



March 6, 2025

BCC Agenda Date/Item: _____

Board of County Commissioners
Clackamas County

Approval of a Board Order for a Fiscal Year 2024-25 Supplemental Budget Resolution with a total net appropriation increase of \$4,582,298. Funding is through Beginning Fund Balance, Charges for Services, Federal/State/Local funding, and other Interfund Transfers. No County General Funds are involved.

Previous Board Action/Review	On August 10, 2022, the Board of County Commissioners entered into the Clackamas County Courthouse Agreement – Phase II Funding Agreement.		
Performance Clackamas	1. Ensure Safe, Healthy and Secure Communities		
Counsel Review	Yes	Procurement Review	No
Contact Person	Nancy Bush	Contact Phone	X8581

EXECUTIVE SUMMARY: The amendment between the State of Oregon, DAS and Clackamas County memorializes the increase of the Article XI-Q bond dollars for the Courthouse Phase II funding by \$45,000,000, totaling \$139,500,000. This amendment also adds the Furniture, Fixtures and Equipment (FFE) and Lease Exhibits to the Phase II funding agreement and includes a specific allocation of \$8,200,000 from the funding for State’s FFE costs.

RECOMMENDATION: Staff recommends BCC approval of this Amendment No.1 to the Clackamas County Courthouse Phase II Funding Agreement with the State of Oregon.

Respectfully submitted,

Nancy Bush
County Operation Officer
Office of County Administration

For Filing Use Only

**AMENDMENT NO. 1
CLACKAMAS COUNTY COURTHOUSE
PHASE II FUNDING AGREEMENT**

This Amendment No. 1 (“Amendment”) to the Clackamas County Courthouse Funding Agreement – Phase II (the “Phase II Agreement”) is made as of the date of last signature on the Amendment (the “Amendment 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 (“County”). OJD, DAS and County are each referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. On August 10, 2022, the Parties entered into the Clackamas County Courthouse Funding Agreement – Phase II (“Phase II Agreement”).

- B. During the 2023 and 2024 legislative sessions, the legislature provided additional funding for the Project, consequently, the Parties now desire to amend the Phase II Agreement to reflect the additional funding.

AGREEMENT

In consideration of the above Recitals which are incorporated in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

- 1. “State Funds for Phase II” under Project Summary on the first page of the Phase II Agreement is deleted in its entirety and replaced with the following:

 “State Funds for Phase II: \$139,500,000 (Article XI-Q bonds)”

- 2. Section 4(a)(ii), County Contribution, is deleted in its entirety and replaced with the following:
 “ ii. “County Contribution” means the amount of not less than \$131,300,000.00, for this Phase II that the County has agreed to provide under this Phase II Agreement.”

- 3. Section 4(a)(v), “State Funds”, is deleted in its entirety and replaced with the following:
 “ v. “State Funds” means the not-to-exceed monetary contribution of \$139,500,000.00 for this Phase II, that the State has agreed to provide under this Phase II Agreement. This amount includes the amount the State has agreed to provide for Authorized State Costs for this Phase II. Authorized State Costs include the FFE Costs which shall not exceed

\$8,200,000.00, and all other Authorized State Costs which shall not exceed \$131,300,000.00.”

4. Section 5(h) is deleted in its entirety and replaced with the following two sections:
 - “(h) In the 2023 legislative session, the Legislative Assembly approved an \$30,365,000.00 Article XI-Q bonds to finance an additional \$30,000,000.00 of Project costs (Or. Laws 2023, ch. 596; Or. Laws 2023, ch. 605.) Further, in the 2024 legislative session, the Legislative Assembly approved an \$15,170,000.00 Article XI-Q bonds to finance an additional \$30,000,000 of Project costs (Or. Laws 2024, ch. 104; Or. Laws 2024, ch. 114.)

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

5. Section 6(b)(viii) is deleted in its entirety and replaced with the following:

“The County submitted a Spending Plan to the State on December 9, 2022. In connection with the additional funding approved in 2023 and 2024, the County shall submit an updated Spending Plan to the State in form and substance acceptable to the State and when requested by the State (“Updated Spending Plan”). The Updated Spending Plan is presently anticipated to be due no later than January 15, 2025. The Updated Spending Plan shall provide estimated quarterly payments of State Bond proceeds with their expected expenditure itemizations for the Project starting after the closing date of the State Bonds and continuing over a period not to exceed three years in an amount totaling the not-to-exceed Article XI-Q bonds amount of \$139,500,000. The Updated Spending Plan shall include anticipated payments for Project Agreement Costs and Non-Project Agreement Costs, including the State’s Occupancy Readiness Milestone Payment.”

