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July 7, 2022

Board of County Commissioners
 Clackamas County

Members of the Board:

Adoption of an Order Authorizing a Project Agreement for the Design, Construction, Partial Financing, Operation and Maintenance of the Clackamas County Circuit Courthouse Between Clackamas County and Special Purpose Entity Formed by Fengate PCL Progress Partners

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| Purpose/Outcomes | Adoption of an order authorizing a project agreement with a special purpose entity formed by Fengate PCL Progress Partners related to the Clackamas County Courthouse Replacement Project. |
| Dollar Amount and Fiscal Impact | <ul style="list-style-type: none"> • Total project cost: Approximately \$313 million. <ul style="list-style-type: none"> o State Contribution - \$94.5 million bonds plus \$1.2 million State General Fund (50% match on Courthouse cost). The Oregon Judicial Department has committed to request an additional \$61 million in state bond funds, which would result in a total state contribution of up to approximately \$156 million. o Total County cost of the project – balance remaining after any state contribution, currently estimated to be approximately \$158 million. |
| 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 30 years after building occupancy, which is anticipated to occur in May, 2025. |
| Previous Board Action | 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, 11/2/21 and 6/29/22. Business Meetings: 2/14/19, 2/21/19, 5/20/21, 6/30/22. |
| Strategic Plan Alignment | 1. <i>Build public trust through good government.</i> |
| Contact Person | <i>Nate Boderman, 503-655-8364</i> |
| Contract No. | <i>None</i> |

BACKGROUND:

For over 20 years Clackamas County has been planning, building, and consolidating relevant services to the County owned Red Soils Campus in Oregon City to provide a cohesive integrated public service center for citizens. A new Courthouse facility has been the center of that master plan since its inception.

The existing Clackamas County Courthouse in downtown Oregon City 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 for the District Attorney. The courthouse configuration has not changed in the 85 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. The courthouse is old and obsolete to the point that it cannot be retrofitted to operate by modern standards, certain parts are inaccessible to people with disabilities, and most of the equipment that is in use is well beyond its useful life and costly to maintain. In addition, 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. Beyond the challenges described above related to space and configuration, 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.

In response, Clackamas County has invested millions of dollars in preparation for a project to replace the existing courthouse. The County has master planned its campus to include such a facility, has made infrastructure available, has dedicated personnel to the project, and has engaged a highly experience project team of outside consultants specializing in the procurement and delivery of public projects utilizing a public private partnership ("P3") delivery approach.

In May, 2021, the Board authorized a resolution (No. 2021-27) indicating its support of the project to replace the existing courthouse, and granting an exemption from the standard procurement process in lieu of a competitive proposal process to obtain a P3 project company to deliver the Project. After a competitive procurement process, the County's selection committee determined that the proposal submitted by Fengate PCL Progress Partners offered the best value.

The Oregon Courthouse Capital Construction Improvement Fund (OCCCIF) provides a path to assist the County financially 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. On June 23, 2021, while the County's procurement process was pending, 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). This amount was in addition to the sum of \$1.2 million that has been previously authorized by the state to assist with certain initial planning and procurement costs associated with the project. Since the time that the State Legislature authorized funding to contribute towards the project, the final financial proposals have been received by the County, demonstrating that costs were higher than originally projected, thus increasing the amount of costs that would be eligible for state match through the OCCCIF program. On June 23, 2022, in response to a review of the

finalized proposal and an increase in costs associated with the project, the Chief Justice of the Oregon Supreme Court, as the administrative head of the Oregon Judicial Department, affirmed that the proposed courthouse replacement project, as proposed by Fengate PCL Progress Partners, met the criteria to receive state funding through the OCCIF program, and further committed to include in the department's 2023-2025 recommended budget a request for additional funds for the project to meet the increased amount of costs that are eligible for state matching funds. County staff have drafted a funding agreement with the state, memorializing the state's financial commitment to the project. The Board will be asked to review and approve that agreement concurrently with this proposed action.

