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PUBLIC SERVICES BUILDING
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February 24, 2022

Board of County Commissioners
 Clackamas County

Members of the Board:

Adoption of an Order Approving an Intergovernmental Agreement with the State of Oregon
Related to Funding for a Future County Courthouse

Purpose/Outcomes	Adoption of an order approving an intergovernmental agreement with the State of Oregon related to funding for a future county courthouse.
Dollar Amount and Fiscal Impact	<ul style="list-style-type: none"> • Total project cost: Approximately \$230 million (estimate) <ul style="list-style-type: none"> o Total County cost of the project - \$135.5 million (estimate) o State Contribution - \$94.5 million bonds plus \$1.2 million State General Fund (50% match on Courthouse cost)
Funding Source	County staff anticipates that the future county courthouse will be funded using a combination of local funds from the County's general fund, and matching funds from the State of Oregon.
Duration	This agreement will expire upon closeout of the Courthouse project, which County staff anticipates will occur after building occupancy in 2025.
Previous Board Action	<p>Policy Sessions: 2/14/17, 10/17/17, 6/26/18, 9/18/18, 1/29/19, 10/22/19, 2/4/20, 2/18/20, 7/7/20, 1/12/21, 4/21/21, 5/5/21, 6/29/21, 8/10/21, 9/21/21, and 11/2/21.</p> <p>Business Meetings: 2/14/19, 2/21/19, and 5/20/21.</p>
Strategic Plan Alignment	<i>1. Build public trust through good government.</i>
Contact Person	<i>Nate Boderman, 503-655-8364</i>
Contract No.	<i>None</i>

BACKGROUND:

The Oregon Courthouse Capital Construction Improvement Fund (OCCCIF) provides a path to assist the County with replacement of its current courthouse facility. The OCCCIF is funded through the sale of state bonds, the revenue from which may only be used for capital expenditures.

In 2019, the County entered into two separate agreements with the State of Oregon to facilitate the receipt of OCCCIF proceeds to assist in the planning, design and construction of the Courthouse facility. The first agreement is a Master Funding Agreement that establishes an

outline of the general rights and responsibilities of both the State and the County with respect to the use of state and OCCIF funds in connection with the County's Courthouse Project. The original Master Funding Agreement contemplated that the parties would enter into additional Phase Funding Agreements to further refine the parties' rights and obligations through the design and construction phases of the project. To that end, the second of the two agreements relates to Phase I of the project, which the parties executed to cover project planning activities in detail, and establishes a State reimbursement to the County of up to \$1.2 million for qualifying costs.

Since the time that the County approved the two intergovernmental agreements described above, the Board of County Commissioners has approved of, and the Oregon Judicial Department (OJD) has endorsed, the use of a Public-Private Partnership (P3) delivery approach to design, build, finance, operate and maintain (DBfOM) a new County courthouse.¹ As a result of this change, certain aspects of those existing agreements described above needed to be amended in order to proceed.

In addition, on June 23, 2021 the State Legislature authorized the issuance of \$94.5 million in state bonds to cover the State's contribution towards the projected capital costs of new courthouse (2021 House Bill 5006). A budget note to that legislation requested a report to the Interim Joint Committee on Ways and Means prior to the 2022 legislative session to produce information and respond to several questions related to the Legislature's authorization of the funding.² Among other things, the report was to include an updated Master Funding Agreement. The report was submitted to the committee on December 14, 2021, addressing each of the required elements and noting that negotiations related to the revised Master Funding Agreement were ongoing, but that a draft would be provided in time for consideration during the 2022 legislative session. Producing an updated Master Funding Agreement continues to be a prerequisite to the Legislature approving an increase in OJD's Other Fund limitation by \$94,499,999 to allow sale of the Article XI-Q bonds that provide state matching funds for the courthouse project.

On February 14, 2022, staff and outside consultant representatives from the County met with staff representatives of OJD and the Oregon Department of Justice (DOJ) and reached

¹ At a Policy Session on May 5, 2021 a majority of the Board authorized staff to proceed with the P3 delivery approach for the new County courthouse. At a subsequent Business Meeting on May 20, 2021 a majority of the Board voted to adopt a Resolution authorizing the P3 procurement approach, providing staff with the approvals necessary to undertake the P3 procurement effort.

² The report was required to provide or address the following:

- The legal sufficiency of the Clackamas County public-private partnership agreement(s), from the state's perspective, pertaining to funding agreement requirements;
- Estimated total cost of ownership to construct, occupy, and maintain the Clackamas County Courthouse;
- Affirmation of county ownership of the Clackamas County Courthouse building and property;
- A final master funding agreement; and
- A long-term flow-of-funds for state and local matching deposits into, and withdrawals from, the OCCIF.

agreement on amended Master Funding Agreement provisions that have been incorporated into the materials attached to this report. Consistent with the approach taken in the original Master Funding Agreement, the agreement provided is intended to operate as an umbrella agreement that will be supplemented by specific phase agreements providing in greater detail how the OCCIF funds will be distributed to the County. Since Phase I of the project is substantially complete, and because the deliverables in Phase I focused exclusively on preplanning and procurement activity, only minor technical revisions are needed to the Phase I agreement already in place between the State and County in order to ensure that the parties can close out this part of the project and move on to Phase II, which will cover the design and construction of the new Courthouse facility. Staff will bring revisions to the Phase I agreement to the Board separately for consideration. The County and State will begin negotiations on the Phase II Funding Agreement as soon as the attached Master Funding Agreement has been executed. The Board will need to separately review and approve the Phase II Funding Agreement, a draft of which is anticipated to be completed in the coming months. It is the Phase II Funding Agreement that will provide details on the manner in which the State will reimburse the County for its portion of the capital expenditures associated with the Courthouse project.

To be clear, staff will not recommend to the Board that it enter into a P3 Project Agreement for the design, construction, finance, operation and maintenance of the new Courthouse unless and until the County has an agreement in place with the State that obligates the State to contribute its portion of the capital costs associated with the project.

RECOMMENDATION:

Staff recommends the Board adopt the attached order approving the Amended and Restated Master Funding Agreement with the State of Oregon.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

Attachments: Board Order
Amended and Restated Master Funding Agreement
Chief Justice Approval Letter dated February 23, 2022

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving an
Amended and Restated
Master Funding Agreement
With the State of Oregon
Related to the Clackamas County
Courthouse Replacement Project



Order No. _____
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Whereas, the Clackamas County Courthouse was completed in 1937 at a time when Clackamas County's population was approximately 50,000 residents, and originally housed only 3 courtrooms and the offices of County Clerk, the Sheriff, the County Jail, and the District Attorney, all of whom have vacated except the last; and

Whereas, the courthouse configuration has not changed in the 82 years since and cannot adequately handle the services required by a population of more than 410,000 residents, which leads to delays of trials, civil and divorce proceedings, and incarcerations with real and lasting negative results; and

Whereas, the courthouse is old and obsolete to the point that it cannot be retrofitted to operate by modern standards, that certain parts are inaccessible to people with disabilities, and that equipment in use is well beyond its useful life and costly to maintain; and

Whereas, the courthouse's cramped areas result in overcrowding and close quarters, intermingling of victims, witnesses, jurors, prisoners, and defendants leading to potential safety concerns and causing undue emotional duress to victims and witnesses; and

Whereas, this region is at significant risk of earthquakes and tests indicate a high likelihood of soil liquefaction under the courthouse during such an event, which could lead to a potential slide of the building into the Willamette River and present a risk of death and serious injury to occupants; and

Whereas, Clackamas County has invested millions of dollars in preparation for this project, including owning the land for the proposed site on the Red Soils campus, having infrastructure in place, dedicating personnel to the construction project, and engaging a highly experience project team of outside consultants specializing in the procurement and delivery of public projects utilizing a public private partnership delivery approach; and

Whereas, Clackamas County has assembled a growing coalition that is supportive of a new courthouse, including elected county officers, judges, state senators and representatives, and city officials; and

Whereas, Clackamas County is seeking matching funds for construction of a new courthouse from the state of Oregon to cover approximately half of the costs of construction; and

Whereas, on February 23, 2022, the Chief Justice of the Oregon Supreme Court conditionally approved the Courthouse replacement proposal and found that the County's proposal met all applicable state law requirements for state match funding through the Oregon Courthouse Capital Construction Improvement Fund (OCCCCIF); and

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving an
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Whereas, the Amended and Restated Master Funding Agreement will set out the general rights and responsibilities of both the State and the County with respect to the use of state and OCCIF funds in connection with the County's Courthouse Project; and

Whereas, the Amended and Restated Master Funding Agreement will be supplemented with specific phase funding agreements to further refine the parties' rights and obligations through subsequent phases of the project, including design and construction.

NOW THEREFORE, the Clackamas County Board of Commissioners do hereby order that the acting Chair of the Clackamas County Board of County Commissioners is authorized to execute the Amended and Restated Master Funding Agreement included with this order.

DATED this 24th day of February, 2022

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

**CLACKAMAS COUNTY COURTHOUSE
AMENDED AND RESTATED MASTER FUNDING AGREEMENT**

THIS CLACKAMAS COUNTY COURTHOUSE AMENDED AND RESTATED MASTER FUNDING AGREEMENT (this “Restated Agreement”) is made on February __, 2022 (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

Estimated Project Completion Date: December 1, 2025

Anticipated State Funds:

Phase I:	\$1,200,000 – General Funds;
Phase II:	\$94,500,000 – Article XI-Q bonds (Spring 2023)

County Contact: Gary Barth, Courthouse Project Manager
Phone: (503) 754-2050
Email: gbarth@clackamas.us
Address: 2051 Kaen Rd.
Oregon City, OR 97045

DAS Contact: Rhonda Nelson, Capital Finance Analyst
Phone: (503) 378-8927
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
Email: David.T.Moon@ojd.state.or.us
Address: 1133 Chemeketa Street
Salem, OR 97301

Judge: The Honorable Kathie F. Steele
Phone: (503) 655-8670
Email: Kathie.F.Steele@ojd.state.or.us
Address: 807 Main St.
Oregon City, OR 97045

Trial Court Administrator: Debbie Spradley
Phone: (503) 655-8670
Email: Debbie.D.Spradley@ojd.state.or.us
Address: 807 Main St.
Oregon City, OR 97045

State Project Monitor: Nick Larson
Oregon Judicial Department
Phone: (503) 986-5429
Email: Nicholas.C.Larson@state.or.us
Address: 1133 Chemeketa Street
Salem, OR 97301

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

Colocation Contact: Glen Bason, Administrator
Office of Facilities Management
Phone: (503) 945-5817
Email: Glen.E.Bason@dhsosha.state.or.us
Address: 1410 Tandem Ave. NE
Salem, OR 97301

Colocation Agency: Public Defense Services Commission,
Office of Public Defense Services
an agency of the State of Oregon

