

# 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](mailto: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



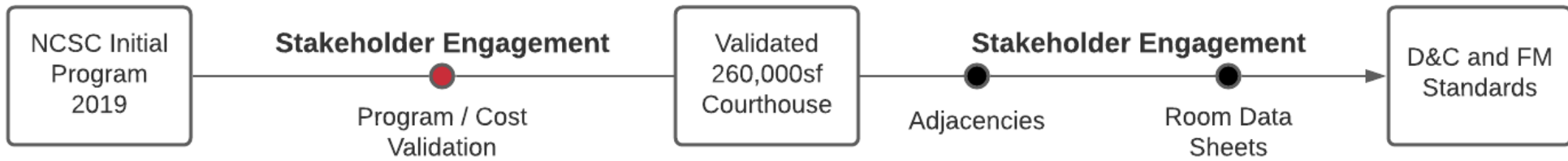
# **New Clackamas County Courthouse Project**

## **Technical Work Session**

**April 21, 2021**



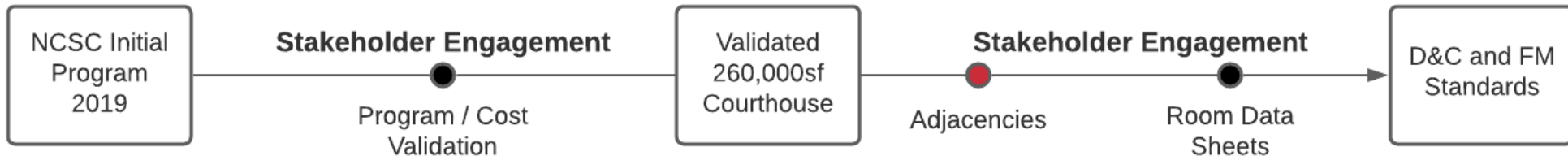
# Program Validation



# Courthouse Program

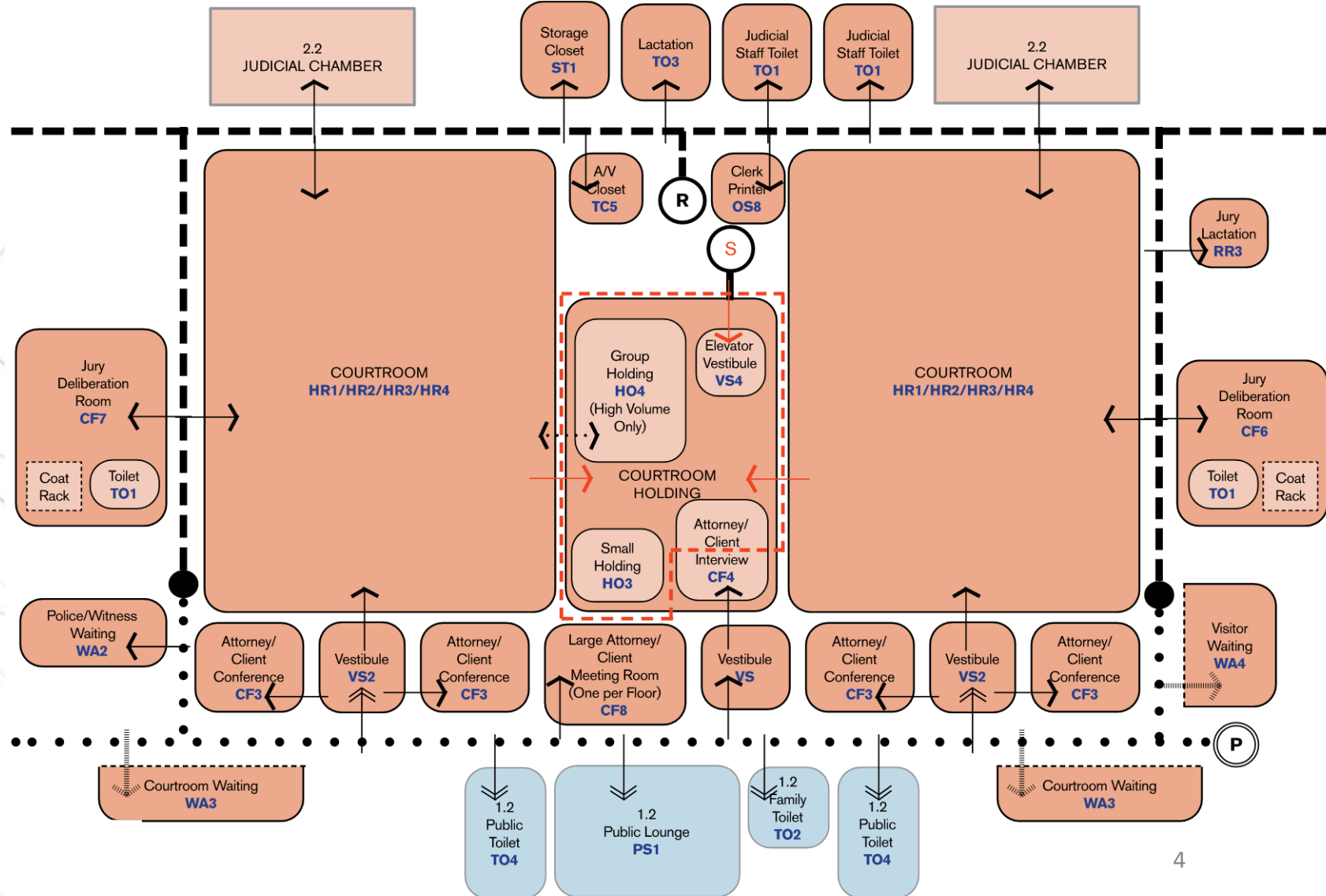
- Validated program based on current and projected needs
- Engaged Stakeholders at County and State level
- Conducted multiple Stakeholder engagement meetings
- Engaged with numerous Stakeholder Groups for input (full list located in Appendix)