Approval of the Board Order attached to this report would allow the County to execute a contract with a special purpose entity formed by Fengate PCL Progress Partners for the design, construction, partial financing, operation and maintenance of the Clackamas County Circuit Courthouse. Related to the main project agreement are a number of ancillary agreements that will directly serve to implement or further the transaction described herein. These agreements include, but may not be limited to, an amendment to the consulting service agreement with Fengate Capital Management Ltd., the Insurance Trust Agreement, the Lenders' Remedies Agreement, the Independent Building Expert Agreement, the Design-Builder Contractor Collateral Agreement and the Facilities Manager Contractor Collateral Agreement. Given the nature of closing a transaction such as this, staff is recommending that the Board delegate authority to the County Administrator to make such changes or modifications to the Project Agreement as he deems appropriate to facilitate closing the transaction, and to enter into the related agreements described above, the purpose of which again is to directly implement or accomplish the purpose of the transaction authorized by the Board Order.

If the Board Order is approved, progress on the project would generally proceed along the following timeline:

- Estimated Commercial Close of the Project Agreement: August 2022
- Estimated Financial Close of the Project Agreement: August 2022
- Complete final design and develop construction documents: Aug. - Dec 2022
- Secure Land Use Approval and Building Permits: December 2022
- Begin construction phase: January 2023
- Substantial Completion, Occupancy Readiness and Commencement of Facilities Management Period: May 2025

RECOMMENDATION:

Staff recommends the Board adopt the attached order, which authorizes the following:

- the Project Agreement by and between a special purpose entity formed by Fengate PCL Progress Partners and Clackamas County, substantially in the form attached as Exhibit A, so long as the sum of (1) the Capital Charge in Section 16.3 of the Project Agreement, and (2) the Facilities Management Charge in Section 16.4 of the Project Agreement, which will be adjusted annually to account for inflation pursuant to the Project Agreement, is at financial close a combined amount not to exceed \$15,500,000 in the first 12 months of payment excluding escalation of the Facilities Management Charge;
- the County Administrator to enter into the Project Agreement in the name of, and on behalf of, the County;

- the County Administrator to, prior to execution and delivery of the Project Agreement, make such changes or modifications to the Project Agreement as he deems appropriate in order to accomplish the purpose of the transaction authorized by the Board Order; and
- the County Administrator to enter into related agreements, the purpose of which is to directly implement or accomplish the purpose of the transaction authorized by the Board Order.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

Attachments: Board Order
Chief Justice Approval Letter dated June 23, 2022

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

In the Matter of Authorizing a Project

Agreement for the Design, Construction, Partial Financing, Operation and Maintenance of the Clackamas County Circuit Courthouse Between Clackamas County and a Special Purpose Entity Formed by Fengate PCL Progress Partners

} Order No. _____
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Whereas, the current courthouse was built in 1937 to house County offices and a single courtroom and the courthouse has been retrofitted over the years to its current configuration of eleven courtrooms and cannot be expanded any further to accommodate the current demand for three additional courtrooms and ancillary support services that are currently located off-site, creating numerous operational inefficiencies; and

Whereas, the courthouse requires significant seismic upgrades and is functionally obsolete for the administration and delivery of justice services; and

Whereas, the Oregon State legislature created the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) in 2013, administered through the OJD, which allows counties that meet the OCCCIF requirements to receive OCCCIF funding for up to 50% of the capital cost of a new county courthouse; and

Whereas, on May 20, 2021, the Board authorized a resolution (No. 2021-27) indicating support of a project for the replacement of the existing courthouse (the “Project”), and for exemption from the standard procurement process in lieu of a competitive proposal process to obtain a Public-Private Partnership (“P3”) project company to deliver the Project; and

Whereas, the Project is to be located on a parcel of land currently owned by the County, commonly known as the Red Soils Campus, and located at 2051 and 2125 Kaen Road in Oregon City; and

Whereas, pursuant to Resolution No. 2021-27, the County has engaged in a two-step competitive proposal processes consisting of (1) a request for qualifications of interest seeking qualified respondents, and (2) a request for proposals in which the County would make a determination of best value; and

Whereas, on July 1, 2021, the County issued the Request for Qualifications No. 2021-35 for the Project; and

Whereas, on August 12, 2021, the County received eight submittals in response to the Request for Qualifications; and

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

In the Matter of Authorizing a Project

Agreement for the Design, Construction, Partial Financing, Operation and Maintenance of the Clackamas County Circuit Courthouse Between Clackamas County and a Special Purpose Entity Formed by Fengate PCL Progress Partners

} Order No. _____
} *Page 2 of 3*

Whereas, the County selected three of the eight interested respondents as eligible to receive a request for proposals and placed those three respondents on a “shortlist”; and