Colocation Contact: Eric J. Deitrick, General Counsel
Office of Public Defense Services
Phone: (503) 378-2750
Email: eric.j.deitrick@opds.state.or.us
Address: 1175 Court St. NE
Salem, OR 97301

Terms and Conditions

- 1. Effective Date and Term.** This Restated 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 Restated Agreement shall be from the Effective Date through the date the parties fulfill their obligations under the Funding Agreement, unless it is sooner terminated pursuant to the provisions of this Restated Agreement.
- 2. Agreement Documents.** This Restated Agreement consists of the following documents, which are listed in descending order of precedence: this Restated Agreement, less all Exhibits; and attached **Exhibit A** (Red Soils Parcel and Project Parcel Description); **Exhibit B** (Progress Report Contents); **Exhibit C** (Courthouse Design Criteria); and **Exhibit D** (Form of Disbursement Request). The foregoing Exhibits are incorporated herein by this reference.
- 3. Definitions: General.** Capitalized terms used in this Restated 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. 685; Or. Laws 2016, ch. 118; Or. Laws 2021, ch. 658; Or. Laws 2021, ch. 669; and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.
 - (b)** “Approved Amount” means either: (i) for Phase I or Phase II Non-Project Agreement Costs, the State’s Proportionate Share of any amount set forth in a Disbursement Request that the State Project Monitor determines represent Authorized Costs, pursuant to Section 12 below; or (ii) for Project Agreement Costs, the State’s Proportionate Share of the amount of Authorized Costs set forth in the Project Agreement and approved by State Project Monitor.
 - (c)** “Authorized Costs” means the County’s actual, reasonable and necessary capital costs relating to the Phase Work, as set forth more completely in Section 10 below and any Phase Funding Agreement.
 - (d)** “Authorized State Costs” means that part of the Project Financing that the State agrees to provide for a specific Phase of the Project, which obligation is limited to 50% of the Approved Amount, subject to the not-to-exceed amount of the State Funds.
 - (e)** “Business Days” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding federal or State of Oregon holidays and business closure days.
 - (f)** “Calendar Days” means contiguous days.
 - (g)** “Chief Justice” means the Chief Justice of the Oregon Supreme Court.
 - (h)** “Code” means the Internal Revenue Code of 1986, as amended.
 - (i)** “Colocation Agency(ies)” means collectively the Department of Human Services, an agency of the State of Oregon, and the Office of Public Defense Services, an agency of the State of Oregon.
 - (j)** “Colocation Contact” means each of the Colocation Agency employees named in the Project Summary and Contact Information above.

- (k) “Colocation Leases” means the long-term lease agreements for each of the Colocation Premises that the applicable Colocation Agency and the County anticipate entering into pursuant to a Phase II Funding Agreement.
- (l) “Colocation Premises” means that certain portion of the Project, as generally described in the Initial Technical Requirements, that will be the subject of the Colocation Lease.
- (m) “County Default” means any of the occurrences set forth in Section 25 below.
- (n) “Courthouse Design Criteria” means the “General Facilities Design Assessment Criteria” adopted by the Oregon Legislative Interim Committee on Court Facilities on December 17, 2007, and attached as **Exhibit C**.
- (o) “Defeasance Costs” means the amount sufficient to defease the then-outstanding State Bonds and any costs necessary for such defeasance, plus any principal and interest payments the State has made or will make before the State Bonds are defeased.
- (p) “Disbursement Request” means a request by the County for credit to the County Contribution and credit towards the Authorized State Costs, substantially in the form of **Exhibit D**.
- (q) “Estimated Project Completion Date” means December 1, 2025.
- (r) “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.
- (s) “Fund” means the Oregon Courthouse Capital Construction and Improvement Fund, commonly referred to as the “OCCCIF”.
- (t) “Funding Agreement” means collectively this Restated Agreement and any Phase Funding Agreements memorializing the parties’ obligations and understandings regarding the Project.
- (u) “General Funds” means funds appropriated by the Oregon Legislative Assembly.
- (v) “Independent Building Expert” means the independent third-party jointly appointed by a Project Company and the County (with input from the State) to make the decision pursuant to the Project Agreement as to if and when the Project has been completed in accordance with the Technical Requirements and is otherwise ready for occupancy and use by the Project Occupants.
- (w) “Initial Technical Requirements” means the requirements for the State Premises portion of the Project intended by the parties to be approved by OJD and to be distributed by County on March 3, 2022, as part of County’s solicitation for a Project Company. The Initial Technical Requirements shall be consistent with the minimum Courthouse Design Criteria.
- (x) “Judge” means the Judge Kathie Steele for the Clackamas County Circuit Court.
- (y) “Mediator” means the individual chosen by the parties to mediate a dispute between them pursuant to Section 7(f) below.
- (z) “Misspent Funds” means any Project Financing spent by the County or the Project Company under the Project Agreement for any purpose other than paying for Authorized Costs, or otherwise in violation of this Restated Agreement.
- (aa) “Non-Project Agreement Costs” means any Authorized Costs unrelated to the Project Agreement Costs that are incurred by the County during Phase II.
- (bb) “OJD Lease” means the long-term lease agreement for the OJD Premises that OJD and the County anticipate entering into pursuant to a Phase II Funding Agreement.

- (cc) “OJD Premises” means that certain portion of the Project, as generally described in the Initial Technical Requirements, which will be the subject of the OJD Lease.
- (dd) “Phase” means Phase I or Phase II as the context so requires.
- (ee) “Phase I” means the planning period for the Project.
- (ff) “Phase II” means the procurement, design and construction period for the Project.
- (gg) “Phase Funding Agreement” means any and all agreements the parties may enter into under this Restated Agreement, in order to memorialize their obligations and understandings regarding any specific Phase of the Project.
- (hh) “Phase I Funding Agreement” means the agreement entered into between the parties on February 28, 2019 and that was amended on June 27, 2019, June 30, 2020, and June 30, 2021 for Phase I of the Project.
- (ii) “Phase II Funding Agreement” means the agreement the parties may enter contemporaneously with or after this Restated Agreement for Phase II of the Project in order to carry out and implement the terms and conditions of this Restated Agreement. This Restated Agreement details certain obligations and understandings that the parties intend to include in the Phase II Funding Agreement.
- (jj) “Progress Report” means the monthly report submitted by County to the State Project Monitor that describes the progress of the Phase II Project Work, which report shall meet the requirements set forth in **Exhibit B**.
- (kk) “Project” means the Clackamas County Courthouse to be constructed on the Project Parcel, in Oregon City, Clackamas County, Oregon, pursuant to the Funding Agreement, the Act, and as more particularly described in the Project Application and in the Initial Technical Requirements.
- (ll) “Project Agreement” means that certain contract awarded by County to a Project Company to furnish labor, materials, equipment, supervision and other incidentals, required to obtain permits, design, construct, commission, partially finance, operate and maintain the Project under a public-private partnership project delivery approach between the County and Project Company (“P3 Approach”).
- (mm) “Project Agreement Costs” means any Authorized Costs incurred by County during Phase II under the terms of the Project Agreement.
- (nn) “Project Application” means that certain application for monies from the Fund to be used for the Project, submitted by the County to the Chief Justice on February 7, 2017 Agreement, supplemented by the County as more particularly described in Section 5(e) to reflect the current P3 Approach, and approved by the Chief Justice pursuant to a letter dated February 23, 2022.
- (oo) “Project Budget” means the budget for the design and construction of the Project, as developed by the County and approved by the State pursuant to the Funding Agreement.
- (pp) “Project Common Areas” means the areas of the Project, as generally described in the Initial Technical Requirements, that will be available for common use by the Project Occupants.
- (qq) “Project Company” means the company with whom the County enters into a Project Agreement .
- (rr) “Project Financing” means the total of the State Funds and the County Contribution.
- (ss) “Project Occupants” means the County, OJD and the Colocation Agencies and their respective employees, agents, tenants, contractors, guests and invitees.

- (tt) “Project Parcel” means that certain real property that is a portion of a larger parcel commonly known as the Red Soils Property, as shown on **Exhibit A**, and any improvements constructed thereon pursuant to the Funding Agreement.
- (uu) “Project Schedule” means the schedule for the design and construction of the Project, as developed by the County and Project Company and approved by the State pursuant to the Funding Agreement.
- (vv) “Project Work” means all work associated with the Project, for any Phase.
- (ww) “Real Property Termination Interest” means an interest in the Project and the Project Parcel, or in other real property owned by the County and any improvements thereon, that the State may accept from the County in lieu of Defeasance Costs pursuant to Section 29(b) below.
- (xx) “State Bonds” means any Oregon Constitution Article XI-Q general obligation bonds issued by the State for the Project; and any bonds or other obligations issued by the State to refinance the State Bonds.
- (yy) “State Default” means any of the occurrences set forth in Section 27(a) below.
- (zz) “State Leases” means the Colocation Leases and the OJD Lease.
- (aaa) “State Premises” means the Colocation Premises and the OJD Premises.
- (bbb) “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of OJD who will monitor and review the Project Work and compliance with the Funding Agreement as set forth herein.
- (ccc) “State’s Occupancy Readiness Milestone Payment” means the one-time payment to be made by the State to the County, pursuant to the Phase II Funding Agreement, as further described in Section 15 below.
- (ddd) “Technical Requirements” means the Initial Technical Requirements and any subsequent design and construction documents including all plans and specifications for the State Premises portion of the Project to be developed by a Project Company. Any subsequent design and construction documents including all plans and specifications shall be subject to approval by the County and State pursuant to the terms of the Phase II Funding Agreement. The Technical Requirements shall be consistent with the Initial Technical Requirements.
- (eee) “Trial Court Administrator” means the OJD employee named in the Project Summary and Contact Information above.
- (fff) “Unspent Funds” means any amounts of the Project Financing that the County fails to spend during a specific Phase.

4. Definitions: Phase-Specific. The following capitalized terms used in this Restated Agreement shall have Phase-specific meanings, to be set forth in any Phase Funding Agreement.

- (a) “Benchmarks” means specific deliverables for a specific Phase relating to that Phase Work.
- (b) “County Contribution” means that part of the Project Financing that the County agrees to provide for a specific Phase of the Project, which obligation is limited to 50% of the Approved Amount.
- (c) “Phase Completion Date” means the date the parties anticipate that a specific Phase will be completed.

- (d) “Phase Work” means the Project Work associated with a specific Phase.
- (e) “State Funds” means the not-to-exceed monetary contribution provided or to be provided by the State for a specific Phase, as specified or will be specified in each Phase Funding Agreement.
- (f) “State’s Proportionate Share” means the portion of the Authorized Costs that are eligible for payment by State Funds, representing that portion of the costs of a specific Phase that the State Premises bears to that specific Phase.

