for all reasonable out-of-pocket expenses and internal costs incurred in connection with the foregoing services.

ARTICLE 23

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 23.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Project Agreement or a Project Contract except:

- (1) As security, substantially in a form approved by the County, acting reasonably, for any loan made to the Project Company under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement;
- (2) In connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or
- (3) Otherwise:
 - (a) prior to the day that is two years after the Occupancy Readiness Date (the "**Transfer Restriction Date**"), with the prior written consent of the County, which may be given or withheld in the County's discretion; and
 - (b) after the Transfer Restriction Date, with the prior written consent of the County, which will not be unreasonably withheld or delayed;

provided that in the case of an assignment under subsections (2) or (3) of this Section, the assignee assumes all the obligations of the Project Company under this Project Agreement.

SECTION 23.2. LIMITATION ON CHANGE IN CONTROL.

(A) Change in Control Defined. For purposes of this Project Agreement "**Change in Control**" means with respect to a person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in an equity holder or group of equity holders, other than the equity holders immediately prior to the change, directly or indirectly:

- (1) Controlling the composition of the majority of the board of directors of the person or of a general partner or manager of the person;
- (2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the person, a general partner of the person or a manager of the person or otherwise;
- (3) Holding equity (either beneficially or otherwise) of that person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account

contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that person with more than one half of the voting rights; or

(4) Having the ability to direct or cause the direction of the management, actions or policies of the person.

(B) Limitations. No Change in Control of the Project Company shall be permitted (whether by the Project Company or otherwise) to occur except:

(1) In connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements;

(2) Arising from any bona fide open market transaction in any shares or other securities of the Project Company or of any Unit Holder or of any holding company of a Unit Holder effected on a recognized public stock exchange;

(3) Any assignment, sale or transfer by a shareholder, general partner, manager or member of the Project Company of any legal, beneficial or equitable interest in any shares, units or equity of the Project Company to any of the following infrastructure investment funds, each of which is an Affiliate of **[NOTE TO PROPOSERS: Equity sponsors to be named here.]**

(4) A reorganization or transfer of interests within a group of persons under common control of ownership interests (whether directly or indirectly) in any person, or of any intermediate entity in the chain of ownership of such person, or a group of funds or similar entities managed (whether directly or indirectly) by any Unit Holder or any Affiliate thereof, so long as there is no substantive change in the entity or group of entities that ultimately have control (individually or collectively) of such person or in the person or group of persons that ultimately manage (individually or collectively) such funds or similar entities, as applicable; or

(5) Otherwise:

(a) prior to the Transfer Restriction Date, with the prior written consent of the County, which may be given or withheld in the County's discretion; or

(b) after the Transfer Restriction Date, with the prior written consent of the County, which will not be unreasonably withheld or delayed.

(C) Transfer of Minority Interests in the Project Company. Notwithstanding that a sale or transfer by [_____] of its minority interest in the Project Company does not constitute a Change in Control, the County may: (1) in its discretion, prohibit any sale or transfer by [_____] of its minority interest prior to the Transfer Restriction Date; and (2) acting reasonably, prohibit any sale or transfer by [_____] of its minority interest on or after the Transfer Restriction Date. The County may also, in its discretion, prohibit any sale or transfer of any minority interest in the Project Company to any Restricted Person at any time during the Term. **[NOTE TO PROPOSERS: To be removed unless there are multiple equity sponsors.]**

SECTION 23.3. FACTORS THE COUNTY MAY CONSIDER.

In determining whether to provide its consent under subsections 23.1(3)(b) (Limitation on Assignment by Project Company), 23.2(A)(1) (Change in Control Defined) or

23.2(B)(5)(b) (Limitations), and without limiting the County's discretion thereunder, it will be reasonable for the County to refuse its consent if:

- (1) The proposed assignee or the new party in control of the Project Company, as the case may be, or any of their Affiliates, is a Restricted Person;
- (2) The proposed assignee cannot comply with the County's conflict of interest requirements;
- (3) The proposed assignee or the new party in control of the Project Company, as the case may be, has, in the reasonable opinion of the County, insufficient creditworthiness to assume the Project Company's obligations under the Project Agreement;
- (4) The experience, background or reputation of the proposed assignee and the key individuals in operating projects or facilities of a similar nature, in the reasonable opinion of the County, is not sufficient to meet the Project Company's obligations under this Project Agreement; or
- (5) The assignment or Change in Control could, in the reasonable opinion of the County, have a material and adverse effect on the County or the Project.

SECTION 23.4. LIMITATION ON ASSIGNMENT BY THE COUNTY.

The County shall not assign, transfer or otherwise dispose of any interest in this Project Agreement except to another Governmental Body, with a credit profile equal to or better than the credit profile of the County at the time of such assignment, transfer or disposition, which assumes in writing and is legally capable of discharging all the obligations of the County under this Project Agreement.

SECTION 23.5. COSTS OF REQUEST FOR CONSENT.

If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 23.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 23.2 (Limitation on Change in Control), the Project Company shall pay the County's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to the County against its obligation under this Section of \$25,000 (Index-Linked). After the decision of the County is rendered, the County will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section with reasonable substantiation of such costs.

ARTICLE 24

INDEMNIFICATION

SECTION 24.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

The Project Company shall defend, indemnify and keep each County Indemnitee indemnified at all times from and against all Loss-and-Expense that any County Indemnitee may sustain in connection with any loss of or physical damage to property or assets of any County Indemnitee, or any claim made by one or more third parties for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any County Indemnitee, arising by reason of any:

- (1) Project Company Fault;
- (2) Non-compliance by the Project Company with any of the provisions of this Project Agreement or any document, instrument or agreement delivered to the County as required under this Project Agreement;
- (3) Claim relating to the storage of any information on the Secure Website, as described in subsection 17.1(B) (Liability and Indemnification);
- (4) Project Company Hazardous Substances; or
- (5) Breach by the Project Company of, or non-compliance by the Project Company with, any Governmental Approval or Applicable Law, or the failure of the Project Company to obtain all necessary Governmental Approvals in accordance with this Project Agreement;

except to the extent caused by County Fault, or a County Event of Default. The Project Company's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. This Section may be relied upon by the County Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.

SECTION 24.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a County Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the County Indemnitee is, or may become entitled to, indemnification or compensation under this Project Agreement in respect of the entire claim, the County Indemnitee shall give notice in writing to the Project Company as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof.

(B) Project Company Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Project Company shall be entitled to dispute the claim in the name of the County Indemnitee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The County Indemnitee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection (B) of this Section in which there is a conflict of interest between the Project Company and the

County Indemnatee, the County Indemnatee may appoint independent legal counsel in respect of such claim and, if it is determined that the County Indemnatee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the County Indemnatee in so doing will be included in the indemnity or compensation from the Project Company.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to subsection (B) of this Section:

(1) The Project Company shall keep the County Indemnatee fully informed and consult with it about material elements of the conduct of the claim;

(2) The Project Company shall demonstrate to the County Indemnatee, at the reasonable request of the County Indemnatee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) The Project Company shall not pay or settle such claims without the consent of the County Indemnatee, such consent not to be unreasonably withheld or delayed.

(E) County Indemnatee Rights to Conduct Defense. The County Indemnatee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Project Company is not entitled to take conduct of the claim in accordance with subsection (B) of this Section; or

(2) The Project Company fails to notify the County Indemnatee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the County Indemnatee under subsection (B) of this Section or notifies the County Indemnatee that it does not intend to take conduct of the claim; or

(3) The Project Company fails to comply in any material respect with subsection (D) of this Section.

(F) Transfer of Conduct of Claim to County Indemnatee. The County Indemnatee may at any time give notice to the Project Company that it is retaining or taking over, as the case may be, (in each case at its own cost and risk) the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection (B) of this Section applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the County Indemnatee, and will provide to the County Indemnatee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim, but shall otherwise be released from its indemnification obligations hereunder with respect thereto.

(G) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

(1) The replacement is performed without additional cost to the County; and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 25

MISCELLANEOUS PROVISIONS

SECTION 25.1. OWNERSHIP OF THE PROJECT.

The Project shall be owned by the County at all times.

SECTION 25.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of the County and the relationship between the parties shall be limited to performance of this Project Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Project Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Project Agreement or the performance thereof.

SECTION 25.3. NO OTHER BUSINESS.

The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or otherwise as expressly permitted hereunder.

SECTION 25.4. PROJECT COMPANY PERSONS.

The Project Company shall, as between itself and the County, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and willful misconduct of each Project Company Person, and all references in this Project Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of the Project Company shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or willful misconduct committed by a Project Company Person.

SECTION 25.5. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Project Company. In all cases where the Project Company is entitled to receive any relief from the County or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Relief Events or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by the County to the Project Company by the County under this Project Agreement, or the length of the extension of time. Such mitigation measures shall include compliance with all procedures and other requirements necessary to obtain any available waiver or exemption from Taxes that would otherwise be borne directly or indirectly by the County. Upon request from the County, the Project Company shall promptly submit a detailed description, supported by all such documentation as the County may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this subsection.

(B) Mitigation by the County. In all cases where the County is entitled to receive from the Project Company any compensation, costs or damages, but not in any other cases, the County shall use all reasonable efforts to mitigate such amount required to be paid

by the Project Company to the County under this Project Agreement, provided that such obligation shall not require the County to:

- (1) Take any action which is contrary to the public interest, as determined by the County in its discretion;
- (2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or
- (3) Alter the amount of deductions for Deductions it is entitled to make in accordance with Appendix 11 (Deductions).

The County shall have no obligation to mitigate, implied or otherwise, except as set forth in this subsection or otherwise as expressly provided in this Project Agreement. Upon request by the Project Company, the County shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by the County to mitigate and meet its obligations under this subsection.

SECTION 25.6. OPPORTUNITIES.

Except as may be specifically agreed in writing between the County and the Project Company during the Term, the County reserves the right to all commercial and other opportunities for, or related to, the Project.

SECTION 25.7. PROJECT AGREEMENT ADMINISTRATION.

(A) Authority of County Representative. The Project Company understands and agrees that the County Representative has only limited authority with respect to the implementation of this Project Agreement, and cannot bind the County with respect to any Project Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the County Representative. The County Representative shall have the right at any time to issue the Project Company a written request for information relating to this Project Agreement. Any written request designated as a "priority request" shall be responded to by the Project Company within three Business Days.

(B) Facilities Management Notices. Facilities Management Notices hereunder shall be given by e-mail, and may be given personally or by telephone promptly followed by e-mail confirmation. Facilities Management Notices to the Project Company shall be given by the County Representative and Facilities Management Notices to the County shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Project Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Project Agreement between the parties which

do not require a Project Agreement Amendment shall be a “**Contract Administration Memorandum**”. A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the County and the Project Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) Issues as to the meaning, interpretation or application of this Project Agreement in particular circumstances or conditions;
- (2) Calculations required to be made;
- (3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
- (4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the County reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the County Representative and the Project Company Representative. The County and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from any Project Agreement Amendments and all other documents relating to the administration and performance of this Project Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Project Agreement.