6. Section 7(b), maximum State Contribution for State Funds”, is deleted in its entirety and replaced with the following:

“(b) **Maximum State Contribution for State Funds.** Unless the amount of State Funds is increased after the Effective Date, the State’s maximum monetary obligation with respect to this Phase II shall not exceed \$139,500,000.00, for both the not-to-exceed \$8,200,000.00 for FFE Costs and the not-to-exceed \$131,300,000.00 for all Authorized State Costs other than FFE Costs.

In the event that the FFE Costs will exceed \$8,200,000.00, the County shall have no obligation to provide FFE in excess of \$8,200,000.00 unless OJD, in its sole discretion provides additional funding for the FFE.

In the event that the Authorized State Costs, other than FFE Costs of this Phase II exceed the \$131,300,000.00 and the parties have not amended this Phase II Agreement to increase the amount of State Funds for the payment of the excess

costs, the County shall be responsible for all additional costs, and the County shall have no claim against the State for any amount that exceeds the amount of the State Funds.”

7. The Section 10(b)(iii) is deleted in its entirety and replaced with the following:
“(iii) Costs for road improvements not required by City of Oregon City or not directly related to the Project. Without limiting the generality of the prior sentence, all costs for any road improvements not contained within the Project Parcel are excluded from Authorized Costs.
8. Section 14 is amended to include the following:
“(f) “During Bond Defeasance. Except as set forth above in this Section, after execution of this Phase II Agreement and before the defeasance or payment in full, including at redemption, of State Bonds, County shall not make any changes or modifications to the State Premises or make any changes, modification, or adjustment to State’s ability to occupy, enjoy, operate, and control the State Premises without obtaining prior written approval of the State.”
9. Section 3 on Exhibit B – Benchmarks for Phase II is deleted in its entirety and replaced with the following:
“3.a) County has provided a complete copy of the Spending Plan (see Section 6(a)(v)(a).)
3.b) County has provided a complete copy of the Updated Spending Plan (see Section 6(b)(vii).)”
10. Section 3 is deleted in its entirety and replaced with the following:
“This Phase II Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, less all Exhibits; then Exhibit C (Initial Technical Requirements); then Exhibit A (Phase Work for Phase II) and Exhibit B (Benchmarks for Phase II), Exhibit E (Lease Agreement), and Exhibit D (Agreement for Transfer of Furniture, Fixtures, and Equipment). The foregoing Exhibits and any documents referenced in those Exhibits are incorporated herein by this reference. Exhibit E (Lease Agreement) and Exhibit D (Agreement for Transfer of Furniture, Fixtures, and Equipment) are intended to be example forms that the County and OJD agree to execute at a later date in substantially the same form.
11. Phase II Funding Agreement is amended to include the following Exhibit D.

“Exhibit D

EXAMPLE AGREEMENT FOR TRANSFER OF FURNITURE, FIXTURES, AND EQUIPMENT

This Agreement for Transfer of Furniture, Fixtures, and Equipment (the “Agreement”) is made and entered into as of [Effective Date] (the “Effective Date”) by and between Clackamas County, a political subdivision of State of Oregon (“County”), and State of

Oregon, acting by and through its Oregon Judicial Department (“OJD”). County and OJD are collectively referred to as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, County purchased certain furniture, fixtures, and equipment as more specifically described in **Attachment A** of this Agreement (collectively, the “FFE”) as part of County responsibilities under a Master Funding Agreement, Phase I Funding Agreement, OJD contract No.190072, and a Phase I Funding Agreement, OJD contract No. 230010, collectively (the “Funding Agreements”).

As of the Effective Date of this Agreement, County has either delivered the FFE to OJD or installed the FFE in OJD Premises located at 1000 Courthouse Road, Oregon City, OR 97045.

County now desires to transfer ownership, title, and warranties (if transferrable) of the FFE to OJD, and OJD agrees to accept such transfer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated into this Agreement, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. Transfer of Ownership and Title

1.1 As of the Effective Date, County hereby transfers, assigns, and conveys to OJD all its ownership, title, and interest including but not limited to all warranties in and to the FFE.