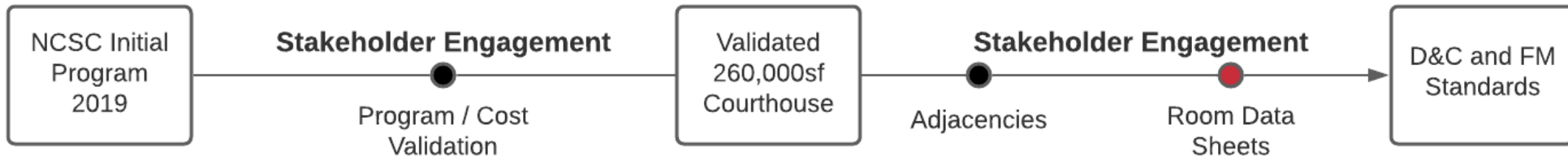
Space Type	Area (sf)
Public Facilities and Building Support Spaces	47,010
Courtrooms and Chambers	72,149
Court Administration	32,188
District Attorney	23,067
Sheriff Transport Operations And Central Holding	7,186
Sheriff Main Office	4,292
State Offices	5,703
Total Departmental Gross Square Feet (dgsf)	191,595
<b>Total Building Gross Square Feet (bgsf) (35% Grossing Factor)</b>	<b>258,654</b>



# Adjacencies

- Development of distinct circulation patterns:
  - Public
  - Staff
  - In-Custody Persons
- Functional adjacencies and interdependencies between departments

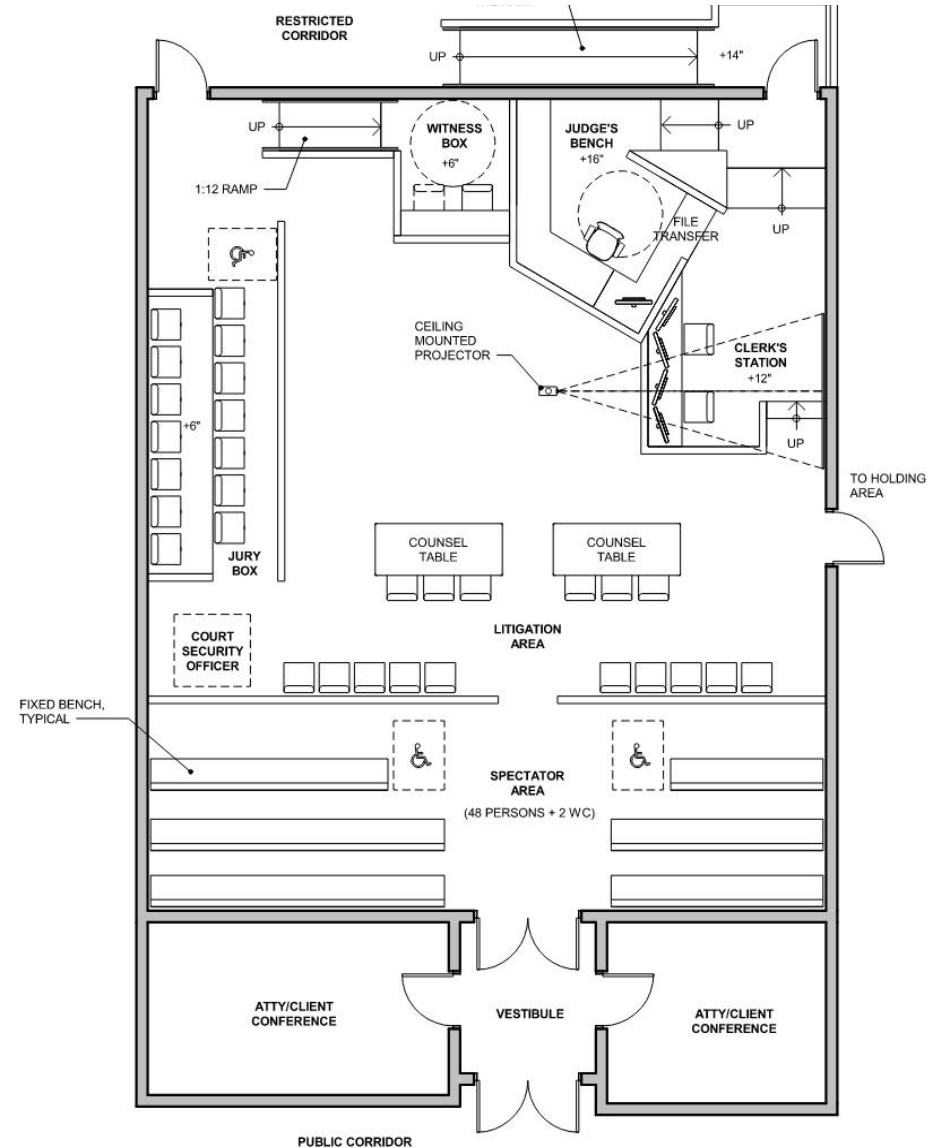




# Room Data Sheets

Defined the requirements for 125 different spaces inclusive of:

- Interior finishes
- FF&E
- IT/AV
- Security Features
- Building Systems
- Daylight and Views
- Privacy and more.







# Appendix

## Defined Terms:

- NCSC – National Center for State Courts
- D&C – Design and Construction
- FM – Facilities Management
- FFE – Furniture, Fixtures and Equipment
- IT – Information Technology
- AV – Audio Visual
- PA – Project Agreement
- Cx – Commissioning
- P3 – Public Private Partnership

## Stakeholder Groups Engaged

5th Judicial District Judges | 5th Judicial District Administration and Management Staff | District Attorney | State’s Department of Human Services | State’s Office of Public Defence Services | Clackamas Indigent Defence Corporation | Juvenile Advocates of Clackamas County | Civil Sheriff’s Office | Law Library | Clackamas County’s Department of Transportation and Development, Sustainability Division | Clackamas County’s Department of Finance, Division of Facilities Management