SECTION 25.8. PROJECT AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 25.7 (Project Agreement Administration), no change, alteration, revision or modification of the terms and conditions of this Project Agreement shall be made except through a written amendment to this Project Agreement (a “**Project Agreement Amendment**”) duly authorized, approved or ratified by the County and duly authorized by the Project Company. Project Agreement Amendments shall be dated and signed by the County Representative and the Project Company Representative.

(B) Project Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Project Agreement, when a Project Agreement Amendment or other agreement with respect to this Project Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging this Project Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 25.9. COUNTY APPROVALS AND CONSENTS.

When this Project Agreement requires any approval or consent by the County to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of subsection 25.7(A) (Authority of County Representative), be given by the County Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the County with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Project Agreement, and except for (1) approvals provided for in Section 5 (Submittal Review Procedure) of Appendix 5 (General

Design, Construction and Facilities Management Technical Requirements), which shall be governed by the terms of such Appendix, and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Project Agreement, require a response or action, if the County does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 30 days of the County's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the County's approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the County pursuant to some specific term of this Project Agreement shall be deemed acceptable to the County if the County shall not have objected thereto within 30 days of the receipt thereof.

SECTION 25.10. DISCLOSED DATA.

It is the Project Company's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Project Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. Without limiting the Project Company's right to claim relief for Differing Site Conditions and Regulated Site Conditions pursuant to this Project Agreement, the Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any County Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Project Agreement on the grounds:

- (1) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (2) That the Disclosed Data was incorrect or insufficient; or
- (3) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than the County,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Project Agreement on any such ground.

SECTION 25.11. ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Project Agreement shall be interpreted as limiting the rights and obligations of the County (or any department or agency thereof) under Applicable Law in their governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against the County (or any department or agency thereof), not based on this Project Agreement, arising out of any act or omission of the County (or any department or agency thereof) in their governmental capacity.

SECTION 25.12. CONFIDENTIALITY.

(A) Confidential Information. Subject to subsection (B) of this Section, each party will hold in confidence any Confidential Information received from the other party, except that this Section will not restrict either party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project

Agreement, and provided further that the Project Company may, subject to obtaining confidentiality restrictions similar to those set forth in this Project Agreement:

(1) Provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreement or related agreements; and

(2) Provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Project Company to perform (or to cause to be performed) its obligations under this Project Agreement.

(B) Exceptions. Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) Which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Agreement;

(2) To the extent any person is required to disclose such Confidential Information by Applicable Law;

(3) Any Governmental Body which requires the information in relation to the Project; or

(4) That the County may be entitled to receive from the Project Company pursuant to this Project Agreement for the operation, maintenance or improvement of the Project in the event of, or following, termination of this Project Agreement.

(C) Security Plan. If requested by the County, the Project Company shall prepare a security plan to assure that Confidential Information obtained from the County or as a consequence of the performance of the Contract Services is not used for any unauthorized purpose or disclosed to unauthorized persons. The Project Company shall advise the County of any request for disclosure of information or of any actual or potential disclosure of information.

(D) Public Communications of Confidential Information. Unless expressly provided in this Project Agreement or otherwise required by Applicable Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information, without the written consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Appendix 16 (Public Communications).

(E) Equitable Relief. Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of subsection (A) of this Section, and that the other party will, in such case, be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of subsection (A) of this Section.

SECTION 25.13. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information:

- (1) With the prior consent of the County;
- (2) To the extent necessary to perform the Project Company's obligations under this Project Agreement; and
- (3) In accordance with Applicable Law, including the Public Meetings and Records Law as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow the County on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

SECTION 25.14. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under agreements of the Project Company which are material to the performance of its obligations under this Project Agreement. The County shall comply with its obligations under agreements of the County which are material to the performance of its obligations hereunder.

SECTION 25.15. BINDING EFFECT.

This Project Agreement shall inure to the benefit of and shall be binding upon the County and the Project Company and any assignee acquiring an interest hereunder consistent with Article 23 (Assignment and Change in Control).

SECTION 25.16. CONSENTS. Any consent required to be given under this Project Agreement shall be in writing.

SECTION 25.17. NOTICES.

(A) Procedure. All notices, consents or approvals or written communications (other than Facilities Management Notices or other communications required by the Project Requirements) given pursuant to the terms of this Project Agreement shall be transmitted in writing to the electronic mail address of each party set forth below in this Section and shall contain a subject line stating the following in block capital letters: "CLACKAMAS PROJECT AGREEMENT SECTION 25.17 NOTICE; RESPONSE CONTRACTUALLY REQUIRED". The recipient of any such notice or communication shall promptly (within 24 hours of receipt) confirm receipt thereof with the sender by electronic mail. If the recipient fails to comply with its obligation under this subsection to respond to the sender confirming receipt of any notice or communication, the sender shall promptly (within 24 hours of such failure), transmit the notice or communication either: (i) in person by hand, (ii) by certified mail, return, receipt requested, postage prepaid, or (iii) by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery. Any such notice or communication will be deemed to be effective on the day the electronic mail transmission is sent; except that, if the electronic mail transmission is not sent on a Business Day or is sent after 5:00 p.m. local time in the place of receipt on a Business Day, then the notice or communication will be deemed to be effective on the next Business Day. Either party may, by like notice, designate further or different electronic mail addresses to which subsequent notices shall be sent.

(B) County Notice Address. Notices required to be given to the County pursuant to this Section shall be addressed as follows:

[_____]

with a copy to:

[_____]

(C) Project Company Notice Address. Notices required to be given to the Project Company pursuant to this Section shall be addressed as follows:

[_____]

with a copy to:

[_____]

SECTION 25.18. NOTICE OF LITIGATION.

In the event the Project Company or County receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 25.19. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Project Agreement to be executed and delivered by their duly authorized representatives on the day and year first above written.

[PROJECT COMPANY]

CLACKAMAS COUNTY, OREGON

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Oregon Business Registry #: _____

Approved as to Form:

Entity Type / State of Formation: _____

Signature: _____

Printed Name: _____

Title: County Counsel

**CLACKAMAS COUNTY COURTHOUSE PROJECT AGREEMENT
SUMMARY OF KEY TERMS**

Certain key terms of the Project Agreement, proposed to be entered into with Fengate PCL Progress Partners, are summarized below. The Project Agreement sets forth additional details on the below key terms and other terms and conditions.

1. GENERAL	
Service Recipient	Clackamas County, Oregon (the “ County ”).
Service Provider	The “ Project Company ”, a single purpose entity formed for the purpose of performing under the Project Agreement jointly owned by Fengate Capital Management LTD (70% equity) and PCL Investments Inc. (30% equity).
Scope of Services	<p>The Project Company shall design, build, partially finance, operate and maintain a “New Courthouse” which includes approximately 250,000 square feet of court related space containing 16 courtrooms (14 to meet current demand and two additional for projected growth in demand), and space for juries, staff, and other State judicial and related County support functions. The building will achieve LEED Gold certification.</p> <p>The Project Company’s scope of services (the “Contract Services”) includes all related and ancillary services as well as performing the design-build and facilities management work with respect to the New Courthouse in accordance with good industry practice and the standards to be set forth in the Project Agreement. The construction project and anticipated operations of the facility can be described as a “Design-Build-partially-finance-Operate and Maintain” agreement (DBfOM).</p> <p>The “Project” includes the New Courthouse, the design and construction of certain on-site road and parking improvements and the performance of all Contract Services.</p>
Parking and Road Improvements	The Project Company will design and build surface parking and certain on-site road improvements to serve the New Courthouse and the Red Soils Campus generally as required by the City of Oregon City. The Project Company will not be responsible for designing or constructing off-site road improvements. Upon completion, the County will be responsible for maintenance, repair and management of all parking and road improvements.
Project Agreement	The contract between the Project Company and the County for the provision of the Contract Services is the “ Project Agreement ”.
Term	30 years from the Scheduled Occupancy Readiness Date (the “ Term ”).
Ownership of Assets	The Project, in its entirety, shall be owned by the County at all times.
2. PROJECT COMPANY FINANCING	
Private Financing	The Project Company shall be responsible for obtaining and repaying the Project Company’s construction financing and long term financing necessary for the Project at its own cost and risk and without recourse to the County. The County will make an

	<p>Occupancy Readiness Milestone Payment (which is expected to be funded by the State’s OCCCIF matching funds) upon the achievement of Occupancy Readiness, as described in Sections 5 and 7 below.</p> <p>The Project Company has included a committed plan of finance in its Proposal and is required to execute its plan of finance to achieve commercial and financial close.</p> <p>All debt or other obligations issued or incurred by the Project Company in connection with the Project Agreement shall be issued or incurred only in the name of the Project Company. The County has no obligation to pay debt service on any such debt or other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company.</p> <p>The amortization term of any Project debt financing or refinancing undertaken by the Project Company shall not exceed the Term of the Project Agreement unless otherwise agreed to by the County in its discretion.</p>
Concurrent Commercial Close and Financial Close	It is expected that commercial close and financial close will occur concurrently in August 2022. The Project Agreement, however, contains provisions to allow for a financial close occurring after commercial close within specified limitations. The Project Company’s committed financing is valid until October 17, 2022. Failure to achieve financial close by October 17, 2022 may result in pricing changes.
Refinancing	The Project Company will have the right, with the County’s prior written consent, to refinance the Project debt. The County will share in any refinancing gains.
Lenders’ Remedies	The County will execute a lenders’ remedies agreement that includes appropriate lenders’ rights provisions, including the right of the lenders to receive notice of a Project Company default and the opportunity to step in and cure the default.
3. DESIGN AND DEVELOPMENT	
Design and Construction Requirements	<p>The County developed, and included in the Request for Proposals, the design and construction standards for the Project. These “Design and Construction Standards” set forth the minimum technical requirements for the Project and incorporated the State’s technical requirements.</p> <p>The Request for Proposals also required the Project Company to develop and furnish a robust design for the Project.</p> <p>Extracts from the Project Company’s technical proposal are being validated, finalized and included in the Project Agreement and, together with the County’s Design and Construction Standards, will constitute the “Design and Construction Requirements” for the Project.</p>
Responsibility for Design	The Project Company shall be responsible and have liability for the design of the Project, including compliance with the Design and Construction Requirements and other requirements set forth in the Project Agreement, achieving the requirements for Occupancy Readiness, and meeting the long-term performance