1.2 OJD accepts such transfer, assignment, and conveyance of the FFE and assumes full ownership as of the Effective Date.

1.3 County shall deliver to OJD all paperwork, owner’s manuals, and warranties to OJD on or before the Effective Date.

2. Warranties

2.1 County shall transfer to OJD any manufacturer warranties, service warranties, or other warranties related to the FFE (the “Warranties”) to the extent such Warranties are transferrable.

2.2 If any Warranties are not transferrable, County agrees to maintain and administer the Warranties on behalf of OJD at no additional cost to OJD.

3. Responsibilities for Repair and Maintenance

3.1 County shall be responsible for the repair, maintenance, and upkeep of the FFE up to and including the Effective Date.

3.2 Effective from the Effective Date, OJD shall be solely responsible for the repair, maintenance, and upkeep of the FFE.

4. Representations and Warranties

4.1 By County: County represents and warrants:

4.1.1 It has good and marketable title to the FFE, free and clear of any liens or encumbrances.

4.1.2 It has the authority to transfer ownership of the FFE to OJD.

4.1.3 OJD has reimbursed the County in full for all the costs associated with procurement, delivery, installation, maintenance, and transfer of title and warranties of the FFE.

4.1.4 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.

4.2 By OJD. OJD represents and warrants that it accepts the FFE “as is,” except as expressly provided herein, and assumes all risk and liability associated with the ownership and use of the FFE after the Effective Date.

5. Parties’ Contribution for Third-Party Claims; Indemnification by Third Parties.

5.1 **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 including, without limitation, third-party claims for infringement of intellectual property rights (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 of the Third-Party Claim and deliver to the Other Party, along with the 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, 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 with respect to the Third-Party Claim.

5.2 OJD Contribution: With respect to a Third-Party Claim for which OJD is jointly liable with County (or would be if joined in the Third-Party Claim), OJD shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of OJD on the one hand and of 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 OJD on the one hand and of 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. OJD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OJD had sole liability in the proceeding.

5.3 County Contribution: With respect to a Third-Party Claim for which County is jointly liable with OJD (or would be if joined in the Third-Party Claim), County shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OJD in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OJD 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 County on the one hand and of OJD 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. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if County had sole liability in the proceeding.

5.4 Other Claims: The Parties shall take all reasonable steps to cause their contractor(s) that are not units of County or OJD as defined in ORS 190.003, if any, to indemnify, defend and hold harmless the other Party and their officers, employees and agents (the "**Indemnitee**") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) to the extent caused, or alleged to be caused, by the negligent or willful acts or omissions of that contractor or any of the officers, agents, employees or subcontractors of the contractor. The Parties specifically intend that the Indemnitee shall, subject to ORS 30.140, in all instances, except for claims arising from the negligent or willful acts or omissions

of the Indemnitee, be indemnified by the contractor from and against any and all claims to the extent the damages are caused by the contractor's fault.

6. Miscellaneous

6.1 Notice.

6.1.1 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 6.1.2 below to the address of the Parties set forth in Section 6.1.3 below, unless a Party modifies its address by notice to the other Parties. The phone numbers listed in Section 6.1.3 below are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Agreement.

6.1.2 Delivery:

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email 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 five 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.

6.1.3 Addresses:

County	OJD
NAME County	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	CITY STATE ZIP CODE
Email:	Email:
Phone:	Phone:
<i>With copy to:</i>	<i>With copy to:</i>
TITLE	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	Salem, OR 97301
Email:	Email:

Phone:	Phone:
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6.2 Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any Claim between OJD (or any other agency or department of the State of Oregon) and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon; provided, however, if a Claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section or any other provision of this Agreement 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.

6.3 Records Maintenance; Review and Audit.

6.3.1 The County shall maintain all financial records relating to the FFE in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to the FFE in such a manner as to clearly document the County's performance. The County acknowledges and agrees that 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 the FFE, 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 6.3.3 below.

6.3.2 Upon request, the County shall promptly provide OJD with any other such information regarding the FFE as OJD may require.

6.3.3 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 three years after maturity of the State Bonds, as defined in the Funding Agreements, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

6.4 Survival: All provisions of this Agreement that would reasonably be expected to survive the expiration or earlier termination of this Agreement shall do so.