# Cost Model Validation

# Cost Model Validation



	sf	\$/sf	Total \$ (mil)
Courthouse	172,037	590.64	101,613
Basement	57,200	546.35	31,251
District Attorney Office	29,417	498.70	14,670
<b>Total Building Construction</b>	<b>258,654</b>	<b>570.39</b>	<b>147,534</b>
Courthouse Site Development	172,080	51.58	8,876
<b>Total Sitework</b>	<b>172,080</b>	<b>51.58</b>	<b>8,876</b>
<b>Total Building and Sitework</b>	<b>258,654</b>	<b>604.71</b>	<b>156,410</b>
Land Use Approvals and Permitting	3.5%		5,474
Architecture/Engineering	7.5%		11,731
P3 Procurement and Schematic Design Phase 2,3			5,355
FF&E	6.5%		10,167
PA Compliance Monitoring and Cx – Phase 4			3,000
Owner Contingency	5%		7,820
<b>Total Project Soft Costs</b>			<b>43,547</b>
<b>RECOMMENDED BUDGET FOR PROJECT</b>	<b>258,654</b>	<b>773.07</b>	<b>199,957</b>
Loop Road including Soft Costs	76,595	141.47	10,836
New Surface Parking: Gravel Lot F South of PSB including Soft Costs	84,000	27.53	2,313

- WT Partnership constructed a series of Cost Models
- Extensive cost modelling based upon current and projected needs
- Total recommended budget inclusive of Courthouse construction, site development, soft costs and administrative fees