	requirements of the Project Agreement. The final 100% design will be prepared following financial close and must be consistent with the Design and Construction Requirements.
Design Reviews	The Project Company's plan for design development shall include a design submittal and review protocol and shall be subject to the approval of the County. The County, working with its technical advisors, has the right to review design submittals for compliance and consistency with the Design and Construction Requirements. The Project Company shall comply with the approved design submittal and review protocol and address all the County's comments received in accordance therewith.
Design and Construction Requirement Changes	The County has the right to accept, reject or modify any Design and Construction Requirement change proposed by the Project Company. In addition, the County has the right to make Design and Construction Requirement changes at any time prior to Occupancy Readiness as long as the County provides the Project Company with appropriate price, schedule and performance relief in accordance with the terms and conditions specified in the Project Agreement. The Project Agreement also addresses Design and Construction Requirement changes necessitated by Relief Events.
Permitting and Governmental Approvals	The Project Company shall obtain and maintain all governmental approvals required for the construction and operation of the Project.
4. CONSTRUCTION WORK	
Construction Work Generally	<p>The Project Company shall be responsible for all construction work relating to the Project.</p> <p>The Project Company shall assure the safe performance of construction work and shall minimize disruption to the County and to the general public. The Project Company shall coordinate its work with the work of all subcontractors and shall cooperate with the County and the subcontractors to help establish a cooperative and collaborative environment for all persons engaged in performing work for the County.</p>
County Oversight	The County, its designated representatives (including the State) and an Independent Building Expert (described below) have the right to monitor, observe and audit all work performed by or on behalf of the Project Company in connection with the Project to determine compliance with the Project Agreement. No monitoring, observation or audit by the County or its designated representatives will serve to relieve the Project Company from responsibility or liability for the performance of the Contract Services in accordance with the Project Agreement.
5. OCCUPANCY READINESS	
Independent Building Expert	The County and the Project Company will jointly identify and employ a third-party expert (the " Independent Building Expert ") to act impartially and independently in determining if the Project Company has completed the Project so that it is ready for occupancy and use and otherwise satisfied all other conditions necessary for Occupancy Readiness. The Independent Building

	Expert’s opinion as to Occupancy Readiness shall be binding on both parties.
Occupancy Readiness Generally	<p>The Project Company will be expected to complete all design, construction and commissioning necessary to cause the Project to be fully operational and ready for occupancy by the County (“Occupancy Readiness”) within 975 days following Financial Close (the “Scheduled Occupancy Readiness Date”). The Scheduled Occupancy Readiness Date may be adjusted to account for the occurrence of any Relief Events.</p> <p>The County will not be obligated to pay the Occupancy Readiness Milestone Payment, or commence payment of the Service Fee, as described in Section 7 below, until Occupancy Readiness is achieved, as determined by the Independent Building Expert.</p>
No Delay Liquidated Damages; Loss Service Fee Payments	In the event that Occupancy Readiness occurs after the Scheduled Occupancy Readiness Date, there will be no delay liquidated damages. The Project Company shall, however, be solely responsible for all additional financing costs incurred by any delay in achieving Occupancy Readiness that is not due to a Relief Event. In the absence of a Relief Event, the Term will also not be extended, resulting in loss Service Fee payments by the Project Company in the event Occupancy Readiness occurs after the Scheduled Occupancy Readiness Date.
6. FACILITIES MANAGEMENT	
Facilities Management Requirements	<p>The County developed and included in the Request for Proposals minimum facilities management standards for the Project (the “Facilities Management Standards”). The Facilities Management Standards were developed in consultation with both County and State representatives.</p> <p>The Request for Proposals also required the Project Company to develop and furnish preliminary facilities management plans for the Project.</p> <p>The Project Company made technical submittals in response to the Request for Proposals that are responsive to the County’s Facilities Management Standards and submittal requirements.</p> <p>Extracts from the Project Company’s technical proposal are being finalized and will be included in the Project Agreement and, together with the County’s Facilities Management Standards, will constitute the “Facilities Management Requirements” for the Project.</p>
Project Company Facilities Management Responsibilities	The Project Company will be responsible for the facilities management services, such as ordinary maintenance and repair, capital maintenance, major repairs, janitorial services, and trash removal.
County Facilities Management Responsibilities	The County will retain responsibility during the facilities management period for: building security (but the Project Company will remain responsible for maintaining any equipment relating to building security); payment for utilities (but the Project Company will be required to maintain the Project in an energy

	<p>efficient manner consistent with anticipated energy usage guarantees); and timely payment of the Service Fee.</p> <p>With respect to heating and cooling functions, the Project Company shall connect the New Courthouse to the central utility plant existent at the current Red Soils Campus. However, responsibility for the operation and maintenance of (and upgrades to) the central utility plant shall remain with the County.</p>
Handback Requirements	The Project Agreement requires the Project to be in a well maintained condition when the Term expires. In particular, the Project is required to meet a Facilities Condition Index (FCI) of .10 or better at handback. Furthermore, at the end of the Term each project component shall be in a condition which is consistent with the applicable useful life requirements set forth in the Project Agreement
Capital Modifications	The Project Agreement includes provisions addressing capital modifications to the Project during the facilities management period. Capital modifications requested by the Project Company are subject to the County’s approval in its sole discretion. Capital modifications required due to Project Company fault shall be for the account and expense of the Project Company. Capital modifications directed by the County or required due to the occurrence of Relief Events shall be for the account of the County.
7. PAYMENT TERMS	
No County Payment Obligations Prior to Occupancy Readiness	The County shall not have any payment obligations to the Project Company prior to the achievement of Occupancy Readiness. If the Project Company achieves Occupancy Readiness prior to the Scheduled Occupancy Readiness Date the County may, without obligation, negotiate with the Project Company terms under which it may assume early occupancy. The Project Company will be expected to finance all costs incurred for the Project prior to Occupancy Readiness.
Occupancy Readiness Milestone Payment	<p>The County will make a one-time payment following the achievement of Occupancy Readiness by the Project Company (“Occupancy Readiness Milestone Payment”) of \$130 million which represents the State’s anticipated contribution to the capital cost of the Project and reimbursement for the cost of moveable furniture, fixtures and equipment expenses incurred and temporarily financed by the Project Company on behalf of the State.</p> <p>The Occupancy Readiness Milestone Payment shall be due and payable no later than five days following the Occupancy Readiness Date.</p>
Service Fee Generally	<p>The County will make monthly Service Fee payments to the Project Company following the achievement of Occupancy Readiness for the balance of the Term of the Project Agreement.</p> <p>The Service Fee will be composed of (1) a fixed capital charge based on the capital and financing costs of the Project; (2) an inflation-adjusted facilities management services charge (composed of (a) a flat ordinary operation and maintenance component, and (b) a sculpted variable major repair and</p>

	<p>replacement lifecycle component); (3) any deductions for failure to achieve performance requirements of the Project Agreement; and (4) an extraordinary items component, primarily for any Relief Event costs incurred from time to time.</p> <p>The capital charge component of the Service Fee will be adjusted between the submittal of Financial Proposals and Financial Close to account for changes in reference interest rates through the date of Financial Close. Following Financial Close, the capital charge will be fixed and not subject to inflation adjustments.</p> <p>The facilities management components of the Service Fee are subject to annual inflation adjustments following financial close.</p>
<p>Moveable Furniture, Fixtures and Equipment Allowance Accounts</p>	<p>Any moveable furniture, fixtures and equipment costs incurred by the Project Company on behalf of the County or State will be (1) funded through allowance accounts established by the Project Company during the design-build phase of the Project, (2) financed by the Project Company over the Term of the Project, and (3) paid for by the County as part of the Occupancy Readiness Milestone Payment and the fixed capital charge component of the Service Fee described above.</p>
<p>Deductions for Nonperformance</p>	<p>Following Occupancy Readiness, each Service Fee payment will be reduced by any deductions the Project Company incurs during the applicable monthly billing period. The purpose of such deductions is to ensure the Project Company is incentivized to provide quality service and comply with the Project’s availability and performance requirements throughout the Term. The two types of deductions that may be incurred are as follows:</p> <ul style="list-style-type: none"> • <u>Unavailability</u>: Every space in the New Courthouse has been designated as a “functional unit”. The Project Agreement identifies hundreds of functional units. If any functional unit becomes “unavailable”, as the term is defined in the Project Agreement, then, upon the expiration of each rectification period (which will vary from 2 hours to 60 hours, depending on the importance of the functional unit and severity of the unavailability event), an unavailability event deduction will be incurred by the Project Company. Failure to correct an unavailability event for an extended period of time will result in a higher deduction. The deduction per functional unit per rectification period ranges from \$100 to \$800. In certain severe instances, “total courthouse unavailability” may occur and result in deductions as high as \$4,000 every two hours. • <u>Performance Failures</u>: Certain performance based requirements are set forth in the Project Agreement. Failure to meet cleanliness, energy efficiency, personnel training, satisfaction survey and administrative reporting standards are examples of performance failures. Non-compliance with these performance requirements will result in a performance failure deduction. Various performance failures have rectification periods similar to unavailability events, and other performance failures are

	<p>assessed on a periodic basis. Failure to correct a performance failure within a rectification period for an extended period of time will result in a higher deduction. Similarly, a more severe failure to comply with a performance failure that is assessed periodically results in a higher deduction.</p> <p>In the event of persistent underperformance, a “ratchet” mechanism will apply. In such event, the total deduction credit applied against the Service Fee will be multiplied by two or four, depending on the severity of persistent underperformance.</p> <p>The Project Company will also have an opportunity to earn back some previously incurred deductions if the Project Company is able to otherwise demonstrate superior performance over the rest of the contract year. Such incentive for superior performance cannot result in a Service Fee greater than the Service Fee that would apply if no deductions were incurred during the contract year.</p>
Minimum Service Fee	The Project Agreement will provide that the Service Fee shall not be reduced to an amount less than the amount necessary for the Project Company to pay debt service on its project debt obligations. Any applicable excess deductions, setoffs or retainage will roll forward to subsequent Service Fee payment periods until they can be applied.
8. RELIEF EVENTS	
Generally	<p>The Project Agreement includes provisions granting the Project Company certain relief upon the occurrence of circumstances beyond the reasonable control of the Project Company and which materially expand the scope, interfere with, delay or increase the cost of performing the Contract Services. Such “Relief Events” will be specifically defined in the Project Agreement. They include changes in law, force majeure events, differing site conditions, undisclosed hazardous substances and other uncontrollable circumstances, but generally exclude any act, event, condition or circumstance resulting from breach of the Project Agreement by the Project Company or any failure of performance by the Project Company or any subcontractor of the Project Company.</p> <p>The occurrence of Relief Events is the sole grounds for excuse from performance under and in accordance with the Project Agreement.</p>
Schedule, Performance and Cost Relief	In the event of the occurrence of a Relief Event, including County-directed change orders and failures of performance by the County, the Project Company may be entitled to performance relief, schedule relief, additional compensation, or any appropriate combination thereof.
Notice and Mitigation	The Project Agreement requires the Project Company to provide notice of the occurrence of any Relief Event, demonstrate the impact of the Relief Event on the performance of the Contract Services, and take all measures reasonably necessary to mitigate the impact of the Relief Event. Any schedule adjustment will require the Project Company to demonstrate the impact of the