Whereas, on September 14, 2021, the County issued Request for Proposals No. 2021-35, to the three “shortlisted” respondents; and

Whereas, in April 7, 2022, the County received qualifying proposals from two of the three “shortlisted” respondents; and

Whereas, in June, 2022, after evaluating the proposals in accordance with the criteria of Request for Proposals No. 2021-35, the County determined that the proposal submitted by Fengate PCL Progress Partners offered the best value; and

Whereas, the County and a special purpose entity formed by Fengate PCL Progress Partners wish to enter into the Project Agreement, substantially in the form of Exhibit A attached to this Order for the Project; and

Whereas, the Board has received and reviewed the technical and financial proposal submitted by Fengate PCL Progress Partners, which is to be incorporated into the Project Agreement as deemed appropriate by County staff.

NOW THEREFORE, the Clackamas County Board of Commissioners do hereby approve the Project Agreement by and between a special purpose entity formed by Fengate PCL Progress Partners and Clackamas County, substantially in the form attached as Exhibit A, so long as the sum of (1) the Capital Charge in Section 16.3 of the Project Agreement, and (2) the Facilities Management Charge in Section 16.4 of the Project Agreement, which will be adjusted annually to account for inflation pursuant to the Project Agreement, is at financial close a combined amount not to exceed \$[15,500,000] in the first 12 months of payment excluding escalation of the Facilities Management Charge.

IT IS FURTHER ORDERED that the County Administrator is authorized to enter into the Project Agreement in the name of, and on behalf of, the County.

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

In the Matter of Authorizing a Project

Agreement for the Design, Construction, Partial Financing, Operation and Maintenance of the Clackamas County Circuit Courthouse Between Clackamas County and a Special Purpose Entity Formed by Fengate PCL Progress Partners

} Order No. _____
} *Page 3 of 3*

IT IS FURTHER ORDERED that the County Administrator is authorized, prior to execution and delivery of the Project Agreement, to make such changes or modifications to the Project Agreement as he deems appropriate in order to accomplish the purpose of the transaction authorized by this Order, and the execution of the Agreement by the County Administrator shall be conclusive evidence of the approval by the County Administrator of all changes or modifications to the Agreement, and the Agreement shall thereupon become binding on the County in accordance with its terms.

IT IS FURTHER ORDERED that the County Administrator is authorized to enter into related agreements, the purpose of which is to directly implement or accomplish the purpose of the transaction authorized by this Order, including, but not limited to, the Insurance Trust Agreement, the Lenders' Remedies Agreement, the Independent Building Expert Agreement, the Design-Builder Contractor Collateral Agreement and the Facilities Manager Contractor Collateral Agreement.

IT IS FURTHER ORDERED that the County Administrator is authorized to amend the Consulting Services Agreement made and entered into by the County and Fengate Capital Management Ltd on November 23, 2021, to increase the total amount payable thereunder to an amount not to exceed \$2,500,000; provided that such amount shall only be payable in the event that the County does not execute the Project Agreement with Fengate PCL Progress Partners.

DATED this 7th day of July, 2022

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

PROJECT AGREEMENT

FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

BETWEEN

CLACKAMAS COUNTY, OREGON

AND

[_____]

DATED

[_____] , 2022

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PROJECT AGREEMENT
FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

THIS PROJECT AGREEMENT FOR THE DESIGN, CONSTRUCTION, FINANCING, OPERATION AND MAINTENANCE OF THE CLACKAMAS COUNTY CIRCUIT COURTHOUSE is entered into on [____], 2022, between Clackamas County, Oregon (the “**County**”), and [____], a [limited liability company] organized and existing under the laws of the State of [____] (the “**Project Company**”).