# P3 Availability Payment

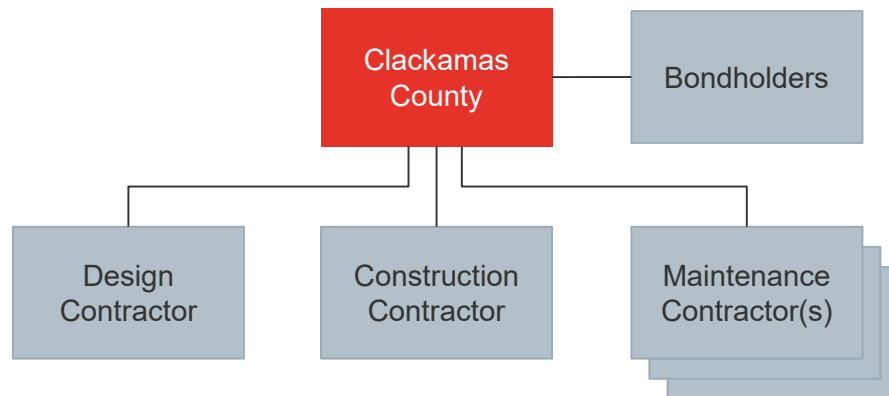
Clackamas County Courthouse P3



# Clackamas County Board decided to pursue P3 delivery

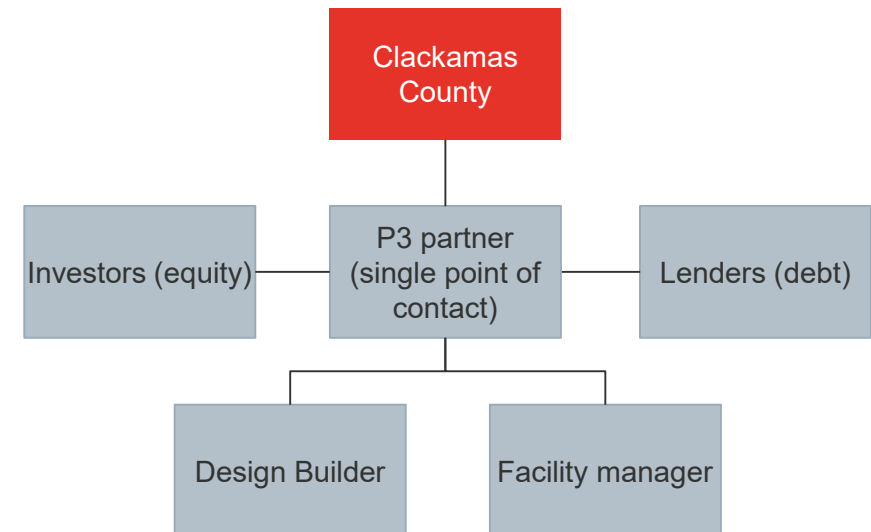
## Conventional delivery

County holds all the contracts, finances the project and retains most risks



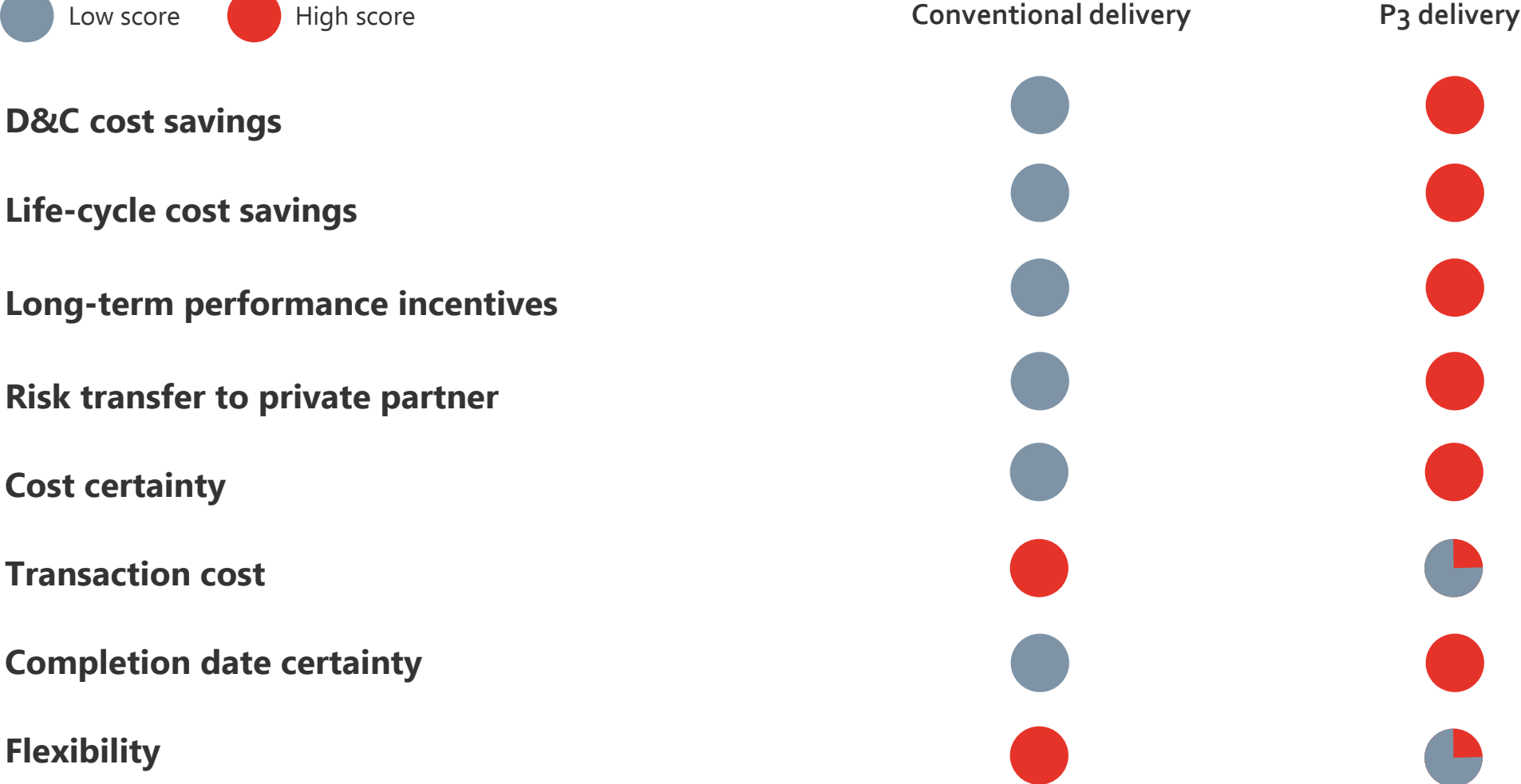
## P3 delivery

County holds a single contract with the P3 partner, P3 partner (partially) finances the project and retains most risks



# The County expects P3 to deliver “value for money”

● Low score   ● High score



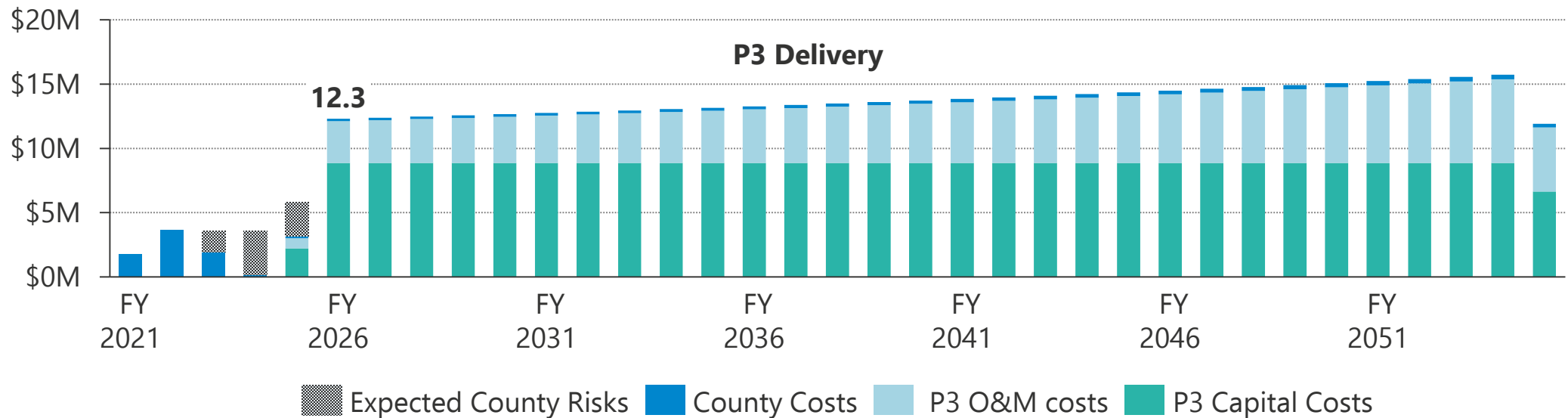
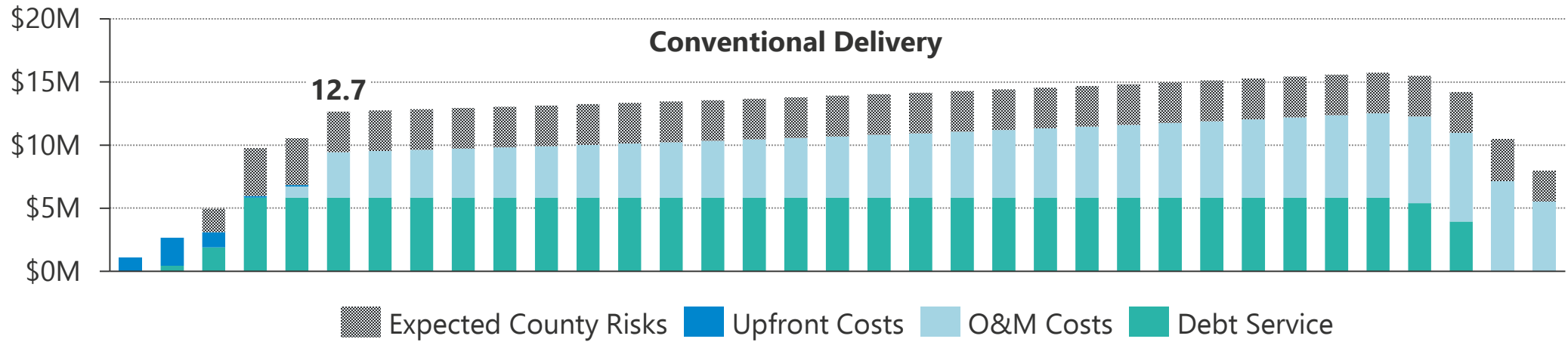
# Under P3 delivery, the County transfers most project risks