	Relief Event on the critical path of the Project schedule. The Project Company's entitlement to relief will be conditioned upon compliance with the notice, proof and mitigation requirements of the Project Agreement.
9. CONTRACTING AND LABOR PRACTICES	
Subcontracting	The Project Company shall be entitled to enter into subcontracts for the performance of the Contract Services but shall remain responsible and liable to the County for the performance of all subcontracted services. The County has approval rights in the Project Agreement with respect to the use of subcontractors. The Project Company shall not substitute or terminate any such approved major subcontractor without the prior written consent of the County.
Wage Requirements	Project contractors and subcontractors will be obligated to pay prevailing wages to workers as required by ORS 279C. 800 to ORS 279C.875, and Oregon Administrative Rule Chapter 839, Division 25.
Labor Relations	The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the work and has exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company or its subcontractors, whether pertaining to organization or subdivision of the work, employee hiring, or any other matters.
Construction Career Pathways Project (C2P2) and Local Business	The Project Company developed a C2P2 implementation plan so that the Project Company may make a good faith effort to achieve all the stated goals of the C2P2 program. Such implementation plan has been incorporated into the Project Agreement. The Project Company has also prepared a local business participation plan that has been incorporated into the Project Agreement.
Disadvantaged Minority-Owned, Women-Owned, Emerging Small Businesses, Service Disabled Veterans Business Enterprises (D/M/W/ESB/SDVBE) Subcontracting Requirements	The Project Company, developed a D/M/W/ESB/SDVBE subcontracting plan, so that the Project Company may make a good faith effort to subcontract 20% of the hard construction costs of the Project to D/M/W/ESB/SDVBE subcontractors. Such subcontracting plan has been incorporated into the Project Agreement.
General Oregon Law Requirements	The Project Company shall comply with all Oregon organizational requirements, including corporate registration and taxation requirements, as well as all other provisions required under applicable Oregon law.

10. INSURANCE, INDEMNITY AND SECURITY FOR PERFORMANCE	
Insurance Requirements	The Project Agreement specifies minimum insurance requirements for the Project Company and its subcontractors. Compliance with the minimum insurance requirements will not serve to limit the Project Company's liability to the County in respect of indemnification or otherwise under the Project Agreement.
Indemnity	The Project Company shall indemnify, defend and hold harmless the County from and against any and all claims or losses resulting from subcontractor claims, intellectual property claims, breach of the Project Agreement (including breach of applicable law), negligence or willful misconduct.
Liability Limitations	The Project Agreement contains no stated dollar limitation on damages for non-performance (except as applicable to deductions, as further described in Section 7 above). Special, consequential and punitive damages will be mutually waived.
Security for Performance	The Project Company has obtained appropriate security for the performance of the design-build work. Such security for performance includes a payment bond and letter of credit from the design-builder along with a parent company guarantee.
11. DEFAULT AND REMEDIES	
Project Company Default	Project Company defaults will include failure to timely commence or diligently pursue the Contract Services necessary to achieve Occupancy Readiness, failure to achieve Occupancy Readiness within 365 days of the Scheduled Occupancy Readiness Date (as adjusted for Relief Events) the (" Longstop Date "), abandonment of the Project, failure to maintain security for performance, bankruptcy and insolvency events, failure to make payments when due, misrepresentations, persistent and material failure of compliance with the performance requirements, and other material breaches of the Project Agreement.
Cure Rights	The Project Company shall be entitled to notice and an opportunity to cure certain defaults. However, the Project Company will not have any further opportunity to cure defaults in respect of a failure to achieve Occupancy Readiness by the Longstop Date, bankruptcy and insolvency events, or breaches of provisions relating to changes in control or refinancings.
County Remedies	The County shall be entitled to exercise remedies in respect of Project Company defaults, including rights to step in and cure, recover actual damages, make demands upon security for performance, termination, and other remedies under law, all subject to the rights of the Project Company's lenders under the lenders' remedies agreement.
County Default	<p>County defaults include failure to make payments when due (subject to notice and cure opportunity) and extended suspension of the Project Company's performance of the Contract Services absent Project Company default.</p> <p>The Project Company shall be entitled to exercise remedies in respect of County default, including termination of the Project Agreement and recovery of actual damages. However, damages</p>

	recoverable by the Project Company shall not exceed the lesser of (1) the amount payable in respect of compensable Relief Events; or (2) the amount payable in the event of convenience termination of the Project Agreement by the County.
11. TERMINATION RIGHTS AND COMPENSATION	
County Termination for Convenience	The County has the right to terminate the Project Agreement for its convenience and without cause at any time. In such event, the County shall pay the Project Company the amount of termination compensation to be specified in the Project Agreement which is expected to consist primarily of an amount equal to 100% of the amount of outstanding Project debt, together with the projected equity return.
County Termination for Project Company Default	The County has the right to terminate the Project Agreement for an event of default by the Project Company. In such event, the termination compensation payable to the Project Company is expected to consist primarily of an amount equal to 80% of the amount of outstanding Project debt.
Project Company Termination for County Default	The Project Company has the right to terminate the Project Agreement for an event of default by the County. Termination compensation payable by the County in such event shall be no greater than the termination compensation in respect of County termination for convenience, and the Project Company shall have no right to recover additional damages or compensation.
Other Termination Rights	Other termination rights are included in the Project Agreement based on the occurrence of uninsurable force majeure events, extended relief events, insurance unavailability, and adverse court rulings.
12. ASSIGNMENT AND CHANGE IN CONTROL	
Generally	The Project Agreement precludes any change in control of the Project Company until two years following the Occupancy Readiness Date (which will be established in the RFP), other than: (1) an exercise of rights by the Project Company's lenders pursuant to a lenders' remedies agreement to be entered into between the lenders and the County at financial close; or (2) changes made with the consent of the County, which may be given or withheld in its absolute discretion. The County will expect to give such consent only in exceptional circumstances. After the restricted period that follows the Occupancy Readiness Date, a change in control of the Project Company will be permitted only with the prior consent of the County, not to be unreasonably withheld.
13. DISPUTE RESOLUTION	
Governing Law	Oregon
Disputes	Disputes shall be handled through non-binding mediation or by litigation solely and exclusively initiated and maintained in the Clackamas County Circuit Court or Oregon Federal District Court.

No Attorney Fees

In the event any dispute, including any bankruptcy proceeding, is instituted to enforce any term of the Project Agreement, each party shall be responsible for its own attorneys' fees and expenses.

Attachment 3 - Project Cost Summary	In Millions Nominal \$
County Direct Costs	
Phase 1 – Preplanning	\$2.40
Phase 2 – Procurement	\$4.40
Phase 3 – Final Design & Permitting	\$0.90
Phase 4 – Construction	\$23.20
Total County Direct Costs	\$30.90
Project Company Costs	
Project Development Costs	\$11.90
Design & Construction Costs ²	\$247.20
Construction Phase Financing Costs	\$23.30
Total Project Company Costs	\$282.40
Total Project Capital Costs	\$313.30
First Full Year AP	\$13.84

Attachment 4	State & County Share		
	FP3 Proposal	Excluding District Attorney Cost *	State Share
County direct costs	\$ 30.9	\$ 27.6	\$ 13.8
FP3 Development Costs	\$ 11.9	\$ 10.6	\$ 5.3
FP3 DB costs	\$ 235.8	\$ 210.5	\$ 105.2
FP3 construction financing costs	\$ 23.3	\$ 20.8	\$ 10.4
	<u>\$ 301.9</u>	<u>\$ 269.4</u>	<u>\$ 134.7</u>
County FF&E - 100% paid by County	\$ 3.2		
State FF&E - 100% paid by State	\$ 8.2		\$ 8.2
Total FF&E	<u>\$ 11.4</u>		
Total Project Costs	<u>\$ 313.3</u>		<u>\$ 142.9</u> Required State Contribution
State Share	\$ 142.9 46%		\$ (94.5) Authorized FY 21/23
County Share	\$ 170.4 54%		\$ 48.4 Request FY 23/25

** The DA space = 11.75% of the Gross Square Footage of the new courthouse, so the State Share reflected on this schedule is an estimate of 89.25% of the proposed cost. FP3 is working on a true cost breakout of the DA from the total costs for State match purposes and will be outlined in the funding agreement between the County and the State.*

**CLACKAMAS COUNTY COURTHOUSE
PHASE FUNDING AGREEMENT FOR PHASE II**

THIS CLACKAMAS COUNTY COURTHOUSE PHASE FUNDING AGREEMENT FOR PHASE II (this “Phase II 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 II

State Funds for Phase II: \$94,500,000.00 (Article XI-Q bonds)

Phase Completion Date: July 1, 2025

Estimated Project Completion Date: December 1, 2025

Terms and Conditions

- 1. Master Funding Agreement.** As anticipated in the Clackamas County Courthouse Amended and Restated Master Funding Agreement dated effective February 28, 2022 (“Master Agreement”) the parties enter into this Phase II Agreement. This Phase II Agreement incorporates all the terms of the Master Agreement as if fully set forth in this herein. In the event of a conflict between this Phase II Agreement and the Master Agreement, this Phase II Agreement shall control.
- 2. Effective Date and Term.** This Phase II Agreement is effective on the date all required signatures and approvals are obtained (“Effective Date”). The term of this Phase II 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.
- 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; and attached **Exhibit A** (Phase Work for Phase II), **Exhibit B** (Benchmarks for Phase II) and **Exhibit C** (March 3, 2022 Memorandum – Initial Technical Requirements). The foregoing Exhibits are incorporated herein by this reference.
- 4. 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 II

Agreement:

- (a) “Benchmarks” means the items set forth in **Exhibit B**.
- (b) “County Contribution” means the amount of not less than \$94,500,000, for this Phase II that the County has agreed to provide under this Phase II Agreement.
- (c) “Furniture, Fixtures, and Equipment” or “FFE” means the personal property consisting of integrated systems furniture, loose furniture such as chairs, file cabinets, freestanding desks, etc., audio visual equipment and information technology equipment which will be acquired and installed in the OJD Premises as more particularly set forth in **Section 15** of this Phase II Agreement.
- (d) “FFE Costs” means the actual, reasonable, and necessary capital costs directly attributable to the acquisition and installation of the FFE, subject to the not-to-exceed amount of \$8,200,000.00 of State Funds.
- (e) “Material Change” has the meaning set forth in **Section 14(b)**.
- (f) “Phase Completion Date” means **July 1, 2025** (or as may be extended by the agreement of the parties).
- (g) **“Phase Work”** means the County’s work and the Project Company’s work under the Project Agreement for the planning, design, and construction of the Project, including those items set forth in **Exhibit A**.
- (h) “State Funds” means the not-to-exceed monetary contribution of **\$94,500,000.00** 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 includes the FFE Costs which shall not exceed 8,200,000.00, and all other Authorized State Costs which shall not exceed \$86,300,000.00.
- (i) “State’s Proportionate Share” means 89.25%, of all Authorized Costs except the FFE Costs for Phase II that are eligible for payment by State Funds.

