

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 5/5/21 **Approx Start Time:** 10:00 am **Approx Length:** 60 min

Presentation Title: New County Courthouse Project Update

Department: County Administration

Presenters: Gary Barth, Courthouse Project Manager

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

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval to proceed with the procurement of a Project Company to design, build, partially finance, operate and maintain (DBfOM) the new county courthouse using a Public-Private Partnership (P3) delivery approach.

EXECUTIVE SUMMARY:

At the July 7, 2020 Policy Session the Board of County Commissioners (BCC) approved the use of a Public-Private Partnership (P3) project delivery approach to design, build, partially finance, operate and maintain (DBfOM) the new county courthouse (the "Project") on the site identified in the adopted Red Soils Master Plan. Staff was directed to prepare a Procurement Package for the purposes of procuring a private development partner for Board review and approval in the spring of 2021. The completion of this Procurement Package will complete Phase 1 of the Project as defined in the Phase 1 Funding Agreement between the County and the State.

At a Work Session on April 21, 2021 the Board was presented with the following components of a P3 Procurement Package:

- A refined Project scope
- A refined Project cost estimate
- A Project financial plan and budget forecast
- A Project "affordability ceiling" based on the Project Lifecycle costs

Additional components of the P3 Procurement Package that will be required over the course of the P3 Procurement effort are also under development to be completed upon Board approval to proceed. They include:

- A Board Resolution, with required findings, that authorize a P3 delivery approach for the courthouse project for consideration at a public hearing
- A Request for Qualification (RFQ), subject to Board approval of the authorizing Resolution, for completion by private development teams interested in being considered for the project
- A Request for Proposal (RFP) that would be issued to the shortlist of firms that responded to the RFQ, subject to the completion of a grant funding agreement with the state for 50% of the project capital costs
- A draft Project Agreement that would accompany the RFP. This draft Agreement will be refined and finalized with the preferred proposer for final Board approval in the 4Q of FY21/22.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget? YES NO

What is the cost? The completion of this Phase 1 procurement preparation effort is budgeted at \$1.3 million in FY 20/21, jointly funded 50/50 between the State and the County.

Should the Board authorize moving forward with the P3 procurement the estimated cost to execute the competitive P3 procurement phase is proposed in the FY 21/22 budget at \$5.4 million with 50% eligible for subsequent state reimbursement. These estimated costs include consulting fees for P3 technical, financial, transactional and legal expertise in conducting P3 procurement efforts and drafting and executing P3 Project Agreements. The costs also include a reserve for reimbursable design fees to be paid to unsuccessful proposers participating in the competitive and comprehensive Request for Proposals to ensure we have a robust competition among qualified teams. Request for Proposals will not be issued until agreements are in place with the state for match funding.

That effort will result in the selection of a preferred Project Company, an approximate 30% courthouse design, a guaranteed project cost and a long-term Project Agreement with the preferred proposer to finance the completion of the design and the construction of the new county courthouse and to operate and maintain it for a 30 year term. The final Project Agreement will be subject to Board approval in 4Q FY 21/22.

Upon Board approval of the Project Agreement through financial and commercial close, the 30 month final design and construction phase begins, running from approximately July 1, 2022 – June 30, 2025. During this phase the county and state will incur an estimated \$2.5 - \$3.0 million expense for contracted “owner representative” services to provide project oversight and work with the Project Company to ensure compliance with the Project Agreement. This oversight will include, but not be limited to, tracking compliance with facility technical requirements, managing

project controls such as costs and budget management, reviewing and tracking project schedules, verifying quality, and producing monthly status reports.

Upon building completion, estimated around July 1, 2025, the budget for the 30 year period commencing FY 25/26 will be that which is reflected in the courthouse Availability Payment schedule contained in the Project Agreement. The state funding match for 50% of the capital costs is anticipated to be received by the county as a single "milestone payment" to be applied to the project capital costs at project completion per a State/County Funding Agreement. The county will accordingly use that milestone payment to pay off a portion of the privately financed debt outstanding resulting in a significantly lower AP which is 100% the responsibility of the county. The Net Present Value (NPV) of the projected Availability Payments is estimated at \$170 million which the Board can establish as an "Affordability Ceiling" for the P3 procurement process with any proposals exceeding that ceiling deemed unacceptable.

STRATEGIC PLAN ALIGNMENT:

- Build a new county courthouse
 - Build public trust through good government
 - Grow a vibrant economy
 - Build a strong infrastructure

LEGAL/POLICY REQUIREMENTS: The Project RFQ, RFP, Procurement Resolution, and Project Agreement will all be produced and approved by county counsel with support of outside legal counsel. The Funding Agreement between the county and the state will be jointly developed by county counsel and as attorneys representing state DOJ.

PUBLIC/GOVERNMENTAL PARTICIPATION: County Public & Government Affairs (PGA) is leading the public and governmental participation efforts as key members of the Project TAT.

OPTIONS:

Option 1. Proceed with procurement of a P3 development partner with a defined project "affordability ceiling", customary in P3 procurements. This will require adoption of a Board Resolution at a subsequent public hearing on May 20, 2021 with findings that support the use of a P3 alternative project delivery approach.

