

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: September 18, 2018 **Approx. Start Time:** 10:30 AM **Approx. Length:** 60 min

Presentation Title: Courthouse Replacement Project Quarterly Report

Department: County Administration, Finance, and Public & Government Affairs

Presenters: Laurel Butman, County Administration; Christa Wolfe, Finance; Chris Lyons & Amy Kyle, Public & Government Affairs

Other Invitees: Judge Kathie Steele, DA John Foote, Sheriff Craig Roberts, Debbie Spradley, Trial Court Administrator; Gary Barth, Project Manager; and Hubbell Communications

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

This is an informational policy session to update the Board on the status of the project for a new courthouse on the Red Soils Campus in Oregon City. Staff is interested in hearing questions and input from the Board and requesting direction to draft a resolution confirming the County's commitment to the project.

EXECUTIVE SUMMARY:

In this briefing, staff will provide an update on project progress and schedule for courthouse replacement. This executive summary and subsequent attachments provide background detail.

Intergovernmental Agreement with the Oregon Justice Department

The general agreement we seek to memorialize is the requirement for the County and the State to share equally those costs related to the portion of the Courthouse project that is attributable to court operations and administration, or to those portions to be leased exclusively to the state. Certain portions of the project will be excluded from the cost sharing formula, most notably, facilities for the District Attorney's office.

We propose to enter into a Master Funding Agreement (Master Agreement) with the State that provides the general framework of our arrangement with the State. General provisions that will apply throughout the duration of the project such as fund deposit procedures, dispute resolution provisions, authorized costs, default and termination provisions, and general boilerplate will be contained in the Master Agreement.

The most significant issue outstanding in our negotiations relates to any value attributable to the County-owned property on which the Courthouse will be sited. The State takes the position that costs associated with this property are not eligible to count towards the County's contribution to the project. A change to state law may be required if the County continues to pursue the ability to claim credit for the value of the real property the County is contributing to the project.

Separate Funding Agreements will be required for each individual phase in the development. Currently, the County anticipates the following three phases to be part of the development process: Phase I "Pre-Planning", Phase II Architect and Engineering (A/E), and Phase III Construction. Each separate phase agreement will contain the specific contribution amounts from the County and State, as well as the percentage of the overall project that will be eligible for reimbursement by the State. Phase I is the phase we are currently engaged in with a budget of \$2.4 million, half of which is from the state general fund. Phase II will begin with the issuance of the RFP for A/E services and will be the 1/3 OCCCIF state bond funding request in OJD's FY 19/21 budget. Phase III will commence with contract for Construction Manager/General Contractor (CM/GC) and be funded with the 2/3 OCCCIF state bond funding request in OJD's FY 21/23 budget.

The first addendum to the Master Agreement will be the Phase 1 Funding Agreement on Design and Pre-Planning (Phase 1 Funding Agreement). This Pre-Planning Phase is not to exceed \$2.4 million with up to \$1.2 from the State General Fund and up to \$1.2 million from the County General Fund. The Phase 1 Funding Agreement will be retroactive once executed and cover qualified expenses incurred during fiscal years 2016-17, 2017-18 and 2018-19. Should the actual pre-planning expense be less than \$2.4 million, the difference will be rolled over into Phase 2, lowering the amount of state bond funds needed in Phase 2 by a like amount.

Activities to be undertaken and complete Phase 1 include:

- Analysis of the existing Courthouse to substantiate known deficiencies;
- Conceptual design and high-level cost estimates for a new Courthouse;
- Submission of Courthouse Capital Construction & Improvement Fund (OCCCIF) request to Oregon Judicial Department (OJD);
- Coordination with OJD and Association of Oregon Counties (AOC) to rank Clackamas high in priority for next round of OCCCIF funding;
- Red Soils Master Plan update submission to Oregon City that shows new courthouse as the next major building project on the Red Soils Campus;
- Site work such as wetland delineation, soil testing, and surface parking preliminary design;
- National Center for State Courts (NCSC) research, analysis and refinement of courthouse design and space plans;
- Analysis and determination of Delivery Approach to design and development of the courthouse; and
- Development and issuance of a Request for Proposal (RFP) for Architect and Engineer Team (A/E) for Phase 2 Comprehensive Design.

Other pre-planning efforts underway related to the Courthouse project but not eligible for State matching funds (and therefore not included in the Phase 1 Funding Agreement) are:

- The relocation of H3S Behavioral Health and Women, Infants, and Children (WIC) facilities;
- Relocation of Technology Services facilities; and
- Relocation of the Juvenile Annex, FIDO, and County Work Crew facilities.

Attachments 1 and 2 include the current redlined drafts of the Master Agreement and the Phase 1 Funding Agreement.

Financing Options and GO Bond Process Update

Finance staff will present an interactive 20-year forecast program to demonstrate impacts of differing levels of Full Faith & Credit (FFC) Bond versus General Obligation (GO) Bond financing. The difference between these two financing approaches is that the debt from FFC bonds is paid by the County, putting pressure on the General Fund while the debt from GO bonds is paid by the general public through tax assessments. Debt service payments are generally spread over a period of 15-25 years.

Several contemplated other projects that will require full or partial financing in coming years include: the planned new Transportation Maintenance & Fleet Facility; replacement of the County's soon to be obsolete PeopleSoft ERP (finance and human resources software); construction of a new jail, an expanded Family Justice Center, new Juvenile and EOC/CCOM buildings; and a possible H3S Clinic relocation for the Courthouse or other projects noted here.

The County has contracted with Davis, Hibbitts & Midghall (DHM) to conduct public surveying and polling related to a possible GO Bond measure. We anticipate two additional surveys following on the outcomes of the survey conducted this past summer. The next survey is scheduled in mid-late October and will include testing messaging, price points for a GO Bond, and most effective

messengers for a GO Bond. Based on the current debt market environment, the County would likely be asking the public to pay an additional 4-14 cents per 1,000 in assessed property value; actual price points for the upcoming survey will be determined in consultation with our Communications & Outreach consultant. Attachment 3 outlines the borrowing options staff is exploring.

Communications/Outreach Campaign

The County is engaging Hubbell Communications to assist with new courthouse communications and outreach between now and next May. A communications plan including media, social media and community outreach will be drafted in the coming weeks with outreach activities beginning in October.

Attachment 4 includes the Hubbell Communications proposal.

Attachment 5 provides an outreach and financing timeline.

Legislative Update & October Events

Staff will provide an update on current collaboration activities with Lane County regarding potential statutory changes and on upcoming key events. These events include a site visit from the Chief Justice, legislator events planned for October, and planning for the Legislative Dinner in January.

County Commitment to the Project

At a September 5 Elected Leaders Team meeting for the new courthouse project, elected leaders including the presiding judge, the district attorney, the sheriff, and two Board members reaffirmed their commitment to the project and their willingness to participate in supporting activities.

As a precursor to asking for support for the new courthouse project from Clackamas County cities, staff is requesting that the Board adopt a resolution memorializing the County's support and aspirations for this project in early October. With Board direction, staff is prepared to present a draft of such a resolution for Board review prior to placing it on the Board's business agenda for adoption.

FINANCIAL IMPLICATIONS (current year and ongoing):

Is this item in your current budget?

Costs are planned but not yet fully budgeted for this multi-year project. We have also set aside a modest budget for public outreach this fiscal year. Some of these costs will provide match for the \$1.2 million in State General Fund funding awarded this current biennium; some costs will be reimbursed from State provided funds.

What is the cost?

- Total project cost: Approximately \$235 million (estimate)
 - Courthouse – \$189 million (estimate),
 - On-campus parking additions, roadway changes and re-routing, intersection signalization Red Soils Master Plan updates, District Attorney office portion of the new Courthouse building , and related soft costs associated with the new Courthouse - \$30-50 million (estimate)
 - Total County cost of the project - \$125-145 million (estimate)
 - State Cost - \$94.5 million (50% match on Courthouse cost)

What is the funding source?

There are two: The Oregon Courthouse Capital Construction and Improvement Fund (OCCCIF) and a planned General Obligation bond or combination of GO and Full Faith & Credit bonds. A bank line of credit will likely be used to bridge the time between expenditures and State reimbursement of OCCCIF funds at the end of each biennium to provide cash flow.

STRATEGIC PLAN ALIGNMENT:

This project aligns with three of the Board's five Strategic Priorities:

- Ensure safe, healthy and secure communities – the new courthouse will be large enough to accommodate the number of judges available and needed for this community and eliminate overcrowding that cause intermixing of jurors, the public, and offenders providing adequate circulation.
- Build a strong infrastructure – the project will replace the outdated county courthouse in downtown Oregon City, which is too small to accommodate the number of judges needed for the community and is not seismically sound.
- Build public trust through good government – the project will improve access to justice for all residents of Clackamas County.

LEGAL/POLICY REQUIREMENTS:

1. The State bonding program for courthouse replacements requires that the County spend at least an equal amount of matching funds for courthouse related costs to those provided by the State OCCCF.
2. The 1.5% for Green Energy Technology program applies to public entities in Oregon and requires that 1.5 percent of the total contract price of a public improvement contract for new construction of a public building must be spent on green energy technology, regardless of the funding source.
3. Oregon Revised Statutes require no less than 1% of funds for the acquisition of public-facing artwork in all state building construction plans with budgets over \$100,000 – *we are looking into whether this applies.*
4. This project will be subject to Oregon City planning and public works requirements for planning and development.
5. It is County policy to build to LEED green building standards; LEED certification is being explored and a question on whether to pursue certification will be brought before the Board at a future quarterly update.

PUBLIC/GOVERNMENTAL PARTICIPATION:

In July, 2017, Clackamas County secured \$1.2 million in State General Fund matching funds from the Oregon Legislature for planning costs associated with the Clackamas County Courthouse replacement project. In addition to the State Legislature's continued involvement in this process, the project also includes participation of the Courts, Clackamas County Sheriff's Office, the Clackamas County District Attorney's Office, the Oregon Department of Human Services, the Association of Oregon Counties' Court Facilities Task Force, the City of Oregon City, the Downtown Oregon City Association, and additional key stakeholders throughout the community. Extensive outreach and communications are anticipated with Clackamas County cities and the public throughout the project.

OPTIONS & RECOMMENDATIONS:

Staff respectfully requests that the Board direct them to prepare a draft resolution affirming County support and aspirations for the new courthouse project for Board review and adoption.

ATTACHMENTS:

1. Attachment 1: Clackamas County Courthouse Master Funding Agreement draft (page 6)
2. Attachment 2: Clackamas County Courthouse Phase 1 Funding Agreement draft (page 42)
3. Attachment 3: Courthouse Borrowing Options Summary (page 75)
4. Attachment 4: Hubbell Communication Proposal response to RFQ 2018-74 (page 76)
5. Attachment 5: Communications & Financing Timeline (page 90)

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____ LSB _____

For information on this issue or copies of attachments, please contact Laurel Butman @ 503-655-8893.

**CLACKAMAS COUNTY COURTHOUSE
FUNDING-MASTER FUNDING AGREEMENT – PHASE I**

THIS CLACKAMAS COUNTY COURTHOUSE ~~FUNDING-MASTER DEVELOPMENT~~ AGREEMENT – ~~PHASE I~~ (this “Agreement”) is made _____, 2018 (the “Effective Date”), by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Clackamas County, Oregon (the “County”).

Project Summary and Contact Information

Project Title: Clackamas County Courthouse

County: Clackamas County

~~**Phase I State Funds:** \$1,200,000.00~~

~~**Phase I Completion Date:** _____~~

~~**Estimated Project Completion Date:** _____~~

~~**Estimated Project Occupancy Date:** _____~~

Funding Source: General Funds

County Contact: _____
Phone: _____
Facsimile: _____
Email: _____
Address: _____

DAS Contact: Rhonda Nelson, Capital Finance Analyst
Phone: (503) 378-8927
Facsimile: (503) 373-7643
Email: Rhonda.Nelson@oregon.gov
Address: 155 Cottage Street NE
Salem, OR 97301

OJD Contact: David T. Moon, Director

Formatted: Indent: Left: 0", First line: 0"

Business and Fiscal Services Division
Phone: (503) 986-5150
Facsimile: (503) 986-5856
Email: David.T.Moon@ojd.state.or.us
Address: Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Presiding Judge: The Honorable Kathie F. Steele
Phone: (503) 655-8670
Facsimile: [REDACTED]
Email: Kathie.F.Steele@ojd.state.or.us
Address: [REDACTED]

Trial Court Administrator: Debbie Spradley
Phone: (503) 655-8670
Facsimile: [REDACTED]
Email: Debbie.D.Spradley@ojd.state.or.us
Address: [REDACTED]

State Project Monitor: Nicholas C. Larson
Phone: (503) 373-7196
Facsimile: (503) 373-7210
Email: nicholas.c.larson@oregon.gov
Address: 1225 Ferry St. SE
Suite Upper 100
Salem, OR 97301

Colocation Agency: Department of Human Services,
an agency of the State of Oregon

Colocation Contact: [REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]
Address: [REDACTED]

Terms and Conditions

1. Effective Date and Term. This Agreement is effective as of the Effective Date, such date being the last date all required signatures and approvals were obtained. The term of this Agreement shall be from the Effective Date through the date the parties fulfill their obligations hereunder, unless it is sooner terminated pursuant to Section 22(b), 23(b)(ii) or 24 below.

2. Agreement Documents. This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, less all Exhibits; and attached Exhibit A (Courthouse Design CriteriaPhase I Work); Exhibit B (Description of Red Soils ParcelPhase I Benchmarks); Exhibit C (Initial PlansInitial Plans); Exhibit D (Form of Disbursement Request); ~~Exhibit D (Courthouse Design Criteria)~~; ~~Exhibit E (Description of Redland Parcel)~~; and ~~Exhibit F (Form of Disbursement Request)~~. The foregoing Exhibits are incorporated herein by this reference.

3. Definitions. Capitalized terms used in this Agreement shall have the meanings defined for such terms in this Section 3, unless the context clearly requires otherwise.

(a) “Act” means Article XI-Q of the Oregon Constitution; Or. Laws 2013, ch. 705; Or. Laws 2013, ch. 723; Or. Laws 2014, ch. 121; Or. Laws 2015, ch. 675; Or. Laws 2016, ch. 118; and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.

(b) “Approved Amount” means the State’s Proportionate Share of any amount set forth in a Disbursement Request that the State Project Monitor determines represent Phase I Authorized Costs, pursuant to Section 10.

(c) “Authorized Costs” means County’s actual, reasonable and necessary capital costs relating to the Project Work, as set forth more completely in Section 6 below

(d) “Authorized State Costs” means the State’s Proportionate Share of the Authorized Costs.

(e) “Chief Justice” means the Chief Justice of the Oregon Supreme Court.

(f) “Code” means the Internal Revenue Code of 1986, as amended.

(g) “Colocation Agency” the Department of Human Services, an agency of the State of Oregon.

(h) “Colocation Contact” means the Colocation Agency employee named in the Project Summary and Contact Information above.

(i) “Colocation Lease” means the long-term lease agreement that the County will enter into with the Colocation Agency during Phase III for the County to convey to the Colocation Agency a leasehold interest in the Colocation Premises in the event the parties enter into the Phase III Funding Agreement and the Project is completed.

(j) “Colocation Premises” means that certain portion of the Project, as generally

~~Funding Master Funding Agreement – (Phase I (Clackamas County Courthouse) – Page~~

3

described in the Initial Plans, that will be the subject of the Colocation Lease.

(k) “County Contribution” means funding the County agrees to provide for all Authorized State Costs.

Formatted: Font: Not Bold

(l) “County Default” means any of the occurrences set forth in Section 22 below.

(m) “Courthouse Design Criteria” means OJD’s “General Facilities Design Assessment Criteria” dated December 2007 and attached as Exhibit D.

(n) “Disbursement Request” means a request by the County for credit to the Phase I County Contribution and disbursement of Phase I State Funds, substantially in the form of Exhibit F.

(o) “Estimated Project Completion Date” means _____.

(p) “Existing Courthouse” means the building located at _____, 807 Main St. Oregon City, Oregon, in which the Clackamas County Circuit Court is located as of the Effective Date.

(q) “Funding Agreement” means the agreement the parties may enter into pursuant to Section 15 below, in order to memorialize their obligations and understandings regarding each individual Phase of the Project.

Formatted: Font: Not Bold

(r) “Initial Plans” means the plans for the Project as of the Effective Date, as described on Exhibit C.

(s) “Mediator” means the individual chosen by the parties to mediate a dispute between them pursuant to Section 8(e) below.

(t) “Misspent Funds” means any Phase I Project Financing spent by the County for any purpose other than paying for Phase I Authorized Costs, or otherwise in violation of this Agreement.

(u) “OJD Lease” means the long-term lease agreement that the parties will enter into during Phase II for the County to convey to OJD a leasehold interest in the OJD Premises, in the event the parties enter into the Phase II Funding Agreement and the Project is completed.

(v) “OJD Premises” means that certain portion of the Project, as generally described in the Initial Plans, that will be the subject of the OJD Lease. The OJD Premises generally includes all courthouse operations and a proportionate share of the common areas.

(w) “Phase” means either Phase I, Phase II, or Phase III, as the context requires.

Formatted: Font: Not Bold

(x) “Phase I” means the design and planning period of the Project in which the Phase I Work occurs and Phase I Benchmarks are achieved.

(y) “Phase I Authorized Costs” means County’s actual, reasonable and necessary capital costs relating to Phase I Work, as set forth more completely in Section 6 below.

(z) “Phase I Authorized State Costs” means the State’s Proportionate Share of the Phase I Authorized Costs.

(aa) “Phase I Benchmarks” means the items set forth in Exhibit B.

(bb) “Phase I Completion Date” means _____.

Funding Master Funding Agreement – (Phase I (Clackamas County Courthouse) – Page 4

~~(ccx)~~ “Phase I County Contribution” means the amount of \$1,200,000.00 that, as of the Effective Date, the County has agreed to provide for Phase I Authorized State Costs.

~~(dd)~~ “Phase II Funding Agreement” means the agreement the parties may enter into pursuant to Section 15 below, in order to memorialize their obligations and understandings regarding Phase II.

~~(eex)~~ “Phase I Project Financing” means the total of the Phase I State Funds and the Phase I County Contribution.

~~(ffz)~~ “Phase I State Funds” means the amount of \$1,200,000.00 that, as of the Effective Date, the State of Oregon has agreed to provide for Phase I Authorized State Costs, such Phase I State Funds being contributed to the Project as a portion of the consideration for the leasehold interest in the State Premises that the County shall convey to OJD pursuant to the State Leases in the event the parties enter into the Phase II Funding Agreement and the Project is completed.

~~(aagg)~~ “Phase I Work” means the County’s design and engineering work and land use entitlements and other governmental approvals required for the Project, which may include those work items set forth in Exhibit A.

~~(bbhh)~~ “Phase II” means the period of the Project in which initial construction of the Project occurs.

~~(eeii)~~ “Phase II Authorized Costs” means the actual, reasonable and necessary capital costs relating to Phase II Work.

~~(ddjj)~~ “Phase II Authorized State Costs” means the State’s Proportionate Share of the Phase II Authorized Costs.

~~(kkee)~~ “Phase II County Contribution” means funding the County agrees to provide for Phase II Authorized State Costs.

~~(lfff)~~ “Phase II Funding Agreement” means the agreement the parties may enter into pursuant to Section 15 below, in order to memorialize their obligations and understandings regarding Phase II.

~~(mmgg)~~ “Phase II State Funds” means any amount of State funding approved in future Legislative sessions for Phase II of the Project, as such funds may be realized from the sale of Article XI-Q bonds or other state bonds in 20____ or subsequent years.

~~(nnhh)~~ “Phase II Work” means construction of the Project and other, related activities.

~~(ooii)~~ “Phase III” means the period of the Project in which final construction of the Project occurs.