5. Background.

- (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) The Oregon Legislative Assembly, through the Act, has authorized the sale of Article XI-Q bonds to finance costs related to the acquisition of land for and construction of courthouses if:
 - (i) the Chief Justice determines significant structural defects of a courthouse threaten human health and safety, the construction of a new building is more cost-effective than remodeling or repairing the courthouse, and the replacement of the Existing Courthouse creates an opportunity for the colocation of other state offices in the courthouse; and
 - (ii) DAS approves the courthouse construction project for which the Article XI-Q bonds will be sold.
- (c) The Act also established the Fund, to hold monies to be used for courthouse construction projects.
- (d) On February 7, 2017, the County submitted the initial Project Application which set forth the County’s need for the Project and basic Project information.
- (e) On February 28, 2019, the parties entered into the Clackamas County Courthouse Master Funding Agreement, and the Clackamas County Courthouse Phase I Funding Agreement. The parties amended the Clackamas County Courthouse Phase I Funding Agreement on June 27, 2019, on June 30, 2020, and on June 30, 2021. Since the execution of the Clackamas County Courthouse Master Funding Agreement and the Clackamas County Courthouse Phase I Funding Agreement, the structure of the project delivery method for the Project has changed from a traditional design-bid-build to the use of a public-private partnership project delivery approach to design, construct, partially finance, and maintain the Project. On May 20, 2021, the Clackamas County Board of County Commissioners adopted Resolution 2021-27 that approved an exemption from the low-bid competitive bidding process for the Project and authorized the use of a public-private partnership delivery approach based on a competitive proposal process. To reflect the changes in the project delivery approach as well as to make other required updates, the parties now enter this Restated Agreement.
- (f) On [], the Chief Justice issued a letter [to the County making the determinations required by Section 5(b)(i); the cost-effectiveness determination made in the letter was subject to an estimated not-to-exceed \$95,700,000 State Funds amount for the Project.
- (g) The parties anticipate that the Project will be developed, funded, and built in two phases: Phase I (the Planning Phase) and Phase II (the Procurement, Design and Construction Phase).
- (h) As of the Effective Date of this Restated Agreement, the parties are completing Phase I and will be commencing Phase II Funding Agreement negotiations.

(i) The State is contributing the State Funds as a portion of the consideration for the leasehold interest in the State Premises that the County will convey to OJD and the Colocation Agencies pursuant to the State Leases.

(j) The Project will be constructed on the Project Parcel and will be designed and constructed in accordance with the Technical Requirements, as agreed to by the parties.

(k) The parties anticipate that the State Funds for the Phases will be as follows:

	Phase I	Phase II
Amount	\$ 1,200,000	\$94,500,000
Funding Source	General Funds	Article XI-Q bonds
Estimated Timeline	Fall 2018-Fall 2021	Spring 2023-2025

(l) The Legislative Assembly authorized State Bonds to fund the State’s Proportionate Share of the Phase II Authorized Costs in Senate Bill 5505 (Or. Laws 2021, ch. 658, effective July 27, 2021). However, the Legislative Assembly provided OJD with an expenditure limitation of \$1.00 for the Project in Section 61 of HB 5006 (Or. Laws 2021, ch. 669, effective August 6, 2021), i.e., providing only a placeholder for funding until further progress on Project documentation is completed.

(m) Notwithstanding Section 5(k) above, a condition precedent to the State’s obligation to contribute any State Funds to the Project is the execution of a Phase II Funding Agreement by the parties and expenditure limitation authorization by the Legislative Assembly.

(n) The parties estimate that, if they enter into Phase II Funding Agreement, the Project will be fully constructed and ready for occupancy and use by the Project Occupants on or before July 1, 2025 (the “Phase II Completion Date”), and otherwise complete by the Estimated Project Completion Date.

(o) In the event State Funds for any Phase derive from General Funds rather than from State Bonds, certain provisions set forth below in this Restated Agreement may not apply to those State Funds. In such event, the respective Phase Funding Agreement will set forth any particular provisions relating to such State Funds derived from General Funds.

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

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

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

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

(i) This Restated 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.

(ii) 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 Restated Agreement against the County regarding the Project or the Project Parcel.

(iii) The County's current employees 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 Restated Agreement, the County's then-current employees 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. Notwithstanding the foregoing, the parties may identify in any Phase Funding Agreement an individual employed by the County who may be eligible for any work or materials directly connected to the Project. The conditions under which the County may claim any work or materials directly connected to the Project by such an employee of the County as an Authorized Cost shall be set forth in the applicable Phase Funding Agreement.

(iv) The State will have no obligation to contribute any State Funds to the Project, except as specifically set forth in a Phase Funding Agreement and as authorized by the Legislative Assembly.

(v) The Project and Project Parcel shall be owned by the County at all times.

(vi) County shall keep the Project and the Project Parcel free from any liens, mortgages, security interests, charges, judgments, judicial awards, attachments or encumbrances of any kind (collectively "Encumbrances"). If any such Encumbrance shall at any time be filed against the Project or Project Parcel, or any portion thereof, County shall cause the same to be discharged of record or bonded off, as permitted by statute, within 30 days after County's receipt of written notice of same.

(vii) County shall ensure the above prohibition on Encumbrances is included in the Project Agreement and that Project Company is subject to same requirement as County.

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

(a) **Generally.** All matters related to the Project will be subject to good-faith collaboration between the parties and, with regard to the Colocation Premises, the Colocation Agencies. The parties shall use their best efforts to cooperate with each other and the Colocation Agencies in order to accomplish the timely completion of the Project Work. All matters related to the Project which may affect OJD or the Colocation Agencies operations or State Premises, including but not limited to changes affecting Project Budget, Project Schedule, and Technical Requirements, shall be subject to OJD approval, which approval requirements will be set forth in the Phase II Funding Agreement.

(b) **Meetings and Documents.** The County shall give OJD and the Colocation Agencies advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve material decisions related to the Project. If such material decision is related to the Project Budget or other Project financing matters, County also shall give DAS advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences). For the purposes of this Section 7(b), such notice to OJD shall be delivered to the Trial Court Administrator, and such notice to the Colocation Agencies shall be delivered to the

Colocation Contacts, in accordance with the notice provisions of Section 36 below. The parties acknowledge and agree that this subsection is not intended to apply to all Project discussions involving County staff that occur on a day-to-day basis; provided, however, the County shall keep OJD and Colocation Agencies staff reasonably informed and provide reasonable opportunity for OJD and Colocation Agencies staff to participate in material Project discussions throughout the Project.

(c) Resolutions of Disputes by the Parties. In the event of a dispute under this Section 7, the parties shall attempt in good faith to resolve the dispute within 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 7(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 30 Calendar Days after submission.

(e) Resolution by Mediator.

(i) If a dispute is not timely resolved pursuant to Section 7(d) above, then, if both parties agree to non-binding mediation, it may be heard by the Mediator, who will be chosen by the parties as follows: within 10 Business Days after the expiration of the 30 – day period set forth in Section 7(e) above, the County shall deliver to the State a list of at least three independent and experienced mediators, and within 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 10 Calendar Days after the selection of the Mediator pursuant to Section 7(e)(i) above, both parties shall submit position statements regarding the dispute to the Mediator; and within 30 Calendar Days after submission of the position statements, the Mediator shall issue a decision regarding the dispute.

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

(iv) Any decision by the Mediator shall be non-binding.

8. Overview of Application of State Funds. As set forth in Sections 12, 13, 14, and 15 below, the State’s monetary contribution for a specific Phase (i.e., the State Funds) will be calculated by taking the costs approved by the State Project Monitor (i.e., the Authorized Costs) and multiplying such amount by the State’s Proportionate Share to establish the Approved Amount. The Approved Amount shall be then multiplied by 50% to determine the amount of Authorized State Costs, such amount not to exceed the amount of the State Funds.

9. Overview of Application of County Contribution Deposit Requirement; County Contribution Calculation.

As set forth more fully in Sections 11 – 14 below, for each specific Phase:

(a) The County shall “deposit” the full amount of the County Contribution, through the direct transfer of funds to OJD into the Fund. Except as allowed under Phase II, such deposits shall be made before the State disburses State Funds to the County for the Authorized State Costs.

- (b) In calculating and applying the County Contribution, the following provisions apply to Phase I and any Non-Project Agreement Costs in Phase II:
- (i) The full amount of the County Contribution must be “credited” to the County, through disbursements of State Funds from the State for Authorized State Costs incurred by the County.
 - (ii) For every Disbursement Request approved by the State Project Monitor, 50% of the Approved Amount shall be credited to the County Contribution, and 50% of the Approved Amount shall be disbursed to the County and credited to the State Funds
 - (iii) Notwithstanding the amount of the County Contribution, the County shall pay for any and all costs of the Phase Work that exceed any amounts applied from the State Funds. Without limiting the prior sentence, the parties agree the County shall have no claim against the State for any amount that exceeds the State Funds.
- (c) In calculating and applying the County Contribution, the following provisions apply to all Project Agreement Costs incurred during Phase II:
- (i) County Contributions will be “credited” to the County under Section 11(c) below, based on approval of the Project Agreement amount by the State for Authorized State Costs incurred by the County.
 - (ii) Subject to the terms of Sections 11(c), Section 13 and 15 below, 50% of the Approved Amount from the Project Agreement shall be credited to the County Contribution, and 50% shall be credited to the Authorized State Costs. Payment of such Authorized State Costs with State Funds shall be in the form of the State’s Occupancy Readiness Milestone Payment.
 - (iii) Notwithstanding the amount of the County Contribution, the County shall pay for any and all costs of the Phase Work that exceed any amounts applied from the State Funds. Without limiting the prior sentence, the parties agree the County shall have no claim against the State for any amount that exceeds the State Funds.

10. Authorized Costs.

- (a) **Generally.** Authorized Costs are the County’s actual, reasonable and necessary capital costs of the Phase Work, which 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) **General Funds Exception.** If the State Funds for a specific Phase come from General Funds instead of State Bonds, the limitations in Section 10(a) above related to tax-exempt bond financings and financings with obligations bearing interest shall not apply to Authorized Costs.
- (c) **Specific Inclusions.**
- (i) Authorized Costs during Phase I and Authorized Costs comprising Non-Project Agreement Costs during Phase II include the following costs incurred by the parties, without limitation:

- (a) capital costs related to the Phase Work;
- (b) costs of the OJD attorneys, technical advisors, and legal professionals including but not limited to attorneys employed by the Oregon Department of Justice and the State’s bond counsel, and the State Project Monitor;
- (c) costs related to the Phase Work by project consultants, including technical advisors, financial advisors, legal advisors and the Independent Building Expert, for the County;
- (d) time spent working on the Project by any employees of the County who may be identified in a Phase Funding Agreement, 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 the County’s overhead (but may include fringe benefits); and that such charges may be capitalized pursuant to Section 10(a)(ii) above.