Should the Board adopt the P3 authorizing Resolution, staff would then commence the P3 procurement effort beginning with the issuance of a Request for Qualifications (RFQ), followed by a Request for Proposals (RFP) issued to a shortlist of firms selected from RFQ respondents. The RFP will include the aforementioned "affordability ceiling" of \$170 million Net Present Value (NPV) and project proposals must come in at or under that ceiling to be considered compliant with the RFP. The RFP process will culminate in the selection of a preferred partner and development of the final Project Agreement for Board approval in the 4Q of FY 21/22.

Option 2. Do not proceed with the procurement of a P3 developer and advise staff to prepare an alternative all-public delivery approach subject to state and county approval.

Option 3. Do not proceed with the procurement of a P3 developer and advise staff to close out the courthouse project and expend no further efforts on a replacement courthouse facility.

RECOMMENDATION:

Staff recommends Option 1, Proceed with procurement of a P3 development partner with a defined project “affordability ceiling”, customary in P3 procurements. This will require adoption of a Board Resolution at a subsequent public hearing on May 20, 2021 with findings that support the use of a P3 alternative project delivery approach.

Should the Board adopt the P3 authorizing Resolution, staff would then commence the P3 procurement effort beginning with the issuance of a Request for Qualifications (RFQ), followed by a Request for Proposals (RFP) issued to a shortlist of firms selected from RFQ respondents. The RFP will include the aforementioned “affordability ceiling” of \$170 million Net Present Value (NPV) and project proposals must come in at or under that ceiling to be considered compliant with the RFP. The RFP process will culminate in the selection of a preferred partner and development of the final Project Agreement for Board approval in the 4Q of FY 21/22.

ATTACHMENTS:

- Answers to questions from the 4/21/21 Work Session
- P3 Procurement Timeline
- Staff Report Work Session 4/21/21
- Staff Report Policy Session 1/12/21
- Staff Report Policy Session 7/7/20

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue, please contact [Gary Barth, Courthouse Project Manager, gbarth@clackamas.us](mailto:gbarth@clackamas.us)

Attachment #1

Courthouse Work Session

April 21, 2021

Follow-Up Responses to Questions Posed by the Board of County Commissioners at the Work Session

Discussion Topic – Facility requirements and space plan

Question: The Departmental square footage is estimated at 191,595 square feet but the total building square footage is estimated at 258,654 square feet, due to a 35% grossing factor. What is a grossing factor and why was 35% used to calculate the total building square footage.

Response: The following is a definition of square footage terms and calculations provided by the National Center for State Courts which were used as the standard for our validated space plan.

The space projections were developed based on the programmed, assignable, functional space anticipated for conducting the planned activities within the court environment, and the necessary un-assignable floor space for the building elements, circulation space, building service mechanical rooms, and other public areas. *Three types of space data, namely Net Square Feet (NSF), Departmental Gross Square Feet (DGSF), and Building Gross Square Feet (BGSF), were used for the development of the space requirements.*

Net Square Feet (NSF). Net area – also called “programmable area” – is measured in net square feet (NSF). Net area describes the actual working area of an office, workstation, or support space. Net area represents the actual area assigned for a specific space for function, excluding permanent structural or architectural elements and internal circulation.

Departmental Gross Square Feet (DGSF). Departmental area – also called “usable area” – is measured in departmental gross square feet, including all net areas (as described above) and a factor to account for interior wall thicknesses, corridors and pathways within a department, columns and other structural elements, and inefficiencies created by shaft spaces that penetrate through the floors within departmental areas, and the like. This value represents the total area that is typically used when calculating the area on a floor that a specific unit or department would require. To arrive at the departmental gross square footage, each total departmental net area is multiplied by a specific grossing factor appropriate to the function for which the space is intended. For example, an open office work environment occupied primarily by cubicle workstations requires a higher departmental grossing factor than a closed private office environment due to the fact that cubicles typically require circulation on more than one side while closed offices typically do not. Programmed areas such as prisoner holding spaces are assigned a relatively high departmental grossing factor to account for larger corridor widths needed for safe transport of prisoners. Programmed areas such as the main lobby, storage rooms and mechanical rooms are assigned a relatively small departmental grossing factor because of the minimal internal circulation required in these spaces.

Building Gross Square Feet (BGSF). Building gross area, includes the total of all departmental areas (as described above), with an additional factor to account for major public circulation among departments, elevators, stairwells, mechanical and electrical spaces not specifically included in the project space listing, exterior walls, and any other common spaces not clearly

identified as net areas. Building gross area is measured to the exterior surface of permanent outer building walls, and includes all enclosed areas. Building gross area is accounted for in the space program by adding an overall building grossing factor to each major departmental area after individual departmental grossing factors have been applied. A BGSF factor varies based on the type of building being designed. Per the NCSC:

“Because courthouses have unique security and circulation requirements, more total space is needed to make individual departmental areas work than in an office building. Courthouses require additional private corridors and private and secure elevator cores. Judicial facilities must handle large numbers of people with efficiency and a sense of decorum. As a result, main lobbies, elevator cores and elevator lobbies, and public corridors must be larger than in a typical office building. This additional space is referred to as Building Gross Square Feet (BGSF).” Accordingly, a grossing factor of 35% was used for the county courthouse.