RECITALS

WHEREAS, on May 5, 2021, the Board of County Commissioners approved the County proceeding with a public-private partnership procurement for the delivery of a new Clackamas County courthouse to replace the county’s existing aging court building;

WHEREAS, on May 20, 2021, the Board of County Commissioners, acting as the local contract review board pursuant to Section 279C.335 of the Oregon Revised Statutes, approved a resolution to exempt the procurement for the new courthouse from the ordinary competitive bidding requirements and instead engage in a two-step competitive proposal process composed of (1) a request for expressions of interest seeking qualified respondents, and (2) a request for proposals in which the County would make a best value determination;

WHEREAS, on June 24, 2021, the Joint Ways and Means Committee of the Oregon State legislature recommended to the full legislature the issuance of \$94.5 million in Article XI-Q bonds to fund the State of Oregon’s contribution to the new courthouse project and the inclusion of such bond issuance request in the State’s 2021-2023 biennium budget;

WHEREAS, on June 26, 2021, the full State legislature approved the State’s 2021-2023 biennium budget, including an authorization for the recommended \$94.5 million bond issuance, which budget and bond issuance authorization was approved by the State Governor on July 16, 2021;

WHEREAS, on July 1, 2021, the County issued a request for qualifications for the new courthouse;

WHEREAS, on August 12, 2021, the County received seven submittals in response to the request for qualifications;

WHEREAS, the County shortlisted three of the eight interested private entities as eligible to receive a request for proposals;

WHEREAS, the Project Company was one of the three shortlisted respondents;

WHEREAS, on September 14, 2021, the County issued a request for proposals to the three shortlisted respondents;

WHEREAS, on [_____], the County received technical proposals from [each of the three] shortlisted respondents, and on [_____], the County received financial proposals from each of the three shortlisted respondents;

WHEREAS, on [_____], after evaluating the proposals in accordance with the criteria set forth in the request for proposals, the County determined that the Project Company's proposal offered the best value to the County;

WHEREAS, in [_____], final negotiations were initiated with the Project Company, which negotiations have concluded with this Project Agreement;

WHEREAS, on [_____], the State and the County executed (1) a funding agreement addressing disbursement of the State's capital contribution to the new courthouse; and (2) lease agreements addressing the relationship between the County as owner, and the State as tenant, of the new courthouse;

WHEREAS, on [_____], the County Board of Commissioners approved [County Resolution No. _____], authorizing the execution and delivery of this Project Agreement between the County and the Project Company; and

WHEREAS, the County desires to receive and the Project Company desires to provide the services set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Project Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Project Agreement whether or not this Article contains a cross-reference to such definitions.

“Affiliate” in respect of a person means any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person. In the case of a Unit Holder, if the Unit Holder is an investment fund, “Affiliate” includes such Unit Holder’s general partner, but does not include any other investment fund in which its general partner is an equity investor as a general partner.

“Appendix” means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Project Agreement and identified as such in the Table of Contents.

“Applicable Law” means:

- (1) Any federal, State or local law, statute, code or regulation;
- (2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and
- (3) Any Governmental Approval,

in each case having the force of law and applicable from time to time to the Project.

“Architect” means [_____], which has been engaged by the Design-Builder to have primary responsibility for the design of the Project.

“Avoidable Costs” when used in relation to an event or circumstance, means all costs and expenditures which:

- (1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
- (2) If the Project Company acted reasonably and in accordance with this Project Agreement (including subsection 25.5(A) (Mitigation by the Project Company)) would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. “Bankruptcy Law” also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Base Case Equity IRR” means the Initial Base Case Equity IRR, as updated at the Financial Close Date pursuant to Appendix 3 (Financial Close Procedures and Conditions).

“Base Case Financial Model” means the Initial Base Case Financial Model, as updated at the Financial Close Date and accepted by the County according to the terms of Appendix 3 (Financial Close Procedures and Conditions), and delivered in electronic format to the County pursuant to Article 17 (Financial Model).

“Billing Period” means each month of a Contract Year except that:

- (1) The first Billing Period shall begin on the Scheduled Occupancy Readiness Date, unless an earlier date is negotiated by the parties pursuant to Section 8.10(B) (Early Occupancy), and shall continue to the last day of the month in which such date occurs, and
- (2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Bond” means any taxable bond or note issued by the Project Company for the purpose of financing the Project.

“Bond Pricing Date” means, with respect to any Bonds included in the Project Company’s Financial Plan, the date of the signing of the bond purchase agreement between the Project Company and the bond purchasers, or an earlier date on which the Bond interest rates are fixed by the bond purchasers.

“Business Day” means any day other than a Saturday, Sunday, or an official County holiday.

“C2P2 Implementation Plan” means the Project Company’s Construction Career Pathways Project (C2P2) implementation plan set forth in Attachment 15B (C2P2 Implementation Plan) of Appendix 15 (Project Company and Project Contractors Information).