5. **Additional Background.**

- (a) As of the Effective Date of this Phase II Agreement, the County has met all of the Phase I Benchmarks as required under the Phase I Agreement, as amended from time to time.
- (b) Pursuant to the terms of the Master Agreement, on March 3, 2022, OJD issued the Memorandum attached to this Phase II Agreement as **Exhibit C** defining the documents comprising the Initial Technical Requirements and setting forth required changes to those documents to ensure consistency with the minimum Courthouse Design Criteria. On

March 3, 2022, subject to County making the listed changes, the State approved the Initial Technical Requirements.

- (c) As of the Effective Date of this Phase II Agreement, County confirms there have been no changes to the Initial Technical Requirements.
- (d) County, either directly or through its agents, has reviewed the top two technical proposals received in response to the its procurement for a Project Company and have noted inconsistencies with the Initial Technical Requirements contained in those proposals. County shall work with the selected Project Company to correct such deficiencies prior to execution of the Project Agreement.
- (e) As noted in the Master Agreement, The Legislative Assembly authorized State Bonds to fund the State’s Proportionate Share of the Phase II Authorized Costs in Senate Bill 5505 (Or. Laws 2021, ch. 658, effective July 27, 2021).
- (f) Further, in House Bill 5202, Section 121 (Or. Laws 2022, ch. 110, effective April 4, 2022), the Legislative Assembly provided OJD with expenditure limitation of \$95,399,999.00 to fund up to \$94,500,000.00 for the State’s Proportionate Share of the Phase II Authorized Costs.
- (g) The State of Oregon has agreed to contribute the State Funds. The State Funds are funds that will be realized from the sale of Article XI-Q bonds.
- (h) The parties anticipate that in Spring 2023, the State of Oregon Treasurer will sell the State Bonds to provide the Phase II State Funds for the Project.
- (i) The Oregon Legislative Assembly may authorize additional State Funds for the Project, but the State has no present obligation of any kind to provide additional funding, other than the State Funds.

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

- (a) The State represents, warrants and covenants as follows:
 - (i) All representation, warranties, and covenants of the State under the Master Agreement are true and correct as of the Effective Date of this Phase II Agreement.
 - (ii) This Phase II Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Phase II Agreement, constitutes a valid and binding agreement of the State that is enforceable against the State in accordance with its terms.
 - (iii) The State has taken all actions required by the legislature for the State to acquire and use the State Funds during this biennium, and the State Funds will be available this biennium, to be spent on this Phase II pursuant to this Phase II Agreement and the Master Agreement. Notwithstanding the prior sentence, a

- condition precedent to State's obligation to contribute any State Funds to the Project after this biennium is subject to the State obtaining the necessary expenditure limitation and authorization from the Oregon Legislative Assembly.
- (iv) Subject to the terms of this Phase II Agreement, the State shall contribute the full amount of the State Funds to the Project.
 - (v) State will issue the State Bonds in the amount of \$94,500,000 in the 2021-2023 biennium, so long as the County is not in default under the terms of this Agreement or any Phase Funding Agreement, subject to the following terms and conditions:
 - a. After receipt and acceptance by State of the County's Article XI-Q Bond Project Spending Plan ("Spending Plan"), DAS shall issue a letter to the County confirming that issuance of Article XI-Q bonds for the Project will be included in the Spring 2023 Article XI-Q bond sale. The letter is presently anticipated to be issued on or before January 13, 2023.
 - b. The State's Article XI-Q bond underwriter(s) shall publicly post the Preliminary Official Statement ("POS") for the Article XI-Q bond sale, which POS includes the Project. The posting of the POS is presently anticipated in January 2023.
 - c. The State Treasurer's Office in conjunction with DAS shall approve the Article XI-Q bond sale pricing documents, including but not limited to the Bond Purchase Agreement, provided that nothing in this Section obligates the State to approve any such documents, any such approval (or withholding thereof) remaining within the sole discretion of the State. Pricing of the bonds is presently anticipated to occur on or before February 15, 2023.
 - d. The State's Article XI-Q bond underwriter(s) shall publicly post the Official Statement ("OS") for the Article XI-Q bond sale, which OS includes the Project. The State Treasurer's Office in conjunction with DAS shall approve closing documents for the State Bonds, provided that nothing in this Section obligates the State to approve any such documents, any such approval (or withholding thereof) remaining within the sole discretion of the State. The State Treasurer at the request of DAS shall issue the State Bonds. A closing date is presently anticipated to occur on or before February 28, 2023.
 - e. While the State covenants to issue the State Bonds during the 2021-2023 biennium subject to the terms and conditions detailed above, all dates, including the closing date, are presently anticipated dates and subject to economic conditions, including but not limited to the economic forecasts, the bond market and interest rates.
 - f. The OJD and DAS shall execute an Interagency Agreement in form and substance satisfactory to OJD and DAS to provide for management of the State Bonds proceeds and disbursement of the proceeds to pay for the Phase Work Authorized Costs. After closing of the State Bonds, DAS will ensure that the State Bonds proceeds are deposited into the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) for use in connection with the Project. Nothing in this Section shall require deposit into separate funds or accounts within the OCCCIF account at Oregon State Treasury.
 - (vi) The parties recognize that Authorized State Costs for Phase II are expected to exceed initial estimates, based on the Project Company's proposal and the

finalized Project Agreement. Upon the receipt of all necessary additional Project information, including Project Company cost information, if Phase II Authorized State Costs exceed initial estimates, the Chief Justice anticipates updating the letter issued to the County on February 23, 2022. Such updated letter is expected to include but not be limited to revising the cost-effectiveness determination to allow for potential increases in the Authorized State Costs for Phase II, if approved by the Oregon Legislature. The present estimated not-to exceed amount is \$95,700,000 State Funds. The Chief Justice may, in her discretion, not update the cost-effectiveness determination or alternatively update the cost-effectiveness determination and provide additional letters of support for the Project to the County.

- (vii) Should the Legislative Assembly authorize additional State Funds for the Project during the 2023 legislative session or subsequent session, including but not limited to additional Article XI-Q bonds, and provide the requisite expenditure limitation authority, the State will reasonably cooperate with the County to amend this Phase II Agreement to contribute the additional authorized amount of State Funds to the Project. If authorized, any additional Article XI-Q bond funding would occur pursuant to a separate bond sale from the sale referenced in **subsection (v)** above.

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

 - (i) All representation, warranties, and covenants of the County under the Master Agreement are true and correct as of the Effective Date of this Phase II Agreement.
 - (ii) This Phase II 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 has taken all actions required by law for the County to acquire and use the County Contribution, and the County Contribution is now available, or will be available as needed, to be spent on this Phase II pursuant to this Phase II Agreement and the Master Agreement.
 - (iv) The County shall contribute the full amount of the County Contribution to the Project.
 - (v) The County understands, acknowledges and agrees that the State has no obligation of any kind to provide additional funding, other than the State Funds.
 - (vi) As required by the Master Agreement, the County shall ensure the prohibition against Encumbrances in Section 6(b)(vi) is included in the Project Agreement.
 - (vii) County shall cooperate with any and all consultants or other contractors hired by OJD in connection with the Project.
 - (viii) County shall submit a Spending Plan to the State in form and substance acceptable to the State and when requested by the State. The Spending Plan is presently anticipated to be due no later than December 30, 2022. The 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 \$94,500,000.

The Spending Plan shall include anticipated payments for Project Agreement Costs and Non-Project Agreement Costs, including the Occupancy Readiness Milestone Payment.

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

7. 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 \$94,500,000.00, for both the not-to-exceed \$8,200,000.00 for FFE Costs and the not-to-exceed \$86,300,000.00 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 \$86,300,000.00 and the parties have not amended this Phase II Agreement agreeing to the increasing 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. 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 the 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 commercially reasonable efforts to timely meet the Benchmarks.

10. Phase Work Authorized Costs: Specific Inclusions and Exclusions.

- (a) **Specific Inclusions.** In addition Authorized Costs allowed and specifically included under the Master Agreement, the parties agree the following capitalizable costs related the Phase Work under this Phase II Agreement are Authorized Costs under Phase II:
 - (i) Time spent working on the Project by (a) Gary Barth, County's Courthouse Project Manager; and (b) Nathan Boderman, Assistant County Counsel, employees of the County;; provided that such time is charged to the Project on a time-spent basis, rather than as a percentage of such employees' total work for the County; that such charges do not include fringe benefits or the County's overhead;
 - (ii) Costs of the Project incurred by the Project Company, including those relating to the Project Company's financing costs for the Project, costs incurred by the

Project Company for the Phase Work, and Phase Work costs related to demolition on the Project Parcel;

- (iii) costs of WTP America, LLC– technical consultant and advisor;
- (iv) costs of IMG Rebel Advisory, Inc. – financial consultant and advisor;
- (v) costs of Hawkins Delafield & Wood LLP – legal consultant and advisor; and
- (vi) costs for road improvements directly related to the Project and required by City of Oregon City.

(b) **Specific Exclusions.** In addition costs excluded from Authorized Costs under the Master Agreement, the parties agree Authorized Costs under this Phase II Agreement also do not include the following:

- (i) Any County financing costs not expressly allowed under **Section 10(a)** above; and
- (ii) Costs for road improvements not required by the City of Oregon City and not directly related to the Project.

11. County Contribution: Phase II Non-Project Agreement Costs. If the County wants to receive credits towards the County Contribution for Non-Project Agreement Costs during this Phase II, County shall follow the process set forth in Section 12 of the Master Agreement.

12. County Contribution – Phase II Project Agreement Costs.

- (a) If County wants to utilize the costs under the Project Agreement as part of the County Contribution, County shall follow the process set forth in Section 11(c) of the Master Agreement.
- (b) The State Project Monitor shall calculate the Project Agreement Costs in accordance with the terms of the Master Agreement and this Phase II Agreement.
- (c) Upon approval of the State Project Monitor of the Authorized Costs under the Project Agreement, County shall receive a credit toward its County Contribution in the amount of the Project Agreement Costs. However, State Funds for the Authorized State Costs or for FFE Costs will not be disbursed prior to the State’s Occupancy Readiness Milestone Payment and then only in accordance with this Section 12(c) and Section 15 of the Master Agreement and **Section 18** of this Phase II Agreement.
- (d) If at any time after the calculation of the Project Agreement Costs pursuant to this Section, the Project Agreement is amended so that the costs under that agreement are revised, County shall provide the State Project Monitor written notice of such amendment along with details of the changes and a complete copy of the amendments.
 - (i) Upon receipt of such notice, the State Project Monitor shall recalculate the Project Agreement Costs in accordance with the terms of the Master Agreement and this Phase II-Agreement.
 - (ii) Upon approval of the State Project Monitor of the Authorized Costs under the Project Agreement as adjusted by the amendment(s), County credit toward its County Contribution shall be adjusted to reflect the adjusted amount of the Project Agreement Costs. However, as previously noted, State Funds for the Authorized

State Costs or for FFE Costs will not be disbursed prior to the State's Occupancy Readiness Milestone Payment and then only in accordance with Section 12(c) and Section 15 of the Master Agreement and **Section 18** of this Phase II Agreement.