Staff and our consultants believe we are being conservative in the square footage estimates using the assigned grossing factors based on the requirements we have developed for the new Clackamas County Courthouse. We prefer to conservative on these space projections and corresponding cost estimates as we go into the procurement process and are certain that the proposers will achieve a much more efficient net to gross ratio and lower cost due to the competitive nature of the P3 procurement structure.

Discussion Topic – Facility Cost Estimate

Question: The costs per square foot seem high. How do they compare to other recent courthouse projects, specifically Jefferson County and Multnomah County courthouses, the first two completed under the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) program?

Response: The table below shows the actual or projected costs of recent courthouse projects completed in N. America, including two completed projects in Oregon (Jefferson and Multnomah) and one planned (Lane) compared to our projected cost estimate. We are anticipating that our actual, final cost may be lower than estimated based on the complete nature of the P3 delivery approach.

Jefferson	OR	2016	\$	15,000,000	35,000	\$	429	Small facility, rural location
Multnomah	OR	2020	\$	350,000,000	462,000	\$	758	Urban high-rise, no dedicated parking
Lane	OR	TBD	\$	252,000,000	300,000	\$	840	Estimated cost in GO Bond ballot measure (failed)
Johnson	KS	2020	\$	193,900,000	356,831	\$	543	Midwest market
Howard	MD	2021	\$	150,000,000	238,000	\$	630	Model for Clackamas
Abbotsford	BC	2021	\$	120,000,000	178,681	\$	672	US dollar equivalent of dollars Canadian
Miami-Dade	FL	2024	\$	267,000,000	640,000	\$	417	Selected P3 proposer 30% lower than projected estimate
Travis County	TX	2022	\$	333,000,000	430,000	\$	774	Comparable size to MultCo
Clackamas			\$	199,957,000	258,654	\$	773	

Discussion Topic – P3 Availability Payment

Q1. How should we interpret the cash flows graphs from the Availability Payment presentation?

The cash flow graphs indicate that:

- the expected costs over the life of the project under conventional delivery are ~\$440M in total or ~\$190M net present value (future expenditures adjusted for the time value of money, to express them in today's dollars);
- the expected costs over the life of the project under P3 delivery are ~\$430M in total or ~\$180M net present value;
- the expected costs in 2021 – 2025 are higher under conventional delivery (~29M) than under P3 delivery (~18M);
- the costs under P3 delivery are more certain than under conventional delivery, as >95% of the costs will be subject to a “ceiling” that bidders in the P3 procurement will have to stay below.

Q2. Isn't the difference in expected costs between the two delivery models negligible?

In the cash flow graphs, the expected costs under P3 delivery are lower than under conventional delivery by about \$0.5M per year, which is not a huge amount of money but will nonetheless result in a more economical project. This may not be the most important difference between the two models. Additional benefits of the P3 structure include:

- the County does not have the experience or capacity to efficiently manage a project of this size and complexity (associated with a highly computerized and modern building systems and equipment), and so is more prone to delays, cost overruns and change orders under a conventional delivery;
- the County can “lock in” 95% of the project costs for the coming 35 years at the launch of the procurement using P3 delivery. (The County will continue to have some costs associated with P3 contract management, force majeure events, etc.);
- the County's costs under P3 delivery are lower in the 2021 – 2025 period, when the County has competing debt service obligations;
- P3 delivery offer completion date certainty for the County;
- the P3 contract is performance-based, meaning that the P3 partner will have to meet the performance standards over the entire 35 year period, or the County will reduce the payments.

Finally, the \$0.5M difference may be bigger in practice, as the County will be using the projected costs for the P3 as a “ceiling”. Three shortlisted bidders will compete in the procurement process to identify the optimal solutions for the project and the lowest possible life cycle costs required to deliver the project and meet the specifications for the following 30 years.

Q3. Why are we considering the value of risks and uncertainties?

Risks and uncertainties do exist and are often realized. Public investment projects regularly experience cost overruns, delays, and change orders. Uninsured and unexpected events – such as

water damage due to a broken sprinkler, premature equipment failure or obsolescence – as well as labor cost increases above private sector growth rates, and less efficient maintenance – including deferred maintenance – further increase costs. In a comprehensive risk assessment for this project we have identified more than 100 risks. The value of those risks is considered in the cash flows presented to the board, and the “typical” experience of realizing those risks is included in the conventional delivery graphic.

It is important to note that the assumptions for debt service and O&M under conventional delivery reflect a project that experiences no cost overruns, delays, or unexpected events over the life of the project. The “expected risk” component results from a market-standard analytical methodology to estimate what a “normal” occurrence of those delays and events would be, and so are costs the County should expect to incur.

Under P3 delivery, we have the opportunity to transfer most of those project risks to the P3 partner. The P3 partner prices those risks into their bid, which is why there is no ongoing grey “expected risks” component of the P3 scenario in the cash flow graphs. Because the P3 partner is more specialized and incentivized to manage the risks, we are expecting a more efficient solution and lower life cycle costs under P3 delivery than under conventional delivery.