6.5 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 this Agreement did not contain the particular term or provisions held to be invalid.

6.6 Waiver: The failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.

6.7 Ambiguities: Each party has participated fully in the review and revision of this Agreement and neither party shall be considered the " drafter" for the purposes of any rule of construction that might cause any provision to be construed against the drafter.

6.8 Entire Agreement: This Agreement constitutes the entire agreement between the Parties concerning the transfer of the FFE and supersedes all prior discussions and agreements.

6.9 Amendments: This Agreement may be amended only by a written document signed by both Parties.

6.10 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 purchase and maintenance of the FFE is not an obligation of OJD. The County shall not represent that it has the power or authority to obligate OJD.

6.11 Parties; No Third-Party Beneficiaries. 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.

6.12 Electronic Signatures and Counterparts: This Agreement and any amendments hereto may be executed via electronic signature and in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

COUNTY

By: _____

Name: _____

Title: _____

Date: _____

OJD

By: _____

Name: _____

Title: _____

Date: _____

Attachment A”

12. Phase II Funding Agreement is amended to include the following Exhibit E.

“Exhibit E

EXAMPLE LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Agreement**”) is made as of MONTH XX, XXXX (the “**Effective Date**”), by and between Clackamas County, an Oregon political subdivision (“**County**”) and the State of Oregon, acting by and through the Oregon Judicial Department (“**OJD**”). County and OJD are each a “**Party**” and together the “**Parties.**”

RECITALS

- A. County is the owner of the Clackamas County Courthouse, located at 1000 Courthouse Road, Oregon City, OR 97045 in Oregon, Oregon, Clackamas County (the “**Courthouse**”).
- B. Pursuant to ORS 1.185 and 1.187, the counties in the State of Oregon provide courthouse facilities for the circuit courts, including suitable and sufficient courtrooms, offices, and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury rooms.

- C. Pursuant to ORS 1.185 and 1.187, OJD operates the State of Oregon's circuit courts and provides all supplies, materials, equipment and other property necessary for the operation of the circuit courts.
- D. Sections 8 and 9, chapter 705, Oregon Laws 2013 and Section 64, chapter 723, Oregon Laws 2013, as amended from time to time (the "**Courthouse Act**"), authorize the State's sale of Article XI-Q bonds to finance certain capital costs related to counties' acquisition of land for and construction of county courthouses.
- E. Nothing in this Agreement shall mean or be construed to mean that the Parties' obligations and State's rights under ORS 1.185, 1.187, the Courthouse Act, or any other laws have been modified or waived.
- F. Pursuant to the Courthouse Act, the State contributed funds from the State Bonds for certain capital costs related to County's acquisition of land for and construction of the Courthouse as consideration for OJD's long-term interest in premises in the Courthouse for the operation of the Circuit Court.
- G. The Parties' agreements regarding the use of the State Bonds for the planning and construction of the Courthouse and OJD's long-term interest in a premises in the Courthouse were memorialized in the following funding agreements between County, and OJD and the Oregon Department of Administrative Services ("DAS") (collectively the "**Funding Agreements**"):
 - a. Master Funding Agreement dated February 28, 2022 ("MFA")
 - b. Phase I Funding Agreement OJD Contract No. 190072
 - c. Phase II Funding Agreement OJD Contract No. 230010
- H. Pursuant to Section 19 of the MFA, County is required to enter into certain agreements for the use and control of the Courthouse with OJD and other Collocated Agencies. This Agreement constitutes the OJD Space Agreement.

TERMS AND CONDITIONS

In consideration of the above Recitals, which are incorporated into this Agreement, the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. **Defined Terms.** Terms used but not otherwise defined in this Agreement shall have the meaning assigned to such terms in the Funding Agreements.
2. **Description.**

2.1. Premises. County hereby conveys and grants to OJD, and OJD hereby accepts from County, those portions of the building identified as OJD space (the “**Premises**”) on **Exhibit A, Floor Plans**, located in the Courthouse as shown and legally described on **Exhibit B, Legal Description and Property Map**. As of the Effective Date of this Agreement, the Premises are approximately 214,534 square feet. If OJD exercises its right to expand into any Expansion Space (as defined in and pursuant to Section 2.3 below), then that Expansion Space shall become part of the Premises.