Project risks organized into categories	Conventional delivery	P3 delivery
<b>Approval and funding process</b>		
Political risk of deal termination or long delays	Public	Public
Planning process and approvals for site	Public	Shared
<b>Permitting and approvals</b>		
Completion of site development process	Public	Shared
Permits and third-party approvals	Public	Shared
<b>Geotechnical / environmental</b>		
Relocation of utilities	Public	Shared
Geotechnical and environmental site conditions	Public	Shared
<b>Procurement</b>		
Delays in procurement process	Public	Public
<b>Design</b>		
Delays in design process	Public	Private
Design errors	Public	Private
<b>Construction risk</b>		
Construction cost overruns	Private	Private
Regular construction risks	Private	Private
Construction delays	Public	Private
Weather related events and force majeure	Public	Shared
Changes in labor and materials costs	Shared	Private
Relocation of existing operations of Court	Public	Public

# Under P3 delivery, the County transfers most project risks

Project risks organized into categories	Conventional delivery	P3 delivery
<b>Financing</b>		
Interest rate risk after financial close	Public	Private
<b>Equipment and commissioning</b>		
Relocation of operations to new courthouses	Public	Public
Changes in equipment cost or equipment selection	Public	Private
Changes in furniture and fixtures costs or selection	Public	Public
Delay in schedule for equipment installation	Public	Private
<b>Lifecycle maintenance</b>		
General capital maintenance cost overruns	Public	Private
Scheduled preventative maintenance cost overruns	Public	Private
Emergency maintenance cost overruns	Public	Private
Structural performance issues	Public	Private
<b>Operational</b>		
Coordination between subcontractors	Public	Private
Long term performance risk	Public	Private
Changes in requirements / specifications	Public	Public

# P3 is expected to result in lower risk-adjusted costs





## P3 Payments are all-inclusive and performance-based

- ▶ P3 Payments will only start after reaching Substantial Completion (2025), and will be paid during the 30 years the P3 partner maintains the facility
- ▶ P3 Payments will be paid by the County, State funding will be used as milestone payment to P3 partner at substantial completion
- ▶ P3 Payments cover capital investment and O&M costs, and reflect private financing (remaining after milestone payment) and risk profile
- ▶ P3 Payments are performance-based, deductions will apply if P3 partner is not meeting performance standards
- ▶ P3 Payments will be subject to a “ceiling” during the procurement, bids exceeding the “ceiling” will be deemed non-compliant

## Under the P3 approach

### PROS:

- Delays capital payments until 2025- occupy building
- Risk is on the Developer, not County
- O&M fully covered by P3
- Replacement Reserves set aside by Developer
- Allows for private innovation, may realize more efficiencies than County-led design.
- Shifts risk of cost overruns and delivery to private partner. County sets the negotiated price into contract, and they must deliver the facility for that price.
- May alleviate the need to have more Facilities staff hired to take care of the expanded courthouse facility.
- All capital and operational maintenance included for 30 years

### CONS:

- Premium cost for all inclusive, includes O&M contract management fee
- The County would own the courthouse upon completion and pay the P3 partner to operate and maintain the facility for a fixed term.

## The Traditional approach

### PROS

- The county acts as the overall project manager of the architect and construction company, and is responsible for the delivery of the Project.
- The cost of capital will be the lowest with this option; the County should be able to borrow at a lower TIC than any private partner.
- This process is the most familiar to the County. Less complex than the P3 option.
- The outcome is more under our control, in that we design it directly with the architect.
- Maintenance costs are less in the beginning as the construction is new

### CONS

- Current staff's ability to effectively manage a project of this magnitude
- We would have the State guidelines for support, but do not have experience with commercial construction or courthouse design. We would be very reliant on the architect for the product, without comparisons.
- Payments begin FY2023, 2 years earlier than with the P3
- The County assumes the risk of the entire project, including design, timing, all cost overruns, etc.
- Need to commit to operational maintenance plan internally to fulfill State funding agreement

## Clackamas County Courthouse Financing Approaches

### 5 Year Increments Summary

FY 2021-2025      FY 2026-2030      FY 2031-3035      FY 2036-2040      FY 2041-2045      FY 2046-2050      FY 2051-2055

#### Conventional Approach

Expected County Risks	8,900,000	16,060,211	16,100,351	16,100,351	16,100,351	16,100,351	15,295,334
<b>County Costs</b>	19,669,956	48,130,466	50,623,236	53,443,577	56,634,533	60,244,808	48,482,101

#### P3 Approach

Expected County Risks	7,692,504	-	-	-	-	-	-
<b>PS Costs</b>	10,692,536	62,396,479	64,770,843	67,457,217	70,496,604	73,935,390	73,834,721
<b>Operational &amp; Debt Costs P3 to County Difference</b>	(8,977,421)	14,266,013	14,147,607	14,013,641	13,862,070	13,690,582	25,352,620

#### Debt Summary

FY 2021      FY 2026      FY 2031      FY 2036      FY 2041      FY 2046      FY 2051

County Debt Service	13,983,940	29,160,797	29,160,797	29,160,797	29,160,797	29,160,797	15,176,857
<b>P3 Total Payment</b>	3,018,167	61,447,996	63,697,721	66,243,078	69,122,917	72,381,190	72,169,459
<b>Debt Summary P3 to County Difference</b>	(10,965,773)	32,287,199	34,536,924	37,082,281	39,962,120	43,220,393	56,992,601