(ii) Authorized Costs comprising Project Agreement Costs during Phase II include only those capital costs related to the Phase Work incurred by the Project Company under the Project Agreement for which County is legally committed to reimburse Project Company.

(d) **Specific Exclusions.** For the avoidance of doubt, 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.

11. County Contribution: Deposits.

(a) **Generally.** To comply with Section 9(a), the County shall deposit the County Contribution as a direct transfer of funds as provided in Section 11(b) below, or through the execution of a Project Agreement with a Project Company committing the County to pay the full amount of the County Contribution as more particularly provided in Section 11(c) below. The County may deposit the full amount of the County Contribution in one or more installments and using any combination of deposits allowed under Sections 11(b) and 11(c) below.

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

- (i) The County may transfer to OJD for deposit in the Fund any amount of the County Contribution, in one or more installments.
- (ii) Within two Business Days after OJD’s receipt of any amount of the County Contribution transferred by the County into the Fund, 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 for deposit in the Fund pursuant to this Section 11(b) shall be “original” funds—in other words, the County shall not transfer the same funds to the Fund more than once.

(c) **Phase II - Execution of Project Agreement – Project Agreement Costs.**

- (i) The execution of a Project Agreement creating a legally binding commitment for the County to pay a Project Company to design and construct the Project may be used to trigger calculation of the amount of Authorized Costs comprising Project Agreement Costs for Phase II as detailed in Subsections 11(c)(iii) and (iv) below.
- (ii) If the County wishes to use the execution of the Project Agreement to establish calculation of such Project Agreement Costs, the County shall submit the following

documents to OJD:

- (a) an executed copy of the Project Agreement;
 - (b) written representation by County that the Project Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County, by the Project Company, in accordance with its terms; and
 - (c) written representation by the Project Company that the Project Agreement has been duly authorized by the Project Company and constitutes a valid and binding agreement of the Project Company that is enforceable against the Project Company, by the County, in accordance with its terms.
- (iii) Upon receipt of the documents in Subsection 11(c)(ii) above, the parties agree that the State Project Monitor shall calculate the Project Agreement Costs.
- (iv) Notwithstanding Section 9(a), the County's receipt of a credit for Project Agreement Costs will permit disbursement of the State's Occupancy Readiness Milestone as provided below before the County's actual deposit of the entire County Contribution is made into the Fund. Instead, the County agrees to make the required deposits and transfer of the entire amount of the County's Contribution to OJD for deposit in the Fund (and thereby making the credit permanent rather than provisional) for accounting and crediting purposes over the course of an estimated 30 years (unless and until the Act is amended to make such transfer no longer required).
- (v) Unless and until the Act is amended to no longer require the County to deposit all funds comprising its County Contribution with OJD, for all portions of County's payments to the Project Company under the Project Agreement that comprise part of County's Contribution, County shall first deposit such funds intended as payments to the Project Company with OJD for accounting and crediting purposes.
- (vi) Within two Business Days after OJD's receipt of any deposits into the Fund by the County constituting County Contribution pursuant to this Section 11(c), OJD shall transfer such amount into the County's account in the Local Government Investment Pool for purposes of making payment within five Business Days to the Project Company for the Project.
- (vii) Any and all funds that the County deposits with OJD into the Fund pursuant to this Section 11(c) shall be "original" funds—in other words, the County shall not transfer the same funds to OJD more than once.

12. County Contribution: Credits Phase I and Phase II Non-Project Agreement Costs.

- (a) **Generally.** In order to receive credits toward the County Contribution during Phase I and credits toward County Contribution for Non-Project Agreement Costs during Phase II, the County shall submit Disbursement Requests pursuant to this Section 12. The amounts that the County requests pursuant to Disbursements Requests shall be:
- (i) used to reimburse the County for payments that the County has previously made for Authorized State Costs of the Project; or

(ii) used by the County to pay to unrelated third parties no later than 5 Business Days after OJD makes the disbursement, as set forth in Section 12(e) below for Authorized State Costs of the Project that the County has incurred.

(b) **Credits Not to Exceed Deposits.** The total credits to the County for the County Contribution may not at any time exceed the total amount that the County has deposited with OJD into the Fund pursuant to Section 11(a) 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 D**, or as otherwise established in the applicable Phase Funding Agreement. 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 Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every 14 Calendar Days, and no less frequently than every 90 Calendar Days.

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

(i) the Disbursement Request complies with Sections 12(a) - (c) above; and

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

(e) **Approved Amounts.** For any amount set forth in a Disbursement Request that the State Project Monitor deems to be Authorized Costs pursuant to Section 12(d) above, then, after multiplying such amount by the State's Proportionate Share to establish the Approved Amount:

(i) 50% of the Approved Amount shall be credited toward the County Contribution.

(ii) 50% of the Approved Amount shall be disbursed to the County from the State Funds, pursuant to Section 14 below, and such amount shall be credited toward the State Funds.

(f) **Tracking Credits and Disbursements.** OJD shall keep current and accurate calculations of the credits to the County Contribution, County Contribution deposits into the Fund, credits towards the Authorized State Costs, and the disbursements from the State Funds.

(g) **Disapproved Amounts.** If the State Project Monitor determines that any cost shown on a Disbursement Request is not an 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 County Contribution, credited toward the Authorized State Costs, or disbursed to the County from State Funds. In the event the County objects to exclusion of any cost shown on a Disbursement Request, the parties will cooperate to resolve the objection as provided in Section 7 above.

(h) **Nonpayment for Work and Materials Accrued.** In the event of a disbursement of State Funds for an Approved Amount for work or materials already received or performed, the County shall, within 5 Business Days, pay the supplier or Project Company such Approved Amount. Any amounts that the County fails to promptly pay such supplier or Project Company constitute Unspent Funds.

(i) **Retainage: Phase I and Phase II Non-Project Agreement Costs.** OJD shall retain 5% of the Approved Amounts from the State Funds provided for in the Phase I Funding Agreement and from the State Funds provided for in the Phase II Funding Agreement for Non-Project

Agreement Costs. This retainage for Phase I shall not be disbursed to the County until the County has met the Benchmarks for Phase I, has deposited the full amount of the County Contribution for Phase I, and any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off. This retainage for Phase II shall not be disbursed to the County until the County has met the Benchmarks for Phase II, has deposited the full amount of the County Contribution comprising Non-Project Agreement Costs for Phase II, and any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off.

13. County Contribution: Credits Phase II Project Agreement Costs.

(a) Generally –Phase II Project Agreement Costs. As more particularly to be detailed in the Phase II Funding Agreement, the credit toward the County Contribution for Project Agreement Costs will occur upon the approval by the State Project Monitor of the Authorized Costs under the Project Agreement.

(b) Credits Not to Exceed Deposits. Except as provided in Section 11(c) above and Section 15 below with respect to credits related to payment authorization of the State's Occupancy Readiness Milestone Payment, the total credits to the County for the County Contribution may not at any time exceed the total amount that the County has deposited with OJD into the Fund pursuant to Section 11(a) above.

(c) Form and Frequency of Progress Reports. While not directly related to credits toward its County Contribution or Authorized State Costs, the County shall submit to the State Project Monitor, with the details outlined in **Exhibit B**, or as otherwise established in the applicable Phase II Funding Agreement monthly Progress Reports within 10 Business Days after the end of each month. The State Project Monitor review of each Progress Report shall be detailed in the Phase II Funding Agreement.

(d) Approved Amounts. For any amount that the State Project Monitor deems to be Authorized Costs pursuant to Section 13(a) above, then, after multiplying such amount by the State's Proportionate Share to establish the Approved Amount:

(i) 50% of the Approved Amount shall be credited toward the County Contribution.

(ii) 50% of the Approved Amount shall be credited toward the State Authorized Costs, not to exceed the State Funds. However, State Funds for the Authorized State Costs will not be disbursed prior to the State's Occupancy Readiness Milestone Payment and then only in accordance with Section 9(c) above and Section 15 below.

(f) Tracking Credits and Disbursements. OJD shall keep current and accurate calculations of the credits to the County Contribution, County Contribution deposits into the Fund, credits toward the required deposit of the County Contribution into the Fund, credits towards the Authorized State Costs, and the disbursements from the State Funds.

(j) Retainage: Phase II Project Agreement Costs. Pursuant to the P3 Approach in any Project Agreement, no disbursement of State Funds related to Project Agreement Costs under Phase II shall occur prior to State's Occupancy Readiness Milestone Payment, therefore, retainage for this portion of State Funds is not required for Phase II.

14. Disbursement of State Funds.

(a) Generally.

(i) For Phase I and for Phase II Non-Project Agreement Costs, the disbursement of State Funds to the County pursuant to Section 12(e) above is subject to the provisions of this Section 14.

(ii) For Phase II Project Agreement Costs, the disbursement of any State Funds for credited Authorized State Costs to the County pursuant to Section 13 above is subject to the provisions of this Section 14 and Section 15 below.

(b) Maximum State Funds. Unless the amount of the State Funds under any Phase Funding Agreement is increased after the effective date of that Phase Funding Agreement, the State's maximum monetary obligation for that Phase of the Project shall not exceed the State Funds. If the costs of a specific Phase of the Project exceed the Project Financing for that Phase, 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 for that Phase.

(c) Sufficient Appropriations. The disbursement of State Funds under Section 12(e) above or Section 15 below is 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 State Funds to the County (calculated at 50% 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 6 above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

15. State's Occupancy Readiness Milestone Payment.

As shall be further described and detailed in a Phase II Funding Agreement, the parties understand that a Project Company is anticipated to finance the entirety of the Project's capital costs pursuant to a Project Agreement during the design and construction phases and under such a P3 Approach no payments shall be made to the Project Company until all applicable Phase II Funding Agreement requirements and Benchmarks have been met, which requirements shall include both the State and the Independent Building Expert determinations concluding that the Project has been completed in accordance with the Technical Requirements and is ready for occupancy and use by the Project Occupants. Upon such determinations, the County will be subject to a valid, binding and enforceable obligation to commence payments to the Project Company. It is the parties' expectation that pursuant to the Phase II Funding Agreement and following the State's and the Independent Building Expert's determination described above, the State will make the single one-time payment to the County of the State's Occupancy Readiness Milestone Payment, which is estimated to be an amount not to exceed \$90,000,000. Upon the State's payment to the County of the State's Occupancy Readiness Milestone Payment, County shall promptly pay such amount to the Project Company. Notwithstanding the prior sentences, the actual amount of the State's Occupancy Readiness Milestone Payment shall be determined

pursuant to Section 13 above. It is the parties' expectation that the County Contribution related to the Project Agreement Costs, will have already been incurred and financed by the Project Company and shall have been determined by State's Project Monitor pursuant to Sections 9 – 11, and Section 13 prior to the determination of occupancy readiness. County's payment of County Contribution for the financing to the Project Company is estimated to be made over time, estimated as a 30 year term beginning after the State's Occupancy Readiness Milestone Payment is paid. The parties acknowledge and agree that such payments of the County Contribution shall, as and to the extent required by Section 11 above, be deposited by the County with OJD into the Fund from time to time over the 30 year payment term on a schedule mutually agreed upon by the parties. The State shall use reasonable efforts to determine all applicable Phase II Funding Agreement requirements and Benchmarks have been met, which requirements shall include the Project has been completed in accordance with the Technical Requirements and is ready for occupancy and use by the Project Occupants, so as to permit the State's Occupancy Readiness Milestone Payment to be disbursed to the County in a timely manner with the intent to be consistent with the Project Agreement.