In summary, in an apples to apples comparison we cannot ignore risks and uncertainties. The fact that the County would not transfer most of the risks to a private contractor under conventional delivery and retain those risks itself does not mean that they will not occur. Not considering the retained risks would make the comparison unfair, and would not reflect the full fiscal exposure the County has under conventional delivery.

Q4. Can we save \$100M by choosing conventional delivery?

No, the expected risk-adjusted costs under conventional delivery are higher than under P3 delivery. They are also more uncertain. The County can “make a bet” and hope that none of the typical risks under conventional delivery are realized. This would be the only way to “save” the roughly \$100 million in expected risks over the 30-year term of the project agreement following construction completion. However, that would be highly unlikely and would introduce long term fiscal uncertainty. We are unaware of any significant projects delivered under similar circumstances in a conventional procurement that did not realize these expected risks. The cost of such retained risks indeed could exceed the expected costs of \$100 million.

Q5. Aren't most of these risks concentrated in the construction period, so we should show them then?

No. As discussed above, these risks include operational, maintenance and lifecycle risks that are sustained over the life of the asset. In addition, construction cost overruns in conventionally delivered projects are typically financed over the life of the asset with further “completion municipal bond” borrowings, so the cost is appropriately spread over the 30 year period.

Q6. Is there a chance that the costs under P3 delivery will be lower than those in the cash flow graphs?

Yes, we will use our cost projection for P3 delivery as a “ceiling” that bidders in the P3 procurement will have to stay below. A combination of the competitive value engineering process built into the P3 procurement (among 3 competing integrated design, construction, maintenance and facility management teams, not just one designer) and the right “best value” (cost and technical merit) evaluation criteria can result in even greater savings. Emphasizing quality or cost in the evaluation criteria will result in bidders focusing on the one the County values more, while not sacrificing compliance with the other. If the Board decides to make cost an important evaluation criterion, it is likely that bidders will submit bids well below the “ceiling”. For example, Miami Dade County received bids that were more than 30% below the “ceiling”.

Q7. How were the project risks derived and how were they monetized when comparing conventional delivery to the P3 approach?

The long-term performance and coordination risks that are transferred to the P3 partner under P3 delivery, are retained by the County under conventional delivery. In order to make an apples-to-apples comparison between delivery models, we need to consider those risks and add them to the conventional cash flows. There is not a “perfect” approach to valuing these risks, but a generally accepted method in the industry is to calculate a “risk premium” or “virtual insurance premium” based on the cost of capital differential. In this approach, the “risk premium” is determined by calculating the difference between the cost of capital based on the applicable public financing interest rate and the cost of capital based on a market-based weighted average cost of capital, expressed in constant cash flows over the lifetime of the project. This approach is in line with academic publications on the topic and the federal government’s guidance on risk valuation and has been used by Howard County, MD, and many other agencies in their comparison of delivery models. As a reminder, the same approach was used – and further explained – in the original value for money assessment that was first presented to the board on February 18th, 2020.

The public financing interest rate that was used is 2.6% and the market-based weighted average cost of capital is 5.3%. Whereas we would be expecting a lower cost of capital in today’s market, we included a “buffer” in both interest rates to ensure that the cash flows presented to the board are “conservative”.

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 4/21/2021 **Approx Start Time:** 10:00 am **Approx Length:** 120 min

Presentation Title: New County Courthouse Project Update

Department: County Administration

Presenters: Gary Barth, Courthouse Project Manager, Elizabeth Comfort, County Finance Director, Project Consultants: Marcel Ham (Rebel), Tom Kness (WT Partnerships), and Eric Peterson (Hawkins, Delafield & Wood).

Other Invitees: Courthouse Leadership Team Members Presiding Judge Kathie Steele, Sheriff Angie Brandenburg, District Attorney John Wentworth, County Public & Government Affairs Director Sue Hildeck.

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

This is primarily an informational work session in advance of the scheduled Policy Session on May 4, 2021 where action will be requested from the Board at that time.

EXECUTIVE SUMMARY:

At the July 7, 2020 Policy Session the Board of County Commissioners (BCC) approved the use of a Public-Private Partnership (P3) project delivery approach. In this approach, the contracted private party would design, build, partially finance, operate and maintain (DBfOM) the new county courthouse (the "Project") on the site identified in the adopted Red Soils Master Plan. Staff was directed to prepare a Procurement Package for the purposes of identifying and recommending a private development partner for Board review and approval in the spring of 2021.

With BCC approval, a Courthouse Technical Advisory Team (TAT) – also known as the Managing for Results (MFR) Courthouse Project Implementation Team - was formed to develop the procurement package. The TAT was comprised of staff from the County, the Oregon Judicial Department (OJD), the State Department of Administrative Services (DAS) guided by three external consulting firms specializing in P3 social infrastructure projects.

The three consulting firms and their areas of expertise are:

- Rebel – Financial and Transactional Advisors
- WT Partnerships – Technical Advisors
- Hawkins, Delafield & Wood – Legal Advisors

The P3 Procurement Package is nearing completion and will be presented to the Board at a Policy Session on May 4, 2021 in order to comply with the termination date of the Phase 1 Funding Agreement and to meet the deadline for submission to receive State matching funds. The Board's approval of the final Procurement Package will conclude Phase 1 of the Project as defined in the Phase 1 Funding Agreement between the County and the State.