2.2. Grant of Rights. County conveyance and grant to OJD of the Premises includes the exclusive rights to control and use the Premises for the Term of this Agreement. This grant includes the right of control over any portions of the Courthouse that were constructed with State Funds including without limitation Courthouse Common Areas (defined in Section 4.1 below).

2.3. Right of Expansion. During the Initial Term (defined below), in the event any portion of the Courthouse outside of the Premises becomes available for use (the “Expansion Space”), OJD shall have the option(s) (each an “Expansion Option”), to expand the Premises to include the Expansion Space. OJD’s use and occupancy of the Expansion Space shall be on the same terms and conditions of OJD’s use and occupancy of the existing Premises under this Agreement.

3. Term.

3.1. Initial Term. The “**Initial Term**” of this Agreement shall begin on **MONTH DAY YEAR** (the “**Commencement Date**”) and continue for the later of: (a) 25 years; or (b) until defeasance or payment in full, including redemption, of the State Bonds. The word “**Term**” is used in this Agreement to describe the Initial Term and any Extension Term (as defined in Section 3.2 below).

3.2. Extension of Term. After the Initial Term, OJD and County may agree to extend the Term of this Agreement for consecutive terms (each an “**Extension Term**”). If the Parties agree to extend the Term, all terms and conditions of this Agreement shall apply to any extension except for the Term dates.

4. Courthouse Common Areas.

4.1. Generally. The Courthouse contains certain areas and facilities outside the Premises, including, but not limited to, the loading zones, that are provided by County for the appurtenant, nonexclusive use of County, OJD, Colocation Agencies, other tenants of the Courthouse and their respective agents, employees and invitees, or the general public (the “**Courthouse Common Areas**”). OJD has the appurtenant, exclusive right to control and use the Courthouse Common Areas. Notwithstanding the prior sentence, OJD grants County, Colocation Agencies, other tenants of the Courthouse and their respective agents, employees and invitees, and the general public the nonexclusive right to use the Courthouse Common Areas, in common with other authorized users.

Subject to the terms on this provision, OJD hereby delegates the day-to-day operational control of the Courthouse Common Areas to County provided such areas are maintained for appurtenant, nonexclusive common use. Any proposed changes, including, without limitation, changes in use or physical layout, in the Courthouse Common Areas must be approved by OJD. OJD may, in its reasonable discretion, revoke the delegations granted under this Agreement.

4.2. Alterations. County shall inform OJD of any plans to materially adjust or modify any portion of the Courthouse Common Areas at least 30 days prior to filing a permit application for the adjustment or modification work. County and OJD must consent in writing to any alterations to the common areas that will have an adverse impact to OJD operations in the Courthouse.

5. Rent. OJD shall not pay any rent for the use and occupation of Premises and the Courthouse Common Areas during the Term of this Agreement.

6. Use of Premises.

6.1. OJD Use. OJD may use the Premises for any and all purposes related to the operation of the Clackamas County Circuit Court (the “**Court**”) and activities related thereto, including, but not limited to, court operations, business operations, administrative support, office use, and OJD supplies and equipment storage.

6.2. County Use.

6.2.1. The County agrees that no portion of the Courthouse that was constructed using Article XI-Q bonds may be used for Private Use by a Private Person.

6.2.1.1. For the purposes of this Agreement, “Private Person” means any person or entity other than a state or local governmental unit or an individual not acting in a trade or business. Accordingly, a Private Person would include the federal government, for-profit organizations, non-profit organizations, and individuals who are acting in a trade or business capacity.

6.2.1.2. “Private Use” means, subject to certain exceptions, the use of a portion or all of the Courthouse by a Private Person if such use is other than as a member of the general public.

6.2.1.3. Private Use can include ownership of the property by the Private Person as well as other arrangements that transfer to the Private Person the actual or beneficial use of the property (such as a lease, management contract, service or incentive payment contract, output contract, naming rights contract or other special arrangement) in such a manner as to set the Private Person apart from the general public.

6.2.1.4. Use by employees of the County solely in their capacity as employees ordinarily will not be considered Private Use.

6.2.2. County agrees that until defeasance or payment in full, including redemption of the State Bonds, the Courthouse shall not be sold, leased, subleased, or otherwise

transferred without prior written approval of OJD and DAS to confirm that the proposed changes do not adversely impact the tax-exempt status of the Article XI-Q bonds.