~~(ppjj)~~ “Phase III Funding Agreement” means the agreement the parties may enter into in order to memorialize their obligations and understandings regarding Phase III.

~~(qqkk)~~ “Presiding Judge” means the Presiding Judge for the Clackamas County Circuit Court, named in the Project Summary and Contact Information above.

~~(rrll)~~ “Project” means the Clackamas County Courthouse to be constructed on the Project Parcel, in the City of , Oregon City, Clackamas County, Oregon, pursuant to this Agreement and, as applicable, the Act, as such Project is described in the

Project Application and in the Initial Plans.

~~(ssmm)~~ “Project Application” means that certain application for monies to be used for the Project, submitted by the County to the Chief Justice on _____, and approved by the Chief Justice and DAS on _____.

~~(ttmm)~~ “Project Budget” means the budget for the construction of the Project, to be developed by the County and approved by the State ~~as part of the Phase I Work~~.

~~(uuoo)~~ “Project Common Areas” means the areas of the Project, as generally described in the Initial Plans, that will be available for common use by the Project Occupants.

~~(vv)~~ “Project Financing” means the total of the State Funds and the County Contribution.

~~(wwpp)~~ “Project Occupants” means the County, OJD and the Colocation Agency and their respective employees, agents, tenants, contractors, guests and invitees.

~~(xxqq)~~ “Project Parcel” means the Red ~~Soils~~land Parcel and any improvements constructed thereon pursuant to this Agreement.

~~(yyrr)~~ “Project Plans and Specifications” means design development documents for the Project, to be developed by the County and approved by the State ~~as part of the Phase I Work~~.

~~(zzss)~~ “Project Schedule” means the schedule for the construction of the Project, to be developed by the County and approved by the State ~~as part of the Phase I Work~~.

~~(aaa)~~ “Project Work” means the design and construction work associated with the Project, including but not limited to the Phase I Work and the Phase II Work

~~(bbb)~~ “Red Soils Parcel” means the parcel of land more particularly described in Exhibit B.

~~(ccctt)~~ “State Bonds” means any Oregon Constitution Article XI-Q general obligation bonds issued by the State for the Project, including Phase II State Funds and Phase III State Funds, if any; and any bonds or other obligations issued by the State to refinance the State Bonds.

~~(uuddd)~~ “State Default” means any of the occurrences set forth in Section 23(a) below.

~~(eee)~~ “State Funds” means any amount of State funding approved for the Project, including but not limited to the Phase I State Funds and the Phase II State Funds.

~~(vvfff)~~ “State Leases” means the Colocation Lease and the OJD Lease.

~~(wwggg)~~ “State Premises” means the Colocation Premises and the OJD Premises.

~~(xxhhh)~~ “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of DAS who, pursuant to an interagency agreement between DAS and OJD, will monitor and review the County’s Project activities and compliance with this Agreement as set forth herein.

~~(yyiii)~~ “State’s Proportionate Share” means _____ percent (____%), which is the portion of the costs of the ~~Phase I~~ Authorized Costs to be allocated to the ~~Phase I~~ Authorized State Costs, as set forth in Section 7 below.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

~~(zzjii)~~ “Trial Court Administrator” means the OJD employee named in the Project Summary and Contact Information above.

~~(aaa)~~ “Unspent Funds” means any amounts of the Phase I Project Financing that the County fails to spend during Phase I as provided in this Agreement.

4. Recitals. The parties recite:

(a) Pursuant to ORS 1.185 and 1.187, OJD operates the State of Oregon’s circuit courts, and the counties in the State of Oregon provide courthouse facilities for the circuit courts.

(b) On _____, the County submitted the Project Application, which set forth the County’s need for the Project and basic Project information.

(c) On _____, the Chief Justice approved the Project Application and determined that significant structural defects in the Existing Courthouse threaten human health and safety, that construction of a new building to house the Clackamas County Circuit Court is more cost-effective than remodeling the Existing Courthouse, and that replacement of the Existing Courthouse will create an opportunity for the colocation of other state offices in a newly constructed courthouse.

(d) On _____, DAS approved the Project Application.

~~(eh)~~ The parties anticipate that the Project will be developed and built in three Phases: Phase I (the Design and Planning Phase); Phase II (the Initial Construction Phase); and Phase III (the Final Construction Phase).

(e) The State of Oregon has agreed to contribute the Phase I State Funds to the Project. The Phase I State Funds are from the State’s General Funds.

~~(f)~~ The State is contributing the Phase I State Funds as a portion of the consideration for the leasehold interests in the State Premises that the County will convey to OJD and the Colocation Agency pursuant to the State Leases. Specifically, the State is contributing fifty percent (50%) of the Phase I Authorized State Costs, in an amount not to exceed the Phase I State Funds.

~~(g)~~ The County will meet the Phase I Benchmarks pursuant to Section 14 below, on or before the Phase I Completion Date (as it may be extended by the agreement of the parties).

~~(h)~~ The parties anticipate that the Project will be developed and built in three Phases: Phase I (the Design and Planning Phase); Phase II (the Initial Construction Phase); and Phase III (the Final Construction Phase).

(i) If the State contributes funding for Phase II and Phase III, such funding will be from State Bonds and in accordance with the Act. The parties anticipate that the sales of such State Bonds would occur in 20____ and 20____.

~~(j)~~ Pursuant to Section 15 below, the parties shall enter into the Phase II Funding Agreement, subject to:

~~(i)~~ the County meeting the Phase I Benchmarks; and

~~(ii) — future State and County approvals of appropriations required for Phase II of the Project, in order to memorialize the State’s contribution of the Phase II State Funds for the Project and the parties’ other obligations and understandings with regard to Phase II.~~

~~(k) — The parties expect to execute the State Leases during Phase III, if they enter into a Phase III Funding Agreement.~~

~~(hl) — The parties estimate that, if they enter into the Phase II Funding Agreement and the Phase III Funding Agreement, the Project will be fully constructed on or before _____ (the Estimated Project Completion Date).~~

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

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

(a) The State represents, warrants and covenants, as applicable, as follows:

(i) This Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Agreement, constitutes a valid and binding agreement of the State that is enforceable against the State in accordance with its terms.

(ii) Because of the State’s contribution of State Funds and the parties’ intent that the State Premises will be leased to OJD and the Colocation Agency, the State will collaborate and cooperate with the County regarding the Project Plans and Specifications, the Project Schedule and the Project Budget, as set forth more completely in Section 8 below.

(b) The County represents, warrants and covenants, as applicable, as follows:

(i) This Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County in accordance with its terms.

~~(b) — The County has taken all actions required by law for the County to acquire and use the Phase I County Contribution for Phase I, and the Phase I County Contribution is now available, or will be available as needed, to be spent on Phase I.~~

~~(c) — The County shall contribute the full amount of the Phase I County Contribution to the Project.~~

~~(d) — The County understands, acknowledges and agrees that the State has no obligation of any kind to provide additional funding, other than the Phase I State Funds.~~

~~(e) — The County understands, acknowledges and agrees that the State has no obligation of any kind to enter into the Phase II Funding Agreement except as set forth in Section 15 below.~~

Formatted: Font: Bold

Formatted: Widow/Orphan control

Formatted: Indent: Left: 0", Hanging: 0.5", No widow/orphan control, Tab stops: 0", Left + Not at 4.5" + 5.38" + 7.38" + 7.5"

Formatted: Font: Bold

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Indent: Left: 0", Hanging: 0.5"

(ii)f The County shall obtain a ~~standard form of title insurance policy for the value of the Redland Parcel~~ report from a title insurance company that shows the County owns fee simple title to the ~~Redland~~ Red Soils Parcel.

Commented [BN1]: We don't need a new insurance policy- just the title product.

(iii)g As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the Project Parcel or the development, construction or use of the Project. The County shall promptly provide OJD with notice of any litigation or claims (environmental or otherwise) filed during the term of this Agreement against the County regarding the Project or the Project Parcel.

(iv)h As of the Effective Date, the County's current employees (except for _____, its _____, *[for the other counties, this has been the Project Manager; there are a few other blanks below for filling in the name/title of this person]* as set forth in and pursuant to Section 6(b) below) are not eligible for, and the County has not hired, contracted with or made any award to any of its current employees for, any work or materials directly connected to the Project. During the term of this Agreement, the County's then-current employees (except for _____) shall not be eligible for, and the County shall not hire, contract with or make any award to any of its then-current employees for, any work or materials that are directly connected to the Project.

Commented [BN2]: County team- who should be designated here?

(v)i Because of the State's contribution of the Phase I State Funds and the parties' intent that the State Premises will be leased to OJD and the Colocation Agency, the County will collaborate and cooperate with OJD and the Colocation Agency regarding the Project Plans and Specifications, the Project Schedule and the Project Budget, as set forth more completely in Section 8 below.

6. **Phase I Authorized Costs.**

(a) **Generally.** Phase I Authorized Costs are the County's actual, reasonable and necessary capital costs of the Phase I Project Work, and that are:

(i) authorized under the Act and the laws pertaining to tax-exempt bond financings;

Formatted: Font: Bold

(ii) permitted by generally accepted accounting principles, consistently applied, as established by the Governmental Accounting Standards Board, as reasonably interpreted by DAS, to be capitalized to an asset that is part of the Project; and

Formatted: Font: Bold

(iii) eligible for financing with obligations bearing interest that is excludable from gross income under the Code.

Formatted: Font: Bold

~~(b) **Specific Inclusions.** Phase I Authorized Costs include, without limitation, the following:~~

Commented [WC3]: Why the limitations since the State is using General Fund? The language here applies directly to tax exempt bonded debt.

~~(i) capital costs related to the Phase I Work;~~

~~(ii) costs of the State Project Monitor; and~~

~~(iii) time spent working on the Project by _____, an employee of the County, provided that such time is charged to the Project on a time spent basis, rather than as a percentage of such employee's total work for the County; that such charges do not include fringe benefits or the County's overhead; and that such charges may be capitalized pursuant to Section 6(a)(ii) above.~~

Commented [WC4]: A contractor of the County – Gary Barth.

Commented [BN5R4]: This should be expanded to include more than just a project manager. Exhibit A seems to contemplate multiple County staff on the project. We can also clarify that a contractor/consultant is an authorized expenditure (and add the same to Exhibit A).

(be) Specific Exclusions. For the avoidance of doubt, ~~Phase I~~ Authorized Costs do not include internal costs charged to the Project by the County, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties.

7. ~~Phase I~~ Authorized State Costs.

(a) Generally. ~~The Phase I~~ Authorized State Costs are the State's Proportionate Share of the ~~Phase I~~ Authorized Costs. The ~~Phase I~~ Authorized State Costs represent the portion of the ~~Phase I~~ Authorized Costs that are attributable to the State Premises.

(b) State's Proportionate Share. State's Proportionate Share, ~~which of _____ percent (____%)~~ represents that portion of the Project that the State Premises bears to the overall Project, ~~shall be defined in each Funding Agreement entered into between the parties.~~ *[the idea here is to agree upon a percentage that generally represents what portion the State Premises will bear to the overall project]*

8. Collaboration and Cooperation between Parties; Meetings and Documents; Resolution of Disputes

(a) Generally. The development of the Project Plans and Specifications, the Project Schedule and the Project Budget will be a collaborative process between the parties and, with regard to the Colocation Premises, the Colocation Agency (as set forth in Section 8(b)(ii) below). The parties shall use their best efforts to cooperate with each other and the Colocation Agency in order to accomplish the timely completion of the ~~Phase I~~ Project Work.

(b) Meetings and Documents.

(i) The County shall give OJD advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve discussions of additions or revisions to the ~~OJD~~ Project Plans and Specifications, the Project Budget, the Project Schedule or the Project Common Areas, and shall promptly deliver to OJD any related documents. For the purposes of this Section 8(b)(i), such notice shall be delivered to the Trial Court Administrator in accordance with the notice provisions of Section 31 below.

Formatted: Font: Bold

(ii) The County shall give the Colocation Agency advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve discussions of the Colocation Premises, and shall promptly deliver to the Colocation Agency any related documents. For the purposes of this Section 8(b)(ii), such notice shall be delivered to the Colocation

Formatted: Font: Bold

Contact in accordance with the notice provisions of Section 31 below.

(c) **Resolutions of Disputes by the Parties.** In the event of a dispute under this Section 8, the parties shall attempt in good faith to resolve the dispute within fifteen (15) business days after one party gives notice to the other party of such dispute.

(d) **Resolution of Disputes by Chair of County Commissioners and Chief Justice.** If the parties do not timely resolve a dispute pursuant to Section 8(c) above, then the dispute shall be submitted to the Chair of the Clackamas County Board of Commissioners and the Chief Justice, or their respective designee, to be resolved within thirty (30) days after submission.

(e) **Resolution by Mediator.**

(i) If a dispute is not timely resolved pursuant to Section 8(d) above, then it ~~shall~~ may be resolved by the Mediator, who will be chosen by the parties as follows: within ten (10) business days after the expiration of the 30 –day period set forth in Section 8(d) above, the County shall deliver to the State a list of at least three (3) independent and experienced mediators, and within ten (10) business days after such delivery, the State shall notify the County of its choice of the Mediator from said list. Notwithstanding the foregoing, if the County fails to timely deliver the list to the State, then the State’s choice of a mediator shall be deemed the Mediator; and if the County does timely deliver the list to the State, and the State fails to timely respond, then the County’s choice of a mediator will be deemed the Mediator.

Formatted: Font: Bold

(ii) Within ten (10) days after the selection of the Mediator pursuant to Section 8(e)(i) above, both parties shall submit position statements regarding the dispute to the Mediator; and within thirty (30) days after submission of the position statements, the Mediator shall issue a decision regarding the dispute.

Formatted: Font: Bold

(iii) The parties share equally share all costs and expenses of the Mediator.

Formatted: Font: Bold

9. **Phase I County Contributions: Deposits.**

(a) **Generally.** In order to receive credits toward the ~~Phase I~~ County Contribution pursuant to Section 10 below, and disbursements from the ~~Phase I~~ State Funds pursuant to Section 11 below, the County shall deposit the full amount of the ~~Phase I~~ County Contribution associated with any individual phase of the Project with OJD, pursuant to the terms of a separate Funding Agreement entered into between the parties. The County shall deposit the ~~Phase I~~ County Contribution as a direct transfer of funds, pursuant to Section 9(b) below, or a credit for the value of the ~~Redland~~ Red Soils Parcel as provided in ORS chapter 705 and in Section 9(c) below. The County may deposit the full amount of the ~~Phase I~~ County Contribution in one or more installments and using any combination of deposits allowed under Sections 9(b) and 9(c) below.

(b) **Direct Transfer of Funds.**

(i) The County may transfer to OJD any amount of the ~~Phase I~~ County Contribution, in one or more installments.

Formatted: Font: Bold

(ii) Within two (2) business days after OJD’s receipt of any amount of the ~~Phase I~~ County Contribution transferred by the County, OJD shall transfer such amount into the County’s account in the Local Government Investment Pool.

Formatted: Font: Bold

(iii) Any and all funds that the County transfers to OJD pursuant to this Section 9(b) shall be “original” funds—in other words, the County shall not transfer the same funds to OJD more than once.

Formatted: Font: Bold

(c) **Value of Red ~~Soils~~land Parcel.** *[Discussion item: whether the value of the Red ~~Soils~~land Parcel is eligible to be counted towards the County Contribution]* If the County wishes to apply the value of the Red ~~Soils~~land Parcel as a deposit toward the Phase I County Contribution, the County shall submit the following documents to OJD within one hundred eighty (180) days after the Effective Date, in accordance with the Act:

Commented [BN6]: Waiting on David and/or Shelby to provide state law and related materials explaining the reasoning behind property value exclusion.

(i) an appraisal that is satisfactory to OJD, in terms of content and timeliness, representing the current value of the Red ~~Soils~~land Parcel;

Formatted: Normal, Indent: Left: 0", Hanging: 0.5", No bullets or numbering

(ii) the sale documents representing the actual purchase price of the Red ~~Soils~~land Parcel by the County; and

Formatted: Font: Bold

(iii) documentation that is satisfactory to OJD, showing that the Red ~~Soils~~land Parcel is land purchased by the County for the Courthouse, pursuant to the Act.

Formatted: Font: Bold

Formatted: Font: Bold

Upon receipt of such documents, OJD shall apply the higher of the appraised value or the purchase price as a deposit to the Phase I County Contribution.

Formatted: Indent: Hanging: 0.5"

10. ~~Phase I~~ County Contributions: Credits.

(a) **Generally.** In order to receive credits toward the ~~Phase I~~ County Contribution, the County shall submit Disbursement Requests pursuant to this Section 10. The amounts that the County requests pursuant to Disbursements Requests shall be either:

(i) to reimburse the County for payments that the County has previously made for ~~Phase I~~ Authorized State Costs of the Project; or

Formatted: Font: Bold

(ii) for ~~Phase I~~ Authorized State Costs of the Project that the County has incurred and will pay to unrelated third parties no later than ~~five-thirty (305)~~ business days after OJD makes the disbursement, as set forth in Section 10(e) below.

Formatted: Font: Bold

(b) **Credits Not to Exceed Deposits.** The total credits to the County for the ~~Phase I~~ County Contribution may not at any time exceed the total amount that the County has deposited with OJD pursuant to Section 9 above.

(c) **Form and Frequency of Disbursement Requests.** The County shall submit Disbursement Requests to the State Project Monitor, in the form shown in ~~Exhibit CF~~. Disbursement Requests shall include clear reference to the Project and itemize and explain all expenses in sufficient detail to allow the State Project Monitor to determine whether such expenses represent ~~Phase I~~ Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every fourteen (14) days, and no less frequently than every one hundred twenty (120) days.

(d) **Review.** The State Project Monitor shall review each Disbursement Request to determine whether:

(i) the Disbursement Request is in the form shown in Exhibit CF and otherwise complies with Section 10(c) above; and

Formatted: Font: Bold

(ii) the expenses set forth in the Disbursement Request represent **Phase I** Authorized Costs.

Formatted: Font: Bold

(e) **Approved Amounts.** For any amount set forth in a Disbursement Request that the State Project Monitor deems to be **Phase I** Authorized Costs pursuant to Section 10(d) above, then, after multiplying such amount by the State's Proportionate Share to establish the "Approved Amount":

(i) fifty percent (50%) of the Approved Amount shall be credited toward the **Phase I** County Contribution; and

Formatted: Font: Bold

(ii) fifty percent (50%) of the Approved Amount shall be disbursed to the County from the **Phase I** State Funds, pursuant to Section 11 below, and such amount shall be credited toward the **Phase I** State Funds.

Formatted: Font: Bold

(f) **Tracking Credits and Disbursements.** OJD shall keep current and accurate calculations of the credits to the **Phase I** County Contribution and the disbursements from the **Phase I** State Funds, pursuant to Section 10(e) above.

(g) **Disapproved Amounts.** If the State Project Monitor determines that any cost shown on a Disbursement Request is not an **Phase I** Authorized Cost, including whether it represented Misspent Funds, the State Project Monitor shall promptly notify the County of such determination, and none of the disapproved amount shall be credited toward the **Phase I** County Contribution or disbursed to the County from the **Phase I** State Funds. In the event the County reasonably objects to exclusion of any cost shown on a Disbursement Request, the parties will cooperate to resolve the objection as provided in Section 8 above.

(h) **Nonpayment for Work and Materials Accrued.** In the event of a disbursement of **Phase I** State Funds for an Approved Amount for work or materials already received or performed, the County shall, within ~~thirty five~~ (30~~5~~) business days, pay the supplier such Approved Amount. Any amounts that the County fails to promptly pay such supplier constitute Unspent Funds.