13. Technical Requirements.

- (a) County shall not make or allow any Material Changes to the Initial Technical Requirements, except as set forth in **Section 14**.
- (b) Despite any communication or participation by OJD employees or officials regarding review of the Technical Requirements including any review or discussion of proposals submitted in response to County's competitive process for the selection of a Project Company, review of the Technical Requirements shall remain subject to **Sections 13 and 14** of this Phase II Agreement and may only be approved by OJD through the processes set forth in this Phase II Agreement. For the avoidance of doubt, communication or participation by OJD employees or officials regarding review the Technical Requirements outside of the processes set forth in this Phase II Agreement shall not be binding on OJD.

14. Review of Design and Material Changes to Technical Requirements.

- (a) **Review and Comment Rights on Design.** OJD shall have the right to review and comment on all Project design to ensure consistency with the Initial Technical Requirements. However, this review and comment by OJD on the Project design and related matters shall neither relieve the County or the Project Company of full responsibility for the design and construction of the Project in accordance with the terms of the Initial Technical Requirements and all other requirements nor in any way limit OJD's rights to review and approve or disapprove that the Project has been completed in accordance with the Initial Technical Requirements, that the Phase Work and Benchmarks have been completed, that the Project is ready for occupancy and use by the Project Occupants, and that the Occupancy Readiness Milestone Payment is due.
- (b) **Material Changes to Technical Requirements.** "Material Change" means any of the following proposed changes to the Project:
 - (i) Any change to the Initial Technical Requirements related to the design or construction of the Project that is not a reasonable, minor variations from the Initial Technical Requirements to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Project. Examples of elements of the Initial Technical Requirements from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms (to the extent overall functionality is not impaired or square footage decreased); exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical cables, and control panels.
 - (ii) A change to the FFE.
 - (iii) Any changes to the Initial Technical Requirements Requested by Project

Company.

(iv) Any changes to the Initial Technical Requirements Requested by County.

(c) **Material Changes Requiring OJD approval.** The County shall promptly provide the Trial Court Administrator and the State Project Monitor with notice of any proposed Material Change, and the Trial Court Administrator and the State Project Monitor shall have ten Business Days after receipt of such notice to review and respond. Any such Material Change is subject to OJD's advance written approval, not to be unreasonably withheld.

(d) **Material Changes Requiring Colocation Agency(ies) approval.** If the Material Change will affect the Colocation Premises of a Colocation Agency, then in addition to the notice and approval required under **Section 14(b)**, the County also shall promptly provide the affected Colocation Agency with notice of the proposed Material Change, and the Colocation Agency shall have five business days after receipt of such notice to review and respond. Any such Material Change is subject to the Colocation Agency's advance written approval, not to be unreasonably withheld.

(e) **Resolution of Conflicts by the Parties.** In the event of a conflict under this Section, the parties may utilize the dispute resolution procedures in Section 7 of the Master Agreement to assist in resolving the dispute.

15. Furnishings and Equipment for OJD Premises. As part of and in connection with the construction of the Project, OJD needs to outfit the OJD Premises, as more particularly set forth in the Initial Technical Requirements. County has agreed on OJD's behalf, to acquire and install the FFE pursuant to the terms of this Phase II Agreement.

(a) County will engage Project Company and may engage other contractors to assist County with the completion, acquisition, and installation of the FFE pursuant to the term of this Phase II Agreement.

(b) Subject to the not-to-exceed amount of State Funds, County shall charge and OJD shall pay 100% of the FFE Costs. Such payment shall be part of the Occupancy Readiness Milestone Payment and, therefore, shall be subject to all terms and conditions for that payment.

(c) The parties acknowledge and agree that the County's obligation to provide FFE is limited to \$8,200,000 unless OJD, in its sole discretion, provides additional funding for the FFE. Subject to the terms of this subsection, the parties agree that OJD may, at any time and in its sole discretion revise the FFE purchases.

(d) County shall ensure or ensure its contractors, including Project Company, submit to OJD all documentation on the FFE including, without limitation, copies of all instructions, warranties, and support terms. All such documentation shall be in PDF format.

(e) County and contractors shall submit to OJD complete lists of inventories delivered for all

FFE, organized by type of FEE (i.e. audio visual, integrated systems furniture, loose furniture and information technology).

- (f) Upon payment of the Occupancy Readiness Milestone Payment, County shall assign and shall cause all contractors including Project Company to assign all right title and interest in such FFE to OJD.

If such FFE contain any software, un-compiled source code, specifications, content, designs, developments, processes, or documentation that is licensed (“Licensed Components”), upon payment of the Occupancy Readiness Milestone Payment, County hereby assigns and shall cause all contractors to assign all their license rights, title and interests in such Licensed Components to OJD.

If such FFE are covered by any warranty or support/service agreements (“Service Contracts”), upon payment of the Occupancy Readiness Milestone Payment, County hereby assigns and shall cause all contractors to assign all of their rights, title and interests in such Service Contracts to OJD.

For the avoidance of doubt, the Parties agree that upon payment of the Occupancy Readiness Milestone Payment all FFE shall become the personal property of OJD. The Parties further agree that upon payment of the Occupancy Readiness Milestone Payment OJD shall obtain the rights to any Licensed Components and Service Contracts. Until payment of the Occupancy Readiness Milestone Payment and the transfer and assignment to OJD, County shall be solely responsible for all FFE and shall bear all risk of loss with respect to the FFE.

16. Commissioning of Improvements.

- (a) **Involvement.** County and Project Company shall include OJD (as the holder of a leasehold interest in the OJD Premises) and the Colocation Agencies (as the holders of leasehold interests in the Colocation Premises) in any and all of the commissioning, walkthrough, closeout, punch list discussions or other presentations of the OJD Premises, the Project Common Areas, and both of the Colocation Premises.
- (b) **Plan.** As part of the commissioning process, County shall provide OJD and Colocation Agencies the Project Company’s commissioning plan for the conduct and timing of the commissioning activities.
- (c) **Commissioning Tests Report.** Promptly upon completion of the commissioning tests, County shall deliver to OJD a copy of the commissioning tests report prepared by or on behalf of the Project Company.

17. Execution of Leases. During this Phase II, the parties shall finalize and enter into the OJD Lease, 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. OJD may require full execution of the OJD Lease and Colocation Leases as a pre-condition to the payment

of the 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.

18. State Occupancy Readiness Milestone.

- (a) The Independent Building Expert shall determine whether the Project has been fully completed, excepting items on written “punch lists,” in accordance with the Initial Technical Requirements including any Material Changes approved by OJD and is ready for occupancy and use by the Project Occupants. Punch list exception items are any defects, deficiencies and items of outstanding work that would not materially impair County or State activities and could be rectified within 120 days with minimal interference to the occupancy, use and lawful operation of the Project. In making the determination, the Independent Building Expert shall determine whether the Project is ready for use and occupancy by the Project Occupants and that completion of the Project is in accordance with the terms of the Project Agreement and the Independent Building Expert Agreement entered into by the Independent Building Expert, the Project Company and the County.
- (b) The State shall use reasonable efforts to determine that all requirements, Phase Work, and Benchmarks under this Phase Agreement have been met, which requirements shall include the Project has been completed in accordance with the Initial Technical Requirements including any Material Changes approved by OJD and is ready for occupancy and use by the Project Occupants. The State and County shall work cooperatively with the goal of coordinating State’s determination under this section to occur before or concurrently with the Independent Building Expert’s determination of Occupancy Readiness, as defined in the Project Agreement. Notwithstanding the Independent Building Expert’s role pursuant to Section 18(a), the State reserves the right to use its own experts and inspectors to independently determine whether all requirements, Phase Work, and Benchmarks under this Phase Agreement have been met. County shall provide access to State experts and inspectors to examine and inspect the Project.
- (c) In order to help ensure simultaneous determinations pursuant to this **Section 18** by the State and the Independent Building Expert, the County shall promptly share with the State’s designated representatives all reports that it receives from the Project Company, WT Partnership and the Independent Building Expert during the design and construction period relating to Project progress and any potential Project issues. The County shall also notify the State of all planned physical inspections of the Project that will be carried out by the Independent Building Expert so that the State will have the opportunity to join any such inspection. The State shall use reasonable efforts to promptly raise with the County any issues, concerns, or disagreements that the Project is in compliance with the Initial Technical Requirements and ready for occupancy and use that the State may have based on the results of any such reports or inspections. Further, the County and State shall use reasonable efforts to resolve any issues, concerns, or disagreements in a timely manner to

help ensure the timely payment of the State's Occupancy Readiness Milestone Payment. The parties acknowledge that the County is obligated to pay the Project Company a lump sum amount within the five Business Days of the Independent Building Expert's completion determination being made pursuant to Section 18(a), and that the County intends to use the State's Occupancy Readiness Milestone Payment to make such lump sum payment to the Project Company. As a result, timely payment of the State's Occupancy Readiness Milestone Payment from the State to the County will help ensure the County has received the State Funds to allow it to pay the Project Company within five Business Days as required in the Project Agreement. However, OJD's receipt and review of any materials under this subsection (c) shall not in any way limit OJD's rights to review and approve that the Project has been completed in accordance with the Initial Technical Requirements and is ready for occupancy and use by the Project Occupants and that the Occupancy Readiness Milestone Payment is due.