7. Hours of Facility Operation. The Courthouse shall be open and fully accessible to the public during Normal Business Hours. “**Normal Business Hours**” means 7:30 a.m. to 5:00 p.m., Monday through Friday, except during federal or State of Oregon holidays. Court operating hours may differ from Courthouse operating hours.

8. Security and Safety. Pursuant to Oregon laws including but not limited to ORS 1.178, 1.180, 1,182, 1.185 and 1.187, the County is responsible for providing suitable and sufficient court facilities for OJD, including suitable and sufficient security for the Courthouse.

9. Maintenance, Repair and Utilities.

9.1. County’s Obligations. As part of its obligations under ORS 1.185 and 1.187, County shall perform, all maintenance, repair and replacement suitable and sufficient to maintain and necessary for the operation of the Courthouse (including the Premises and the Courthouse Common Areas). Further, County shall provide, at its own expense, all utilities and services, including, without limitation, maintenance and janitorial services, to the Courthouse including, without limitation, the Premises.

9.2. OJD’s Obligations. As part of its obligations under ORS 1.187, OJD shall provide the supplies, materials, equipment and other personal property necessary for the operation of the Court.

10. Quiet Enjoyment. Subject to the terms and conditions of this Agreement, OJD shall peaceably and quietly have, hold, and enjoy the Premises during the Term, without any interruption or disturbance from County or any party claiming by, through or under County.

11. Force Majeure. If the performance by either Party of any provision of this Agreement is prevented or delayed by any strikes, lockouts, labor disputes, other public emergency, acts of God, fire or other casualty, or other cause beyond the reasonable control of the Party from whom performance is required (each an “**Event of Force Majeure**”), the Party will be excused from such performance for the period of time equal to the time of that prevention or delay. The Party so excused shall, upon cessation of the Event of Force Majeure, diligently pursue performance of its obligations under this Agreement.

12. Parties’ Contribution for Third-Party Claims; Indemnification by Third Parties.

12.1. 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 of the Third-Party Claim and deliver to the Other Party, along with the 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, 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 with respect to the Third-Party Claim.

12.2. OJD Contribution. With respect to a Third-Party Claim for which OJD is jointly liable with County (or would be if joined in the Third-Party Claim), OJD shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of OJD on the one hand and of 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 OJD on the one hand and of 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. OJD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OJD had sole liability in the proceeding.

12.3. County Contribution. With respect to a Third-Party Claim for which County is jointly liable with OJD (or would be if joined in the Third-Party Claim), County shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OJD in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OJD 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 County on the one hand and of OJD 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. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if County had sole liability in the proceeding.

12.4. Other Claims. The Parties shall take all reasonable steps to cause their contractor(s) that are not units of County or OJD as defined in ORS 190.003, if any, to indemnify, defend and hold harmless the other Party and their officers, employees and agents (the "**Indemnitee**") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) to the extent caused, or alleged to be caused, by the negligent or willful acts or omissions of that contractor or any of the officers, agents, employees or subcontractors of the contractor. The Parties specifically intend that the Indemnitee shall, subject to ORS 30.140, in all instances, except for claims arising from

the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all claims to the extent the damages are caused by the contractor's fault.

13. Notice.

13.1. 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 13.2 below to the address of the Parties set forth in Section 13.3 below, unless a Party modifies its address by notice to the other Parties. The phone numbers listed in Section 13.3 below are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Agreement.

13.2. Delivery.

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt
Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email 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 five 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.

13.3. Addresses:

County	OJD
NAME County	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	CITY STATE ZIP CODE
Email:	Email:
Phone:	Phone:
<i>With copy to:</i>	<i>With copy to:</i>
TITLE	Oregon Judicial Department

ATTN: FIRST NAME LAST NAME	ATTN: FIRST NAME LAST NAME
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	Salem, OR 97301
Email:	Email:
Phone:	Phone:

14. Miscellaneous.

- 14.1. Time is of the Essence. Time is of the essence in the performance of the terms of this Agreement.
- 14.2. Calculation of Days. Any reference in this Agreement to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or State of Oregon holiday.
- 14.3. No Third-Party Beneficiaries. County and OJD 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.
- 14.4. 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 this Agreement did not contain the particular term or provisions held to be invalid.
- 14.5. Waiver. The failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.
- 14.6. Consent. Unless otherwise specifically stated herein, any consent by a Party shall not be unreasonably withheld, conditioned or delayed.
- 14.7. Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any Claim between OJD (or any other agency or department of the State of Oregon) and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon; provided, however, if a Claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section or any other provision of this Agreement 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.
- 14.8. 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.
- 14.9. Amendments. No amendment, waiver, consent, modification or change of terms of this Agreement shall bind a Party unless in writing and signed by all Parties. Such

amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

- 14.10.** Electronic Signatures and Counterparts. This Agreement and any amendments hereto may be executed via electronic signature and in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.
- 14.11.** Survival. All provisions of this Agreement that would reasonably be expected to survive the expiration or earlier termination of this Agreement shall do so.
- 14.12.** Insurance: Upon the commencement of this Agreement 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 Courthouse in an amount at least equal to the amount of the Project Financing (as defined in the Master Funding Agreement and subsequent Phase Agreement to it). Insurance proceeds from an insured loss affecting the Courthouse shall be exclusively used by the County to rebuild, repair and restore the Courthouse 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 Courthouse 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 30 Calendar 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 30 Calendar 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 such self-insurance program is at the same level, and under the same conditions, as if the above commercial general liability insurance had been procured. The County's self-insured deductible for such commercial general liability insurance shall not exceed \$100,000 for each loss. Self-insurance is not allowed for other insurance coverages.
- 14.13.** Defeasance Costs. County shall be liable for any County breach of this Agreement. Upon the County's breach, OJD remedies include the right to recover from the County any General Funds or the Defeasance Costs for any State Bonds.
- 14.14.** No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- 14.15.** Limitation of Liabilities. This Agreement is expressly subject to the debt limitation set forth in Article XI of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 14.16.** Exhibits. The Exhibits listed below are incorporated as part of this Agreement:

Exhibit A: Floor Plans

Exhibit B: Legal Description and Property Map

Legal Description: Tract "B", RED SOILS, in the City of Oregon City, County of Clackamas and State of Oregon EXCEPTING THEREFROM that portion conveyed to the City of Oregon City for street dedication in Deed recorded August 24, 1993 as Fee No. 93-061053. FURTHER EXCEPTING THEREFROM that portion conveyed to the City of Oregon City for street dedication in Deed recorded July 19, 2012 as Fee No. 2012-045338. FURTHER EXCEPTING THEREFROM that portion conveyed to the City of Oregon City for street dedication in Deed recorded July 19, 2012 as Fee No. 2012-045339.



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

COUNTY:

NAME County, an Oregon political subdivision:

Print Name: _____

Title: _____

Signature: _____

Reviewed for County

FIRST NAME, LAST NAME - COUNTY ATTORNEY
FOR NAME COUNTY, OREGON:

By: _____

NAME, TITLE

OJD:

The State of Oregon, acting by and through the Oregon Judicial Department

Print Name: _____

Title: _____

Signature: _____

OJD Legal Approval:

By: _____

Date: _____”

The State and the County, by execution of this Amendment, each hereby acknowledge that each has read this Amendment, understands it and agrees to be bound by its terms and conditions. The Parties agree that by the exchange of this Amendment electronically, each has agreed to the use of electronic means, if

applicable, instead of the exchange of physical documents and manual signatures. By inserting an electronic or manual signature below, each authorized representative acknowledges that it is their signature, that each intend to execute this agreement, and that their electronic or manual signature should be given full force and effect to create a valid and legally binding agreement.

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

Print Name: _____

Title: _____

Signature: _____

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

Print Name: _____

Title: _____

Signature: _____

Approved as to Legal Sufficiency for the State:

Print Name: _____

Title: _____

Signature: _____

Approved as to all provisions relating to the Office of Public Defense Services, as Colocation Agency hereunder:

**The State of Oregon,
acting by and through the Office of Public Defense Services (Colocation Agency):**

Print Name: _____

Title: _____

Signature: _____

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

The State of Oregon,

acting by and through the Department of Human Services (Colocation Agency):

Print Name: _____

Title: _____

Signature: _____

Clackamas County, Oregon (“County”):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

_____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____

_____, Assistant County Counsel