(i) **Retainage.** OJD shall retain five percent (5%) of the Approved Amounts from the **Phase I** State Funds from any Disbursement Request that is related to payment under a contract in which the County is entitled to withhold retainage from its contractor. This retained amount shall not be disbursed to the County until the County has met the **Phase I** Benchmarks ~~pursuant to Section 14 below~~ and has contributed the full amount of the **Phase I** County Contribution associated with a particular Phase, as set forth in a separate Funding Agreement, and until any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off.

Formatted: Font: Not Bold

11. Disbursement of **Phase I** State Funds.

(a) **Generally.** The disbursement of ~~Phase I~~ State Funds to the County pursuant to Section 10(e) above is subject to the provisions of this Section 11.

(b) **Maximum State Contribution.** ~~Unless the amount of Phase I State Funds is increased after the Effective Date, the State's maximum monetary obligation with respect to the Project shall not exceed \$1,200,000.00. In the event that the costs of Phase I exceed the Phase I Project Financing and the parties have not amended this Agreement or entered into a Phase II Funding Agreement agreeing to the payment of the excess costs, the County shall be responsible for all additional costs, and~~ The County shall have no claim against the State for any amount that exceeds the amount of the ~~Phase I~~ State Funds ~~which have, or will be, appropriated for this Project.~~

(c) **Sufficient Appropriations.** The disbursement of ~~Phase I~~ State Funds under Section 10(e) above, and of the Security Disbursement (as defined in and pursuant to Section 11(e) below), are contingent on OJD receiving sufficient appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly.

(d) **Conditions Precedent.** OJD's obligation to disburse the ~~Phase I~~ State Funds to the County for any Approved Amount is subject to satisfaction of each of the following conditions precedent, with respect to each disbursement:

(i) OJD has received sufficient expenditure authorizations to allow OJD, in the exercise of its reasonable administrative discretion, to make the disbursement.

Formatted: Font: Bold

(ii) No County Default has occurred and is continuing.

Formatted: Font: Bold

(iii) The County's representations and warranties set forth in Section 5 above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

Formatted: Font: Bold

(e) **Security Disbursement.**

(i) In addition to the ~~Phase I~~ State Funds, OJD shall disburse to the County, on or before _____, the amount of \$ _____ (the "Security Disbursement") from OJD's State Court Facilities Account, for expenditure by the County on security equipment for the Project. The security equipment shall be for the costs of security cameras, duress alarms and access control systems for the Project. As a condition to disbursement of the Security Disbursement, the County shall submit invoices or other assurance acceptable to OJD that the Security Disbursement has been or will be spent only on security equipment for the OJD Premises.

Formatted: Font: Bold

(ii) The Security Disbursement is not part of the ~~Phase I~~ State Funds and shall not be credited towards the County Contribution. The County's spending of the Security Disbursement for purposes other than as set forth in this Section 11(e) shall constitute Misspent Funds, and the County's failure to spend the Security Disbursement shall constitute Unspent Funds.

Formatted: Font: Bold

12. Payment of State Project Monitor.

(a) OJD has entered into an interagency agreement with DAS for the services of the State Project Monitor relating to the Project. The State Project Monitor shall charge its time to the Project on a time-spent basis, rather than as a percentage of such employee's total work for DAS and such charges will not include fringe benefits or DAS's overhead For each Phase, total costs incurred for the services of the State Project Monitor shall not exceed such amount that may be agreed on by the parties through a Funding Agreement.

Upon receipt of an invoice for the State Project Monitor's services pursuant to such interagency agreement, OJD shall promptly deliver such invoice to the County, and the County shall pay the amount due to DAS within thirty (30) days after delivery thereof.

(b) The County shall then submit a Disbursement Request to the State pursuant to Section 10(c) above, and the amount paid thereon by the County shall be multiplied by the State's Proportionate Share treated as an Approved Amount, and:

(i) fifty percent (50%) thereof shall be credited toward the ~~Phase I~~ County Contribution; and

(ii) fifty percent (50%) thereof shall be disbursed to the County from the ~~Phase I~~ State Funds, pursuant to Section 11 above, and such amount shall be credited toward the ~~Phase I~~ State Funds.

Formatted: Font: Bold

Formatted: Font: Bold

13. ~~Phase I~~ Project Work.

~~(a) — The County shall meet the Phase I Benchmarks pursuant to Section 14 below, on or before the Phase I Completion Date (as it may be extended by the agreement of the parties).~~

~~(b) — The County shall use all commercially reasonable efforts to timely meet the Phase I Benchmarks.~~

(ae) The County shall ~~design~~ undertake the Project Work in accordance with Oregon law and for the purposes described in the Act and this Agreement, including but not limited to the following:

(i) in accordance with OAR 330-135-0010 through 330-135-0055, pertaining to expenditures for solar technology, as applicable to the Project. The County shall provide OJD with copies of all reports required by OAR 330-135-0055 as applicable to the Project and as required by the Oregon Department of Energy; and

(ii) all statutes and administrative rules relating to Public Works, if the Project is a Public Works as defined in ORS 279C.800(6).

Formatted: Font: Bold

Formatted: Font: Bold

(bd) The County shall contract with competent professionals for all ~~Phase I~~ Project Work, and shall require all such professionals to possess and maintain all licenses, registrations, insurance, and bonds required by Oregon law.

(ce) The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the ~~Phase I~~ Project Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, and 279C, other applicable law and local contracting procedures; and in compliance with Oregon Laws 2014, chapter 66 (HB

4111). The County shall document all solicitations, selection and award processes used for contracting the ~~Phase I~~Project Work.

~~(df)~~ The County shall be responsible for awarding and managing all contracts and property acquisitions necessary to complete the ~~Phase I~~Project Work in accordance with the Project Application ~~and the Initial Plans~~.

~~(eg)~~ All subagreements that the County may enter into which are funded wholly or in part with ~~Phase I~~Project Financing shall be subcontractual in nature, with the other party engaged in the role of a contractor. The County shall actively administer all subcontracts with contractors to ensure that the terms of the subcontract are consistent with the terms of this Agreement to ensure compliance with the terms of the subcontract, and to ensure the contractor's support for the intended purposes of this Agreement and the Act.

~~(fh)~~ The ~~Phase I~~Project Work shall be performed in compliance with all applicable federal, state and local laws and ordinances.

~~(gi)~~ Neither execution of this Agreement nor approval of the Project Plans and Specifications by OJD or DAS shall be construed as a representation or warranty by the State that the Project Plans and Specifications are in compliance with any building or other code or other applicable governmental requirements.

~~(hj)~~ The State and the Colocation Agency and their employees, agents and representatives (including, without limitation, the State Project Monitor, the Presiding Judge, the Trial Court Administrator and the Colocation Contact) shall have access to the Project, the Project Parcel and Project documentation and records at all reasonable times throughout the term of this Agreement, and as otherwise required under this Agreement, to inspect the work, operation and accounting records related to the Project.

~~(ik)~~ The County shall promptly provide notice to OJD of any credible evidence that a principal, employee, agent, contractor, subcontractor, supplier or other person has submitted a false claim under the False Claims Act, ORS_180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving the Phase I Project Financing.

~~(jl)~~ During the term of this Agreement, the County shall, promptly upon request, deliver to the State Project Monitor any requested information relating to the ~~Phase I~~Project Work, in sufficient detail to enable the State Project Monitor to determine whether the ~~Phase I~~Project Work is proceeding in a timely fashion.

~~(km)~~ The County shall pay when due all claims for work performed on the ~~Phase I~~Project Work by or through County for services rendered or materials furnished to the Project, and shall keep the Project and the Project Parcel free from any liens arising by or through the County. If any such lien shall at any time be filed against the Project or the Project Parcel, or any portion thereof, the County shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after the County's receipt of written notice of same.

~~(ln)~~ The Project will not be enrolled in the State Energy Efficiency Design (SEED) program.

~~14. Phase I Benchmarks. The County shall be deemed to have met the Phase I Benchmarks if the State, in its reasonable discretion, approves in writing:~~

- ~~(a) the Project Plans and Specifications;~~
- ~~(b) the Project Schedule; and~~
- ~~(c) the Project Budget.~~

15. Phase II Funding Agreements.

(a) **Phase I Funding Agreement.** Concurrent with the execution of this Master Development Agreement, the parties shall enter into the Phase I Funding Agreement, to memorialize the State's contribution of the Phase I State Funds for the Project, and the parties' other obligations and understandings regarding Phase I.

Formatted: Font: Not Bold

(b) **Condition.** The parties shall enter into ~~the Phase II~~subsequent Funding Agreements; to memorialize the State's contribution of ~~the Phase II~~State Funds ~~for to~~ future phases of the Project, and the parties' ~~if~~ other obligations and understandings regarding ~~those future~~ Phases ~~II,~~ only if the County meets the ~~Phase I~~ Phase I Benchmarks on or before the Phase I Completion Date or the Phase II Benchmarks on or before the Phase II ~~Phase I~~Completion Date (as set forth in the applicable Funding Agreement, and as it may be extended by the agreement of the parties) and the ~~required~~ Phase II State Funds have been allocated by the Oregon Legislative Assembly.

(b) **County Notice.** The County shall provide ninety (90) days' notice to the State in advance of the estimated date of the County's completion of the ~~Phase I~~applicable Benchmarks. After receiving this notice, the State will have thirty (30) days to provide the County with a draft ~~Phase II~~Funding Agreement ~~for the next Phase~~.

(c) **Execution.** The parties shall use their good-faith efforts to negotiate and execute ~~subsequent a Phase II~~Funding Agreements within thirty (30) days after the County meets the ~~Phase I~~Benchmarks ~~applicable to the current Phase~~.

(d) **Excess Phase I State Funds.** In the event the parties enter into ~~the Phase II~~subsequent Funding Agreements and not all of the ~~Phase I~~State Funds ~~applicable to a prior Phase~~ have been disbursed to the County pursuant to this Agreement ~~or related Funding Agreements~~, any such excess funds shall be added to the ~~Phase II~~State Funds ~~to be used in future phases of the Project~~.

(e) **Excess Deposits to Phase I County Contribution.**

(i) In the event the parties enter into ~~the Phase II~~subsequent Funding Agreements pursuant to this Section 15, and the amount of the ~~Phase I~~County Contribution deposited pursuant to Section 9 above exceeds the full amount of Disbursement Requests approved by the State Project Monitor pursuant to Section 10(e) above, any such excess amount shall be added to the ~~Phase II~~County Contribution ~~to be used in future phases of the Project~~.

Formatted: Font: Bold

(ii) In the event the parties do not enter into ~~the Phase II~~subsequent Funding Agreements pursuant to this Section 15, and the amount of the ~~Phase I~~County

Formatted: Font: Bold

Contribution deposited pursuant to Section 9 above exceeds the full amount of Disbursement Requests credited to the ~~Phase I~~ County Contribution pursuant to Section 10(e) above, any excess amount shall be returned to the County.

(f) **Excess ~~Phase I~~ Authorized State Costs.** In the event the parties enter into ~~the Phase I~~ subsequent Funding Agreements and the Approved Amounts credited to the ~~Phase I~~ State Funds under Section 10(e) above exceed the ~~Phase I~~ State Funds, any such excess credits to the ~~Phase I~~ State Funds will be considered credits to ~~Phase II~~ State Funds to be used in future phases of the Project.

16. Terms and Conditions of Leases.

(a) **Generally.** In the event the parties enter into the Phase III Funding Agreement, then during Phase III the parties shall finalize and enter into the OJD Lease, and the County shall enter into the Colocation Lease, in accordance with the provisions of this Section 16.

(b) **Lease Terms.** The State Leases shall contain the following general terms and conditions:

(i) The initial term of the State Leases shall last until the State Bonds mature or full payment of the defeasance costs of the State Bonds, whichever occurs first.

Formatted: Font: Bold

(ii) During the initial term of the State Leases, OJD and the Colocation Agency shall not pay any rent to the County.

Formatted: Font: Bold

(iii) OJD and the Colocation Agency may each extend the initial term of the State Leases, at a monthly fair market rent.

Formatted: Font: Bold

(iv) OJD and the Colocation Agency shall, at their own expense, provide consumables (e.g., toilet paper, paper towels, etc.).

Formatted: Font: Bold

(v) The County shall, at its own expense, maintain, repair and replace the State Premises.

Formatted: Font: Bold

(vi) The County shall provide, at its own expense, all utilities and services, including janitorial services, to the State Premises.

Formatted: Font: Bold

(vii) During the term of the State Leases, in the event any portion of the Project outside of the State Premises becomes available for rent, OJD or the Colocation Agency can rent such portion from the County at fair market value.

Formatted: Font: Bold

17. Misspent Funds and Unspent Funds.

(a) **Notice.** If the State Project Monitor determines that there are Misspent Funds or Unspent Funds by the County, including pursuant to Section 10(g) or 10(h) above, the State Project Monitor shall provide written notice to the County describing the amount and nature of such Misspent Funds or Unspent Funds.

(b) **Cure.** Within thirty (30) days after receipt of the notice described in Section 17(a) above, or such longer period as the State Project Monitor may (but is not obligated to) approve at the County's request:

(i) with regard to Misspent Funds: the County shall pay OJD the amount of the Misspent Funds, and OJD shall reverse the credits to the ~~Phase I~~ County Contribution and the ~~Phase I~~ State Funds for such amounts.

Formatted: Font: Bold

(ii) with regard to Unspent Funds, the County shall provide evidence satisfactory to the State Project Monitor that the County has spent the Unspent Funds for ~~Phase I~~ Authorized Costs.

Formatted: Font: Bold

A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 17(b) shall constitute a County Default.

(c) **Resolution.** Where the County disputes a determination made by the State Project Monitor under this Section, the County may utilize the resolution procedures in Section 8 to assist in the dispute. Notwithstanding Section 17(b) above, during the period in which the State and County are pursuing resolution of the dispute pursuant to the procedures of Section 8, failure by the County to cure the Misspent Funds or the Unspent Funds shall not constitute a County Default.

Formatted: Font: Bold

18. Taxes and Assessments; Utilities. During the ~~Phase I~~ Project Work, the County shall pay all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or the Project Parcel. If any governmental charges may lawfully be paid in installments over a period of years, the County may pay those charges in installments. The County may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the Project or the Project Parcel to loss or forfeiture.

19. County Not a State Officer, Employee or Agent. The County is not an “officer,” “employee” or “agent” of the State, as those terms are used in ORS 30.265.

20. Insurance. Upon the commencement of any Project work upon the ~~Redland~~ Red Soils Parcel, and through the remainder of the term of this Agreement, the County shall maintain in full force and effect throughout the entire term of this Agreement, property insurance for the perils of all risks of direct physical loss or damage including earthquake and flood covering the Project and the Project Parcel in an amount at least equal to the amount of the ~~Phase I~~ Project Financing. Insurance proceeds from an insured loss affecting the Project or the Project Parcel shall be exclusively used by the County to rebuild, repair and restore the Project and the Project Parcel in a manner consistent with the terms of this Agreement. The County shall consult with OJD regarding the plans for rebuilding, repairing and restoring the Project and the Project Parcel and such plans shall be subject to OJD’s approval, which shall not be unreasonably withheld. OJD shall be provided notice of any cancellation or material modification to the policy at least thirty (30) days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to OJD on or before the Effective Date, and thereafter at least thirty (30) days prior to the effective date of any renewal or

replacement policy. The policy shall be issued by companies licensed or authorized to provide insurance in the State of Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. Notwithstanding the foregoing, the County may satisfy its insurance obligations through its existing self-insurance program, provided that the Red Soils Parcel shall be insured at the same level, and under the same conditions, as if the above insurance had been procured. The County's self-insured deductible shall not exceed \$100,000 each loss, except the earthquake and flood deductible shall not exceed five percent (5%) of each loss or \$100,000, whichever is more, without prior consent of OJD.

Formatted: Font: (Default) Times New Roman, 12 pt

Formatted: Font: (Default) Times New Roman, 12 pt

21. County Default. Any of the following shall constitute a County Default:

(a) The County fails to meet the Phase I Benchmarks on or before the Phase I Completion Date or the Phase II Benchmarks on or before the Phase II Completion Date ~~the Phase I Benchmarks on or before the Phase I Completion Date~~ (as it may be extended by the agreement of the parties) as set forth in any Funding Agreement entered into between the parties.

(b) The County fails to perform, observe or discharge any of its other duties or obligations under this Agreement (except for curing Misspent Funds or Unspent Funds as set forth in Section 21(c) below) within thirty (30) days after written notice from the State specifying the nature of the failure with reasonable particularity; or, if such failure cannot reasonably be completely remedied within such 30-day period, then within such longer times as the failure can reasonably be remedied, in the State's reasonable discretion and as set forth in the notice to the County.

(c) The County fails to cure any Misspent Funds or Unspent Funds as required by Section 17(b) above.

(d) Any representation or statement made by the County in this Agreement or in any document or report relied upon by the State or the State Project Monitor, as the case may be, to approve a Disbursement Request, monitor the Project as provided herein or disburse ~~Phase I~~ Project Financing, is untrue in any material respect when made.

(e) The County declares itself or is adjudicated insolvent or bankrupt, applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial part of its assets, or a proceeding or case is commenced, without the application or consent of the County, in any court of competent jurisdiction, seeking: (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of the County; or (2) the appointment of a trustee, receiver, custodian, liquidator or the like for the County or of all or any substantial part of its assets.

22. State's Remedies for County Default. Upon a County Default, the State, may, at its option, pursue any or all of the remedies available under this Agreement and at law

or in equity, including but not limited to:

- (a) ceasing disbursement of ~~Phase I~~ State Funds;
- (b) terminating this Agreement and/or any applicable Funding Agreement;
- (c) bringing an action at law to recover damages incurred as a result of the County Default, in order to recover ~~all any Misspent Funds or Unspent Funds~~ ~~Phase I~~ State Funds disbursed to the County hereunder, with interest thereon; and
- (d) seeking any equitable remedies, including specific performance, which may be available to the State.

23. State Default and County’s Remedies for State Default.

- (a) **Default by State.** Any of the following shall constitute a State Default:
 - (i) The State fails to pay the County any amount as required by this Agreement or any applicable Funding Agreement, and OJD fails to cure such failure within thirty (30) days after the County’s written notice or such longer period as the County may specify in such notice; or
 - (ii) The State commits any material breach or default of any covenant, warranty or obligation under this Agreement other than one described in Section 23(a)(i) above, and such breach or default is not cured within thirty (30) days after the County’s written notice or such longer period as the County may specify in such notice.
- (b) **County’s Remedies for State Default.** In the event of a State Default, the County may, at its option:
 - (i) receive reimbursement of its remaining County Funds;
 - (ii) terminate this Agreement and/or any applicable Funding Agreement;
 - (iii) bring an action at law to recover damages incurred as a result of the State Default, in order to recover all ~~Phase I~~ County Contributions hereunder, with interest thereon; and
 - (iv) pursue any or all of the remedies available to it under this Agreement and at law or in equity.

Formatted: Indent: First line: 0.5"

24. Termination by State. In the event OJD fails to receive sufficient appropriations, expenditure limitations and other state authorizations to permit OJD in the reasonable exercise of its administrative discretion to continue making payments under this Agreement, OJD may immediately terminate this Agreement without penalty or liability, effective upon the delivery of notice to the County.

25. Parties’ Contribution for Third Party Claims; Indemnification.

- (a) **Generally.** If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party (the

“Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section 25, and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing, are conditions precedent to the Other Party’s contribution obligation under this Section 25 with respect to the Third Party Claim.

(b) State Contribution. With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including reasonable attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

(c) County Contribution. With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including reasonable attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

(d) All Other Claims. For any other claim, suit, class action suit, or proceeding alleging discriminatory, unconstitutional, or otherwise unlawful conduct with respect to either party’s acts or refusal to act under this Agreement, each party shall indemnify and defend the other, and their electd officials, officers, employees, and other agencies from

and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to their acts or omissions or the acts or omissions of their elected officials, officers, employees, subcontractors or agents under this Agreement.