“Café” means the in-building part of the New Courthouse providing food services, as further described in the Design and Construction Requirements.

“Capital Charge” has the meaning set forth in Section 16.3 (Capital Charge).

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“Capital Modification” means any material change to any part of the physical assets constituting the Project occurring after the Occupancy Readiness Date, including the alteration, addition, demolition or extension of the physical assets constituting the Project or the

installation of new structures, equipment, systems or technology, provided that any major maintenance, repair and replacement work as described in Section 9.6(A) (Major Maintenance, Repair and Replacements Generally) and any Handback Work shall not be considered a Capital Modification. If a replacement of any part of the Project is made by the Project Company under Article 9 (Facilities Management), or a capital investment, improvement or modification is required to be made by the Project Company in order to remedy a Project Company Remediable Breach, and can be reasonably expected to result in a material change to the physical assets constituting the Project, then such replacement, capital investment, improvement or modification shall constitute a Capital Modification.

“Central Utility Plant Assumed Operating Performance Parameters” means the assumed operating performance parameters of the Central Utility Plant set forth in Appendix 4 (Central Utility Plant Description and Assumed Operating Performance Parameters).

“Central Utility Plant” or **“CUP”** means the existing central utility plant owned and operated by the County, located in the Red Soils Campus in Oregon City, Oregon, proximate to the Project Site, and used for the production of heated and chilled water for thermal comfort in the adjacent County public buildings. The Central Utility Plant is described in Appendix 4 (Central Utility Plant Description and Assumed Performance Parameters).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Change in Control” has the meaning set forth in subsection 23.2(A) (Change in Control Defined).

“Change in Law Event” means the coming into effect of:

- (1) Any Applicable Law enacted after the Technical Proposal Submittal Date;
- or
- (2) Any modification (including repeal) of any Applicable Law existing on the Technical Proposal Submittal Date that comes into effect after the Technical Proposal Submittal Date;

compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays or increases the cost of performing the Contract Services.

It is specifically understood, however, that none of the following shall constitute a “Change in Law Event”:

- (1) Any law, statute, code or regulation that has been enacted or adopted on or before the Technical Proposal Submittal Date to take effect after the Technical Proposal Submittal Date;
- (2) The denial or imposition of any term or condition in connection with, any Governmental Approval required for the Contract Services;
- (3) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Technical Proposal Submittal Date;

(4) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Technical Proposal Submittal Date; or

(5) Any change in Tax law (except that the Project Company shall be entitled to relief on account of (a) a Discriminatory Change in Tax Law; (b) a Specified Change in Tax Law as and to the extent provided in Section 15.2 (Discriminatory or Specified Changes in Tax Law), or (c) a change in duties, levies, imposts or tariffs imposed by the United States on imported goods).

“Change Order” means a written order signed by the County and the Project Company prior to Substantial Completion under this Project Agreement, making a Design and Construction Requirement Change. A Change Order shall be deemed to constitute a Project Agreement Amendment.

“CMMS” means the computerized maintenance management system to be provided by the Project Company, as further described in Section 3.3.3 (Computerized Maintenance Management System) of Appendix 8 (Facilities Management Standards).

“Collateral Agent” means [_____], in its capacity as collateral agent for the Senior Lenders under the Senior Financing Agreements.

“Commissioning” means the commissioning of the Project conducted pursuant to Section 7.19 (Commissioning) and Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Commissioning Fine Tuning Period” means the period commencing after the Occupancy Readiness Date, at a time when the New Courthouse can be operated under fully loaded occupancy cycles for four complete seasons after the Occupancy Readiness Date (or such earlier time as the County may reasonably agree) whereby the Project Company verifies through various testing that all key systems in the New Courthouse, including heating, air conditioning, and ventilation, are functioning in accordance with the Design and Construction Requirements and the Facilities Management Requirements.

“Commissioning Plan” means the commissioning plan for the Project prepared pursuant to Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Commissioning Tests” means the commissioning tests set forth in Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Confidential Information” means Personal Information, and information of a party that the party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information.

“Contract Administration Memorandum” has the meaning set forth in Section 25.7 (Project Agreement Administration).