16. Payment of State Professional Expenses.

(a) The OJD's attorneys and legal professionals, technical advisors, and the State Project Monitor shall charge their time to the Project on a time-spent basis, rather than as a percentage of the individual's total work for OJD, and such charges do not include OJD's overhead (but may include fringe benefits). Other State technical consultants and attorneys will be charged at their customary hourly rates. OJD shall deliver invoices to the County for State professional expenses at least quarterly to the extent there are any expenses to be invoiced to the County, and the County shall pay the amount due to OJD within 30 Calendar Days after delivery thereof. The parties acknowledge and agree the State will not invoice the County for any State professional expenses incurred prior to July 1, 2021.

(b) The County shall then submit a Disbursement Request to the State Project Monitor pursuant to Section 12(c) above, and the Authorized Costs from the OJD invoice amount shall be multiplied by the State's Proportionate Share to establish the Approved Amount, and:

- (i) 50% thereof shall be credited toward the County Contribution; and
- (ii) 50% thereof shall be disbursed to the County from the State Funds, pursuant to Section 14 above, and such amount shall be credited toward the State Funds.

17. Project Work.

(a) The County shall undertake the Project Work in accordance with Oregon law and for the purposes described in the Act and this Restated 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).

- (b)** The County shall contract with competent professionals for all Project Work and shall require all such professionals to possess and maintain all licenses, registrations, insurance, and bonds required by Oregon law.
- (c)** The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the Project Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, and 279C, and other applicable law and local contracting procedures. The County shall document all solicitations, selection and award processes used for contracting the Project Work.
- (d)** The County shall be responsible for:
- (i)** awarding and managing all contracts and property acquisitions necessary to complete the Project Work in accordance with the Project Application, as supplemented, approved by the Chief Justice and the Technical Requirements; and
 - (ii)** awarding and managing any Project Agreement with terms sufficient to ensure completion of the Project Work in accordance with the Project Application approved by the Chief Justice and the Technical Requirements.
- (e)** All subagreements that the County may enter into which are funded wholly or in part with Project Financing shall be subcontractual in nature, with the other party engaged in the role of a contractor. The County shall:
- (i)** actively administer all subcontracts with contractors to ensure that the terms of the subcontract are consistent with the terms of this Restated Agreement to ensure compliance with the terms of the subcontract, and to ensure the contractor's support for the intended purposes of this Restated Agreement and the Act; and
 - (ii)** actively administer any Project Agreement with terms sufficient to ensure that the terms of any subcontract are consistent with the terms of this Restated Agreement, and to ensure any contractor working on the Project supports the intended purposes of this Restated Agreement and the Act.
- (f)** The Project Work shall be performed in compliance with all applicable federal, state and local laws and ordinances.
- (g)** Neither execution of this Restated Agreement nor approval of the Technical Requirements by OJD or DAS shall be construed as a representation or warranty by the State that the Technical Requirements are in compliance with any building or other code or other applicable governmental requirements.
- (h)** The State and the Colocation Agencies and their employees, agents and representatives (including, without limitation, the State Project Monitor, the 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 times throughout the term of this Restated Agreement, and as otherwise required under this Restated Agreement, to inspect the work, operation and accounting records related to the Project.
- (i)** 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 Project Financing.

- (j) During the term of this Restated Agreement, the County shall:
 - (i) invite the State to participate in any meetings with proposers during the project procurement process;
 - (ii) deliver any interim proposals, final proposals, and proposal clarifications received from proposers during the procurement process;
 - (iii) invite the State and Colocation Agencies to participate in any meetings with the Project Company regarding the Project and the status of the Project Work;
 - (iv) deliver to the State any interim drafts of any Project Agreement, final Project Agreement, and any proposed revisions or amendments to any Project Agreement;
 - (v) deliver to the State any reports received from its technical advisor, WT Partnership, or from any Project Company regarding the status of the Project Work;
 - (vi) deliver to the State any reports received from the Independent Building Expert, regarding the status of the Project Work; and
 - (vii) promptly upon request, deliver to the State Project Monitor any additional requested information related to the Project Work in sufficient detail to enable the State Project Monitor to determine whether the Project Work is proceeding in a correct and timely fashion.
- (k) The County shall pay when due all claims for work performed on the Project Work by or through the County for services rendered or materials furnished to the Project. Where the County has entered into a Project Agreement to perform the Project Work, the County shall pay when due any applicable payment when due under the terms of the Project Agreement or this Restated Agreement. The County shall keep the Project and the Project Parcel free from any liens arising by or through the County or Project Company. 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 30 Calendar Days after the County's receipt of notice of same.
- (l) The Project will not be enrolled in the State Energy Efficiency Design (SEED) program.

18. Phase Funding Agreements. In order to memorialize the State's contribution of State Funds for Phases of the Project, and the parties' other obligations and understandings regarding those Phases, the parties shall enter into Phase Funding Agreements.

19. Terms and Conditions of Leases.

- (a) **Generally.** In the event the parties enter into the Phase II Funding Agreement, then during Phase II the parties shall finalize and enter into the OJD Lease, and the County shall enter into the Colocation Leases, in accordance with the provisions of this Section 19.
- (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) The State Leases shall grant OJD and to each Colocation Agency, as applicable, a full leasehold interest including the exclusive right to control and use the applicable portion of the State Premises.

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

(iii) During the initial 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 Agencies shall have the unrestricted first option to lease such portion, rent free, from the County.

(iv) OJD and the Colocation Agencies have the right, but not the obligation, to each extend the term of the State Leases. During any extension term, OJD shall not pay any rent, however the Colocation Agencies may be charged fair market rent for the Colocation Premises during any extension term.

(v) OJD and the Colocation Agencies shall, at their own expense, provide supplies, materials, equipment and other personal property necessary for their business operations (except for any furniture, fixtures and equipment that are part of the Technical Requirements).

(vi) The County shall, at its own expense, maintain, repair and replace the Project including, without limitation, the State Premises such as to provide for suitable and sufficient premises for OJD and the Colocation Agencies.

(vii) The County shall provide, at its own expense, all utilities and services, including, without limitation, maintenance and janitorial services, to the Project including, without limitation, the State Premises.

(viii) The OJD and Colocation Agencies shall not be granted access to the Project in the event the State fails to pay the State's Occupancy Readiness Milestone, unless such failure to pay is subject to a legitimate dispute between the parties.

20. 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 12(g) or 12(h) or Section 15 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 30 Calendar Days after receipt of the notice described in Section 20(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 County Contribution and the Authorized State Costs 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 Authorized Costs.

A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 20(b) shall constitute a County Default.

(c) **Resolution.** If the County disputes a determination made by the State Project Monitor under this Section 20, the County may utilize the dispute resolution procedures in Section 7 above to assist in resolving the dispute. Notwithstanding Section 20(b) above, during the period in which the State and the County are pursuing resolution of the dispute pursuant to Section 7

above, failure by the County to cure the Misspent Funds or the Unspent Funds shall not constitute a County Default.

21. Taxes and Assessments; Utilities. During the 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.

22. Tax Covenants. The following covenants by the County apply to any State Funds that arise from State Bonds:

(a) Generally. The County covenants for the benefit of the State and the owners of the State Bonds that it shall comply with all provisions of the Code which are required for interest on the State Bonds to be excluded from gross income for federal taxation purposes. In determining what actions are required to comply, the County and the Project Company, if necessary, may rely on an opinion of the State's bond counsel.

(b) Specific Covenants. The County makes the following specific covenants with respect to the Code:

(i) The County shall not take any action or omit any action that would cause the State Bonds to become "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.

(ii) The County shall, at the request of DAS, cooperate with DAS to provide information DAS may need to compute any arbitrage rebate payments which may be due from DAS in connection with the State Bonds.

(c) The County shall ensure that the Project Agreement shall include the terms of this Section 22. The County shall make reasonable efforts to ensure that the Project Company shall comply with the terms of this Section 22.

23. 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.

24. Insurance. Upon the commencement of any Project work upon the Project Parcel, and through the remainder of the term of this Restated Agreement, the County shall maintain, or cause the Project Company to maintain with the County named as an additional insured party, in full force and effect throughout the entire term of this Restated 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 Project Financing. Insurance proceeds from an insured loss affecting the Project or the Project Parcel shall be exclusively used to rebuild, repair and restore the Project and the Project Parcel in a manner consistent with the terms of this Restated 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 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 commercial general liability insurance obligations through its existing self-insurance program, provided 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 required insurance coverages.

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

- (a) The County fails to meet the Benchmarks by the Phase Completion Date.
- (b) The County fails to perform, observe or discharge any of its other duties or obligations under this Restated Agreement (except for curing Misspent Funds or Unspent Funds as set forth in Section 25(c) below) within 30 Calendar 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 20(b) above.
- (d) Any representation or statement made by the County in this Restated 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 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.

26. 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 Restated Agreement and at law or in equity, including but not limited to:

- (a) ceasing disbursement of State Funds;
- (b) terminating this Restated Agreement and/or any applicable Phase Funding Agreement;

- (c) recovering from the County any State Funds disbursed to the County from General Funds, or the Defeasance Costs for any State Funds disbursed to the County from State Bonds, within 60 Calendar Days after the termination;
- (d) bringing an action at law to recover damages incurred as a result of the County Default, in order to recover all State Funds disbursed to the County hereunder, with interest thereon; and
- (e) seeking any equitable remedies, including specific performance, which may be available to the State.

27. 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 undisputed amount as required by any applicable Phase Funding Agreement, and OJD fails to cure such failure within 30 Calendar Days after the County's 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 Restated Agreement other than one described in Section 27(a)(i) above, and such breach or default is not cured within 30 Calendar Days after the County's notice specifying the nature of the material breach or default with reasonable particularity; or, if such material breach or default cannot reasonably be completely remedied within such 30-day period, then within such longer times as the material breach or default can reasonably be remedied, in the County's reasonable discretion and as set forth in the notice to the State.