	Conventional			P3
	DEBT	O&M	Total	O&M Included
2021	-		-	-
2022	430,790		430,790	-
2023	1,888,830		1,888,830	-
2024	5,832,159		5,832,159	-
2025	5,832,159	888,392	6,720,551	3,018,167
2026	5,832,159	3,608,920	9,441,079	12,122,624
2027	5,832,159	3,699,143	9,531,302	12,204,050
2028	5,832,159	3,791,622	9,623,781	12,287,512
2029	5,832,159	3,886,412	9,718,571	12,373,061
2030	5,832,159	3,983,572	9,815,732	12,460,748
2031	5,832,159	4,083,162	9,915,321	12,550,627
2032	5,832,159	4,185,241	10,017,400	12,642,754
2033	5,832,159	4,289,872	10,122,031	12,737,183
2034	5,832,159	4,397,118	10,229,278	12,833,973
2035	5,832,159	4,507,046	10,339,206	12,933,183
2036	5,832,159	4,619,723	10,451,882	13,034,874
2037	5,832,159	4,735,216	10,567,375	13,139,106
2038	5,832,159	4,853,596	10,685,755	13,245,944
2039	5,832,159	4,974,936	10,807,095	13,355,454
2040	5,832,159	5,099,309	10,931,469	13,467,701
2041	5,832,159	5,226,792	11,058,952	13,582,754
2042	5,832,159	5,357,462	11,189,621	13,700,683
2043	5,832,159	5,491,398	11,323,558	13,821,561
2044	5,832,159	5,628,683	11,460,843	13,945,461
2045	5,832,159	5,769,401	11,601,560	14,072,458
2046	5,832,159	5,913,636	11,745,795	14,202,630
2047	5,832,159	6,061,476	11,893,636	14,336,056
2048	5,832,159	6,213,013	12,045,173	14,472,818
2049	5,832,159	6,368,339	12,200,498	14,613,000
2050	5,832,159	6,527,547	12,359,707	14,756,685
2051	5,832,159	6,690,736	12,522,895	14,903,963
2052	5,401,369	6,858,004	12,259,373	15,054,923
2053	3,943,329	7,029,454	10,972,783	15,209,656
2054	-	7,205,191	7,205,191	15,368,259
2055	-	5,521,859	5,521,859	11,632,658



**OREGON JUDICIAL DEPARTMENT  
Office of the State Court Administrator**

April 9, 2021

The Honorable Senator Fred Girod, Co-Chair  
The Honorable Representative Paul Holvey, Co-Chair  
Joint Committee on Ways and Means Subcommittee on Capital Construction  
900 Court Street NE  
H-178 State Capitol  
Salem, Oregon 97301

**RE:** SB 5505 Bonding Authorization for Oregon Supreme Court building renovation and County Courthouses Replacement projects

Dear Co-Chairpersons:

The Oregon Judicial Department (OJD) respectfully requests bonding authorization for the Supreme Court building renovation (\$21.7 million) and for courthouse replacement projects (\$137.0 million) in Clackamas, Linn, and Benton counties and General Fund appropriations (\$4.9 million) for the planning phases of courthouse replacement projects in Josephine, Crook, and Curry counties. These projects were recommended in the 2021-23 Chief Justice's Recommended Budget and bonding authority is provided in SB 5505. The projects also will require limitation be provided in SB 5506 for the Supreme Court building and in HB 5012 for the county courthouse replacements. The completion of these projects will provide safety for court users and ensure efficient court operations for decades to come.

**Supreme Court Building Renovation Request:**

The Supreme Court Building is the oldest office building located on the State Capitol Mall. Built in 1914, the 56,000 square foot building houses the Supreme Court offices and courtroom and the State of Oregon Law Library. While regular maintenance is performed on the building and some larger remediation projects have been performed, such as the roof replacement in 2010, no major remodel has taken place on the building or its infrastructure. Since the building is now more than 100 years old, many of the internal systems (HVAC, lighting, elevator, power, etc.) have exceeded their useful life. The building has not been seismically retrofitted, as other state-owned facilities on the Capitol Mall have been, despite being recently placed on the National Historic Registry. The OJD has proposed renovation policy option packages in prior budgets to address the many deferred maintenance issues.

During the 2013 Legislative Session, \$4.4 million in capital construction funds and bonds were authorized to address serious safety concerns that had arisen pertaining to the exterior façade and windows. Funding was used to address major safety concerns while preserving the historic nature

of the building and the materials used. Work started in 2014 and was completed in 2016.

In the 2017 session, the Legislature approved \$6.0 million in capital construction funds and bonding authority to begin an interior modernization and seismic protection project. Project construction began in February 2020 and is projected to be completed in the winter of 2022.

Additional funding (\$5.3 million General Funds, \$27.8 million in bond funds) was authorized during 2019-21 biennium to pay for rent, construction costs, and moving expenses. We are now requesting this final bond issuance (\$21.7 million) to provide the state with a seismically-sound, 21st century Supreme Court building that has up-to-date, efficient, flexible and sustainable internal systems that will serve the public well into the building's second century.

**Oregon Courthouse Capital Construction and Improvement Fund Requests:**

Counties are by law responsible to provide suitable and sufficient court facilities for state circuit courts. This legal responsibility continued when the State of Oregon assumed responsibility decades ago for the operating costs of courts and providing indigent defense.

Many courthouses, however, have significant deferred maintenance, and many lack seismic protection. The 2013 Legislature created the Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) to provide state matching funds to replace unsafe courthouses. Oregon law provides that the fund is intended to "... be used solely to finance costs related to acquiring, constructing, remodeling, repairing, equipping or furnishing land, improvements, courthouses or portions of courthouses that are owned by or operated by the State of Oregon." Under current practice, new state-supported courthouses continue to be owned by counties but are operated by the state under no-cost lease agreements

To be eligible for OCCCIF funding:

- The courthouse with respect to which the bonds will be issued must have significant structural defects, including seismic defects, that present actual or potential threats to human health and safety;
- Replacing the courthouse, whether by acquiring and remodeling or repairing an existing building or by constructing a new building, must be more cost-effective than remodeling or repairing the courthouse;
- Replacing the courthouse must create an opportunity for co-location of the court with other state offices; and,
- The Chief Justice and the Department of Administrative Services must approve the project for which the bonds will be used.

State matching funds may be up to 50 percent of allowable project costs for state-used space (courts, the co-located agency, and common areas) if the new courthouse also provides space for

co-location opportunities with a state agency. If co-location is not included, then the allowable match may not exceed 25 percent of project costs. Costs for locating any county offices in the new facility, including district attorney offices, continue to be the responsibility of the county.

Two courthouses have been completed through the OCCCIF. Jefferson County courthouse was the first completed in September 2016. The total cost of the project was \$15 million, with the state providing a planned \$6.5 million in matching funds (50 percent of allowable expenses).