26. Independent Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties. Any agreement entered into by the County relating to the Project is not an obligation of the State. The County shall not represent that it has the power or authority to obligate the State.

27. No Third-Party Beneficiaries. DAS, OJD and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Agreement.

28. Subcontracts, Successors and Assignments. The County's entry into any subcontracts for any portion of the Project shall not relieve the County of any of its duties or obligations under this Agreement. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties, and their respective successors and permitted assigns, if any.

29. Compliance with Applicable Law.

(a) The County shall comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this Agreement and the Project. Without limiting the generality of the foregoing, the County expressly agrees to comply with the following, and all regulations and administrative rules established pursuant thereto:

- (i) Workers' Compensation Laws (ORS Chapter 656);
- (ii) Wages, Hours and Records Laws (ORS Chapter 652);
- (iii) Conditions of Employment Laws (ORS Chapter 653);
- (iv) Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657);
- (v) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
- (vi) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (vii) the Americans with Disabilities Act of 1990, as amended;
- (viii) the Health Insurance Portability and Accountability Act of 1996;

- (ix) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (x) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (xi) Discrimination against disabled persons (ORS 659A.142);
- (xii) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (xiii) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (xiv) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
- (xvii) the requirements of any other nondiscrimination statute(s) which may apply to the application; and
- (xviii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this Section 31(a).

(b) The County shall ensure that any architectural or engineering services contract, construction or CM/GC contract and all of the first-tier subcontracts for Project work or materials resulting from this Agreement shall include the terms of this Section 29. The County shall make reasonable efforts to ensure that all contractors performing Project work or providing materials under contracts resulting from this Agreement shall comply with the terms of this Section 29.

30. Records Maintenance; Review and Audit.

(a) The County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County acknowledges and agrees that DAS, OJD, the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts, for the period of time set forth in Section 30(c).

(b) Upon request, the County shall promptly provide the State with any other such information regarding the Project as the State may require.

(c) The County shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings until the later of six (6) years after the completion of the ~~Phase I~~Project Work, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

31. Notice.

(a) **Generally.** Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 31(b) below to the address of the parties or the State Project Monitor, as set forth in the Project Summary and Contact Information above, unless a party or the State Project Monitor modifies its address by notice to the other parties and the State Project Monitor, as applicable. The phone numbers listed in the Project Summary and Contact Information are for convenience only, and any information delivered by phone to a party or the State Project Monitor shall not constitute notice under this Agreement.

(b) **Delivery.**

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Facsimile	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or facsimile shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt, or three (3) days after the mailing date if delivery is refused
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

32. Severability; Waiver.

(a) **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

(b) **Waiver.** The failure by a party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

33. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. In no event shall this Section 33 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim, action suit or proceeding or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

34. Entire Agreement; Amendments.

(a) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof, except that this Agreement is intended to be interpreted consistent with any separate Funding Agreements entered into between the parties on the subject matter hereof. ~~There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.~~

(b) **Amendments.** No amendment, waiver, consent, modification or change of terms of this Agreement shall bind a party unless in writing and signed by both parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

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

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

- (a) 13 – ~~Phase I~~Project Work;
- (b) 21 – County Default
- (c) 22 – State’s Remedies for County Default;
- (d) 23 – State Default and County’s Remedies for State Default;
- (e) 25 – Parties’ Contribution for Third-Party Claims; Indemnification;
- (f) 27 – No Third-Party Beneficiaries;
- (g) 28 – Subcontracts, Successors and Assignments;
- (h) 30 – Records Maintenance; Review and Audit;

- (i) 32 – Severability; Waiver;
- (j) 33 – Governing Law; Venue; Consent to Jurisdiction; and
- (k) Any other provision of this Agreement that by its terms is intended to survive.

[remainder of page intentionally left blank]

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

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

Print Name: _____
Title: _____
Signature: _____

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

Print Name: _____
Title: _____
Signature: _____

Approved as to Legal Sufficiency for the State:

By: _____
Shelby E. Robinson, Assistant Attorney General

Approved as to all provisions relating to the Department of Human Services, as Colocation Agency hereunder:

**The State of Oregon,
acting by and through the Department of Human Services (Colocation Agency):**

Print Name: _____
Title: _____
Signature: _____

Clackamas County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

_____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
_____, Assistant County ~~Attorney~~Counsel

#8780476v2

Exhibit A

Phase I Work

- ~~Architectural design and space planning~~
- ~~Site due diligence~~
- ~~Geotechnical and environmental investigations~~
- ~~Land surveys~~
- ~~Traffic impact analysis~~
- ~~Architectural Design and Engineering Services (A/E)~~
- ~~Pre construction services from contractor(s)~~
- ~~Inspections and other due diligence~~
- ~~Work by the County's Project management staff~~
- ~~Development of Project Plans and Specifications~~
- ~~Development of Project Schedule~~
- ~~Development of Project Budget~~
- ~~City of ██████████ development and plan review, permit fees and system development charges~~
- ~~1.5% for solar (per State of Oregon requirements for public projects)~~
- ~~State Historic Preservation Office application and permit fees~~

Exhibit B

Phase I Benchmarks

- ~~1. Finalizing the Project Plans and Specifications~~
- ~~2. Finalizing the Project Schedule~~
- ~~3. Finalizing the Project Budget~~

Exhibit C

Initial Plans

~~[discussion item about what can be attached here,
It may be the description of the Project as set forth in the Application]~~

Exhibit AD

Courthouse Design Criteria

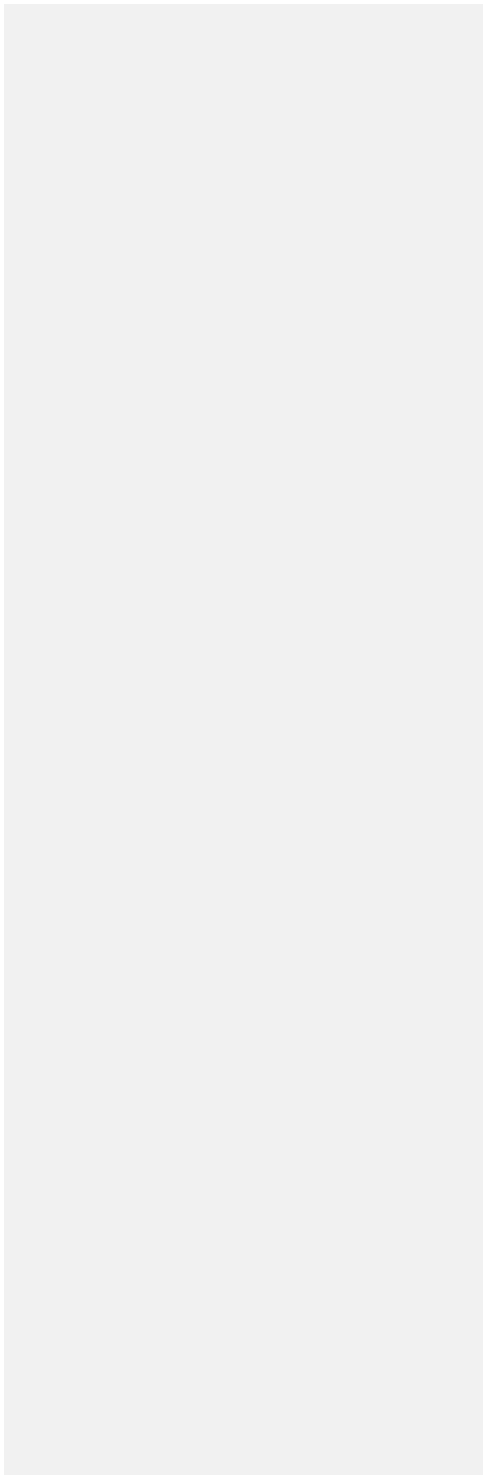


Exhibit BE

Description of ~~Redland~~Red Soils Parcel

[to be provided by County]

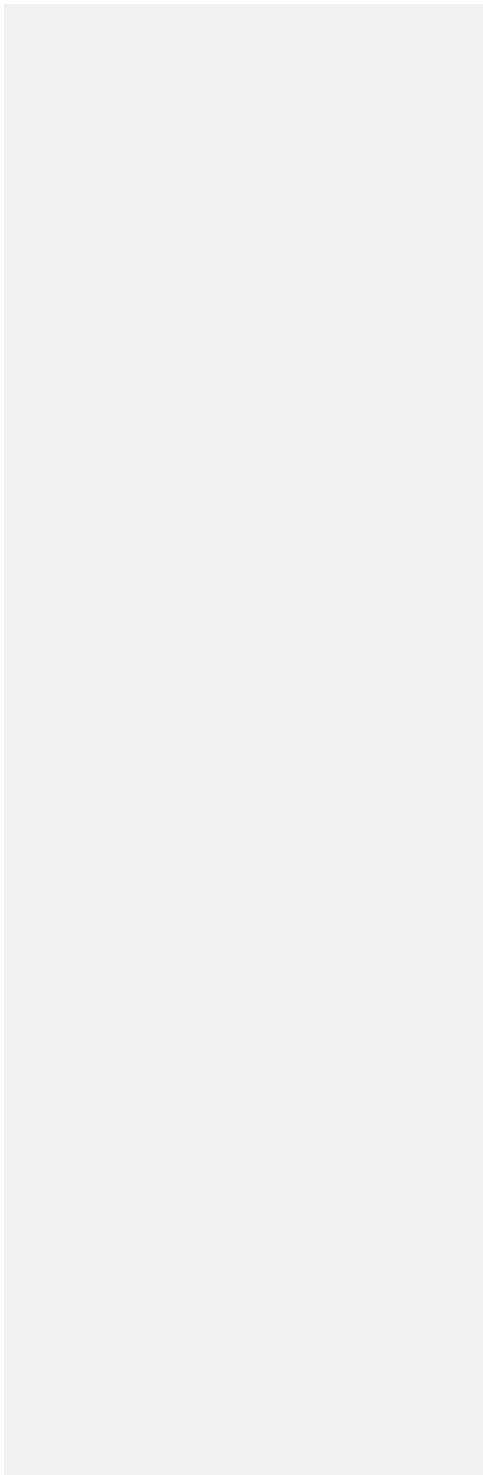


Exhibit C
Initial Plans

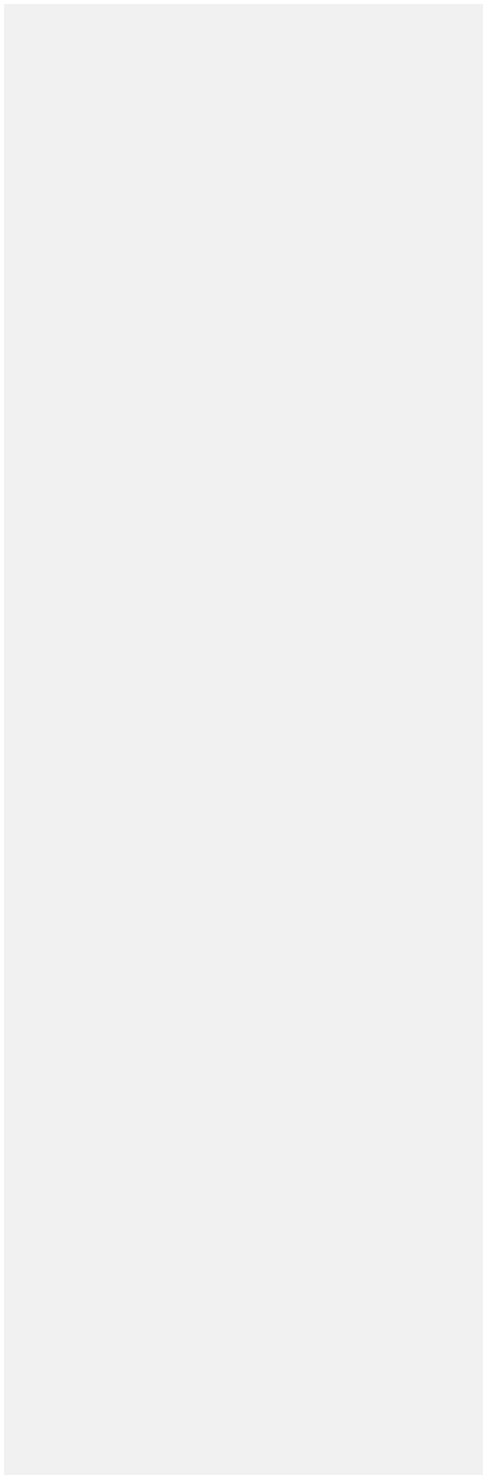


Exhibit DE

Form of Disbursement Request

Disbursement Request Number: _____

[number Requests sequentially for ease of tracking]

Dated: _____

Project Title: Clackamas County Courthouse

Funding: General Funds

Funding Agreement: Clackamas County Courthouse Funding Agreement between OJD, DAS and Clackamas County dated _____, 2018 (the "Agreement")

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Agreement.

On behalf of Clackamas County (the "County"), I hereby request a total disbursement of \$_____ pursuant to the Agreement, fifty percent (50%) of such amount to be credited to the Phase I County Contribution, and the other fifty percent (50%) of such amount to be disbursed to the County from the Phase I State Funds.

I hereby make the following certifications in connection with this Disbursement Request:

1. On behalf of the County, I have reviewed the attached invoice(s) and any other documents attached to this Disbursement Request, and I have determined that the invoiced work or materials represent Phase I Authorized Costs for the Project pursuant to the Agreement.
2. The County will use the disbursement amount requested by this Disbursement Request either:
 - (a) to reimburse the County for amounts that the County has previously paid for Phase I Authorized State Costs of the Project; or
 - (b) for Phase I Authorized State Costs of the Project that the County has incurred from unrelated third parties but has not yet paid, which the County will pay no later than five (5) business days after disbursement by OJD of the amount set forth herein.
3. The total amount credited to the Phase I County Contribution pursuant to Section 10(e) of the Agreement is equal to or greater than the total Phase I State Funds disbursed to date plus the amount of this Disbursement Request.
4. The certifications in this Disbursement Request are true to the best of my knowledge and belief.

By: _____
Authorized Signature

CLACKAMAS COUNTY COURTHOUSE
PHASE I FUNDING AGREEMENT — ~~PHASE I~~

Formatted: Left: 1", Right: 1", Header distance from edge: 0.5", Footer distance from edge: 0.5"

THIS CLACKAMAS COUNTY COURTHOUSE FUNDING AGREEMENT – PHASE I (this “Agreement”) is made _____, 2018 (the “Effective Date”), by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Clackamas County, Oregon (the “County”).

Project Summary ~~and Contact Information~~

Project Title: Clackamas County Courthouse

County: Clackamas County

Phase I State Funds: \$1,200,000.00

Phase I Completion Date: _____

~~**Estimated Project Completion Date:** _____~~

~~**Estimated Project Occupancy Date:** _____~~

Funding Source: General Funds

Formatted: Indent: Left: 0", First line: 0"

~~**County Contact:** _____
Phone: _____
Facsimile: _____
Email: _____
Address: _____~~

DAS Contact: Rhonda Nelson, Capital Finance Analyst
Phone: (503) 378-8927
Facsimile: (503) 373-7643
Email: Rhonda.Nelson@oregon.gov
Address: 155 Cottage Street NE
Salem, OR 97301

~~**OJD Contact:** David T. Moon, Director
Business and Fiscal Services Division
Phone: (503) 986-5150
Facsimile: (503) 986-5856
Email: David.T.Moon@ojd.state.or.us~~

Address: Supreme Court Building
1163 State Street
Salem, OR 97301-2563

Presiding Judge: The Honorable Kathie F. Steele
Phone: (503) 655-8670
Facsimile: [REDACTED]
Email: Kathie.F.Steele@ojd.state.or.us
Address: [REDACTED]

Trial Court Administrator: Debbie Spradley
Phone: (503) 655-8670
Facsimile: [REDACTED]
Email: Debbie.D.Spradley@ojd.state.or.us
Address: [REDACTED]

State Project Monitor: Nicholas C. Larson
Phone: (503) 373-7196
Facsimile: (503) 373-7210
Email: nicholas.c.larson@oregon.gov
Address: 1225 Ferry St. SE
Suite Upper 100
Salem, OR 97301

Colocation Agency: Department of Human Services,
an agency of the State of Oregon

Colocation Contact: [REDACTED]
Phone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]
Address: [REDACTED]

Terms and Conditions

1. **Effective Date and Term.** This Agreement is effective as of the Effective Date, such date being the last date all required signatures and approvals were obtained. The term of this Agreement shall be from the Effective Date through the date the parties fulfill their obligations hereunder, unless it is sooner terminated pursuant to Section ~~1522(b) or 16(b) or 24~~ below.

Formatted: Not Highlight

Formatted: Not Highlight

2. **Agreement Documents.** This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement; less all Exhibits; and attached ~~Exhibit A (Phase I Work); Exhibit B (Phase I Benchmarks); Exhibit C (Initial Plans); Exhibit D (Courthouse Design Criteria); Exhibit E (Description of Redland Parcel); and Exhibit F (Form of Disbursement Request).~~ The foregoing Exhibits are incorporated herein by this reference.

3. **Integration.** ~~This Agreement is intended to be interpreted consistent with that Master Funding Agreement entered into between the parties hereto and effective as of _____, 2018 and incorporates the terms of that agreement as if fully set forth herein. In the event of a conflict between this Agreement and the Master Funding Agreement, this Agreement shall control.~~

Formatted: Font: Not Bold

4. **Definitions.** Capitalized terms used in this Agreement shall have the meanings defined for such terms ~~as set forth in the Master Funding Agreement and as~~ in this Section 43, unless the context clearly requires otherwise.

~~(a) —“Act” means Article XI Q of the Oregon Constitution; Or. Laws 2013, ch. 705; Or. Laws 2013, ch. 723; Or. Laws 2014, ch. 121; Or. Laws 2015, ch. 675; Or. Laws 2016, ch. 118; and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.~~

~~(b) —“Approved Amount” means the State’s Proportionate Share of any amount set forth in a Disbursement Request that the State Project Monitor determines represent Phase I Authorized Costs, pursuant to Section 10.~~

~~(c) —“Chief Justice” means the Chief Justice of the Oregon Supreme Court.~~

~~(d) —“Code” means the Internal Revenue Code of 1986, as amended.~~

(ae) “Colocation Agency” the Department of Human Services, an agency of the State of Oregon.

~~(f) —“Colocation Contact” means the Colocation Agency employee named in the Project Summary and Contact Information above.~~

(bg) “Colocation Lease” means the long-term lease agreement that the County will enter into with the Colocation Agency during Phase III for the County to convey to the Colocation Agency a leasehold interest in the Colocation Premises in the event the parties enter into the Phase III Funding Agreement and the Project is completed.

(ch) “Colocation Premises” means that certain portion of the Project, as generally described in the Initial Plans, that will be the subject of the Colocation Lease.