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

(i) terminate as applicable this Restated Agreement, and/or any or all Phase Funding Agreements;

(ii) bring an action at law to recover damages incurred as a result of the State Default;

(iii) bring an action at law in order to recover all County Contributions actually paid by County to State, not just provisionally credited, hereunder; and

(iv) pursue any or all of the remedies available to it under this Restated Agreement and at law or in equity.

28. Termination by State or County.

(a) 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 the Funding Agreement, OJD may immediately terminate this Restated Agreement without penalty or liability, effective upon the delivery of notice to the County.

(b) In the event the County fails to receive sufficient appropriations, expenditure limitations and other authorizations to permit the County in the reasonable exercise of its administrative discretion to continue making payments under the Funding Agreement, the County may immediately terminate this Restated Agreement without penalty or liability, effective upon the

delivery of notice to the State, except that in such event the Defeasance Costs shall be due pursuant to Section 28(c) below.

(c) In the event the County terminates this Restated Agreement and/or any applicable Funding Agreement for any reason, County shall repay to the State the Defeasance Costs for any State Funds disbursed to the County from State Bonds under the Funding Agreement within 60 Calendar Days after the termination.

29. Defeasance Costs.

(a) Generally.

(i) The County has no obligation to pay Defeasance Costs except where specifically provided for in this Restated Agreement.

(ii) Upon the request of the County, the State shall promptly provide to the County a calculation of the Defeasance Costs as of a specific date.

(iii) In the event the amount of Defeasance Costs paid by the County hereunder exceeds the State's actual Defeasance Costs, the State shall refund the excess to the County within 30 Calendar Days after the defeasance is accomplished. If the amount of Defeasance Costs paid by the County to the State is less than the State's actual Defeasance Costs, the State shall so notify the County and the County shall pay the deficiency to the State within 30 Calendar Days after the State notifies the County.

(b) **Real Property Termination Interest.** If the County, in its reasonable discretion, is not able to directly pay the State the Defeasance Costs or any portion thereof as maybe required herein, the County may convey to the State a Real Property Termination Interest in accordance with this Section 29(b). The proposed Real Property Termination Interest that the County proposes to convey shall be equal to or greater than the unpaid Defeasance Costs, and must be acceptable to the State, in the State's sole discretion. If acceptable to the State, the County shall convey the Real Property Termination Interest to the State pursuant to a Statutory Warranty Deed under ORS 93.850. Such Real Property Termination Interest shall be conveyed free of any and all Encumbrances. County shall be responsible for all costs related to conveying the Real Property Termination Interest to the State including, without limitation, all closing costs and title insurance. Further, the County shall provide to the State any documentation requested by the State to substantiate the value of the Real Property Termination Interest or to otherwise affirm the condition of the Real Property Termination Interest.

30. 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 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 30(a), 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 30(a) with respect to the Third-Party Claim.

(b) State Contribution. With respect to a Third-Party Claim for which State is jointly liable with the County (or would be if joined in the Third-Party Claim), State 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 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 State 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. State's 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 County is jointly liable with the State (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 the State in such proportion as is appropriate to reflect the relative fault of 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 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. 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. The parties shall take all reasonable steps to cause their contractor(s) that are not units of County or the State as defined in ORS 190.003, if any, to indemnify, defend and hold harmless the other party and their officers, employees and agents (the "Indemnatee") 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 Indemnatee shall, subject to ORS 30.140 with regard to Third Party Claims, in all instances, except for claims arising from the negligent or willful acts or omissions of the Indemnatee, be indemnified by the contractor from and against any and all claims to the extent the damages are caused by their fault.

31. 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.

32. Parties; No Third-Party Beneficiaries. DAS, OJD and the County are the only parties to this Restated Agreement and are the only parties entitled to enforce its terms. Nothing in this Restated 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 Restated Agreement. Colocation Agencies are not parties or third-party beneficiaries to this Restated Agreement. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Restated Agreement.

33. 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 Restated Agreement. The provisions of this Restated Agreement shall be binding upon and shall inure to the benefit of the parties, and their respective successors and permitted assigns, if any.

34. 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 Restated 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-2 , 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 34(a).
- (b) The County shall ensure that any architectural or engineering services contract, Project Agreement, construction or CM/GC contract and all of the first-tier subcontracts for Project Work or materials resulting from this Restated Agreement shall include the terms of this Section 34. The County shall make reasonable efforts to ensure that all contractors, including the subcontractors of the Project Company, performing Project work or providing materials under contracts resulting from this Restated Agreement shall comply with the terms of this Section 34.

35. Records Maintenance; Review and Audit.

- (a) The County shall maintain all financial records relating to this Restated Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to this Restated 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 Restated 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 35(c) below.
- (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 three years after maturity of the State Bonds, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Restated Agreement.
- (d) The County shall ensure that any architectural or engineering services contract, Project Agreement, construction or CM/GC contract and all of the first-tier subcontracts for Project Work or materials resulting from this Restated Agreement shall include the terms of this Section 35. The County shall make reasonable efforts to ensure that all contractors, including the subcontractors of the Project Company, performing Project work or providing materials under contracts resulting from this Restated Agreement shall comply with the terms of this Section 35.

36. Notice.

- (a) **Generally.** Any notices, demands, deliveries or other communications required under this Restated Agreement shall be made in writing and delivered by one of the methods set forth in Section 36(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 Restated 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	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 3 Business 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 Restated Agreement for delivery of a notice is not a Business Day, such deadline shall be deemed extended to the next Business Day.

37. Severability; Waiver.

(a) Severability. If any term or provision of this Restated 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 Restated 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 Restated Agreement shall not constitute a waiver of that or any other provision.

38. Governing Law; Venue; Consent to Jurisdiction. This Restated 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 Restated 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 38 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.

39. Attachments. All attachments, addenda, schedules and exhibits which are referred to in this Restated Agreement are incorporated in this Restated Agreement.

40. Ambiguities. Each party has participated fully in the review and revision of this Contract 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 of the Contract.

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

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

- (a) 17 – Project Work;
- (b) 22 – Tax Covenants;
- (c) 25 – County Default;
- (d) 26 – State’s Remedies for County Default;
- (e) 27 – State Default and County’s Remedies for State Default;
- (f) 29 – Defeasance Costs
- (g) 30 – Parties’ Contribution for Third-Party Claims; Indemnification;
- (h) 32 – No Third-Party Beneficiaries;
- (i) 33 – Subcontracts, Successors and Assignments;
- (j) 35 – Records Maintenance; Review and Audit;
- (k) 36 – Severability; Waiver;
- (l) 38 – Governing Law; Venue; Consent to Jurisdiction; and
- (m) Any other provision of this Restated Agreement that by its terms is intended to survive.

43. Entire Agreement; Amendments.

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

(b) **Amendments.** No amendment, waiver, consent, modification or change of terms of this Restated 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.

[remainder of page intentionally left blank]

The State and the County, by execution of this Restated Agreement, each hereby acknowledge that each has read this Restated 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: _____
Wendy Johnson, Sr. 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: _____

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: _____

Clackamas County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

_____, COUNTY ATTORNEY
FOR CLACKAMAS COUNTY, OREGON

By: _____
_____, Assistant County Counsel

Exhibit A

Red Soils Parcel and Project Parcel Description

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.

Map:

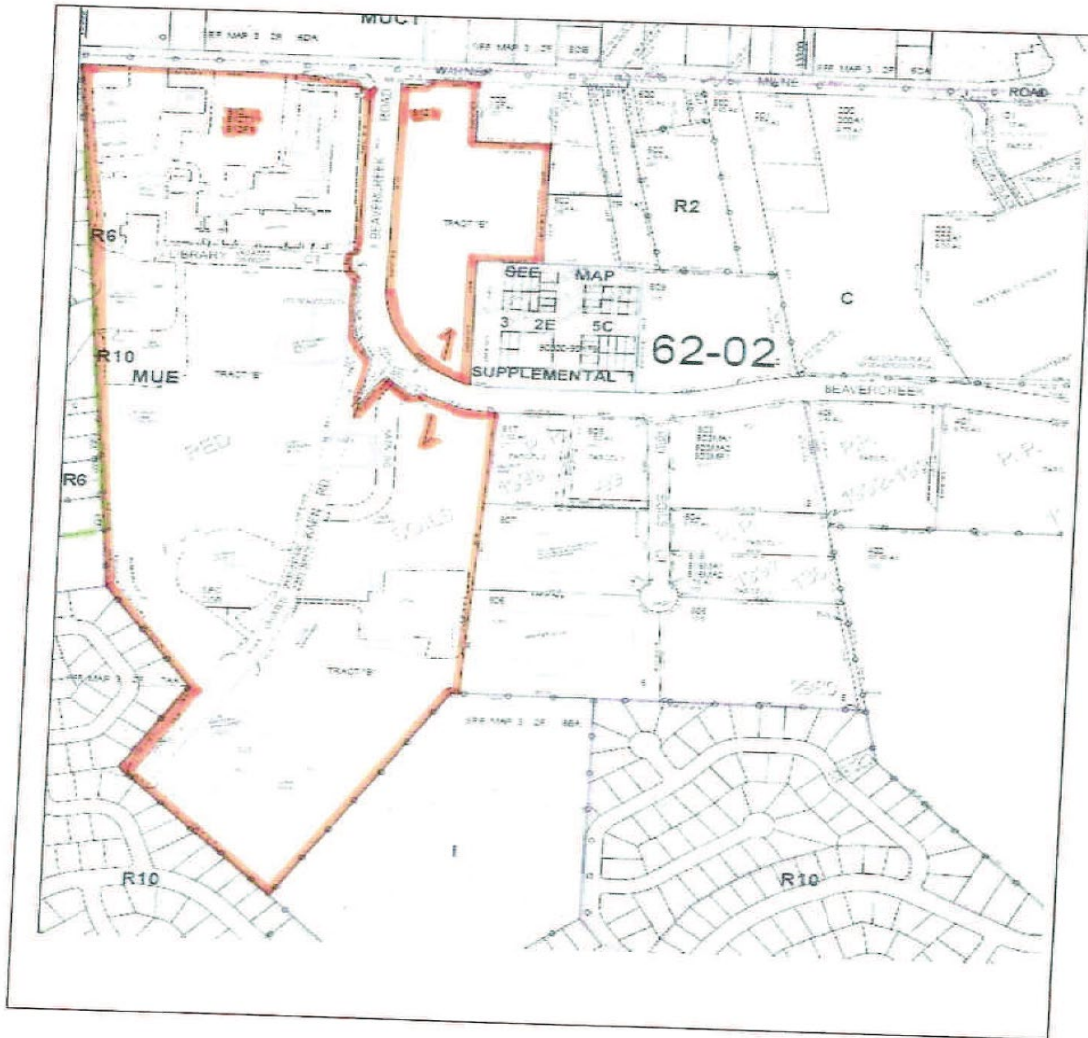


Exhibit B

Progress Report Contents

Each Progress Report shall at a minimum:

- a. describe the progress for the ongoing phases of the Project Work;
- b. include any Project Schedule reports;
- c. identify schedule activities planned for the upcoming period;
- d. identify critical path issues and proposed resolution;
- e. identify problems and issues that arose during the period from the submission of the previous month's Progress Report and the submission of the current month Progress Report, including their status;
- f. summarize resolution or mitigation raised in previous Progress Reports and their status;
- g. include a monthly quality report;
- h. include any environmental noncompliance and remediating or mitigating actions;
- i. identify any unexpected environmental occurrences during the period from the submission of the previous month's Progress Report and the submission of the current Progress Report, including a summary of their resolution, mitigation and/or status;
- j. include a list of change orders or amendments identified or executed during the period from the submission of the previous month's Progress Report and the submission of the current Progress Report, including their status;
- k. identify any events that have resulted in an amendment to the Project Agreement during the period from the submission of the previous month's Progress Report and the submission of the current month's Progress Report, and describe status; and
- l. identify requested and/or required actions by the State for the next month.