The second project completed was the 17-story Multnomah County Courthouse, which opened in October 2020, four years after breaking ground. State bonds were approved in each of the last four biennia. Total state bonding for the project includes \$125 million for construction and \$17.4 million for furniture, fixture and equipment (FFE), for a total state contribution of \$142.4 million

OJD is now requesting re-authorization of \$47.4 million in previously authorized bond funding, and \$89.6 million in new bond authority totaling \$137.0 million for courthouse replacement projects in Clackamas, Linn, and Benton counties.

#### Lane County Courthouse

The 2016 Legislature approved the sale of \$1.45 million in bonds, which was increased by \$5.0 million in the 2017 Legislative session. Another \$87.6 million was approved in the 2019 session. The project was then delayed, and the 2019 bonds were not issued while the county's preferred building site went through a process to ensure there would be no legal challenges. The project has been further delayed by the COVID-19 pandemic. In its 2021-23 recommended budget OJD requested re-authorization of bond funding, however we are not currently asking for those bonds to be authorized and expect to renew the request in a subsequent biennium. OJD will keep the legislature informed of the progress of this project.

#### Clackamas County Courthouse

The new courthouse facility is proposed for the county's Red Soils campus and would provide a seismically safe building, allow sufficient space for court operations, allow jurors to convene in the courthouse instead of in a separate building, and consolidate district attorney offices into one building. The 2017 Legislature approved \$1.2 million General Fund for project planning, and the 2019 Legislature authorized \$31.5 million that were not issued. OJD is now requesting those bonds be reauthorized along with a final request of \$63.0 million for construction for a total of \$94.5 million. The county is proposing a public-private-partnership approach that may serve as an example of another financing option for other counties to utilize.

#### Benton County Courthouse

The Benton County courthouse was built in 1888. The county completed a thorough seismic evaluation of the building, which is on the National Historic Register. The county is conducting a public outreach effort and is looking to build a replacement courthouse as part of a justice center facility (estimated \$130 million) in downtown Corvallis. The county was appropriated \$2 million in planning funds by the 2019 Legislature and OJD is now requesting \$26.6 million for construction, plus an amount still to be determined for FFE.

### Linn County Courthouse

The Linn County courthouse was built in 1940 and expanded in 1967, before Oregon had a statewide building code. As with many other courthouse facilities, its age and design contribute to significant seismic issues as well as space limitations and security concerns. The county originally proposed purchasing land to build a public safety campus, of which the courthouse would be part; however, it has since proposed building a new adjoining building to the existing courthouse. Linn County was approved for a one-time request of \$15.9 million in state matching funds by the 2019 Legislature session, however the project has been delayed and OJD is now requesting re-authorization of those bonds, and may possibly have a future request for FFE.

### **General Fund Planning Requests:**

OJD works with the Association of Oregon Counties to identify counties seeking State matching funds for courthouse replacement and to recommend priorities to the Chief Justice. As a result of that process, the Chief Justice is requesting \$4.9 million in General Fund appropriations for planning costs that are not eligible for bond funding for the following projects:

### Josephine County Courthouse

The Josephine County courthouse was originally built in 1915 and expanded in 1974. It ranked 30th in a 2008 courthouse facilities assessment that noted the courthouse requires significant improvements in fire alarm and sprinkler systems and seismic safety in order to meet state standards. Construction cost estimates and a timeline will be further refined as part of the planning process. OJD is requesting \$1.2 million General Fund to support project planning.

### Curry County Courthouse

The Curry County courthouse was built in 1956 and is connected by pathway to the adjacent sheriff's office and jail. Ranked 42nd among the 48 court facilities in the 2008 assessment, it is the lowest-ranked courthouse for which OJD is requesting replacement funding. The assessment found the facility needed significant upgrades to fire alarm and fire sprinkler systems, plumbing, and power systems. OJD is requesting \$3.5 million General Fund to support project planning.

### Crook County Courthouse

This 1909 building ranked 40th in the 2008 assessment, only slightly better than the Curry County facility. The assessment noted "excessive" upgrades needed in seismic safety and in-custody defendant areas, and "significant" upgrades needed in security and other building systems. The county hopes to replace the existing courthouse with a multi-purpose, multi-agency justice center. Project costs and timelines will be developed in the planning process. OJD is requesting \$169,827 to support the project planning.

Thank you for your consideration. For additional information, please contact David Moon, Business and Fiscal Services Director, at (503) 602-5150.

cc: John Borden, Legislative Fiscal Analyst



## 5 Year General Fund Forecast As of April 2021

Excludes Amounts Related to GO Bond (C800)