- (d*i*) “County Default” means any of the occurrences set forth in Section ~~22-15~~ below.
- ~~(j) “Courthouse Design Criteria” means OJD’s “General Facilities Design Assessment Criteria” dated December 2007 and attached as Exhibit D.~~
- ~~(k) “Disbursement Request” means a request by the County for credit to the Phase I County Contribution and disbursement of Phase I State Funds, substantially in the form of Exhibit F.~~
- ~~(l) “Estimated Project Completion Date” means _____.~~
- ~~(m) “Existing Courthouse” means the building located at _____, Oregon City, Oregon, in which the Clackamas County Circuit Court is located as of the Effective Date.~~
- ~~(n) “Initial Plans” means the plans for the Project as of the Effective Date, as described on Exhibit C.~~
- ~~(o) “Mediator” means the individual chosen by the parties to mediate a dispute between them pursuant to Section 8(e) below.~~
- ~~(p) “Misspent Funds” means any Phase I Project Financing spent by the County for any purpose other than paying for Phase I Authorized Costs, or otherwise in violation of this Agreement.~~
- ~~(q) “OJD Lease” means the long-term lease agreement that the parties will enter into during Phase II for the County to convey to OJD a leasehold interest in the OJD Premises, in the event the parties enter into the Phase II Funding Agreement and the Project is completed.~~
- ~~(r) “OJD Premises” means that certain portion of the Project, as generally described in the Initial Plans, that will be the subject of the OJD Lease. The OJD Premises generally includes all courthouse operations and a proportionate share of the common areas.~~
- ~~(s) “Phase I” means the design and planning period of the Project in which the Phase I Work occurs and Phase I Benchmarks are achieved.~~
- ~~(t) “Phase I Authorized Costs” means County’s actual, reasonable and necessary capital costs relating to Phase I Work, as set forth more completely in Section 76 below, and in the Master Funding Agreement.~~
- ~~(u) “Phase I Authorized State Costs” means the State’s Proportionate Share of the Phase I Authorized Costs.~~
- ~~(v) “Phase I Benchmarks” means the items set forth in Exhibit B.~~
- ~~(w) “Phase I Completion Date” means _____.~~
- ~~(x) “Phase I County Contribution” means the amount of \$1,200,000.00 that, as of the Effective Date, the County has agreed to provide for Phase I Authorized State Costs.~~
- ~~(y) “Phase I Project Financing” means the total of the Phase I State Funds and the Phase I County Contribution.~~
- ~~(z) “Phase I State Funds” means the amount of \$1,200,000.00 that, as of the Effective Date, the State of Oregon has agreed to provide for Phase I Authorized State Costs, such Phase I State Funds being contributed to the Project as a portion of the consideration for the leasehold interest in the State Premises that the County shall convey to OJD pursuant to the State Leases in the event the parties enter into the Phase II Funding Agreement and the Project is completed.~~
- ~~(aa) “Phase I Work” means the County’s design and engineering work and land use entitlements and other governmental approvals required for the Project, which may include those work items set forth in Exhibit A.~~

~~(pbb)~~ “Phase II” means the period of the Project in which initial construction of the Project occurs.

~~(ce)~~ “Phase II Authorized Costs” means the actual, reasonable and necessary capital costs relating to Phase II Work.

~~(dd)~~ “Phase II Authorized State Costs” means the State’s Proportionate Share of the Phase II Authorized Costs.

~~(ee)~~ “Phase II County Contribution” means funding the County agrees to provide for Phase II Authorized State Costs.

~~(gff)~~ “Phase II Funding Agreement” means the agreement the parties may enter into pursuant to Section 145 below, in order to memorialize their obligations and understandings regarding Phase II.

~~(rgg)~~ “Phase II State Funds” means any amount of State funding approved in future Legislative sessions for Phase II of the Project, as such funds may be realized from the sale of Article XI-Q bonds or other state bonds in 20____ or subsequent years.

~~(hh)~~ “Phase II Work” means construction of the Project and other, related activities.

~~(sii)~~ “Phase III” means the period of the Project in which final construction of the Project occurs.

~~(tjj)~~ “Phase III Funding Agreement” means the agreement the parties may enter into in order to memorialize their obligations and understandings regarding Phase III.

~~(kk)~~ “Presiding Judge” means the Presiding Judge for the Clackamas County Circuit Court, named in the Project Summary and Contact Information above.

~~(uH)~~ “Project” means the Clackamas County Courthouse to be constructed on the Project Parcel, in the City of _____, Oregon City, Clackamas County, Oregon, pursuant to this Agreement and, as applicable, the Act, as such Project is described in the Project Application and in the Initial Plans.

~~(mm)~~ “Project Application” means that certain application for monies to be used for the Project, submitted by the County to the Chief Justice on _____, and approved by the Chief Justice and DAS on _____.

~~(vnn)~~ “Project Budget” means the budget for the construction of the Project, to be developed by the County and approved by the State as part of the Phase I Work.

~~(oo)~~ “Project Common Areas” means the areas of the Project, as generally described in the Initial Plans, that will be available for common use by the Project Occupants.

~~(pp)~~ “Project Occupants” means the County, OJD and the Colocation Agency and their respective employees, agents, tenants, contractors, guests and invitees.

~~(wqq)~~ “Project Parcel” means the Red Soilsland Parcel and any improvements constructed thereon pursuant to this Agreement.

~~(xrr)~~ “Project Plans and Specifications” means design development documents for the Project, to be developed by the County and approved by the State as part of the Phase I Work.

~~(yss)~~ “Project Schedule” means the schedule for the construction of the Project, to be developed by the County and approved by the State as part of the Phase I Work.

~~(z)~~ “Red Soils Parcel” means the parcel of land more particularly described in Exhibit B of the Master Funding Agreement.

Formatted: Font: Not Bold

Formatted: No underline

Formatted: No underline

Formatted: No underline

Formatted: Font: Not Bold

~~(aa)~~ “State Bonds” means any Oregon Constitution Article XI-Q general obligation bonds issued by the State for the Project, including Phase II State Funds and Phase III State Funds, if any; and any bonds or other obligations issued by the State to refinance the State Bonds.

~~(ab)~~ “State Default” means any of the occurrences set forth in Section ~~23(a)~~ 16 below.

~~(ac)~~ “State Leases” means the Colocation Lease and the OJD Lease.

~~(ad)~~ “State Premises” means the Colocation Premises and the OJD Premises.

~~(ae)~~ “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of DAS who, pursuant to an interagency agreement between DAS and OJD, will monitor and review the County’s Project activities and compliance with this Agreement as set forth herein.

~~(ay)~~ “State’s Proportionate Share” means _____ percent (____%), which is the portion of the costs of the Phase I Authorized Costs to be allocated to the Phase I Authorized State Costs, as set forth in Section 7 below.

~~(az)~~ “Trial Court Administrator” means the OJD employee named in the Project Summary and Contact Information above.

~~(aa)~~ “Unspent Funds” means any amounts of the Phase I Project Financing that the County fails to spend during Phase I as provided in this Agreement.

5.4. Recitals. The parties recite:

(a) Pursuant to ORS 1.185 and 1.187, OJD operates the State of Oregon’s circuit courts, and the counties in the State of Oregon provide courthouse facilities for the circuit courts.

(b) On _____, the ~~County parties entered into~~ submitted the Project Application ~~the Master Funding Agreement related to the Project,~~ which set forth the ~~County’s need for the Project and basic Project information~~ parties’ respective obligations and entitlements throughout the Project’s various phases.

~~(c) On _____, the Chief Justice approved the Project Application and determined that significant structural defects in the Existing Courthouse threaten human health and safety, that construction of a new building to house the Clackamas County Circuit Court is more cost-effective than remodeling the Existing Courthouse, and that replacement of the Existing Courthouse will create an opportunity for the colocation of other state offices in a newly constructed courthouse.~~

~~(d) On _____, DAS approved the Project Application.~~

~~(e) The parties anticipate that the Project will be developed and built in three Phases: Phase I (the Design and Planning Phase); Phase II (the Initial Construction Phase); and Phase III (the Final Construction Phase).~~

~~(f) The State of Oregon has agreed to contribute the Phase I State Funds to the Project. The Phase I State Funds are from the State’s General Funds.~~

~~(g) The State is contributing the Phase I State Funds as a portion of the consideration for the leasehold interests in the State Premises that the County will convey to OJD and the Colocation Agency pursuant to the State Leases. Specifically, the State is contributing fifty percent (50%) of the Phase I Authorized State Costs, in an amount not to exceed the Phase I State Funds.~~

~~(h) The County will meet the Phase I Benchmarks pursuant to Section 134 below, on or before the Phase I Completion Date (as it may be extended by the agreement of the parties).~~

~~(h) The parties anticipate that the Project will be developed and built in three Phases: Phase I (the Design and Planning Phase); Phase II (the Initial Construction Phase); and Phase III (the Final Construction Phase).~~

(gi) If the State contributes funding for Phase II and Phase III, such funding will be from State Bonds and in accordance with the Act. The parties anticipate that the sales of such State Bonds would occur in 20____ and 20____.

(lj) Pursuant to Section 145 below, the parties shall enter into the Phase II Funding Agreement, subject to:

(i) the County meeting the Phase I Benchmarks; and

(ii) future State and County approvals of appropriations required for Phase II of the Project, in order to memorialize the State's contribution of the Phase II State Funds for the Project and the parties' other obligations and understandings with regard to Phase II.

~~(k) The parties expect to execute the State Leases during Phase III, if they enter into a Phase III Funding Agreement.~~

~~(l) The parties estimate that, if they enter into the Phase II Funding Agreement and the Phase III Funding Agreement, the Project will be fully constructed on or before _____ (the Estimated Project Completion Date).~~

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

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

(a) The State represents, warrants and covenants, as applicable, as follows:

(i) This Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Agreement, constitutes a valid and binding agreement of the State that is enforceable against the State in accordance with its terms.

(ii) The State has taken all actions required by law for the State to acquire and use the Phase I State Funds for Phase I, and the Phase I State Funds are now available, or will be available as needed, to be spent on Phase I.

(iii) The State shall contribute the full amount of the Phase I State Funds to the Project.

(iv) The State understands, acknowledges and agrees that the County has no obligation of any kind to provide additional funding, other than the Phase I County Contribution.

(v) The State understands, acknowledges and agrees that the County has no obligation of any kind to enter into the Phase II Funding Agreement except as set forth in Section 14 below.

(b) The County represents, warrants and covenants, as applicable, as follows:

(ia) This Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County in accordance with its terms.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Indent: Left: 0", Hanging: 0.5", Tab stops: 0", Left + Not at 4.5" + 5.38" + 7.38" + 7.5"

Formatted: Font: Bold

Formatted: Indent: Left: 0", Hanging: 0.5"

~~(iib)~~ The County has taken all actions required by law for the County to acquire and use the Phase I County Contribution for Phase I, and the Phase I County Contribution is now available, or will be available as needed, to be spent on Phase I.

~~(iiie)~~ The County shall contribute the full amount of the Phase I County Contribution to the Project.

~~(iive)~~ The County understands, acknowledges and agrees that the State has no obligation of any kind to provide additional funding, other than the Phase I State Funds.

~~(ive)~~ The County understands, acknowledges and agrees that the State has no obligation of any kind to enter into the Phase II Funding Agreement except as set forth in Section 14~~5~~ below.

~~(f)~~ The County shall obtain a standard form of title insurance policy for the value of the Redland Parcel that shows the County owns fee simple title to the Redland Parcel.

~~(g)~~ As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the Project Parcel or the development, construction or use of the Project. The County shall promptly provide OJD with notice of any litigation or claims (environmental or otherwise) filed during the term of this Agreement against the County regarding the Project or the Project Parcel.

~~(h)~~ As of the Effective Date, the County's current employees (except for _____, its _____, *for the other counties, this has been the Project Manager; there are a few other blanks below for filling in the name/title of this person*) as set forth in and pursuant to Section 6(b) below) are not eligible for, and the County has not hired, contracted with or made any award to any of its current employees for, any work or materials directly connected to the Project. During the term of this Agreement, the County's then current employees (except for _____) shall not be eligible for, and the County shall not hire, contract with or make any award to any of its then current employees for, any work or materials that are directly connected to the Project.

~~(i)~~ Because of the State's contribution of the Phase I State Funds and the parties' intent that the State Premises will be leased to OJD and the Colocation Agency, the County will collaborate and cooperate with OJD and the Colocation Agency regarding the Project Plans and Specifications, the Project Schedule and the Project Budget, as set forth more completely in Section 8 below.

76. Phase I Authorized Costs.

~~(a)~~ **Generally.** Phase I Authorized Costs are the County's actual, reasonable and necessary capital costs of the Phase I Work, and that are:

~~(i)~~ authorized under the Act and the laws pertaining to tax exempt bond financings;

~~(ii)~~ permitted by generally accepted accounting principles, consistently applied, as established by the Governmental Accounting Standards Board, as reasonably interpreted by DAS, to be capitalized to an asset that is part of the Project; and

~~(iii)~~ eligible for financing with obligations bearing interest that is excludable from gross income under the Code;

~~(b)~~ **Specific Inclusions.** Phase I Authorized Costs includes payment for work reasonably

Formatted: Indent: Left: 0", Hanging: 0.5", Widow/Orphan control

Formatted: Not Highlight

Formatted: Indent: Left: 0", Hanging: 0.5", Space After: 3 pt, Widow/Orphan control, Tab stops: 0", Left + 0.5", Left + 1", Left

Formatted: Indent: Left: 0"

Commented [WC1]: Why the limitations since the State is using General Fund? The language here applies directly to tax exempt bonded debt.

related to those items identified in Exhibit A, which consists of, without limitation, the following:

Formatted: Underline

(i) capital costs related to the Phase I Work;

Formatted: Font: Bold

(ii) costs of the State Project Monitor; and

Formatted: Font: Bold

(iii) time spent working on the Project by _____, an employee of the County, provided that such time is charged to the Project on a time-spent basis, rather than as a percentage of such employee's total work for the County; that such charges do not include fringe benefits or the County's overhead; and that such charges may be capitalized pursuant to Section 6(a)(ii) above of the Master Funding Agreement;

Formatted: Font: Bold

(iv) time spent working on the Project by Barth Consultants, LLC, an outside consultant of the County providing project management services; and

Formatted: Font: Bold

(v) time spent working on the Project by SERA Architects, Inc., an outside consultant of the County providing preliminary architectural design, space planning and development consultation services.

Formatted: Font: Bold

Commented [BN2]: County team- verify this is the correct entity.
Formatted: Font: Bold

~~(e) — Specific Exclusions. For the avoidance of doubt, Phase I Authorized Costs do not include internal costs charged to the Project by the County, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties.~~

87. Phase I Authorized State Costs. State's Proportionate Share of fifty percent (50%) represents that portion of the Phase I Work that the State Premises bears to the overall Phase I Work. *[the idea here is to agree upon a percentage that generally represents what portion the State Premises will bear to the overall project]*

Formatted: Font: 12 pt, Bold

Formatted: Indent: Left: 0", First line: 0"

9. ValuePhase of Red Soils Parcel.

[Discussion item: whether the value of the Red Soils Parcel is eligible to be counted towards the County Contribution] If the County wishes to apply the value of the Red Soils Parcel as a deposit toward the Phase I County Contribution, the County shall submit the following documents to OJD within one hundred eighty (180) days after the Effective Date, in accordance with the Act:

Formatted: Indent: Left: 0", First line: 0"

Commented [BN3]: Waiting on David and/or Shelby to provide state law and related materials explaining the reasoning behind property value exclusion.

(a) an appraisal that is satisfactory to OJD, in terms of content and timeliness, representing the current value of the Red Soils Parcel;

Formatted: Font: Bold

Formatted: Font: (Default) Times New Roman, 12 pt

(b) the sale documents representing the actual purchase price of the Red Soils Parcel by the County; and

Formatted: Font: (Default) Times New Roman, 12 pt

(c) documentation that is satisfactory to OJD, showing that the Red Soils Parcel is land purchased by the County for the Courthouse, pursuant to the Act.

Formatted: Font: (Default) Times New Roman, 12 pt

Upon receipt of such documents, OJD shall apply the higher of the appraised value or the purchase price as a deposit to the Phase I County Contribution ~~I Authorized State Costs.~~

~~(a) — Generally. The Phase I Authorized State Costs are the State's Proportionate Share of the Phase I Authorized Costs. The Phase I Authorized State Costs represent the portion of the Phase I Authorized Costs that are attributable to the State Premises.~~

~~(b) — State's Proportionate Share. State's Proportionate Share of _____ percent (____%) represents that portion of the Project that the State Premises bears to the overall Project. *[the idea here is to agree upon a percentage that generally represents what portion the State*~~

~~Premises will bear to the overall project.~~

8. — Collaboration and Cooperation between Parties; Meetings and Documents; Resolution of Disputes

~~(a) — Generally. The development of the Project Plans and Specifications, the Project Schedule and the Project Budget will be a collaborative process between the parties and, with regard to the Colocation Premises, the Colocation Agency (as set forth in Section 8(b)(ii) below). The parties shall use their best efforts to cooperate with each other and the Colocation Agency in order to accomplish the timely completion of the Phase I Work.~~

~~(b) — Meetings and Documents.~~

~~(i) — The County shall give OJD advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve discussions of additions or revisions to the OJD Plans, the Project Budget, the Project Schedule or the Project Common Areas, and shall promptly deliver to OJD any related documents. For the purposes of this Section 8(b)(i), such notice shall be delivered to the Trial Court Administrator in accordance with the notice provisions of Section 31 below.~~

~~(ii) — The County shall give the Colocation Agency advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve discussions of the Colocation Premises, and shall promptly deliver to the Colocation Agency any related documents. For the purposes of this Section 8(b)(ii), such notice shall be delivered to the Colocation Contact in accordance with the notice provisions of Section 31 below.~~

~~(c) — Resolutions of Disputes by the Parties. In the event of a dispute under this Section 8, the parties shall attempt in good faith to resolve the dispute within fifteen (15) business days after one party gives notice to the other party of such dispute.~~

~~(d) — Resolution of Disputes by Chair of County Commissioners and Chief Justice. If the parties do not timely resolve a dispute pursuant to Section 8(c) above, then the dispute shall be submitted to the Chair of the Clackamas County Board of Commissioners and the Chief Justice, or their respective designee, to be resolved within thirty (30) days after submission.~~

~~(e) — Resolution by Mediator.~~

~~(i) — If a dispute is not timely resolved pursuant to Section 8(d) above, then it shall be resolved by the Mediator, who will be chosen by the parties as follows: within ten (10) business days after the expiration of the 30-day period set forth in Section 8(d) above, the County shall deliver to the State a list of at least three (3) independent and experienced mediators, and within ten (10) business days after such delivery, the State shall notify the County of its choice of the Mediator from said list. Notwithstanding the foregoing, if the County fails to timely deliver the list to the State, then the State's choice of a mediator shall be deemed the Mediator; and if the County does timely deliver the list to the State, and the State fails to timely respond, then the County's choice of a mediator will be deemed the Mediator.~~

~~(ii) — Within ten (10) days after the selection of the Mediator pursuant to Section 8(e)(i) above, both parties shall submit position statements regarding the dispute to the Mediator; and within thirty (30) days after submission of the position statements, the Mediator shall issue a decision regarding the dispute.~~

(iii) ~~The parties share equally share all costs and expenses of the Mediator.~~

9. Phase I County Contribution: Deposits.

(a) ~~Generally.~~ In order to receive credits toward the Phase I County Contribution pursuant to Section 10 below, and disbursements from the Phase I State Funds pursuant to Section 11 below, the County shall deposit the full amount of the Phase I County Contribution with OJD. ~~The County shall deposit the Phase I County Contribution as a direct transfer of funds, pursuant to Section 9(b) below, or a credit for the value of the Redland Parcel as provided in ORS chapter 705 and in Section 9(e) below. The County may deposit the full amount of the Phase I County Contribution in one or more installments and using any combination of deposits allowed under Sections 9(b) and 9(e) below.~~

(b) Direct Transfer of Funds.