The procurement package will contain the following:

1. A refined Project scope and cost estimate
2. A financial plan and budget forecast based on that cost estimate
3. A draft Request for Qualifications (RFQ) to be issued upon BCC approval to private development teams interested in the Project
4. A draft Term Sheet for the P3 Project Agreement
5. A draft Board Resolution authorizing the P3 delivery approach as an alternative public procurement.

This procurement preparation effort will provide the Board with the comprehensive project scope and information necessary to make an informed decision in directing staff towards accomplishing the Strategic Priority to build a new county courthouse.

Alternative Analyses:

At the January 12, 2020 Policy Session the Board directed staff to also look at two alternative approaches to building a new county courthouse using the P3 approach:

- 1) Leasing vacant space elsewhere in the county and renovating it into the new courthouse facility or
- 2) Vacating the Development Services Building (DSB) on the Red Soils Campus and renovating/expanding the DSB into a new county courthouse.

For option 1, there is no space available anywhere in Clackamas County sufficient to meet the projected space requirements for the new courthouse. We then prepared a hypothetical cost analysis assuming space was available and applied current market lease rates. The net present value of a 30-year lease coupled with projected cost of leasehold improvements to convert the space into a courthouse made this option more expensive than building new. And at the end of the lease, the County would own nothing and be required to enter into a new lease at the then-current market rates or relocate to a new facility.

Option 2 would require a complete gutting of the existing DSB and a new addition of near equal size. The cost of renovating and expanding is projected to be only slightly less than the costs of building a new courthouse, but the functional space plan and preferred space adjacencies would be greatly compromised due to the constrain of working within the existing DSB structure and site. Further we projected the costs of relocating 60% of the current DSB occupants to leased spaced off campus and with the net present value of that cost added to

the renovation and expansion, the DSB alternative was much more expensive than building new. The Board can be confident that the new build approach is the most financially viable option.

Today's work session will provide the Board with an overview of the work completed to-date by the TAT on the P3 procurement package and answer any questions the Board may have prior to the May 4, 2021 Policy Session.

Staff and the consultants representing the TAT will present information to the BCC in the following order of topics, with BCC Q&A following each topic presentation:

Topic	Presenter	Duration	Time
Courthouse Project Purpose and Need	Gary Barth, Courthouse Project Manager	5 minutes	10:00 – 10:05
Courthouse Facility Needs	WT Partnerships	25 minutes	10:05 – 10:30
Project Cost Estimate	WT Partnerships	25 minutes	10:30 – 10:55
P3 Financing Review; Availability Payment Projections	Rebel	30 minutes	10:55 – 11:25
Budget Implications	Elizabeth Comfort, County Finance Director	30 minutes	11:25 – 11:55
Next Steps – May 4, 2021 Policy Session	Gary Barth, Courthouse Project Manager	5 minutes	11:55 – 12:00

FINANCIAL IMPLICATIONS (current year and ongoing):

The total Project costs and long range financial forecast are currently in development as part of the Procurement Preparation effort outlined in this staff report.

Is this item in your current budget? YES NO

What is the cost? The completion of the Phase 1 procurement preparation effort is budgeted at \$1.3 million, jointly funded 50/50 between the State and the County. The County share is in the FY 20/21 adopted budget.

The estimated cost for the new courthouse is \$185 million in current dollars, with no escalation, split equally between the County and the State. The District Attorney space is estimated to be an additional \$15 million in hard costs paid 100% by the County. Road and parking improvements on the Red Soils Campus as required by the City of Oregon City may total an additional \$13 million, some of which may be eligible for State match funding if deemed to be "authorized" costs shown to be directly related to the construction of the new courthouse.

The County has requested a state match of \$94.5 million for the FY 21/23 biennium budget, with an opportunity for a final request in FY 23/25 based on the project's Guaranteed Maximum Price (GMP) set forth in the Project Agreement to be completed by mid-year 2022.

In a P3 arrangement, the public partner does not make debt payment until the building completed and ready for occupancy (known as an Availability Payment), which is projected to be early 2025. If so, the first courthouse payment does not need to be budgeted until FY 24/25 at the earliest.

STRATEGIC PLAN ALIGNMENT:

- Build a new county courthouse
 - Build public trust through good government
 - Grow a vibrant economy
 - Build a strong infrastructure

LEGAL/POLICY REQUIREMENTS: The Project RFQ, RFP, Procurement Resolution, and Project Agreement will all be produced and approved by county counsel with support of outside legal counsel. The Funding Agreement between the County and the State will be jointly developed by county counsel and attorneys representing state DOJ.

PUBLIC/GOVERNMENTAL PARTICIPATION: County Public & Government Affairs (PGA) is leading the public and governmental participation efforts as key members of the Project TAT.