- (d) In the event that the Independent Building Expert makes its determination of Occupancy Readiness, but the State reasonably determines that any part of Section 18(b) above has not been met or achieved, 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 remaining actions to be performed pursuant to Section 18(b). Any amounts retained pursuant to this Section shall be promptly paid to the County upon completion of the relevant outstanding actions and only when such completion is approved by the State. Nothing in this Section limits County's obligation to complete the Project in accordance with requirements and terms of the Funding Agreements.
- (e) Upon determination of completion of the Project by the Independent Building Expert pursuant to Section 18(a), the State shall, subject to its right to withhold disputed amounts pursuant to Section 18(d) above, make a payment to the County of the State's Occupancy Readiness Milestone Payment. Such payment is estimated as of the date of this Phase II Agreement to be an amount of \$90,000,000, assuming the State has determined the Project to be complete pursuant to Section 18(b) and has not retained any amounts pursuant to Section 18(d) above. Notwithstanding the prior sentence, the actual amount of the State's Occupancy Readiness Milestone Payment shall be determined pursuant to Section 13 of the Master Agreement and Section 12 of this Phase II Agreement.
- (f) Provided the State has realized the State Funds from the sale of the Article XI-Q bonds and has received sufficient appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly, the State shall pay State's Occupancy Readiness Milestone Payment within three Business Days of the determination under Section 18(e) above.
- (g) Upon the State's payment to the County of the State's Occupancy Readiness Milestone Payment, County shall pay the same amount to the Project Company pursuant to the Project Agreement within five Business Days.
- (h) As required under the Master Agreement, County's payment of County Contribution for the financing to the Project Company is estimated to be made over time, estimated as a

30 year term beginning after the State's Occupancy Readiness Milestone Payment is paid. The parties acknowledge and agree that such payments of the County Contribution shall, as and to the extent required by Section 11 of the Master Agreement, be deposited by the County with OJD into the Fund from time to time over the 30 year payment term on a schedule mutually agreed upon by the parties.

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

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

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

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: _____
Title: _____
Signature: _____

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

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

Print Name: _____
Title: _____
Signature: _____

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

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

Print Name: _____
Title: _____
Signature: _____

Clackamas County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

_____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
_____, Assistant County Counsel

Exhibit A

Phase Work for Phase II

- Complete and provide a copy of Request for Proposal (RFP) for the Project Company
- Provide copy of the successful proposer's response to the RFP for the Project Company
- Complete and provide copy of the fully executed Project Agreement
- Complete and provide copy of the Initial Technical Requirements
- Complete and provide the Project Schedule
- Complete and provide the Project Budget
- Obtain approval from the City of Oregon City of any necessary land use permits
- Complete and provide a copy of permit set of the design documents
- Obtain Substantial Completion of the Project, as evidenced by a certificate of occupancy from the City of Oregon City and verification by Independent Building Expert and the State that the Project was constructed in accordance with the Initial Technical Requirements, including any Material Changes approved by OJD or the Colocation Agency, as applicable.

Exhibit B

Benchmarks for Phase II

- County has obtained OJD written approval of the Initial Technical Requirements
- County has completed the Phase Work for Phase II
- County has obtained the required approvals from OJD pursuant to **Section** above regarding any applicable Material Changes;
- County has obtained the required approvals from Colocation Agencies pursuant to **Section** above regarding any applicable Material Changes
- County has entered into OJD Lease
- County has entered into a Colocation Lease with each Colocation Agency
- Complete Project Parcel due diligence
- Complete copy of the Spending Plan (see Section 6(v)(a))
- Complete the conceptual designs for required surface parking facilities

Exhibit C

March 3, 2022 Memorandum – Initial Technical Requirements

Type	Year	Taxes	Transfer to Debt Service Fund	Courthouse Capital Charge	Total Debt Pd by GF	Debt / Taxes
Actuals	FY 18-19	130,855,979	5,066,655		5,066,655	3.9%
Actuals	FY 19-20	133,082,464	5,115,403		5,115,403	3.8%
Projected	FY 20-21	140,368,995	5,202,044		5,202,044	3.7%
Projected	FY 21-22	145,861,139	4,770,068		4,770,068	3.3%
Budget / Forecast Yr 1	FY 22-23	150,947,359	4,686,058		4,686,058	3.1%
Forecast Yr 2	FY 23-24	157,526,354	4,618,125		4,618,125	2.9%
Forecast Yr 3	FY 24-25	163,722,421	4,226,579		4,226,579	2.6%
Forecast Yr 4	FY 25-26	169,824,151	4,204,126	11,035,931	15,240,057	9.0%
Forecast Yr 5	FY 26-27	176,275,379	4,132,470	11,095,585	15,228,054	8.6%
Forecast Yr 6	FY 27-28	182,497,219	6,636,542	11,095,585	17,732,127	9.7%
Forecast Yr 7	FY 28-29	189,332,173		11,095,585	11,095,585	5.9%
Forecast Yr 8	FY 29-30	196,426,855		11,095,585	11,095,585	5.6%
Forecast Yr 9	FY 30-31	203,791,136		11,095,585	11,095,585	5.4%
Forecast Yr 10	FY 31-32	211,435,259		11,095,585	11,095,585	5.2%
Forecast Yr 11	FY 32-33	219,369,859		11,095,585	11,095,585	5.1%
Forecast Yr 12	FY 33-34	227,605,974		11,095,585	11,095,585	4.9%
Forecast Yr 13	FY 34-35	236,155,061		11,095,585	11,095,585	4.7%
Forecast Yr 14	FY 35-36	245,029,013		11,095,585	11,095,585	4.5%
Forecast Yr 15	FY 36-37	254,240,175		11,095,585	11,095,585	4.4%
Forecast Yr 16	FY 37-38	263,801,362		11,095,585	11,095,585	4.2%
Forecast Yr 17	FY 38-39	273,725,874		11,095,585	11,095,585	4.1%
Forecast Yr 18	FY 39-40	284,027,517		11,095,585	11,095,585	3.9%
Forecast Yr 19	FY 40-41	294,720,623		11,095,585	11,095,585	3.8%
Forecast Yr 20	FY 41-42	305,820,066		11,095,585	11,095,585	3.6%
Forecast Yr 21	FY 42-43	317,341,289		11,095,585	11,095,585	3.5%
Forecast Yr 22	FY 43-44	329,300,318		11,095,585	11,095,585	3.4%
Forecast Yr 23	FY 44-45	341,713,790		11,095,585	11,095,585	3.2%
Forecast Yr 24	FY 45-46	354,598,974		11,095,585	11,095,585	3.1%
Forecast Yr 25	FY 46-47	367,973,795		11,095,585	11,095,585	3.0%
Forecast Yr 26	FY 47-48	381,856,859		11,095,585	11,095,585	2.9%
Forecast Yr 27	FY 48-49	396,267,480		11,095,585	11,095,585	2.8%
Forecast Yr 28	FY 49-50	411,225,704		11,095,585	11,095,585	2.7%
Forecast Yr 29	FY 50-51	426,752,341		11,095,585	11,095,585	2.6%
Forecast Yr 30	FY 51-52	442,868,990		11,095,585	11,095,585	2.5%
Forecast Yr 31	FY 52-53	459,598,071		11,095,585	11,095,585	2.4%
Forecast Yr 32	FY 53-54	476,962,858		11,095,585	11,095,585	2.3%
Forecast Yr 33	FY 54-55	494,987,506		11,095,585	11,095,585	2.2%
Forecast Yr 34	FY 55-56	513,697,092		59,654	59,654	0.0%

Clackamas County Courthouse P3 Procurement FAQs

(as of 6/20/2022)

1. WHAT ARE THE OPTIONS THE BOARD HAS?

The Board has two options – 1) Approve the Fengate P3 (FP3) proposal and move toward financial close, or 2) reject the FP3 proposal and restart the procurement of a new Courthouse.

1.1. Can we negotiate further with the preferred bidder?

The County has gone through an extensive 6-month value engineering process with the Proposers. During that process we have already descoped any “nice to have’s”. The County has exhausted all material value engineering options, resulting in the fully optimized and committed proposals that were submitted in a competitive context.

1.2. Can we pause the procurement and restart later?

The current proposals are fully committed through mid October. If we don’t reach financial close by then, the design and construction costs and the financing conditions will need to be renegotiated. Considering the developments in the construction and financial markets, delaying the process is expected to lead to price increases.

1.3. Can we exchange their financing with cheaper public financing that the County pays directly?

Financing is an integrated part of the P3 agreement. It ensures effective risk transfer because the County’s private partner has skin in the game. It provides performance incentives, as the financiers and investors will only fully recover their investment if the County’s private partner continues to perform, so they will monitor the project’s performance and put pressure on the Project Company to complete construction and continue to keep the building up to standard.

The proposer teams ran their own competitive process to select the debt financing – more than 90% of the financing requirement – at the most attractive terms. This has resulted in historically low borrowing costs on both the debt and equity portions, including the lowest rates our financial advisor is aware of in the history of P3s for some components.

Financing has been part of the procurement from the start and cannot be taken out. Pursuing a public financing option would require this procurement to be cancelled and a new procurement to be restarted.

2. IF THE BOARD APPROVES THE CONTRACT, WHAT HAPPENS?

If the Board approves the contract, the team will move to finalize the project and financing agreements and achieve financial close as quickly as possible. Closing is targeted by the end of August, after which the Project Company will immediately commence design and construction activities.

2.1. Are all the P3 costs fixed if we approve this contract?

The vast majority of costs associated with the contract are fixed already (design-build cost, real facilities management and lifecycle refurbishment charges, equity rate of return, debt credit spreads).

Clackamas County Courthouse P3 Procurement FAQs

(as of 6/20/2022)

However, the debt costs will continue to move with market changes (e.g. US Treasury yields as the base rate for the long-term bonds) until financial close, when they will all be fixed.

After financial close, the capital charge will not change for the duration of the P3 agreement. Neither will the facilities management costs or lifecycle costs in real dollar terms, however the facilities management and lifecycle components of the Service Fee will be indexed by actual CPI.

2.2. What is the current Service Fee using today's interest rates?

Interest rates have risen roughly 90 basis points since the bid interest rate effective date of April 5, 2022. Accordingly, the Capital Charge component has risen from \$9.8 million per year to \$11.1 million per year. The first year Facilities Management Charge is \$3.4 million, for a total first year Service Fee of \$14.5 million.

2.3. What if interest rates keep going up?

In order to enable interest rates to move while also allowing the Team to reach financial close without returning to the Board for last-minute approval, we are suggesting that the Board approve the ability of the Team to reach financial close as long as the Year 1 total Service Fee stays below \$16.9 million. This represents an interest rate market move of 1.00%. Should rate movements drive the service fee above this level, we would call an emergency Board meeting for the Board to either reapprove the new level or cancel the transaction.

3. WHAT HAPPENS IF WE REJECT THIS CONTRACT?

If this contract is rejected, the bid will no longer be valid and the County will need to begin the Courthouse procurement again, based on a timeline established by the Board.

3.1. Can we reject this bid, but keep the designer and builder, and finance it at the same price with cheaper County debt (FF&C or GO)?

No. While the County will own the design, the committed pricing and guarantees are all integrated parts of the P3 contract, and they will no longer be binding if the contract is rejected. Given unexpected inflation since the pricing date (4/5/2022) and increases in market volatility, it is not clear that the County could still get the same pricing. Because this procurement included the financing and other integrated P3 security elements, should the County wish to continue to develop the same design, it will need to reprocure the designer and builder through another procurement.

3.2. Can we do another P3 if we reject this contract?

It is unlikely that the County would be able to generate the same level of interest in a P3 procurement if it cancelled this procurement. Each bidding team has spent millions of dollars and over a year of time developing their proposals. The best teams are unlikely to want to "throw good money after bad" in the County for a second proposal.