- ~~(i) The County may transfer to OJD any amount of the Phase I County Contribution, in one or more installments.~~
- ~~(ii) Within two (2) business days after OJD's receipt of any amount of the Phase I County Contribution transferred by the County, OJD shall transfer such amount into the County's account in the Local Government Investment Pool.~~
- ~~(iii) Any and all funds that the County transfers to OJD pursuant to this Section 9(b) shall be "original" funds in other words, the County shall not transfer the same funds to OJD more than once.~~

(e) **Value of Redland Parcel.** ~~[Discussion item: whether the value of the Redland Parcel is eligible to be counted towards the County Contribution]~~ If the County wishes to apply the value of the Redland Parcel as a deposit toward the Phase I County Contribution, the County shall submit the following documents to OJD within one hundred eighty (180) days after the Effective Date, in accordance with the Act:

- (a) an appraisal that is satisfactory to OJD, in terms of content and timeliness, representing the current value of the Redland Parcel;
 - (b) the sale documents representing the actual purchase price of the Redland Parcel by the County; and
 - (c) documentation that is satisfactory to OJD, showing that the Redland Parcel is land purchased by the County for the Courthouse, pursuant to the Act.
- Upon receipt of such documents, OJD shall apply the higher of the appraised value or the purchase price as a deposit to the Phase I County Contribution.

Commented [BN4]: Waiting on David and/or Shelby to provide state law and related materials explaining the reasoning behind property value exclusion.

10. Phase I County Contribution: Credits.

(a) ~~Generally.~~ In order to receive credits toward the Phase I County Contribution, the County shall submit Disbursement Requests pursuant to this Section 10. The amounts that the County requests pursuant to Disbursements Requests shall be either:

- (i) to reimburse the County for payments that the County has previously made for Phase I Authorized State Costs of the Project; or
- (ii) for Phase I Authorized State Costs of the Project that the County has incurred and will pay to unrelated third parties no later than five (5) business days after OJD makes the disbursement, as set forth in Section 10(e) below.

~~(b) — Credits Not to Exceed Deposits.~~ The total credits to the County for the Phase I County Contribution may not at any time exceed the total amount that the County has deposited with OJD pursuant to Section 9 above.

~~(c) — Form and Frequency of Disbursement Requests.~~ The County shall submit Disbursement Requests to the State Project Monitor, in the form shown in Exhibit F. Disbursement Requests shall include clear reference to the Project and itemize and explain all expenses in sufficient detail to allow the State Project Monitor to determine whether such expenses represent Phase I Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every fourteen (14) days, and no less frequently than every one hundred twenty (120) days.

~~(d) — Review.~~ The State Project Monitor shall review each Disbursement Request to determine whether:

—— (i) — the Disbursement Request is in the form shown in Exhibit F and otherwise complies with Section 10(c) above; and

—— (ii) — the expenses set forth in the Disbursement Request represent Phase I Authorized Costs.

~~(e) — Approved Amounts.~~ For any amount set forth in a Disbursement Request that the State Project Monitor deems to be Phase I Authorized Costs pursuant to Section 10(d) above, then, after multiplying such amount by the State's Proportionate Share to establish the "Approved Amount":

—— (i) — fifty percent (50%) of the Approved Amount shall be credited toward the Phase I County Contribution; and

—— (ii) — fifty percent (50%) of the Approved Amount shall be disbursed to the County from the Phase I State Funds, pursuant to Section 11 below, and such amount shall be credited toward the Phase I State Funds.

~~(f) — Tracking Credits and Disbursements.~~ OJD shall keep current and accurate calculations of the credits to the Phase I County Contribution and the disbursements from the Phase I State Funds, pursuant to Section 10(e) above.

~~(g) — Disapproved Amounts.~~ If the State Project Monitor determines that any cost shown on a Disbursement Request is not a Phase I Authorized Cost, including whether it represented Misspent Funds, the State Project Monitor shall promptly notify the County of such determination, and none of the disapproved amount shall be credited toward the Phase I County Contribution or disbursed to the County from the Phase I State Funds. In the event the County reasonably objects to exclusion of any cost shown on a Disbursement Request, the parties will cooperate to resolve the objection as provided in Section 8 above.

~~(h) — Nonpayment for Work and Materials Accrued.~~ In the event of a disbursement of Phase I State Funds for an Approved Amount for work or materials already received or performed, the County shall, within five (5) business days, pay the supplier such Approved Amount. Any amounts that the County fails to promptly pay such supplier constitute Unspent Funds.

~~(i) — Retainage.~~ OJD shall retain five percent (5%) of the Approved Amounts from the Phase I State Funds. This retained amount shall not be disbursed to the County until the County has met the Phase I Benchmarks pursuant to Section 14 below and contributed the full amount of the Phase I County Contribution, and until any mechanics' and materialmen's liens filed against the

~~Project or the Project Parcel have been discharged of record or bonded off.~~

1011. Disbursement of Phase I State Funds.

~~(a) — Generally. The disbursement of Phase I State Funds to the County pursuant to Section 10(e) above is subject to the provisions of this Section 11.~~

~~(b) — Maximum State Contribution. Unless the amount of Phase I State Funds is increased after the Effective Date, the State’s maximum monetary obligation with respect to the Project shall not exceed \$1,200,000.00. In the event that the costs of Phase I exceed the Phase I Project Financing and the parties have not amended this Agreement or entered into a Phase II Funding Agreement agreeing to the payment of the excess costs, the County shall be responsible for all additional costs, and the County shall have no claim against the State for any amount that exceeds the amount of the Phase I State Funds.~~

~~(c) — Sufficient Appropriations. The disbursement of Phase I State Funds under Section 10(e) above, and of the Security Disbursement (as defined in and pursuant to Section 11(e) below), are contingent on OJD receiving sufficient appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly.~~

~~(d) — Conditions Precedent. OJD’s obligation to disburse the Phase I State Funds to the County for any Approved Amount is subject to satisfaction of each of the following conditions precedent, with respect to each disbursement:~~

- ~~(i) — OJD has received sufficient expenditure authorizations to allow OJD, in the exercise of its reasonable administrative discretion, to make the disbursement.~~
- ~~(ii) — No County Default has occurred and is continuing.~~
- ~~(iii) — The County’s representations and warranties set forth in Section 5 above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.~~

~~(e) — Security Disbursement.~~

~~(i) — In addition to the Phase I State Funds, OJD shall disburse to the County, on or before _____, the amount of \$ _____ (the “Security Disbursement”) from OJD’s State Court Facilities Account, for expenditure by the County on security equipment for the Project. The security equipment shall be for the costs of security cameras, duress alarms and access control systems for the Project. As a condition to disbursement of the Security Disbursement, the County shall submit invoices or other assurance acceptable to OJD that the Security Disbursement has been or will be spent only on security equipment for the OJD Premises.~~

~~(ii) — The Security Disbursement is not part of the Phase I State Funds and shall not be credited towards the County Contribution. The County’s spending of the Security Disbursement for purposes other than as set forth in this Section 11(e) shall constitute Misspent Funds, and the County’s failure to spend the Security Disbursement shall constitute Unspent Funds.~~

1112. Payment of State Project Monitor.

~~(a) — OJD has entered into an interagency agreement with DAS for the services of the State Project Monitor relating to the Project. In Phase I, total costs incurred for the services of the State Project Monitor shall not exceed \$ _____, unless such amount is amended by~~

Formatted: Highlight

~~written agreement of OJD, DAS and the County. Upon receipt of an invoice for the State Project Monitor's services pursuant to such interagency agreement, OJD shall promptly deliver such invoice to the County, and the County shall pay the amount due to DAS within thirty (30) days after delivery thereof.~~

~~(b) The County shall then submit a Disbursement Request to the State pursuant to Section 10(c) above, and the amount paid thereon by the County shall be multiplied by the State's Proportionate Share treated as an Approved Amount, and:~~

~~(i) fifty percent (50%) thereof shall be credited toward the Phase I County Contribution; and~~

~~(ii) fifty percent (50%) thereof shall be disbursed to the County from the Phase I State Funds, pursuant to Section 11 above, and such amount shall be credited toward the Phase I State Funds.~~

123. Phase I Work.

~~(a) The County shall meet the Phase I Benchmarks pursuant to Section 134 below, on or before the Phase I Completion Date (as it may be extended by the agreement of the parties).~~

~~(b) The County shall use all commercially reasonable efforts to timely meet the Phase I Benchmarks.~~

~~(c) The County shall design the Project in accordance with Oregon law and for the purposes described in the Act and this Agreement, including but not limited to the following:~~

~~(i) in accordance with OAR 330-135-0010 through 330-135-0055, pertaining to expenditures for solar technology, as applicable to the Project. The County shall provide OJD with copies of all reports required by OAR 330-135-0055 as applicable to the Project and as required by the Oregon Department of Energy; and~~

~~(ii) all statutes and administrative rules relating to Public Works, if the Project is a Public Works as defined in ORS 279C.800(6).~~

~~(d) The County shall contract with competent professionals for all Phase I Work, and shall require all such professionals to possess and maintain all licenses, registrations, insurance, and bonds required by Oregon law.~~

~~(e) The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the Phase I Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, and 279C, other applicable law and local contracting procedures; and in compliance with Oregon Laws 2014, chapter 66 (HB 4111). The County shall document all solicitations, selection and award processes used for contracting the Phase I Work.~~

~~(f) The County shall be responsible for awarding and managing all contracts and property acquisitions necessary to complete the Phase I Work in accordance with the Project Application and the Initial Plans.~~

~~(g) All subagreements that the County may enter into which are funded wholly or in part with Phase I Project Financing shall be subcontractual in nature, with the other party engaged in the role of a contractor. The County shall actively administer all subcontracts with contractors to ensure that the terms of the subcontract are consistent with the terms of this Agreement to ensure compliance with the terms of the subcontract, and to ensure the contractor's support for the intended purposes of this Agreement and the Act.~~

~~(h) — The Phase I Work shall be performed in compliance with all applicable federal, state and local laws and ordinances.~~

~~(i) — Neither execution of this Agreement nor approval of the Project Plans and Specifications by OJD or DAS shall be construed as a representation or warranty by the State that the Project Plans and Specifications are in compliance with any building or other code or other applicable governmental requirements.~~

~~(j) — The State and the Colocation Agency and their employees, agents and representatives (including, without limitation, the State Project Monitor, the Presiding Judge, the Trial Court Administrator and the Colocation Contact) shall have access to the Project, the Project Parcel and Project documentation and records at all reasonable times throughout the term of this Agreement, and as otherwise required under this Agreement, to inspect the work, operation and accounting records related to the Project.~~

~~(k) — The County shall promptly provide notice to OJD of any credible evidence that a principal, employee, agent, contractor, subcontractor, supplier or other person has submitted a false claim under the False Claims Act, ORS 180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving the Phase I Project Financing.~~

~~(l) — During the term of this Agreement, the County shall, promptly upon request, deliver to the State Project Monitor any requested information relating to the Phase I Work, in sufficient detail to enable the State Project Monitor to determine whether the Phase I Work is proceeding in a timely fashion.~~

~~(m) — The County shall pay when due all claims for work performed on the Phase I Work by or through County for services rendered or materials furnished to the Project, and shall keep the Project and the Project Parcel free from any liens arising by or through the County. If any such lien shall at any time be filed against the Project or the Project Parcel, or any portion thereof, the County shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after the County's receipt of written notice of same.~~

~~(n) — The Project will not be enrolled in the State Energy Efficiency Design (SEED) program.~~

134. Phase I Benchmarks. The County shall be deemed to have met the Phase I Benchmarks if the State, in its reasonable discretion, approves in writing:

- (a) the Project Plans and Specifications;
- (b) the Project Schedule; and
- (c) the Project Budget.

Commented [BN5]: Is everyone satisfied with these benchmarks, or should we revisit?

145. Phase II Funding Agreement.

~~Pursuant to the terms set forth in the Master Funding Agreement, (a) — Condition.~~

~~The parties shall enter into the Phase II Funding Agreement, to memorialize the State's contribution of the Phase II State Funds for the Project, and their other obligations and understandings regarding Phase II, only if the County meets the Phase I Benchmarks on or before the Phase I Completion Date (as it may be extended by the agreement of the parties) and the Phase II State Funds have been allocated by the Oregon Legislative Assembly.~~

~~(b) — County Notice. The County shall provide ninety (90) days' notice to the State in advance of the estimated date of the County's completion of the Phase I Benchmarks. After~~

Formatted: Font: Not Bold

Formatted: Font: Not Bold

receiving this notice, the State will have thirty (30) days to provide the County with a draft Phase II Funding Agreement.

~~(e) — Execution. The parties shall use their good faith efforts to negotiate and execute a Phase II Funding Agreement within thirty (30) days after the County meets the Phase I Benchmarks.~~

~~(e) — Excess Phase I State Funds. In the event the parties enter into the Phase II Funding Agreement and not all of the Phase I State Funds have been disbursed to the County pursuant to this Agreement, any such excess funds shall be added to the Phase II State Funds.~~

~~(f) — Excess Deposits to Phase I County Contribution.~~

~~(i) — In the event the parties enter into the Phase II Funding Agreement pursuant to this Section 15, and the amount of the Phase I County Contribution deposited pursuant to Section 9 above exceeds the full amount of Disbursement Requests approved by the State Project Monitor pursuant to Section 10(e) above, any such excess amount shall be added to the Phase II County Contribution.~~

~~(ii) — In the event the parties do not enter into the Phase II Funding Agreement pursuant to this Section 15, and the amount of the Phase I County Contribution deposited pursuant to Section 9 above exceeds the full amount of Disbursement Requests credited to the Phase I County Contribution pursuant to Section 10(e) above, any excess amount shall be returned to the County.~~

~~(g) — Excess Phase I Authorized State Costs. In the event the parties enter into the Phase II Funding Agreement and the Approved Amounts credited to the Phase I State Funds under Section 10(e) above exceed the Phase I State Funds, any such excess credits to the Phase I State Funds will be considered credits to Phase II State Funds.~~

16. — Terms and Conditions of Leases.

~~(a) — Generally. In the event the parties enter into the Phase III Funding Agreement, then during Phase III the parties shall finalize and enter into the OJD Lease, and the County shall enter into the Colocation Lease, in accordance with the provisions of this Section 16.~~

~~(b) — Lease Terms. The State Leases shall contain the following general terms and conditions:~~

~~(i) — The initial term of the State Leases shall last until the State Bonds mature or full payment of the defeasance costs of the State Bonds, whichever occurs first.~~

~~(ii) — During the initial term of the State Leases, OJD and the Colocation Agency shall not pay any rent to the County.~~

~~(iii) — OJD and the Colocation Agency may each extend the initial term of the State Leases, at a monthly fair market rent.~~

~~(iv) — OJD and the Colocation Agency shall, at their own expense, provide consumables (e.g., toilet paper, paper towels, etc.).~~

~~(v) — The County shall, at its own expense, maintain, repair and replace the State Premises.~~

~~(vi) — The County shall provide, at its own expense, all utilities and services, including janitorial services, to the State Premises.~~

~~(vii) — During the term of the State Leases, in the event any portion of the Project outside of the State Premises becomes available for rent, OJD or the Colocation Agency can rent such portion from the County at fair market value.~~

17. — Misspent Funds and Unspent Funds.

~~(a) — Notice. If the State Project Monitor determines that there are Misspent Funds or Unspent Funds by the County, including pursuant to Section 10(g) or 10(h) above, the State Project Monitor shall provide notice to the County describing the amount and nature of such Misspent Funds or Unspent Funds.~~

~~(b) — Cure. Within thirty (30) days after receipt of the notice described in Section 17(a) above, or such longer period as the State Project Monitor may (but is not obligated to) approve at the County's request:~~

~~— (i) — with regard to Misspent Funds: the County shall pay OJD the amount of the Misspent Funds, and OJD shall reverse the credits to the Phase I County Contribution and the Phase I State Funds for such amounts.~~

~~— (ii) — with regard to Unspent Funds, the County shall provide evidence satisfactory to the State Project Monitor that the County has spent the Unspent Funds for Phase I Authorized Costs.~~

~~A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 17(b) shall constitute a County Default.~~

~~18. — Taxes and Assessments; Utilities. During the Phase I Work, the County shall pay all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or the Project Parcel. If any governmental charges may lawfully be paid in installments over a period of years, the County may pay those charges in installments. The County may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner, so long as the contest does not subject any portion of the Project or the Project Parcel to loss or forfeiture.~~

~~19. — County Not a State Officer, Employee or Agent. The County is not an "officer," "employee" or "agent" of the State, as those terms are used in ORS 30.265.~~

~~20. — Insurance. Upon the commencement of any Project work upon the Redland Parcel, and through the remainder of the term of this Agreement, the County shall maintain in full force and effect throughout the entire term of this Agreement, property insurance for the perils of all risks of direct physical loss or damage including earthquake and flood covering the Project and the Project Parcel in an amount at least equal to the amount of the Phase I Project Financing. Insurance proceeds from an insured loss affecting the Project or the Project Parcel shall be exclusively used by the County to rebuild, repair and restore the Project and the Project Parcel in a manner consistent with the terms of this Agreement. The County shall consult with OJD regarding the plans for rebuilding, repairing and restoring the Project and the Project Parcel and such plans shall be subject to OJD's approval, which shall not be unreasonably withheld. OJD shall be provided notice of any cancellation or material modification to the policy at least thirty (30) days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to OJD on or before the Effective Date, and thereafter at least thirty (30) days prior to the effective date of any renewal or replacement policy. The policy shall be issued by companies licensed or authorized to provide insurance in the State of~~

~~Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. The County's self insured deductible shall not exceed \$100,000 each loss, except the earthquake and flood deductible shall not exceed five percent (5%) of each loss or \$100,000, whichever is more, without prior consent of OJD.~~

1521. County Default and State's Remedies for County Default. Any of the following shall constitute a County Default:

(a) **Default by County.** Any of the following shall constitute a County Default:

Formatted: Font: Not Bold

(i) The County fails to meet the Phase I Benchmarks on or before the Phase I Completion Date (as it may be extended by the agreement of the parties).

Formatted: Indent: Left: 0", Hanging: 0.5"

(ii) The County fails to perform, observe or discharge any of its other duties or obligations under this Agreement within thirty (30) days after written notice from the State specifying the nature of the failure with reasonable particularity; or, if such failure cannot reasonably be completely remedied within such 30-day period, then within such longer times as the failure can reasonably be remedied, in the State's reasonable discretion and as set forth in the notice to the County.

(iii) The County is in default of its obligations under the Master Funding Agreement.

~~(b) **State's Remedies for County Default.** The County fails to perform, observe or discharge any of its other duties or obligations under this Agreement (except for curing Misspent Funds or Unspent Funds as set forth in Section 21(e) below) within thirty (30) days after notice from the State specifying the nature of the failure with reasonable particularity; or, if such failure cannot reasonably be completely remedied within such 30-day period, then within such longer times as the failure can reasonably be remedied, in the State's reasonable discretion and as set forth in the notice to the County.~~

~~(c) The County fails to cure any Misspent Funds or Unspent Funds as required by Section 17(b) above.~~

~~(d) Any representation or statement made by the County in this Agreement or in any document or report relied upon by the State or the State Project Monitor, as the case may be, to approve a Disbursement Request, monitor the Project as provided herein or disburse Phase I Project Financing, is untrue in any material respect when made.~~

~~(e) The County declares itself or is adjudicated insolvent or bankrupt, applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial part of its assets, or a proceeding or case is commenced, without the application or consent of the County, in any court of competent jurisdiction, seeking: (1) the liquidation, dissolution or winding up, or the composition or readjustment of debts, of the County; or (2) the appointment of a trustee, receiver, custodian, liquidator or the like for the County or of all or any substantial part of its assets.~~

Formatted: Space After: 3 pt

22. State's Remedies for County Default. Upon a County Default, the State, may, at its option, pursue any or all of the remedies available under this Agreement and at law or in equity, including but not limited to:

~~(i)~~ **(ia)** ceasing disbursement of Phase I State Funds;

- (iib) terminating this Agreement;
- (iie) bringing an action at law to recover damages incurred as a result of the County Default, in order to recover all Phase I State Funds disbursed to the County hereunder, with interest thereon; and
- (ivd) seeking any equitable remedies, including specific performance, which may be available to the State.