OPTIONS: N/A

RECOMMENDATION: N/A

ATTACHMENTS:

- Policy Session Staff Report July 7, 2020 (no attachments)
- Presentation on Courthouse Facility Needs (WT Partnerships)
- Presentation on Project Estimated Cost (WT Partnerships)
- P3 Financing – Availability Payment Presentation (Rebel)
- Budget Implications Presentation (County Finance Department)
- OJD Testimony for FY 21/23 Courthouse Funding Requests

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

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

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 1/12/2021 **Approx Start Time:** 1:30 pm **Approx Length:** 45 min

Presentation Title: New Circuit Courthouse Project Update

Department: County Administration

Presenters: Gary Barth, Courthouse Project Manager

Other Invitees: Courthouse Leadership Team Members Presiding Judge Kathie Steele, Sheriff Angie Brandenburg, District Attorney John Wentworth; County Finance Director Elizabeth Comfort, County Public & Government Affairs Director Sue Hildick; Consultants Marcel Ham (Rebel Group), Tom Kness (WT Partnerships), and Eric Petersen (Hawkins, Delafield & Wood).

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

No action requested. Information Only.

EXECUTIVE SUMMARY:

The County Courthouse Technical Advisory Team (TAT) is in the process of preparing a Public-Private Partnership (P3) procurement package for **Board review and approval later this spring** to design, build, partially finance, operate and maintain (DBfOM) a new county courthouse (the "Project") on the site identified in the adopted Red Soils Master Plan.

This package will be presented to the Board in advance of the deadline to provide the Oregon Judicial Department (OJD), the State Legislature and the Governor's office with the County's final Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) request for the FY 21/23 biennium budget.

This procurement package will contain the following:

1. A Project "affordability ceiling" based on projected revenue and assuming no new voter-approved taxes
2. A refined Project scope and cost estimate that falls within the affordability ceiling
3. A draft Request for Qualifications (RFQ) to be issued to private development teams interested in the Project
4. A draft Request for Proposal (RFP) to be issued to a short-list of development teams selected from RFQ respondents
5. A draft Project Agreement that will be entered into between the County and the preferred private development team selected from the RFP respondents
6. A draft Phase 2 Funding Agreement between the County and the State outlining the terms of the state funding contribution to the project

This procurement preparation effort was undertaken in order to provide the Board with the comprehensive analysis and information necessary to make an informed decision in directing staff in accomplishing the Strategic Priority to build a new county courthouse.

This session is intended to provide the Board with a project status update and answer any questions or hear any concerns the Board may have at this time and determine the schedule for future Board updates during this project phase.

FINANCIAL IMPLICATIONS (current year and ongoing):

The total Project costs and long range financial forecast are currently in development as part of the Procurement Preparation effort outlined in this staff report.

Is this item in your current budget? YES NO

What is the cost? This procurement preparation effort is budgeted at \$1.3 million, jointly funded 50/50 between the State and the County, with the county share in the FY 20/21 adopted budget. The State already approved \$31.5 million in OCCIF bond proceeds and has earmarked an additional \$63 million for a prospective state match ceiling of \$94.5 million, subject to approval in the FY 21/23 biennium budget

STRATEGIC PLAN ALIGNMENT:

- Build a new county courthouse
 - Build public trust through good government
 - Grow a vibrant economy
 - Build a strong infrastructure

LEGAL/POLICY REQUIREMENTS: The Project RFQ, RFP, Project Agreement and Funding Agreement will all be produced and approved by county counsel, State DOJ and outside legal counsel

PUBLIC/GOVERNMENTAL PARTICIPATION: County Public & Government Affairs (PGA) is leading the public and governmental participation efforts as key members of the Project TAT.

OPTIONS: N/A

RECOMMENDATION: N/A

ATTACHMENTS:

- County Strategic Priority
- Courthouse TAT Organizational Chart
- Courthouse Replacement Project Progress Report
- Project Work Plan
- Project Frequently Asked Questions (FAQ)
- Red Soils Master Plan
- Value-for-Money Presentation

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

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

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: July 7, 2020 **Approx. Start Time:** 1:30 PM **Approx. Length:** 60 min

Presentation Title: Courthouse Replacement Project

Department: County Administration

Presenters: Gary Barth, *Project Director*, Elizabeth Comfort, *Interim Director*, Finance

Other Invitees: Sue Hildick, *Director, Public and Government Affairs*, Kathie Steele, *Presiding Judge*, Debbie Spradley, *Trial Court Administrator*

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Approval to proceed with the next step in a Public-Private Partnership (P3) procurement for the new County Courthouse as outlined on the proposed P3 Implementation Plan attached.

EXECUTIVE SUMMARY:

Clackamas County has been approved by the State of Oregon Judicial Department as the next courthouse replacement project to be funded through the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF). The county and the state have committed up to \$2.4 million for the Phase 1 planning effort for the new county courthouse which will culminate in the issuance of Request for Proposals (RFP's) to design and build the new courthouse. The state and county each committing up to \$1.2 million in general funds towards this effort that runs through the state fiscal biennium FY2019-2021 and county FY 2020/2021. This funding commitment and outcomes are memorialized in an Inter-Governmental Agreement (IGA) between the County and the State.

To-date, approximately \$1.1 million has been spent on the planning effort, specifically an assessment of the current courthouse, the projected space needs for a new courthouse and a high level cost estimate of the new courthouse based on those space needs. These efforts were all required in order to complete the application for the OCCCIF program.