“Contract Services” means the Design-Build Work and the Facilities Management Services.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) The Design and Construction Requirements;
- (3) Good Design-Build Practice;
- (4) The Facilities Management Requirements;
- (5) Good Facilities Management Practice;
- (6) The Design-Build Plans;
- (7) The Facilities Management Plans;
- (8) Applicable written equipment manufacturers’ specifications;
- (9) Applicable Insurance Requirements; and
- (10) Any other standard, term, condition or requirement specifically provided in this Project Agreement to be observed by the Project Company.

Subsection 1.2(S) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability, consistency and stringency of the Contract Standards.

“Contract Year” means each of:

- (1) The period from the Financial Close Date to the next June 30th;
- (2) Each subsequent period of 12 calendar months commencing on July 1st;
and
- (3) The period from July 1st in the year in which this Project Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Cost Substantiation” has the meaning described in Section 16.12 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation).

“County” means Clackamas County, Oregon.

“County Activities” means any activities carried on or to be carried on by the County, or other persons permitted by the County (including the State Courthouse Tenants), in the New Courthouse related to the administration of justice and any other lawful County purpose.

“County Conditions Precedent” has the meaning set forth in Section 3.2 (County Conditions Precedent) of Appendix 3 (Financial Close Procedures and Conditions).

“County Design-Build Period Payment Obligation” has the meaning set forth in subsection 7.22(A) (County Payment Obligations).

“County Event of Default” has the meaning set forth in Section 21.1 (County Events of Default).

“County Fault” means:

- (1) A breach by the County of any of its obligations (other than payment obligations) under this Project Agreement;
- (2) A breach of any representation or warranty by the County under this Project Agreement;
- (3) Willful misconduct of a County Indemnitee; or
- (4) A negligent act or omission of a County Indemnitee.

“County Indemnitee” means:

- (1) The County;
- (2) The State, including any State Courthouse Tenants; or
- (3) Any representative, agent or advisor (including legal and financial advisors) of any person referred to in items (1) or (2) above or any manager, official, employee (including an elected or appointed judge, judicial officer, subordinate judicial officer, director, officer, member or other employee of the County or the State, including any State Courthouse Tenants), contractor or subcontractor (of any tier) thereof, in any such person’s capacity as a provider of services directly or indirectly to the County or the State, including any State Courthouse Tenants, in connection with the Project, other than the Project Company, Project Contractors or Subcontractors.

“County Moveable FF&E Allowance Account” has the meaning set forth in subsection 7.16(D) (Payment for County Moveable Furniture, Fixtures and Equipment).

“County Moveable Furniture, Fixtures and Equipment” means the Moveable Furniture, Fixtures and Equipment to be utilized by the County and funded by the County, as identified in Attachment 6B (Preliminary List of County Moveable Furniture, Fixtures and Equipment) of Appendix 6 (Design and Construction Standards) or otherwise agreed to by the parties.

“County Representative” means the individual specified in writing by the County as the representative of the County from time to time for all purposes of this Project Agreement.

“D/M/W/ESB/SDVBE Subcontracting Plan” means the Project Company’s disadvantaged minority-owned, women-owned, emerging small businesses, service disabled veterans business enterprises subcontracting plan set forth in Attachment 15D (D/M/W/ESB/SDVBE Subcontracting Plan) of Appendix 15 (Project Company and Project Contractors Information).

“Debt” of any person at any date means, without duplication:

- (1) All obligations of such person for borrowed money;
- (2) All obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (3) All obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;
- (4) All obligations of such person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;
- (5) All obligations of such person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);
- (6) All deferred obligations of such person to reimburse any bank or other person in respect of amounts paid or advanced under a letter of credit or other similar instrument;
- (7) All Debt (as otherwise defined in this definition) of others secured by a charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim or encumbrance of any nature, including any claims of a Governmental Body, on any asset of such person, provided such Debt (as otherwise defined in this definition) is assumed by such person; and
- (8) All Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such person or as to which such person has an obligation substantially the economic equivalent of a guarantee.

“Deductions” means those deductions from the otherwise applicable Service Fee that the County is permitted to take as offsets on account of specified instances of non-performance as described in Appendix 11 (Deductions). A “Deduction” can refer to either an Unavailability Deduction or a Performance Failure Deduction, as such terms are defined in Appendix 11.

“Deductions Credit” has the meaning set forth in Section 16.5 (Deductions Credit).

“Deliverable Material” has the meaning set forth in subsection 7.1(H) (Deliverable Material).

“Demolition Work” means the work described in Section 7.3 (Demolition Work).