Formatted: Indent: First line: 0.5"

Formatted: Indent: Left: 0.5"

Formatted: Indent: Left: 0", Hanging: 0.5"

1623. State Default and County’s Remedies for State Default.

(a) **Default by State.** Any of the following shall constitute a State Default:

- (i) The State fails to pay the County any amount as required by this Agreement, and OJD fails to cure such failure within thirty (30) days after the County’s written notice or such longer period as the County may specify in such notice; or
- (ii) The State commits any material breach or default of any covenant, warranty or obligation under this Agreement other than one described in Section 2316(a)(i) above, and such breach or default is not cured within thirty (30) days after the County’s written notice or such longer period as the County may specify in such notice.

Formatted: Font: Bold

Formatted: Font: Bold

(b) **County’s Remedies for State Default.** In the event of a State Default, the County may, at its option:

- (i) receive reimbursement of its remaining Phase I County Funds;
- (ii) terminate this Agreement;
- (iii) bring an action at law to recover damages incurred as a result of the State Default, in order to recover all Phase I County Contributions hereunder, with interest thereon; and
- (iv) pursue any or all of the remedies available to it under this Agreement and at law or in equity.

Formatted: Indent: First line: 0.5"

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Normal, Indent: Left: 0.5", First line: 0", Space After: 3 pt, No widow/orphan control, Tab stops: 0.5", Left + 1", Left

~~24. — Termination by State. In the event OJD fails to receive sufficient appropriations, expenditure limitations and other state authorizations to permit OJD in the reasonable exercise of its administrative discretion to continue making payments under this Agreement, OJD may immediately terminate this Agreement without penalty or liability, effective upon the delivery of notice to the County.~~

Formatted: Space After: 3 pt, Tab stops: 1", Left + Not at 0.8"

~~25. — Parties’ Contribution for Third Party Claims; Indemnification.~~

~~(a) — Generally. If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a party (the “Notified Party”) with respect to which the other party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section 25, and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing, are conditions precedent to the Other Party’s~~

contribution obligation under this Section 25 with respect to the Third Party Claim.

(b) — State Contribution. With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

(c) — County Contribution. With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the County shall contribute to the amount of expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

(d) — All Other Claims. For any other claim, suit, class action suit, or proceeding alleging discriminatory, unconstitutional, or otherwise unlawful conduct with respect to either party's acts or refusal to act under this Agreement, each party shall indemnify and defend the other, and their officers, employees, and other agencies from and against all claims, suits, actions, losses, damages, liability, costs and expenses of any nature whatsoever arising out of or relating to their acts or omissions or the acts or omissions of their officers, employees, subcontractors or agents under this Agreement.

26. — Independent Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties. Any agreement entered into by the County relating to the Project is not an obligation of the State. The County shall not represent that it has the power or authority to obligate the State.

27. — No Third Party Beneficiaries. DAS, OJD and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this

~~Agreement. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Agreement.~~

~~**28. Subcontracts, Successors and Assignments.** The County's entry into any subcontracts for any portion of the Project shall not relieve the County of any of its duties or obligations under this Agreement. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties, and their respective successors and permitted assigns, if any.~~

~~**29. Compliance with Applicable Law.**~~

~~(a) The County shall comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this Agreement and the Project. Without limiting the generality of the foregoing, the County expressly agrees to comply with the following, and all regulations and administrative rules established pursuant thereto:~~

- ~~— (i) Workers' Compensation Laws (ORS Chapter 656);~~
- ~~— (ii) Wages, Hours and Records Laws (ORS Chapter 652);~~
- ~~— (iii) Conditions of Employment Laws (ORS Chapter 653);~~
- ~~— (iv) Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657);~~
- ~~— (v) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;~~
- ~~— (vi) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;~~
- ~~— (vii) the Americans with Disabilities Act of 1990, as amended;~~
- ~~— (viii) the Health Insurance Portability and Accountability Act of 1996;~~
- ~~— (ix) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;~~
- ~~— (x) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;~~
- ~~— (xi) Discrimination against disabled persons (ORS 659A.142);~~
- ~~— (xii) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;~~
- ~~— (xiii) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;~~
- ~~— (xiv) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee 34), as amended, relating to confidentiality of alcohol and drug abuse patient records;~~
- ~~— (xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;~~
- ~~— (xvii) the requirements of any other nondiscrimination statute(s) which may apply to the application; and~~
- ~~— (xviii) all other applicable requirements of federal and state civil rights and rehabilitation~~

~~statutes, rules and regulations not set forth in this Section 31(a).~~

~~(b) — The County shall ensure that any architectural or engineering services contract, construction or CM/GC contract and all of the first tier subcontracts for Project work or materials resulting from this Agreement shall include the terms of this Section 29. The County shall make reasonable efforts to ensure that all contractors performing Project work or providing materials under contracts resulting from this Agreement shall comply with the terms of this Section 29.~~

30. — Records Maintenance, Review and Audit.

~~(a) — The County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County acknowledges and agrees that DAS, OJD, the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts.~~

~~(b) — Upon request, the County shall promptly provide the State with any other such information regarding the Project as the State may require.~~

~~(c) — The County shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings until the later of six (6) years after the completion of the Phase I Work, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.~~

31. — Notice.

~~(a) — **Generally.** Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 31(b) below to the address of the parties or the State Project Monitor, as set forth in the Project Summary and Contact Information above, unless a party or the State Project Monitor modifies its address by notice to the other parties and the State Project Monitor, as applicable. The phone numbers listed in the Project Summary and Contact Information are for convenience only, and any information delivered by phone to a party or the State Project Monitor shall not constitute notice under this Agreement.~~

~~(b) — **Delivery.**~~

Method of delivery	When notice deemed delivered
In-person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email or Facsimile	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or facsimile shall be deemed sent the following business day)
US-Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt, or three (3) days after the mailing date if delivery is refused

Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt
---	--

If the deadline under this Agreement for delivery of a notice is a Saturday, Sunday or federal or State of Oregon holiday, such deadline shall be deemed extended to the next business day.

32. — Severability; Waiver.

(a) — **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.

(b) — **Waiver.** The failure by a party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

33. — Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding between the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. In no event shall this Section 33 be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim, action suit or proceeding or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

34. — Entire Agreement; Amendments.

(a) — **Entire Agreement.** This Agreement constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

(b) — **Amendments.** No amendment, waiver, consent, modification or change of terms of this Agreement shall bind a party unless in writing and signed by both parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

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

1736. Survival. All provisions of this Agreement set forth under the following Section headings shall survive expiration or termination of this Agreement:

- (a) 113 – Phase I Work;
- (b) 1421 – County Default [and State’s Remedies for County Default](#)

- ~~(e) 22 – State’s Remedies for County Default;~~
- ~~(e) 1523 – State Default and County’s Remedies for State Default;~~
- ~~(e) 25 – Parties’ Contribution for Third Party Claims; Indemnification;~~
- ~~(f) 27 – No Third Party Beneficiaries;~~
- ~~(g) 28 – Subcontracts, Successors and Assignments;~~
- ~~(h) 30 – Records Maintenance; Review and Audit;~~
- ~~(i) 32 – Severability; Waiver;~~
- ~~(j) 33 – Governing Law; Venue; Consent to Jurisdiction; and~~
- ~~(k)~~ Any other provision of this Agreement that by its terms is intended to survive.

[remainder of page intentionally left blank]

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

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

Print Name: _____

Title: _____

Signature: _____

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

Print Name: _____

Title: _____

Signature: _____

Approved as to Legal Sufficiency for the State:

By: _____
Shelby E. Robinson, Assistant Attorney General

Approved as to all provisions relating to the Department of Human Services, as Colocation Agency hereunder:

**The State of Oregon,
acting by and through the Department of Human Services (Colocation Agency):**

Print Name: _____

Title: _____

Signature: _____

Clackamas County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

_____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
_____, Assistant County ~~Attorney~~ Counsel

#8780476v2

Exhibit A

Phase I Work

- Architectural design and space planning
- Site due diligence
- Geotechnical and environmental investigations
- Land surveys
- Traffic impact analysis
- Architectural Design and Engineering Services (A/E)
- Pre-construction services from contractor(s)
- Inspections and other due diligence
- Work by the County's Project management staff
- Work by the County's independent project management consultant
- Development of Project Plans and Specifications
- Development of Project Schedule
- Development of Project Budget
- City of Oregon City development and plan review, permit fees and system development charges
- 1.5% for solar (per State of Oregon requirements for public projects)
- State Historic Preservation Office application and permit fees

Exhibit B

Phase I Benchmarks

1. Finalizing the Project Plans and Specifications
2. Finalizing the Project Schedule
3. Finalizing the Project Budget

Exhibit C

Initial Plans

*[discussion item about what can be attached here.
It may be the description of the Project as set forth in the Application]*

Exhibit D
Courthouse Design Criteria

Formatted: Right: 1"

Exhibit E

Description of Redland Parcel

[to be provided by County]

Exhibit F

Form of Disbursement Request

Disbursement Request Number: _____

[number Requests sequentially for ease of tracking]

Dated: _____

Project Title: _____ Clackamas County Courthouse

Funding: _____ General Funds

Funding Agreement: _____ Clackamas County Courthouse Funding Agreement between OJD, DAS and Clackamas County dated _____, 2018 (the "Agreement")

Capitalized terms that are used but are not defined in this Disbursement Request have the meanings defined for those terms in the Agreement.

On behalf of Clackamas County (the "County"), I hereby request a total disbursement of \$ _____ pursuant to the Agreement, fifty percent (50%) of such amount to be credited to the Phase I County Contribution, and the other fifty percent (50%) of such amount to be disbursed to the County from the Phase I State Funds.

I hereby make the following certifications in connection with this Disbursement Request:

1. _____ On behalf of the County, I have reviewed the attached invoice(s) and any other documents attached to this Disbursement Request, and I have determined that the invoiced work or materials represent Phase I Authorized Costs for the Project pursuant to the Agreement.
2. _____ The County will use the disbursement amount requested by this Disbursement Request either:
 - (a) _____ to reimburse the County for amounts that the County has previously paid for Phase I Authorized State Costs of the Project; or
 - (b) _____ for Phase I Authorized State Costs of the Project that the County has incurred from unrelated third parties but has not yet paid, which the County will pay no later than five (5) business days after disbursement by OJD of the amount set forth herein.
3. _____ The total amount credited to the Phase I County Contribution pursuant to Section 10(e) of the Agreement is equal to or greater than the total Phase I State Funds disbursed to date plus the amount of this Disbursement Request.
4. _____ The certifications in this Disbursement Request are true to the best of my knowledge and belief.

Formatted: Indent: Left: 0", First line: 0"

By: _____
Authorized Signature

Formatted: Indent: Left: 0"

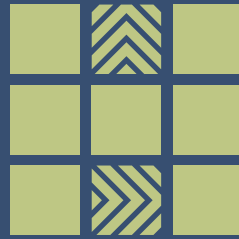
Formatted: List Paragraph, Indent: Left: 1", First line: 0"

Financing Scenarios for Courthouse 9-11-2018

ASSUMPTIONS:

- The County's total project cost is \$135 million.
- \$94.5 million will be received from the State through their courthouse bond program.
- GO Bonds on the May 2019 ballot.
- Combined Levy Total \$/1,000 assessed value includes \$0.10 for existing 20 yr GO bond until 2032
- Based on current market interest rates and a buffer of 1%

Financing Packages	Term	Type	Property Tax Bill Increase	COMBINED Levy Total	Type	Avg. Annual Debt Service from the General Fund
\$135M GO	20 yrs	GO	\$ 0.13	\$ 0.23	NA	\$ -
	25 yrs	GO	\$ 0.10	\$ 0.20	NA	\$ -
	40 yrs	GO	\$ 0.11	\$ 0.21	NA	\$ -
\$95M GO & \$40M FFC	20 yrs	GO	\$ 0.08	\$ 0.18	FFC	\$3.1 million
	25 yrs	GO	\$ 0.06	\$ 0.15	FFC	\$2.8 million
\$65M GO & \$70M FFC	20 yrs	GO	\$ 0.05	\$ 0.14	FFC	\$5.5 million
	25 yrs	GO	\$ 0.03	\$ 0.12	FFC	\$5.0 million
\$135M FFC	20 yrs	NA	\$ -	\$ -	FFC	\$10.6 million
	25 yrs	NA	\$ -	\$ -	FFC	\$9.6 million



Hubbell

COMMUNICATIONS

PROPOSAL:

Clackamas County RFQ #2018-74

August 28, 2018





Hubbell

COMMUNICATIONS

Mr. George Mason
Clackamas County, Procurement Division
Public Services Building
2051 Kaen Road
Oregon City, OR 97045

Dear George:

It is with great enthusiasm that we submit our response to your request for proposal for public affairs work for Clackamas County. Our proposal includes a comprehensive approach to satisfy the county's needs for strategic counsel, community engagement and research analysis. Our proposal is specifically designed to support a possible bond initiative to fund courthouse construction in May of 2019.

Hubbell Communications, a highly-respected and successful Oregon-based public affairs firm, will provide the overall project lead. As with any firm like ours, certain projects come along that strike a chord and pique our imaginations in unexpected ways. This is one such project and, for several reasons, we believe we are particularly well-suited to succeed.

First, we know the county very well – north to south, urban and rural. We have run numerous successful issue-based communications programs and campaigns targeting local communities in and around Clackamas County. We have won campaigns not only in Clackamas County, but also in Klamath, Linn and Lake Counties. We were the PR team behind the “Oregon Idea,” the successful statewide legislative initiative that redefined the higher education funding model in Oregon, and have run dozens of similar statewide efforts. Over a year-long period, we ran all aspects of a successful school bond campaign in Lake Oswego, including community/stakeholder outreach and engagement to build external support, research and message development, internal communications and strategic counsel to executive leadership and members of the school board. The bond proposal was barely at a 50 percent public approval level when we began our efforts. The final election had us winning with over 60 percent voter approval.

Second, our staff mix is ideal for this task. Our team includes a former state legislator from Clackamas County; former campaign managers with experience in Clackamas County; former journalists who covered Clackamas County beats and former staffers for Rep. Greg Walden, Sens. Jeff Merkley and Ron Wyden and Gov. Kate Brown, among others. In short, this is what we do – and where we love to do it.

We are storytellers, messaging experts, persuaders and networkers. We love to connect the dots between people and ideas, and we are good at it. A substantial portion of our portfolio is focused on reputation building, and we have a long trail of success in this area. We've been relied upon by some of the biggest brands in the world, as well as some of the smallest and most fantastic organizations you've never heard of. As our website says, “We're smart and we're scrappy...Uphill battles don't scare us.” Even though we've been an established presence in Oregon for more than 15 years, we still have the passion and the energy we had on Day One.

Please accept our enthusiastic submission. We look forward to participating in your process.

Sincerely,

Ward Hubbell, President

thinkhubbell.com

OUR PROMISE

We're smart and we're scrappy. We find opportunities others miss. We don't mind getting our hands dirty and uphill battles don't scare us. We will find a way to win because that's how we're wired.

We're former journalists, elected officials, campaign operatives, digital experts and corporate communication executives. We love what we do and we're really good at it.

We will shoot straight with you. Always. If we disagree with you, we'll tell you. Respectfully. We're pros and we know you're looking for good advice, not someone who tells you what you want to hear.



TABLE OF CONTENTS

ABOUT
page 4

SERVICES
page 5

OUR EXPERIENCE
page 6

APPROACH & METHODOLOGY
page 7

PROFESSIONAL FEES & BUDGET
page 12

REFERENCES
page 12



Hubbell Communications is Oregon’s premier public affairs and public relations firm.

Headquartered in Portland, Oregon and operating throughout the Pacific Northwest, Hubbell Communications services include media relations, crisis communication, marketing, ballot campaigns, issue advocacy, digital, grassroots activation, coalition building and internal communications.

We work in a wide range of industry sectors including healthcare, energy, manufacturing, transportation, natural resources, agriculture and many others. Our staff includes experienced professionals—former journalists, elected officials, campaign strategists, corporate communication executives, digital experts—who know how to develop and execute strategies that help our clients win.

Representative Clients

CORPORATE

- Amazon
- Columbia Sportswear
- Columbia Distributing
- Davita
- Edf Renewable Energy
- Exxonmobil
- Fresenius
- Fred Meyer Food Company
- Great Western Malting
- Jeld-Wen
- Kinder Morgan
- Pacific Power
- Portland General Electric
- Schnitzer Steel
- Tesoro Savage
- Universal Health Services
- U.S. Renal Care
- The Greenbrier Companies

SMALL BUSINESS

- Bullseye Glass
- Columbia Energy Partners
- Hannah The Pet Society
- Hansen Price
- Metro West Ambulance
- Omega Morgan
- Recovery Works, NW
- Riverbank Power

NON-PROFIT

- American Chemistry Council
- Associated Oregon Industries
- Lake Oswego Corporation
- Oregon Association Of Nurseries
- Oregon Head Start Association
- Oregon Restaurant Association
- Oregon Trout
- Pet Food Institute
- Pew Environmental Trust
- Sustainable Northwest

PUBLIC

- City of Hillsboro, Oregon
- Lake Oswego School District
- Oregon Health Sciences University
- Oregon State University
- Port of Portland
- Portland State University
- University of Oregon
- Washington County, Oregon

Public Affairs. Public Relations.



CRISIS MANAGEMENT

Sometimes bad things happen. When they do, keeping a clear head and telling a credible and consistent story is imperative. We help our clients protect their reputations in times of crisis.

ISSUE ADVOCACY

Lobbyists work inside a capitol building or a city hall. We work outside. Our job is to make sure the external environment regarding our client's point of view is supportive so their lobbyists can be successful.

GRASSROOTS ACTIVATION

Moving public opinion or changing public policy rarely happens without widespread public support. We're business-savvy networkers, campaign people, connectors. We find connections between people and issues.

MEDIA RELATIONS

Media relations is the backbone of PR. Knowing how and to whom to tell your story in the media can often mean the difference between success and failure for any communication effort. We know the media because we've been there.

BALLOT CAMPAIGNS

Getting at least 50%+1 on Election Day is a matter of strategy, mathematics, messaging and lots of hard work. We're strategists, communicators and campaign junkies. We love politics and we love to win.

MARKETING COMMUNICATIONS

Whether you are launching a company, entering a new marketplace or repositioning an existing brand, it is vitally important to tell a compelling and memorable story. We help our clients cut through the marketing clutter.

INTERNAL COMMUNICATIONS

The number one employee complaint in most companies is a lack of communication. Employees want and need to know how they are doing in their jobs and how their work contributes to the overall success of their company. We help companies tell their story to their employees in a systematic and efficient way.

DIGITAL ADVOCACY

Understanding and harnessing rapidly changing digital communication platforms has never been more important. We build, manage and evolve up-to-date digital platforms to help our clients deliver their messages to the right people, the right way.

COALITION MANAGEMENT

Nowhere does the adage about 'strength in numbers' apply more aptly than in the world of politics. The most effective political strategies often involve mobilizing like-minded individuals and groups to advocate for a shared policy objective.

Our Experience

COMPANY EXPERIENCE

Hubbell Communications and its principals have a deep background of experience in community engagement and ballot measure campaigns. Our firm has a perfect record of seven straight wins at the ballot, including efforts managed on behalf of public entities, local utilities and private groups.

Our team is made up of former elected officials, journalists, campaign managers and lobbyists. We are well-suited to non-advocacy ballot measure campaigns, from initial research to design and execution. The core principals of our team, Scott Bruun, Kara Hansen, Chris Edmonds, Jennifer Sitton and Lindsey Hendren have availability to perform the activities and tasks identified within the scope of work for the duration of the contract.