	Forecast Yr 1								Notes
	Actuals FY 19-20	Amended Budget FY 20-21	Projected FY 20-21	(Proposed) FY 21-22	Forecast Yr 2 FY 22-23	Forecast Yr 3 FY 23-24	Forecast Yr 4 FY 24-25	Forecast Yr 5 FY 25-26	
<b>Operating Revenue</b>									
Property Tax	133,082,464	136,279,011	136,279,011	139,964,601	144,551,038	149,483,670	154,443,198	159,753,095	FY2021-22 assumes 4% AV growth rate with 94.7% Collection rate
License and Permits	1,987,378	1,963,827	1,963,827	1,982,925	1,934,518	1,887,663	1,842,504	1,798,999	Reduction in out years due to 3% declining trend of franchise fees.
Federal, State and Local Revenue	8,434,500	8,133,988	7,483,988	7,726,103	7,905,263	8,082,610	8,265,169	8,453,061	Forecasted annual growth of 2%.
Charge For Services (Recording/Alloc Costs)	17,648,667	16,642,748	16,642,748	17,135,684	17,627,155	18,308,674	18,848,596	19,605,205	Allocations held flat for 3rd consecutive year. Includes Internal Services allocation charges.
Agencies Salary Reimbursement	20,422,047	23,786,956	22,121,869	23,762,584	25,188,339	27,455,290	29,102,607	31,721,842	Pass through for agency payroll. Matching to below expense.
All Other Revenue	2,677,916	3,726,500	4,380,500	2,700,643	2,781,662	2,865,112	2,951,066	3,039,597	FY2020-21 Projection includes Bond Premium (1 new and 2 refinanced), \$477K land sale proceeds (Tigard Recovery Center), and \$177K OSU rent backpay.
Interfund Transfer In	9,985,859	4,018,935	4,888,935	2,865,959	700,000	718,200	736,873	756,032	FY2019-20, FY2020-21, and FY2021-22 include GF fund balance call backs.
<b>Operating Revenue</b>	<b>194,238,832</b>	<b>194,551,965</b>	<b>193,760,878</b>	<b>196,138,499</b>	<b>200,687,976</b>	<b>208,801,219</b>	<b>216,190,014</b>	<b>225,127,831</b>	
% Change from prior year	7.0%	0.2%	-0.2%	0.8%	2.3%	4.0%	3.5%	4.1%	
<b>Operating Expense</b>									
Personnel Services (Does not include EPA)	25,950,027	28,311,402	26,329,604	28,531,017	30,242,878	32,964,737	34,942,621	38,087,457	Yr1 growth = 8.4%, Yr2 growth = 6.0%, Yr3 growth = 9.0%, Yr4 growth = 6.0%, Yr5 growth = 9.0%,
Agencies Salary Expense	20,422,047	23,786,956	22,121,869	23,762,584	25,188,339	27,455,290	29,102,607	31,721,842	Pass through for agency payroll. Matching to above revenue.
Equal Pay Cost Adjustments			600,000	1,400,000	500,000				Estimated implementation funding plan
Material and Services	8,006,401	11,524,964	9,726,338	8,978,605	9,212,049	9,451,562	9,697,303	9,949,432	FY2020-21 Projection = 3 year average, Years 2-5 = 2.6% growth rate.
Allocations & Indirect Costs	9,907,106	9,239,120	9,239,120	9,239,120	9,610,533	10,106,436	10,506,651	11,048,794	FY2021-22 = zero change
Capital Outlay	171,830	130,947	130,947	120,140	184,831	184,831	184,831	184,831	Property Repairs, Equipment, and Software
Special Payments	476,591	460,149	460,149	475,000	475,000	475,000	475,000	475,000	
Transfer to Departments	114,137,259	111,257,454	109,535,765	117,971,325	119,220,609	122,201,124	125,256,152	128,387,556	FY2021-22 budget with 98.5% transfer rate
<b>Operating Expense</b>	<b>179,071,261</b>	<b>184,710,992</b>	<b>178,143,792</b>	<b>190,477,791</b>	<b>194,634,238</b>	<b>202,838,979</b>	<b>210,165,164</b>	<b>219,854,912</b>	
<b>Net Operating Income (Loss)</b>	<b>15,167,571</b>	<b>9,840,973</b>	<b>15,617,086</b>	<b>5,660,708</b>	<b>6,053,739</b>	<b>5,962,240</b>	<b>6,024,849</b>	<b>5,272,919</b>	
<b>Non-Operating Expense</b>									
Transfer to Debt Service Fund	5,115,403	5,202,044	5,202,044	4,744,699	5,067,490	5,004,963	4,984,568	4,964,446	Maintaining debt service at pre-refinance level for future needs.
InterFund Loan with WES	244,303	244,303	494,958						Repayment to WES for Brooks Bldg Complete in FY2020-21
Library Buildings (Gladstone & Oak Lodge)					500,000	500,000	500,000	500,000	May 2022 debt issuance
Courthouse Capital and Additional O&M			650,000	2,600,000			5,436,000	7,780,000	50% General Fund coverage. Estimate of Courthouse P3 costs and additional O&M
<b>Non-Operating Expense</b>	<b>5,359,706</b>	<b>5,446,347</b>	<b>6,347,002</b>	<b>7,344,699</b>	<b>5,567,490</b>	<b>5,504,963</b>	<b>10,920,568</b>	<b>13,244,446</b>	
% Change from prior year		1.6%	18.4%	34.9%	-24.2%	-1.1%	98.4%	21.3%	
<b>Revenue Less Expenses</b>	<b>9,807,865</b>	<b>4,394,626</b>	<b>9,270,084</b>	<b>(1,683,991)</b>	<b>486,249</b>	<b>457,277</b>	<b>(4,895,719)</b>	<b>(7,971,527)</b>	
<b>Beginning Fund Balance</b>	<b>34,203,208</b>	<b>40,897,943</b>	<b>45,292,569</b>	<b>53,679,703</b>	<b>51,995,712</b>	<b>52,481,960</b>	<b>52,939,237</b>	<b>48,043,518</b>	
<b>Ending Fund Balance *</b>	<b>44,011,072</b>	<b>45,292,569</b>	<b>54,562,653</b>	<b>51,995,712</b>	<b>52,481,960</b>	<b>52,939,237</b>	<b>48,043,518</b>	<b>40,071,992</b>	
% Change from prior year		2.9%	24.0%	14.8%	0.9%	0.9%	-9.2%	-16.6%	
* Total Contingencies & Reserves Requirement		23,059,833		23,718,642	24,380,268	25,279,082	26,136,828	27,147,955	Per policy, contingency is 5% of operating budget and reserves are 10% of combined property tax and permits.
* Fund Balance Net of Reserve Requirements		22,232,736		28,277,069	28,101,693	27,660,155	21,906,690	12,924,037	

**Notes & Assumptions:**

- FY 19-20 • The consultation expense on Equal Pay falls within materials and services.
- \$2.7MM in one-time revenue from Employer Contribution Reserve Fund in "All Other Revenue". Resources could be allocated to help offset EPA impact.
- YTD vacancy savings have been incorporated into Personnel costs.
- The index used in forecasting certain figures including COLA is the CPI West Region Size A as published by the Oregon Office of Economic Analysis.
- FY 20-21 • Includes an estimated \$500K in "All Other Revenue" from Tri-Met Settlement payment.
- Personnel aligns to full costing of personnel with a 7% vacancy rate factor.
- \* Bond Premium set-aside in reserves for an undetermined future capital project
- FY 21-22 • PERS increases incorporated every biennium (FY22, FY24, FY26)
- FY 22-23 • Library bond of \$8MM (20 YR) for City of Gladstone IGA (Issue May 2022).