In addition, the county contracted with IMG Rebel to complete a Value-for-Money (VFM) analysis to evaluate alternative project finance and delivery approaches to determine which option provides the best **value for money** to the State and Clackamas County to design, build, finance, operate and maintain the new courthouse. The best value is defined as the most advantageous combination of whole life cost, project quality and sustainability that achieves the project requirements.

The study by IMG Rebel concluded that a P3 hybrid approach to designing, building, partially financing, operating and maintaining a new county courthouse provides the greater VFM. Those results were presented to the Board at a February 18, 2019 policy session. No action was taken at that time, deferring action to this follow-on policy session.

Subsequent to the VFM analysis, the County Interim Finance Director also undertook efforts to provide the Board with a financial plan for the county's share of the project costs in the context of a long-range, sustainable budget effort. That analysis has identified an upper limit for affordability but it does not yet answer the question of how much the county should pay in the context of future needs and a sustainable operating budget. That analysis is attached for your reference.

The remaining task of Phase 1 is to finalize the affordability target, develop a corresponding financing plan and complete the project procurement preparation effort.

P3 Implementation Process:

The P3 Implementation Plan outlines five high-level phases. Board acceptance of the VFM recommendation to proceed with a P3 Hybrid approach concluded the first of these five phases, the Project Initiation phase.

The next phase is Procurement Preparation. This is a very critical phase in the P3 procurement process and includes formation of a P3 Technical Advisory Team (TAT) comprised of internal staff and external P3 subject-matter experts in the following areas necessary to create the P3 Request for Proposals:

- Financial/Transactional: The primary objective of this team will be to determine the “affordability targets” for the courthouse project and further refine the work already undertaken by county finance. The county is responsible for 50% of the design and construction costs and 100% of the whole life costs to operate and maintain the building. This team will work to determine what the county can afford for both our share of construction and whole life costs, develop a recommended financing strategy, prepare cash flow projections and draft financial and operating agreements.
- Technical: This team will be focused on a refinement of the project design factoring in the requirements of the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF), the space and programming analyses previously conducted by SERA Architects and the National Center for State Courts (NCSC), and project costs based on the refined design and the affordability targets developed by the Financial/Transactional advisors.
- The legal team will prepare all of the documents required for a P3 procurement including Expressions of Interest (EOI), Requests for Qualifications (RFQ’s) and Request for Proposals as well as the long-term financial and legal agreements that will define all aspects of designing, building, financing, operating and maintaining a new county courthouse. They will also ensure compliance with the OCCCIF bond covenants and the county’s Local Contract Review Board rules.

Each of these three focus areas will inform the others during this Procurement Preparation phase. For example, the technical requirements will inform the project scope and design which will in turn need to comport with the affordability target developed by the finance team. The legal effort will capture the agreed upon technical and financial requirements and be reflected in the final Request for Proposals.

At the completion of this Procurement Preparation phase, the county and state will have a well-defined project that addresses the long-term needs for a new county courthouse that the state will support, at a price the county can afford with all of the legal documents required to initiate the next phase which will be the actual Procurement of a P3 developer. **It is important to note that Board approval will then be required to approve the RFP and financing plan before the RFP is issued. This will constitute a firm project commitment.**

The only commitment the Board is being asked to make at this time is to approve this Procurement Preparation phase using the previously approved funding authorized in the current IGA.

The Board will be continuously updated during this Procurement Preparation phase as the project becomes more fully defined prior to procurement.

PREVIOUS BOARD ACTION:

- October 22, 2019 the Board directed staff to proceed with a Public-Private (P3) hybrid approach subject to validation of a VFM analysis.
- February 18, 2019 policy session presentation of the VFM analysis confirming a P3 hybrid as the recommended approach to designing, building, partially financing, operating and maintaining (DBfOM) the new courthouse. No action was taken at the time, deferring action to this follow-on policy session.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget?

- Yes, this item is in the FY 20/21 budget. The County is executing the Phase 1 pre-planning effort using with a budget of \$2.4 million budget split 50/50 between the County and the State and governed by an approved Intergovernmental Agreement.

What is the cost?

- The cost to complete Phase 1, including the P3 Procurement Preparation effort is not to exceed the remaining Phase 1 approved budget estimated at \$1.3 million, with the county responsible for 50% or \$650,000.

What is the funding source?

State funds are coming from state general funds in the approved budget of the Oregon Judicial Department. The county funds are from the general fund budgeted in the Finance Department.

STRATEGIC PLAN ALIGNMENT:

The building of a new county courthouse is one of 12 Strategic Priorities of the county and is listed under the category **Build Public Trust through Good Government** – the project will ensure that key public safety services are safe and accessible to all residents.

LEGAL/POLICY REQUIREMENTS:

1. A P3 procurement effort will require state approval and compliance with the OCCCIF program as well as compliance with Local Contract Review Board (LCRB) rules. Previous legal review provided favorable opinions for the use of a P3 for an OCCCIF project and permissible under LCRB rules before the county contracted for the VFM analysis.
2. The County must adhere to the budget, conditions and outcomes outlined in the Phase 1 Funding Agreement with the State.