The OJD's receipt and review of the monthly Progress Reports shall not imply OJD approval or consent to any of the matters set forth therein. Without limiting the prior sentence, OJD receipt and review of the monthly Progress Reports shall not in any way limit OJD's rights to review and approve that the Project has been completed in accordance with the Technical Requirements and is ready for occupancy and use by the Project Occupants and that the Occupancy Readiness Milestone Payment is due.

Exhibit C

Courthouse Design Criteria

I. General Facilities Design Assessment Criteria

1. Building Configuration

- High public contact functions are located on lower floors.
- Functions not requiring substantial public contact are located on upper or below ground floors.
- Functions requiring higher security levels are located on upper or below ground floors.
- Internal circulation patterns for in-custody cases are located in three separate and distinct zones: public; private (for court staff); and secured circulation for in-custody persons. (See Section IX)

2. Public Service Requirements (including Fire, Life, Safety)

- Main public entrance accommodates anticipated public traffic.
- Public waiting areas:
 - Include sufficient comfortable seating.
 - Located close to areas of highest public use.
 - Have easy access to restrooms, water fountains and telephones.
 - Sized in proportion to the population to be served.
 - Configured to minimize noise transmission to courtrooms.
- Signs, Directions:
 - Directional and informational content is incorporated into the design of all public areas.
 - A building directory is located near each public entrance.
 - A building directory features a diagram that lists all the building's major components.
 - Informational signs are multi-lingual, as appropriate.
 - Braille lettering and audio signals are provided at elevators.
- Information kiosk or counter:
 - Located in a highly visible place near the main entrance.
 - Provides direction and basic information.
 - Provides an automated system using touch screen technology connected to the Local area network.
- Court calendar information:
 - Posted in the information area.
 - Video monitors used (large court facilities).

3. General Office and Workstation

- General Office Guideline (in square feet)
Per staff member; includes work space, files, office equipment, conference; training and reception areas. 250 - 280
- Workstation Sizes (in square feet)

(Type)	(Workstation)	(Private Office)
Staff/Technical	50-80	
Supervisory	80-100	100-120
Management		120-250
Executive		200-250

4. Provisions for Persons with Disabilities

- All areas of the court facility meet all state and federal ADA requirements (The courts have completed extensive ADA Assessment surveys evaluating compliance with applicable requirements).

5. Security and Public Safety

- Building security (See Section VIII)
 - External video surveillance cameras positioned at each pedestrian and vehicular entrance.
 - Building entrances configured with unobtrusive security barriers.
 - Grounds configured to inhibit access of unauthorized vehicles.
 - No public parking adjacent to structures containing courtrooms or court support areas, if allowed by City.
 - At least one courtroom is equipped for high risk trials.
 - Air intake vents for the HVAC system are secured from public access.
- Public Safety
 - Building complies with all relevant fire codes (adequate fire protection and fire alarms).
 - Emergency power and lighting capacity are provided.

6. Seismic Safety

- The structure of the building complies with relevant seismic safety codes.
(A full-scale evaluation is outside the scope of this assessment).

7 Heating, Ventilating and Air Conditioning (HVAC)

- HVAC system meets all code requirements.
- Systems are able to maintain temperatures between 66 and 78 degrees Fahrenheit.
- Each courtroom has an individual thermostatic control for its heating and cooling provided by the buildings central HVAC control system.
- Adequate fresh air and exhaust ventilation in areas subject to dense occupation (i.e., courtrooms).
- HVAC system sound transmissions have been minimized.
- HVAC system ductwork incorporates sound deadening technology between rooms that require private conversations (jury rooms, judges' chambers, and attorney client conference rooms).

8. Plumbing and Electrical

- Plumbing
 - All restroom facilities and drinking fountains meet building codes.
 - Separate restroom facilities are provided for the public, judicial staff, and in-custody defendants.
- Electrical
 - Electrical systems meet building codes.
 - Sufficient electrical capacity and quality are provided to accommodate anticipated future needs.
 - Electrical capacity meets total connected load requirements plus 25 percent for future load growth.

9. Information Systems and Communications

- Also See Section X
- Designated computer or telecommunications rooms (Larger Court facilities) with increased cooling capacity, separate or redundant power and located to reduce the risk of flooding
- Designated room has sufficient cooling not to exceed 82 degrees Fahrenheit.
- Designated room has controlled access including access controls.

10. Lighting

- Sufficient lighting in all building areas to conduct business.

11. Acoustics

- Minimizes intrusive noise.
- Allows accurate hearing and recording of proceedings.
- Allows access to the court by the hearing impaired.

12. Parking; Vehicular and Pedestrian Access

- Provides secured parking for judges and supervisory court staff.
- Passenger loading and short term parking areas are provided near to but at a safe distance from courthouse entrances.
- Loading zone area provided for delivery vehicles that do not need to use the loading dock, if allowed by City.
- All deliveries to courts required to go through x-ray screening.
- Access to the courthouse meets ADA requirements.
- Building provides a single primary public entrance to the courts area.
- Lobby is large enough to accommodate all visitors during peak periods.
- Metal detectors and x-ray equipment are placed in the circulation path from the entrance.

13. Building Support Services

- Court facility incorporates space for the following functions:
 - First aid station
 - Food services or vending
 - Loading dock
 - Supplies and equipment storage
 - Maintenance shops and office
 - Custodial supplies and storage and
 - File shredding area

II. Courtroom Assessment Criteria

1. General criteria

- Courthouse has at least one large courtroom to accommodate large trials and other kinds of public functions.
- Courtrooms sized and configured to accommodate the type of proceedings assigned to the room.
- Courtroom is composed of 2 components: the litigation area; and the spectator seating area
- The parties in any proceeding are able to clearly see and hear the witness, jury, judicial officer and counsel
- Courtroom is configured to protect witnesses and jurors from intimidation.
- Courtroom is configured to ensure appropriate confidentiality for attorneys and judicial officers.

2. Courtroom Size Criteria (NSF is net square feet)

- Ceiling heights are proportional to the size of the room.
- The size of the courtrooms:

Type	Litigation area			S	spectator area			Total Square Feet
	NSF	Width	Length	Seating	NSF	Width	Length	
Non-jury civil/juvenile/family	840	30	28	20-40	260-360	30	varies	1,100-1,200
1 2-person jury	1,152	36	32	30-60	348-648	36	Varies.	1,500-1,800
High volume/multititigant	1,360	40	34	100-150	840-1040	40	varies	2,200-2,400

3. Courtroom areas

- Judicial officers bench:
 - Has an unobstructed view of the entire courtroom.
 - Is elevated so that the occupant's seated eye level is higher than anyone standing.
 - Accommodates computer (including sufficient space for multiple monitors), telephone, data transmission equipment, and writing desk.

- Courtroom clerk's station:
 - Is adjacent to the bench and accessible to counsel.
 - Has adequate space for placement of in-process forms, exhibits and other essential materials.
 - Is cable-ready for computer terminals, has telephone, electrical outlets and audio controls.
- Witness stand:
 - Witness has clear facial view of the judge, jury, parties, court reporter and counsel
 - The chair is height adjustable and easily removable to accommodate wheelchair access.
 - The stand is on a level between the floor of the litigation area and the judge's bench.
 - The stand is large enough to accommodate an interpreter.
- Jury box:
 - Each juror has clear sight lines to the witness, counsel, judge and evidence display areas.
 - Has physical separation from the spectator and counsel areas.
 - Is large enough to comfortably seat the full number of jurors needed for trial.
- Counsel area:
 - Has at least two tables positioned so attorneys can be seen and heard by other attorneys, the judge, the witness and the jury.
 - Tables placed far enough apart to allow private conversations between attorneys and clients.
 - Tables provide electrical outlets and connections to accommodate computers and internet.
 - Tables and table areas are large enough to accommodate interpreters.
- Spectator area:
 - Provides seating for witnesses, family and the public.
 - The area is separated from the litigation area in a manner that controls movement.
 - The area is sized to accommodate the jury panel during jury selection.
 - Space is reserved for wheelchairs.
- Other Areas and Features:
 - Court reporter area is situated so that anything said by participants can be heard; reporter has access to electrical outlets.
 - Bailiff's station is situated to enable the occupant to see all persons in the courtroom.
 - Exhibit display and equipment is located to be clearly visible for all court participants.
 - Silent duress alarms are located in the judges' bench, courtroom clerk and bailiff areas.
 - Assisted listening devices are available.

III. Judicial Offices and Support Space

1. Judicial offices

- Accessible only from a private corridor.
- Chambers, either clustered or adjacent to courtrooms, are provided to each judicial officer.
- Each chamber is equipped with a silent duress alarm.
- Chambers are a minimum of 350 net sq. ft. (not including restroom).
- Chambers have adequate sound insulation
- Judicial offices have access to non-public restrooms.

2. Support Space

- Support staff workstations/reception/waiting areas are adjacent to chambers.
- Work areas for court reporters, law research clerks, bailiffs are provided.

IV. Jury Assembly and Deliberation

1. Jury Assembly

- Jury assembly room/information presentation area
 - Sufficient seating for all prospective jurors:
 - a. 8 to 12 square feet per person for -theater style seating;
 - b. 15 to 20 square feet for accommodate lounge-type seating.
 - Areas for reading, studying, working and watching television are provided.

- Working areas are provided with data connections and electric power for computers.
- Public telephones, restroom facilities, and coatrooms are adjacent to the jury assembly room.
- Movement of jurors minimizes contact with attorneys and litigants.
- Jury reception/check-in area
 - A silent duress alarm is provided at the desk.

2. Jury deliberation room

- Ratio of jury deliberation rooms to courtrooms is one to two.
- Located on restricted corridors.
- Can comfortably accommodate 14 jurors.
- Allows use of charts, exhibits, and video monitors.
- At least 350 net sq. ft., exclusive of restroom and refreshment areas.
- Acoustically designed so that conversations cannot be heard outside the room.