EXPERIENCE OF STAFF

Scott Bruun, Managing Principal: Scott served three terms in Oregon's House of Representatives and was twice a major-party nominee and candidate for U.S. Congress. While serving in Oregon's legislature, Scott focused on tax, health care and economic development issues and was known as a "bridge builder" by legislative colleagues and staff in both parties. In addition to politics, Scott's background includes Fortune 500 experience, venture capital and executive financial management – including five years as chief financial officer for a large, successful West Coast company. Scott has a bachelor's degree in Political Science from University of Oregon and a master's degree in Business from Portland State University.

Chris Edmonds, Principal: Chris Edmonds brings a wealth of campaign and political experience to Hubbell Communications. As a certified project manager, Chris designs and manages many of the firm's complex communications programs and advises clients on a range of political and communication matters. A native Oregonian, Chris has served both of Oregon's U.S. senators, three governors and numerous state and local elected officials. His experience includes key roles in ten ballot initiative and candidate campaigns. He has served the state of Oregon in numerous roles, most recently as Director of Government Affairs for the Department of Human Services, Oregon's largest state agency. He is an expert in enterprise analytics and has co-authored a textbook on performance management for the state of Oregon. Chris holds a bachelor's degree in Political Science from Oregon State University and a certification in Project Management from Willamette University.

Kara Hansen, Vice President: Kara Hansen joined Hubbell Communications after spending a decade working as an award-winning news reporter and editor in the Pacific Northwest, including work in Clackamas County. While she provides support for a variety of projects at the firm, she specializes in writing and media relations, identifying possibilities for stories, interviews, photos and opinion pieces and working with local media outlets to help clients take advantage of those opportunities. Kara honed her skills in journalism at the University of Oregon, where she obtained a bachelor's degree and worked for the Oregon Daily Emerald newspaper. She worked for several years at The Daily Astorian, before taking a job with Pamplin Media Group, where she covered a range of topics while serving as News Editor of the Lake Oswego Review and Assistant Editor of the West Linn Tidings.

Lindsey Hendren, Account Coordinator: Lindsey supports clients through research, writing, community partnerships and grassroots organizing. As an M.P.A. and self-identified policy wonk, she also helps the team sort through and simplify complex data. A native Oregonian, Lindsey received a master's degree in Public Administration from the University of Washington's Evans School of Public Policy and Governance, specializing in environmental and natural resource policy. While in Seattle, she served as a graduate communications intern at the City of Seattle's Department of Transportation, as well as the communications coordinator for a statewide advocacy campaign that sought to implement the nation's first carbon tax.

Jennifer Sitton, Account Coordinator: The consummate multi-tasker, Jennifer provides support on client projects in a multitude of ways. From grassroots organizing and coalition-building, to writing and media relations, Jennifer uses her skills to contribute to all aspects of client work and marketing for the team. A seventh-generation Oregonian who is passionate about issues affecting her home state, Jennifer most recently worked for Congressman Greg Walden in Washington, D.C. As Walden's executive assistant, she managed day-to-day operations and interactions between staff, constituents, visitors, and the Congressman, while gaining a wide breadth of knowledge on the many issues affecting Oregonians. Prior to working in Washington, D.C., Jennifer worked for a different public affairs firm in Portland. Jennifer graduated from Claremont McKenna College with a dual degree in government and history, where she wrote her senior thesis on the topic of federal forestry regulations and urban-rural division in Oregon.

Approach, Methodology, Recommended Timeline and Availability of Vendor Staff:

Our undefeated (7 of 7) record in local electoral campaigns across Oregon is the result of a consistent, sustained commitment to strategies that work. Our method and approach rely on research and our experience of what voters value, how they prioritize decision-making, where they receive information on a local level and how to best engage the community.

When approaching a bond measure, we allow these questions to guide our decision-making at each step. In conjunction with our clients, we develop strategies and tactics designed to:

- Improve community engagement by facilitating public meetings, asking for underrepresented groups and community members to be a part of the planning and implementation process and including core stakeholders at every step of the process
- Identify opportunities to demonstrate direct value of bond projects to the community
- Evaluate bond portfolio to ensure alignment between community priorities and needs
- Assess bond cost and price-elasticity of the electorate to ensure affordability and community acceptance
- Review County performance and communications and recommend strategies to build trust within the community, as well as develop messaging around the consequences of inaction on courthouse funding

We support our clients' efforts from start to finish, advising on timelines, political considerations and the appropriate campaign roles and responsibilities for County staff versus an independent, private political campaign that may support the bond.

COMMUNITY ENGAGEMENT

Building and maintaining a strong relationship with the community is essential to preserving strong support for existing County projects. Additionally, fostering these relationships will put the County in a strong place for future plans and programs, such as passage of a bond to fund a new Courthouse. Hubbell would work with the County to maintain and strengthen existing relationships, as well as advise on how best to engage additional stakeholders and community leaders. Furthermore, Hubbell would advise the County on opportunities to engage and educate the community on current and future projects.

- Assist the County in establishing advisory committees, stakeholder-focused committees and other groups to build support and establish priorities for a new courthouse
- Identify weaknesses of current courthouse and related messaging opportunities

- Collaborate with key influencers, stakeholders and organizations within the community including, but not limited to, law enforcement agencies, district attorney, public defenders, justice advocates and local elected officials, to get a comprehensive understanding of community values and priorities
- Work in conjunction with County staff and the Board of County Commissioners to scope, design and spearhead a potential bond measure for the May 2019 special election. This would include development of measure language, print collateral, official County communications, earned media and online and digital/social communication channels.

INTERNAL COMMUNICATION

Effective communication grounded in the mission, values and goals of the Board of County Commissioners and other key stakeholders is the single most important element of building trust and alignment between internal stakeholders and the community. With experience supporting public and private organizations, from local school districts to Fortune 500 companies, Hubbell is well-versed in best practices for internal communication. Our research-backed approach includes:

- Identifying existing County communication strengths and challenges
- Working with the County to improve or create messaging platforms and distribution methods
- Facilitating employee engagement by aligning and sensitizing internal communication to employee values and attitudes
- Conducting interviews with key stakeholders to gain deeper insight into employee perceptions
- Engaging with the Board of County Commissioners and other key elected officials on messaging strategy and internal and external approach
- Evaluating existing community surveys and/or conducting new ones

CONDUCT RESEARCH

Our approach and actions for Clackamas County will be guided by surveys and data used to gather information on how the public perceives the Clackamas County Courthouse, which in turn will inform us how to most effectively engage the community. Accurate and effective messaging will be recommended based on a series of polls, surveys and community outreach. Collecting this data will help Hubbell guide recommendations and proposals regarding County activities. Data will also determine how the public views the County and corresponding activities. Establishing baseline perceptions will be followed by recommendations on how the County can engage and work with the community, especially when considering short and long range planning. We will also advise the County on how to best work with staff and employees to effectively communicate district needs and goals.

Once surveys and analyses are complete, we would work with the County to develop a multi-faceted plan that would help determine how to message the funding of a new Courthouse building.

We will also work with and prepare County leadership for meetings with local elected officials when communicating the state of the Courthouse and related concerns.

DATA COLLECTION AND ANALYSIS/POLLING

Hubbell works closely with a number of polling vendors, including DHM Research, Patinkin Research and the Nelson Report. We are an experienced and savvy team of political strategists with a long record of successful survey development, field deployment and analysis. Where appropriate, we conduct focus groups in partnership with vendors to gain deeper qualitative understanding of public perception.

COLLATERAL AND MESSAGE DEVELOPMENT

Writing, formatting, and distributing content for print, online and broadcast media will help inform the public. Producing this content and distributing it through a variety of channels will ensure that the majority of community members are well-informed. We would develop and execute a media plan to communicate with members of the public, stakeholders and businesses, including the following:

- Develop an editorial calendar as an internal tool for aligning our public communications with project timelines, key milestones and identified opportunities and/or risks.
- Confer with County Commissioners and County staff to regularly draft and submit opinion pieces that align with and support the editorial calendar.
- Build relationships with local reporters by pitching stories and provide relevant content in conjunction with editorial calendar and construction timelines.
- Engage local editorial boards as appropriate, and in conjunction with the County Commissioners and County staff, to ensure adequate education on issues related to the bond.

Messaging concerning the County's role is essential to maintaining strong support for current and future projects. By developing and implementing a plan that prioritizes fiscal transparency, efficiency and effectiveness, the County will be in a strong position to announce future projects. We would develop a thorough messaging strategy that would include the following:

- A heavy focus on stakeholder outcomes, delivery of value to the community and adherence to commitments that have been made to the public by the County.
- Recruit credible messengers, including staff, County Commissioners and key community leaders who would serve as information conduits for the County to the general public.
- An analysis and recommendations regarding web content, social media assets and intra-district communication channels.
- Strategies to proactively maintain engagement with community members and stakeholders.

Describe a list of other agencies you are currently working with: The Lake Oswego School District is the only public agency we are currently working with. We serve a number of trade associations, nonprofits and businesses.

Do you have experience supporting non-advocacy ballot measure campaigns? \Please describe those campaigns: The 2017 Lake Oswego School Bond campaign was aimed at designing and building public support for a \$187 million local bond measure to repair and replace school facilities. We worked closely with school district leadership, elected officials and stakeholders to design and test a bond package that was ultimately approved by 60 percent of community members. Our role included development of all messaging, collateral, media relations and a public engagement strategy that featured more than 100 community meetings over a one year period.

Describe your experience facilitation public meetings. Our firm specializes in facilitating and helping implement public meetings. Relying on the example of the 2017 Lake Oswego school bond, we organized and facilitated community meetings to update the public on bond news and improvements. These meetings include a slideshow, where a panel of staff presents updates, as well as a controlled Q&A section where members of the public were solicited for feedback and questions about the bond. Public meetings always include opportunities for community members to speak one-on-one with staff. Additionally, we regularly lead or participate in public meetings on behalf of clients and also know what the community and stakeholders expect during these meetings.

Do you provide translation services? Yes, we contract with local translation services and have access to both translation and interpretation services.

Describe your experience supporting communication and outreach activities to underrepresented stakeholders. Our first question is to always ask who is not at the table. It's essential to prioritize underrepresented stakeholders and community groups when conducting public outreach and engagement. By developing collateral in multiple languages, conducting targeted community outreach to churches, community groups, nonprofits and schools, we're able to develop a thorough list of groups and individuals that need to be at the table. Examples of these efforts include targeted outreach on behalf of tourism associations to members of Portland's communities of color, partnerships with social justice groups on behalf of the Musicfirst coalition, outreach to social justice groups on behalf of Morrison Child & Family Services and our recent work facilitating a successful relationship between Lloyd Center and the NAACP.

What are your preferred methods for evaluating the effectiveness of your communication plan or public involvement process during and following implementation? Success metrics need to be established on the front end in conjunction with client needs and preferences. Typically, these are 80 percent quantitative and 20 percent qualitative. On the quantitative side, we work with clients to establish baseline data (typically through surveys) on public perception and establish goals. Secondary or tracking surveys provide information around progress. Other quantitative measurements may include number/attendance of community meetings, social media engagement data and/or earned media volume and readership. On the qualitative side, regular meetings and feedback from County staff, Commissioners and stakeholders is necessary to track success relative to benchmarks. Hubbell Principal Chris Edmonds has worked closely with public agencies including Oregon's Department of Administrative Services and Department of Human Services on their enterprise analytics. He is well-versed in modern enterprise performance management systems and the needs of large public agencies.

Describe your experience supporting or designing communication strategy and implementation for housing, transportation, sanitary sewer, surface water, parks, human services, public safety and other government related projects.

Lake Oswego School District: \$187 million bond measure

In 2016, we were hired by the Lake Oswego School District to advise and, later, run their school bond campaign. When we were retained, community support for a \$245 million bond proposal was low, at approximately 50 percent. Working in conjunction with district staff, board members and research vendors, we developed recommendations for a comprehensive, three-phase plan to address the district's long-term capital improvement needs. The first phase was the passage of the \$187 million bond measure that funds a new junior high and focusses the majority of funds on key building repairs and improvements. The measure passed with 60% support - a full 10 points higher than polling showed at the time Hubbell was retained. We currently advise the district on bond communications and general strategy as requested by district staff.

Hillsboro/Washington County

Our Clients, two local governments, were concerned that the state legislature would reduce funding for a valuable economic development program benefiting their communities. While a full court press was in place to lobby for its continued funding, they needed to build public support for this program. Recognizing that this issue was not on the minds of the average voter and could be easily misconstrued by voters, Hubbell designed an aggressive but surgical advocacy effort to identify, recruit and prepare allies to weigh in favorably for the program. We conducted a statewide road show targeting specific groups and individuals to alert them to the threat and recruit them to join the advocacy effort. We worked with each stakeholder and group to craft their own unique and compelling stories and turned these into memorable collateral material – infographics, legislative leave-behinds, social media posts – that was disseminated strategically throughout the session. We recruited and prepared stakeholders to voice their support through traditional and online media. Thanks to Hubbell's efforts, the lobby team was able to provide compelling and authoritative support for the program to legislators. The economic development program was protected.

Oregon State Sheriffs' Association

The Oregon State Sheriffs' Association (OSSA) hired Hubbell Communications to provide comprehensive communication and outreach services specifically designed to a) increase positive perceptions of Oregon sheriffs among Oregon citizens; b) provide key messaging and collateral to help OSSA manage a robust legislative agenda; and c) increase citizen participation and citizen (paid) membership to the OSSA organization. Our efforts with OSSA have included management of a statewide baseline poll, development of messaging from that poll, and development and rollout of strategic earned, paid and social media campaigns designed to deliver key objectives.

Pacific Power

Pacific Power and the community they served were concerned about a ballot initiative that would have created a municipal utility district at great cost and risk to the citizens of this small town. Hubbell developed a campaign to defeat this measure by organizing local volunteers into a coalition called "Residents for Responsible Government," which coordinated community outreach and neighborhood meetings to raise awareness of the issue. Using messages developed through surveys of registered voters, we developed a theme centered on government accountability and designed a six-month campaign consisting of paid and earned media, direct mail, outdoor signage, digital outreach and a strong get-out-the-vote (GOTV) field effort. Prior to ballot drop, the field team identified and tracked the position of the electorate. Voters heard campaign messages through emails and social media, direct mail, digital and print advertising, radio and earned media. We held regular events to keep supporters informed and engaged. Despite being outspent by a wide margin, Hubbell Communications pulled off a 76% landslide victory with a stunningly high 63% turnout in an off-year special election. The municipalization proposal was blocked, sending a strong message to local elected officials about government accountability and the influence of special interests.

Oregon IDEA

Leaders in the Oregon business and education community created an ambitious legislative agenda to streamline funding mechanisms to accelerate the growth of Oregon's higher education institutions. These reforms and their benefits were largely unknown to rank-and-file Oregon voters, whose support was needed for their passage. We created a grassroots organization branded to appeal to average Oregonians to serve as the communication mechanism for building support for this package of education reforms. We rebranded the Oregon Higher Education Alliance to become "The Oregon Idea," a coalition of small-business owners, CEOs, community leaders and alumni of Oregon's community colleges and universities. Propelled by a rolling launch at universities and community colleges throughout the state, we recruited alumni and other supporters through a sophisticated web of communication channels, including grassroots recruitment, special events, earned and paid media, and digital outreach. By leveraging these strategies over a year-long period, Hubbell Communications generated hundreds of allies across the state who supported The Oregon Idea's agenda through letters and calls to legislators, by delivering public testimony, by participating in earned media opportunities and by creating viral support through personal social media channels. Legislators, some of whom commented that they had never seen such an outpouring of support for a single issue, overwhelmingly approved the legislative reforms.

Professional Fees and Budget

General Consulting & Project Management Services:

\$9,000/Month (September 2018 through May 2019: Total \$90,000)

Other Estimated Expenses (as approved by client):

Design and produce collateral materials \$10,000

Travel expenses (not to exceed) \$5,000

Total Project Cost: \$105,000

References

CHRISTINE MOSES

Lake Oswego School District, Communications Director
mosesc@loswego.k12.or.us

CORINNE WEISS

City of Hillsboro, Communications and Marketing Director
corinne.bloomfield@hillsboro-oregon.gov

SCOTT BOLTON

Pacific Power, Executive Vice President
scott.bolton@pacifcorp.com

MELODY ROSE

Marylhurst University, President
mrose@marylhurst.edu

minds changed.
story told.
reputation protected.
crisis managed.
campaign won.



CLACKAMAS COUNTY CERTIFICATIONS
RFQ #2018-74

Each Quoter must read, complete and submit a copy of this Clackamas County Certification with their Quote. Failure to do so may result in rejection of Quote. By signature on this Certification the undersigned certifies that they are authorized to act on behalf of the Quoter and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

As required in ORS 279B.110(2)(3), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Quoter is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321, 323, and elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620, all as applicable. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Quoter to 28% backup withholding.

SECTION II. NON-DISCRIMINATION

The undersigned hereby certifies that the Quoter has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, national origin, or any other protected class. Nor has Quoter or will Quoter discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emergency small business that is certified under ORS 200.055.

SECTION III. CONFLICT OF INTEREST

The undersigned hereby certifies that no elected official, officer, agency or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFQ, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its Commissioners, officers, agents, or employees had induced Quoter to submit this Quote. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a quote for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION

The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFQ (including any attachments); and
2. Are an authorized representative of the Quoter, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Quote or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFQ and Quote; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFQ.

Firm Name: Hubbell Communications Date: 8/20/18
Signature: [Signature] Title: Marketing Principal
Name: Scott Brown Telephone: 503 720-1329
Email: scott@thinkhubbell.com OR CCB # (if applicable): N/A

Business Designation (check one):
 Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120
 Non-Resident Quote. Resident State: _____

Oregon Business Registry Number: 154018-96

County Courthouse Project Communications & Financing Timeline

*****Working Timeline, Updated 9/6/18*****

- Sept 5-11:** **Consultant Develops Stakeholder Interview Plan**
- Sept 10-26:** **Conduct Focus Groups with Key Stakeholders**
Objectives: Build awareness, solicit feedback, identify local champions, and recruit speakers bureau. Stakeholders include but are not limited to Clackamas County bar, OTLA, business groups, H3S advisory groups, building trades, public safety community, disability community
- Tues, Sept 18:** **Quarterly BCC Update**
Objectives: Discuss financing options, receive BCC majority direction
- Mon, Oct 1:** **Begin Outreach/Information Campaign**
- Fri, Oct 5:** **Chief Justice Walters Visit to Clackamas County with Judge Steele and Chair Bernard**
- Early Oct:** **BCC Business Meeting**
Objective: To adopt a resolution supporting the project to demonstrate the county's commitment
- Early Oct:** **Leadership Team Meeting**
Objectives: Recap BCC quarterly update meeting, refine financing plan options, discuss legislator events, train electeds on messaging for speakers bureau
- Mid-Oct:** **Legislator & Key Stakeholder Events (hold two to allow every legislator to attend)**
Objectives: Rally the troops, demonstrate county commitment, line up legislative champions, tour the courthouse
- Mid/Late-Oct:** **Field 2nd Poll**
Objectives: Assess voter cost tolerance for possible bond amounts and test messaging

- Mid-Nov: Leadership Team Meeting**
Objectives: Recap legislator events, check-in on communications, input on 3rd poll
- Early Dec: Field 3rd Poll**
Objectives: Re-test bond measure support
- Dec/Jan: Policy Sessions to review 2nd & 3rd polls, ballot title, question, summary**
- Tues, Jan 8: Legislative Dinner at County Courthouse**
- Tues, Jan 22: Start of Legislative Session**
- Jan/Feb: BCC Business Meeting**
Formal ballot measure referral
- Sat, Mar 2: Deadline to file notice of ballot title with County Elections for publication**
- Thurs, Mar 21: Measure filing deadline (completed and noticed)**
Start of prohibition on county staff advocating for or against measure
- Mon, Mar 25: Voters' Pamphlet deadline for measure arguments**