Clackamas County Courthouse P3 Procurement FAQs

(as of 6/20/2022)

3.3. What are the benefits associated with rejecting this contract?

There are four main benefits of rejecting this contract:

1. The County would not “lock in” the current pricing and Service Fee schedule, which would leave more flexibility in future years for budgeting for programs. (Until another Courthouse procurement began to use budget capacity.)
2. The County could revisit how high of a strategic priority a new courthouse is.
3. The County could redesign its procurement process and may have more certainty around its components of the project (road and parking improvements), which might enable it to procure all elements together.
4. It is expected that 2026 – 2028 are going to be more challenging financially under the P3, as the County will be paying both a Service Fee and material amounts of FF&C debt service (\$9 – 11 M per year in debt service). Rejecting this contract could enable the County to delay the new procurement so that payments don’t begin until 2029, reducing impact on programs during the 2026 – 2028 window.

3.4. What are the risks associated with rejecting this contract?

There are five main risks associated with rejecting this contract:

1. *Project Delays and Public Safety.* Rejecting this contract will guarantee that a new Courthouse will not be built before 2026. The current Courthouse is insufficient to handle the current caseload due to too few courtrooms, contributing to crowded jails and the early release of prisoners and people being held pending trial. Delaying the new Courthouse may exacerbate this problem.
2. *Existing Facilities Risk:* The County is not currently maintaining and investing in the existing Courthouse as a long-lived asset, and is experiencing unexpected and expensive breakdowns annually. In addition, erosion and seismic insufficiency of the existing building increase the susceptibility of the old Courthouse to catastrophic collapse. Further delay increases the costs and risks associated with these elements.
3. *OCCCIF match risk.* Currently, the OCCCIF is expecting to match 50% of the State’s Proportional Share of the Project. Should this contract be rejected and the procurement restarted, the State would not sell its bonds in February 2023, and the Project would be required to go through program approval and affordability analysis again. Should the new procurement be delayed or stretch on, there is no guarantee that the OCCCIF program will not be modified or cancelled. In addition, even if the program stays in place, should future costs come in higher than the P3, there is no guarantee that the state will fully match those increased costs in its affordability determination.
4. *Capital Cost Risk.* By rejecting this contract, the County would lose the committed design-build price associated with the P3 contract. While most economists and market participants are anticipating a slowing to the rampant inflation in construction costs we’ve seen over the past year, we have not seen anyone predicting that overall construction prices will fall, just that they will rise more slowly. Accordingly, the County can expect costs to rise if it delays the Project.

Clackamas County Courthouse P3 Procurement FAQs

(as of 6/20/2022)

5. *Interest Rate Risk.* While interest rates have risen dramatically lately, most market participants we have heard from do not anticipate rates falling again in the near future. In addition, rates remain near historical lows, returning to only 2018 levels, as can be seen in the charts below. (Source: Macrotrends.net) Accordingly, there seems to be more likelihood to interest rates increasing over the next few years than to them decreasing.

10- year US Treasury Rates
(1962 – 2022)



30-year US Treasury Rates
(1977 – 2022)



4. HOW DO THE COSTS OF THE P3 CONTRACT COMPARE TO THE COUNTY PROCURING AND OPERATING THIS PROJECT THROUGH A TRADITIONAL PROCUREMENT?

Overall, with updated assumptions reflecting escalation and current interest rates, the risk-adjusted costs of the P3 are roughly 10% lower than the risk-adjusted costs of conventional delivery.

There are three key components of the costs: 1) Capital Costs, 2) Facilities Management Costs, and 3) Lifecycle Costs.

1. *Capital Costs:* The Capital costs of the project consist of both the actual design and build costs and the financing costs. P3 procurement methods – by integrating the design and build components and running a competitive, but collaborative, process that incorporates “value engineering” opportunities with teams of integrated design/builders – typically results in lower design build costs of 10 – 25%. Conservatively, we can assume that the County would get at least a 5% higher price by procuring a design-build through traditional methods. Design-bid-build would be even higher.

On the financing side of things, it is inarguable that the interest rate on tax-exempt debt is lower than the WACC of a P3. However, because all rates are near historical lows, our financial advisor’s analysis indicates that it would only take a 6% cost overrun to eliminate all the benefit of tax-exempt borrowing. This is well within the expected range of public procurement overruns, and Clackamas County’s experience.

Finally, the County’s competitive P3 process has been able to result in historically low borrowing costs on both the debt and equity portions, including the lowest rates our financial advisor is aware of in the history of P3s for some components.

Clackamas County Courthouse P3 Procurement FAQs

(as of 6/20/2022)

Overall, when incorporating the cost fixing and risk-allocation mechanisms in the P3, and current market realities (particularly inflation and volatility), overall capital costs of the P3 are expected to be lower than delaying and reprocurring.

2. *Facilities Management Costs:* Currently, the County is paying roughly \$13.77 / sq.ft. to operate and maintain (O&M) the existing Courthouse and DA facilities. The P3 agreement locks in the O&M component at \$13.69 (in \$2022), subject only to CPI increases. Historically, County costs have increased at rates higher than inflation. Accordingly, O&M costs under the P3 are expected to be slightly better on a /sq.ft. basis, and are expected to grow more slowly than traditionally-operated costs. (We note that the overall costs of the new Courthouse are higher because it is a larger building. However, the design has been "optimized" through "value engineering" in the consultative bid process, so any new Courthouse is likely to be of similar size.)
3. *Lifecycle Costs:* Historically, the County has not budgeted or planned for "Lifecycle Costs" – the major maintenance, renewal/rehabilitation, and "overhaul" costs that periodically occur with a long-lived asset. This can cause last minute budget challenges and reserve draws if deferring preventative maintenance results in significant failures at inopportune times that have to be repaired on an emergency basis. While the County is moving towards incorporating these predictable "overhauls" into its budgeting process, it is not yet complete. The P3 contract, however, includes these elements in the Lifecycle Cost payment, and any risk of unexpected failures before the Lifecycle renewal/overhaul period falls on the P3 partner. Accordingly, we would expect the overall Lifecycle Costs of the P3 to be lower than those resulting from the County's traditional processes.

Memo

Date: June 20, 2022

To: Board of County Commissioners

Gary Schmidt, County Administrator

From: Gary Barth, Courthouse Project Manager

RE: Estimated Allocated Costs of District Attorney Space in the New Courthouse

New office space for the Clackamas County District Attorney's (DA) office was included in the Technical Requirements of the new county courthouse. As we have known, the cost attributable to the DA's space does not qualify for the State funding match under the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF). The State funding request needs to exclude those estimated DA costs, so we used a gross square footage ratio as an initial methodology in allocating project costs.

With Fengate PCL Progress Partners (FP3) now selected as the Apparent Successful Proposer, we requested that they provide a more precise estimate of the total project costs that could be attributable to the DA space for use in determining the final OCCCIF State match request. FP3 just completed a cost allocation exercise that resulted in a cost estimate of ***\$7,172,385 for the district attorney space or 2.3% of the total project costs.*** This is much lower cost attributable to the DA space and the more precise allocation methodology will be provided to the State with our revised funding request. This revised DA cost estimate has the following implications:

1. Courthouse costs eligible for the 50% OCCCIF match increase by ~ \$25 million, potentially reducing the County share of the project costs by \$12.5 million.
2. The low incremental cost of incorporating the DA into the new Courthouse provides a very cost-effective effective solution to relocating the DA from their

current substandard, leased facilities in downtown Oregon City to the Red Soils Campus.

Revised County/State Cost Sharing based on updated cost of District Attorney Space:

	FP3 Proposed Costs			
County direct costs	\$ 30.9			
FP3 Development Costs	\$ 11.9			
FP3 DB costs	\$ 247.2			
FP3 construction financing costs	<u>\$ 23.3</u>			
Total Costs excluding FF&E	<u>\$ 313.3</u>			
Less FF&E Allowance	\$ (11.4)			
Less Cost of District Atty space	<u>\$ (7.2)</u>			
Total Eligible for 50% OCCIF match	<u><u>\$ 294.7</u></u>			
 <i>County Share</i>				
50% of Eligible Courthouse Costs	\$ 147.4			
100% of District Atty space	\$ 7.2			
100% of County FF&E Allowance	<u>\$ 3.2</u>			
	<u><u>\$ 157.8</u></u>	50.4%	170.4	\$ 12.65
 <i>State Share</i>				
50% of Eligible Courthouse Costs	\$ 147.4			
100% of State FF&E Allowance	<u>\$ 8.2</u>			
	<u><u>\$ 155.6</u></u>	49.6%	142.9	\$ (12.65)
Currently Authorized FY 21/23	\$ 94.5			
Additional Request for FY 23/25	\$ 61.1			



From FP3

Following up on the County's request for cost allocation of the district attorney program, please see the information below that outlines our approach to calculation and the allocable cost.

- When allocating cost to district attorney space, we took a different approach than utilizing a % based on GBA and total cost.
- The driver for this is that the total project cost includes significant portions of work that are not building related – which is reflected in the Unifomat breakdown.
- In addition, within the total courthouse building cost, there are significant cost premiums in that total number that are not allocable to the district attorney space.
- These cost premiums range from premium finish components in other spaces to equipment that is required whether or not the district attorney space were part of the program.
- Put simply, the district attorney space is one of the most cost effective spaces within the project.
- In order to take these realities into consideration and establish a responsible, accurate cost allocation, we have taken the following approach:
 - A detailed QTO was completed for all components of the district attorney space – from all structural elements to room signage.

-
- This QTO included the associated structural deck, associated building enclosure assemblies, associated interior assemblies / finishes, and associated MEP systems.
 - These quantities were then valued using the same cost data used to assemble our financial submission.
 - Lastly, we reviewed the details of our estimate and have also included general expenses associated with the square footage of the district attorney space.
 - In addition to the QTO and pricing exercise, we analyzed the appropriate schedule allocation associated with the construction of the district attorney space.
 - The value listed below includes the general expenses associated with that schedule allocation.

Following the process above, this allocation exercise has resulted in a value of \$7,172,385 for the district attorney space.

In the event that conversations progress toward actual removal of the district attorney program, we wanted to highlight that a change order for cost reduction would not generate the same value. This \$7.2M would be considerably reduced for a variety of reasons:

-
- Removal of this program would require a significant re-design effort. In doing so, several of the assemblies allocated to the DA program would likely remain on the building.
 - As an example, enclosure isn't necessarily deleted since it would still be required to enclose the floor of the building.
 - In a quick analysis of how the overall building program could be adjusted after removing DA space, not all GBA can actually be removed.
 - This essentially creates some GBA "bloat" in the remaining program in order to minimize building re-design – which erodes the extent of cost savings.

We felt it was important for all parties to understand some of the nuances arising from a scope reduction scenario.