V. Court Administration

1. General Considerations

- The court administration area is designed to ensure the efficient flow and processing of work.
- Court administrative offices are connected to both public and private corridors.
- Duress security alarms are in appropriate sites.

2. Court Administration Area

- General work area and miscellaneous support
 - Includes a work area for sorting mail and for copying equipment.
 - Work space is provided for all appropriate staff and for records that are in use.
- Public service counters
 - General office areas are separated from public areas.
 - Counters are designed for efficient exchange of public documents.
 - Counters are capable of accepting and electronically processing documents via electronic scanning.
 - The public area outside the counter provides at least 10 feet between the counter and the entrance for queuing.
 - A public area for viewing records is provided adjacent to the counter; secure and visible to staff.
 - Public area has a controlled access terminal or workstation capable of providing service to the public for research and general court functions.
 - Security glass, or other methods for insuring that the public remains outside of office area, is in place at service counters.
 - Duress security alarms are placed in appropriate sites and integrated into the courthouse security system.
- Records storage
 - Sufficient space is provided for records storage and retrieval.
- Exhibit/evidence storage
 - Secure areas are provided for storage of exhibits.
 - Separate secure area is provided for storage of evidence.

VI. Court Support

1. Children waiting area.

- Area includes adequate storage for toys, games and books, easy access to restrooms with diaper changing stations, and space for staff or volunteers.
- Area has electrical capacity and power for VCR/DVD viewing

2. Court facilitator services area

- Court program areas (i.e. for prose litigants) are located in areas convenient to the public.

- Areas have space adequate to fulfill functions.
3. **Attorney client conference rooms**
 - One conference room per two courtrooms is provided for attorney use.
 - The rooms accommodate a table and four chairs.
 4. **Waiting areas for adverse parties**
 - Areas are divided so that adverse parties are separate from one another.

VII. Alternative Dispute Resolution

Note: With the exception of Marion County, dedicated space for provision of these services is not a part of the courthouse facilities provided in Oregon. However, for courts with increasing family court, small claims, domestic relations and FED mediations, adequate dedicated space is a consideration.

1. Mediation Services

- Mediator offices accommodate up to six individuals, and have sound absorbent walls.
- Reception/waiting areas provide separate areas for different parties.
- Large mediation room accommodates larger family groups and allows involvement of additional staff.
- Mediation area provides a waiting area for children, located in a secure place, and an equipment storage area.
- Mediation area includes some kind of duress alarm system.

VIII. Court Security

1. Building perimeter, site and parking assessments:

- Architectural barriers to protect entrances.
- Surveillance cameras at entrances and exits.
- Illuminated circulation around building and parking lot.
- Illuminated parking lots.
- Tamper resistant utility connections to building
- Low height landscaping
- Secured parking for judges
- Surveillance cameras in parking lots

2. Building entrances assessments:

- Surveillance cameras
- Security weapons screening
- Intrusion detection alarms
- High security door locks
- Intercom system at entry door
- Visual monitoring of entrance
- Controlled access to loading dock
- Screening equipment for incoming packages
- Key car or other electronic device for non-public access doors.

3. Public waiting areas assessments:

- Limited ability to hide contraband
- Controlled public access to secured rooms
- Surveillance cameras

IX. In-Custody Defendant Areas

1. Remote Video Communication.

- Facility is equipped with remote video connections between the court facility and the detention facility.

2. In-Custody Receiving, Holding and Transportation components:

- Vehicle sallyport
- Security vehicle parking
- Pedestrian sallyport
- Initial holding cell and search area
- Control center
- Central holding cell
- Lunchroom or access to eating area
- Dress-out, property and clothing storage
- Attorney interview space
- Secure elevators and corridors
- Courtroom holding cells

X. Facilities Technology Recommendations

1. Power

- Individual electrical receptacles for each technology component without the use of extenders
- Backup power supplies (UPS) sufficient to provide 15 minutes of battery power in the event of power interruption to critical technology components
- Electrical power to computer server rooms capable of supporting a minimum of 10 individual components
- All power used for technology resources should be properly conditioned and filtered to allow for the highest level of efficiency.
- Rack-mounted backup power (UPS) sufficient to provide 30 minutes of battery power in the event of power interruption to all critical network components such as switches and routers, video units, electronic recording and media or file servers.
- Dedicated electrical circuits for computer and technology components at a minimum of 20 amps per circuit.

2. Voice/Data

- Minimum of 2 recessed data-ports on separate circuits, for each workstation or laptop computer
- Minimum of 2 recessed voice-ports capable of supporting, both analog and digital voice circuits at each individual work area
- Network cable to support 100mb/s certified data thru-put adhering to current standards for low-voltage cable installation.
- Minimum network switch capacity to handle total number of required connections plus twenty percent additional load.
- Network switch and routers capable of up to 1Gb/s loads.
- Provisioning of cable pathways to allow easier cable changeover to accommodate improvements in data technology
- Network switches operating at 1Gb-10Gb speed and cabling capable of supporting Power Over Ethernet (POE)
- Isolated data circuits in each courtroom and conference room dedicated for video streaming and video conferencing with voice.
- Ceiling oriented network data-ports and power capable of supporting wireless network access components

Exhibit D
Form of Disbursement Request

[For use with the Phase I and Phase II Non-Project Agreement Costs only.]

Disbursement Request Number: _____
[number Requests sequentially for ease of tracking]

Dated: _____

Project Title: Clackamas County Courthouse

Phase: _____

Funding Source: _____

Funding Agreement: Clackamas County Courthouse Phase ____ Funding Agreement
between OJD, DAS and Clackamas County dated
_____ (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 and the Clackamas County Courthouse Amended and Restated Master Funding Agreement ("Restated Agreement").

On behalf of Clackamas County (the "County"), I hereby request a total disbursement of \$_____ pursuant to the Phase ____ Agreement, 50% of such amount to be credited to the County Contribution for the Phase set forth above, and the other 50% of such amount to be disbursed to County from 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 Authorized Costs for the Phase set forth above, pursuant to the Phase ____ Funding 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 Authorized State Costs of the Project; or
 - (b) to pay to unrelated third parties no later than 5 Business Days after OJD makes the disbursement, for Authorized State Costs of the Project that the County has incurred.
3. The parties agree that the total amount credited to the County Contribution pursuant to Section 12 of the Restated Agreement must be equal to or greater than the total 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



OREGON SUPREME COURT

February 23, 2022

The Honorable Tootie Smith
Chair, Clackamas County Board of Commissioners
2051 Kaen Road
Oregon City, OR 97045

Dear Chair Smith:

I am pleased to approve Clackamas County's application, as supplemented, for state funding for a new Clackamas County Courthouse. Additional approvals and agreements will be needed to authorize the sale of state bonds to support the project, which are explained below.

In order to approve this project as eligible for state bond matching funds, I have made the following determinations as required by Oregon Laws 2013, ch. 705, section 8(2)(a)(A):

1. **The current courthouse has significant structural defects that present actual threats to human health and safety.** The county's application documented the seismic deficiency of the current courthouse, including susceptibility of soil liquefaction due to the site's location. While this alone is sufficient to meet this statutory requirement, I also find that the county's application identifies structural deficiencies, significant space inadequacies, emergency exiting deficiencies, security deficiencies, flooding risk, ADA inadequacies, and the presence of asbestos that present other imminent and actual threats to human health and safety.
2. **Replacing the current courthouse is more cost-effective than remodeling or repairing the courthouse.** The current courthouse is more than 80 years old, needs to be significantly expanded and improved in order to meet current standards and future court needs, and sits on an unstable bank of the Willamette River in downtown Oregon City. This combination of circumstances, as documented by the county's application and studies and summarized in Board Resolution 2019-11, support a finding the replacing the courthouse is the most cost-effective option.

In brief, those assessments show the existing mechanical and electrical systems are severely lacking and that replacing those systems will be expensive, intrusive and potentially infeasible. The application estimates that the current courthouse is deficient by more than 16,000 square feet of program space for judges, court staff, the public, and adults in custody.¹ The current site

¹ Clackamas County New Courthouse Oregon Judicial Department Application, February 17, 2017, p. 9.

offers limited, potentially dangerous, and cost-prohibitive opportunities for expansion. Multiple reports describe the inadequacies of the existing site.²

Construction of a new courthouse on the Red Soils Parcel would take advantage of previous infrastructure improvements made by the county for the intended location of a future court facility.³ Further, the site already houses other court-related public services, including the juvenile department and county jail.

This cost-effectiveness determination is subject to the present estimated not-to-exceed \$95,700,000 State Funds amount for the project.

- 3. Replacing the courthouse provides an opportunity for co-location of the court with other state offices.** Both the County's application and the Master Funding Agreement document plans to co-locate the Office of Public Defense Services and the Oregon Department of Human Services in the new facility. Both of these offices engage with the court on a regular basis, and co-location will improve services to the public.

The County requests state matching funds for space that would be "owned or operated" by the State of Oregon after completion of the project by a Project Company through a P3 (public-private partnership project delivery approach) agreement. As you know, although Clackamas County is the first Oregon courthouse project to use P3 approach, the Oregon Department of Administrative Services and Oregon Judicial Department have received legal advice that concludes that a P3 approach meets the statutory and constitutional requirements for matching Article XI-Q bond financing, if the detailed requirements are met.

Because the final courthouse project depends on the Project Company the county will select, final approval needed for the state bond sale will rely on a review of the county's technical requirements for the new building, fully executing a Master Funding Agreement and any necessary additional funding agreements, confirmation that the final project design meets the technical requirements, and approval by the Department of Administrative Services. We are developing processes and agreements in place to ensure the timely approval of these subsequent steps.

I appreciate the immense amount of work it has taken to move from demonstrated need, to a vision, to a thoughtfully constructed plan. I look forward to our continued partnership as the P3 process progresses and the agreements continue to take shape to provide a safe and suitable courthouse facility for the residents of Clackamas County.

Sincerely,



Martha L. Walters
Chief Justice

² See Carlson Geotechnical Report, October 2011 and Creekside Environmental Consulting Technical Memorandum, November 16, 20215. See also Clackamas County Board Resolution No. 2019-11.

³ Clackamas County New Courthouse Oregon Judicial Department Application, February 17, 2017, p. 10.

ec: Michael C. Wetzel, Presiding Judge
Kathie Steele, Circuit Court Judge
Debbie Spradley, Trial Court Administrator
Nancy Cozine, State Court Administrator
David Moon, Director of Business and Fiscal Services
Wendy Johnson, Department of Justice
Rhonda Nelson, DAS Capital Finance
Gary Barth, Courthouse Project Manager
Nate Boderman, County Counsel