PUBLIC/GOVERNMENTAL PARTICIPATION:

The replacement County Courthouse Project was one of the County's top two initiatives along with I-205 for the previous 2019 legislative session. Success with this priority lead to the State approving \$31.5 million for the current biennium (FY 2019/2021) representing the state share of the first \$63 million in project costs that will commence with the issuance of the RFP and run through design and early stage construction.

In addition to the State Legislature's continued involvement in this process, the project also includes participation of the Clackamas County Circuit Court, the Clackamas County Sheriff's Office, the Clackamas County District Attorney's Office, the Oregon Department of Human Services, the Association of Oregon Counties, the City of Oregon City, and additional key stakeholders throughout the community.

OPTIONS & RECOMMENDATIONS:

Option 1 – Complete Phase 1 using a P3 delivery approach

- This would result in issuance of Request for Proposals RFP(s) for a Technical Advisory Team to assist county staff in developing the materials required to procure a P3 developer to design, build, partially finance, operate and maintain the new courthouse facility. This would include drafting of the P3 Expressions of Interest (EOI), P3 Request for Qualifications (RFQ's), and ultimately the P3 RFP to include a refined project specification and affordability targets for final board approval before the issuance of the RFP
- Pros – lowest cost approach to determining building design and projected construction costs; private-sector competition will drive facility design and cost; design and construction work would be contracted by, coordinated with and overseen by the private developer; higher probability of project being completed on-time and at or under budget; project timeline and cost risk is transferred from the county to the private developer; long-term, lifecycle costs are included providing budget predictability and certainty; design and construction integrated with O&M to deliver lowest overall lifecycle costs.
- Cons – new delivery approach for the county; more complex procurement effort; contractual commitment to operations, maintenance and lifecycle costs over the contract term

Option 2 - Complete Phase 1 using the Construction Manager/General Contractor delivery approach.

- This would result in development of two possibly three RFP's; one for architectural/engineering services (A/E), one for CM/GC services, and possibly a third for a Utility Services Provider (USP) for the building systems (such as mechanical, electrical, plumbing, technology, security, etc.)
- Pros – familiar process; lowest financing costs through full faith & credit (FF&C) bonds; operations, maintenance and lifecycle costs are not contractually obligated
- Cons – Project design will be done by a single architectural firm and constructed by a separate, single construction firm; firms will be chosen based on qualifications, not competitive project design or project cost; county serves as project developer and retains risk of project delivery including cost overruns and project delays; funding required immediately; significant costs would be incurred to create final project design and establish the Guaranteed Maximum Price (GMP) of construction; design and construction may not be integrated with O&M and or focused on lowest overall lifecycle costs; deferred maintenance risk.

Option 3 – Complete Phase 1 using the Design/Build delivery approach

- This would result in development of a single RFP for a Design/Build team and require an estimated project budget and financing plan. It may also include possible development of a second RFP for a USP for the courthouse building systems.
- Pros – familiar process; lowest financing costs through FF&C bonds; design and construction work coordinated to avoid conflicts and optimize design for constructability; operations, maintenance and lifecycle costs are not contractually obligated
- Cons – Project design and construction will be done by a single design/build team; the team will be chosen based on qualifications, not competitive project design or project cost; county serves as project developer and retains risk of project delivery including cost overruns and project delays; funding required immediately; significant costs would be incurred to create final project design and

establish the Guaranteed Maximum Price (GMP) of construction; design and construction may not be integrated with O&M and or focused on lowest overall lifecycle costs; deferred maintenance risk.

Staff recommends Option 1 – Procurement preparation for a P3 project delivery.

If the Board approves Option 1, technical, legal and financial advisors will be retained as part of the Technical Advisory Team to complete Phase 1 with no commitments that their engagement will continue beyond this procurement preparation effort. Phase 1 of the courthouse project will be considered complete upon the development of the project scope, affordability, financing plan and the development of the Request for Proposals (RFP's) per this recommendation.

While it was essential to confirm for the Board that the County's financial obligations for a new courthouse are within the realm of affordability in order to move ahead with completing Phase 1, in the recommended P3 approach **the Board does not need to confirm the final project scope, project budget and affordability requirements at this time.** The P3 procurement effort requires further preparation before the county is ready to launch a Board approved procurement for a P3 developer. By initiating the P3 preparation effort now – including assembling the TAT, finalizing the scope, developing the technical specifications, refining cost estimates, and developing the P3 procurement documentation – we are targeting the third quarter of **FY 20/21 (Jan-March 2021) to return to the Board for final approval of the P3 developer procurement** to include a recommended project schedule, affordability ceiling, final project scope and P3 procurement documentation. This timing will also coincide well with our requirement to convey to the state our final estimated project costs and corresponding final OCCIF funding request as OJD prepares their 2021/2023 biennium budget request for legislative approval. This will provide the county with greater certainty of the state match funding commitment before the project is under contract with a P3 developer.

ATTACHMENT:

1. Courthouse Financing Memo
2. Clackamas County Courthouse P3 Implementation Plan
3. Board Strategic Priority – Build Public Trust Through Good Government
4. Phase 1 Funding Agreement Progress Summary

SUBMITTED BY:

Division Director/Head Approval _____
 _____ Department
 Director/Head Approval _____ County
 Administrator Approval _____

For information on this issue or copies of attachments, please contact Mary Raethke @ 503-742-5912