“Design and Construction Proposal Extracts” means extracts from the Proposal pertaining to the design and construction of the Project, including clarifications issued by the County after the date of submittal, as negotiated by the parties and appended hereto as Appendix 7 (Design and Construction Proposal Extracts).

“Design and Construction Requirement Change” means a change in the Design and Construction Requirements made by a Change Order:

- (1) As a result of a Project Company request agreed to by the County pursuant to Section 7.10 (Design and Construction Requirement Changes Made at Project Company Request);
- (2) On account of Relief Events pursuant to Section 7.11 (Design and Construction Requirement Changes Made Due to Relief Events); or
- (3) At the direction of the County pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction).

“Design and Construction Requirements” means the requirements for the design and construction of the Project as set forth in the Design and Construction Standards and the Design and Construction Proposal Extracts, as modified from time to time in accordance with the provisions of Article 7 (Design and Construction) and Appendix 5 (General Design, Construction and Facilities Management Technical Requirements) and as construed in accordance with the provisions of Section 1.2(S) (Applicability, Stringency and Consistency of Contract Standards).

“Design and Construction Standards” means the standards for the design, construction and performance of the Project as set forth in Appendix 6 (Design and Construction Standards).

“Design-Build Contract” means the design-build agreement between the Project Company and the Design-Builder, a certified copy of which has been delivered by the Project Company to the County.

“Design-Build Contract Price” means \$[_____], the lump sum price payable by the Project Company to the Design-Builder under the Design-Build Contract for the Design-Build Work as of the Effective Date. **[NOTE TO PROPOSERS: The Design-Builder’s final design-build price set forth in the Proposal will be included here.]**

“Design-Build Governmental Approvals” means all Governmental Approvals required from time to time during the Design-Build Period for the commencement and continuance of the Design-Build Work.

“Design-Build Period” means the period from and including the Financial Close Date through the Occupancy Readiness Date.

“Design-Build Plans” means the Design-Build Health and Safety Plan, the Design-Build Communication Plan, the Design-Build Quality Management Plan, and the Commissioning Plan, each as established in preliminary draft form on the Effective Date in Appendix 7 (Design and Construction Proposal Extracts) and as further developed pursuant to Section 5 (Submittal Review Procedures) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), as well as the C2P2 Implementation Plan, the Local Business Plan, the D/M/W/ESB/SDVBE Subcontracting Plan and any other plan required to be provided during the Design-Build Period pursuant to Appendix 6 (Design and Construction Standards).

“Design-Build Project Manager” has the meaning set forth in subsection 4.3(B) (Design-Build Project Manager).

“Design-Build Quality Management Plan” means the Project Company’s plan for quality assurance and quality control in implementing the Design-Build Work to be developed in

accordance with the requirements set forth in Section 26.3.3 (Design-Build Quality Management Plan) of Appendix 6 (Design and Construction Standards).

“Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Project Company pursuant to this Project Agreement during the Design-Build Period, including the Demolition Work.

“Design-Builder” means [_____], or any assignee or replacement permitted under this Project Agreement.

“Design Documents” means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Design-Build Work.

“Differing Site Conditions” means (a) actual subsurface or latent physical conditions (including man-made conditions and Utilities) at the Project Site that differ materially from the soil, bedrock, and geological conditions described in the Geotechnical Investigation Report, or (b) physical conditions at the Project Site which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character required herein; provided, however, that the term “Differing Site Conditions” excludes conditions, other than those described in the Geotechnical Investigation Report, (1) of which the Project Company had actual knowledge as of the Technical Proposal Submittal Date; and (2) that come into existence after the Technical Proposal Submittal Date which are introduced to the Project Site by the Project Company or a Project Company Person.

“Disclosed Data” means the information and data contained in the documents listed in Reference Document 1 (List of Additional Project-Related Documents Made Available to the Project Company).

“Discriminatory Change in Tax Law” means a Change in Law Event which results in the imposition of Taxes or a change in Taxes and which specifically applies to discriminate against:

- (1) The Project or the Project Company with respect to the Project and not other projects or persons;
- (2) Other similar projects delivered through public-private partnership or performance-based infrastructure delivery methods, or another delivery method similar to them and not other projects;
- (3) Persons that have contracted with the County or other Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons; or
- (4) Persons holding shares or other evidences of ownership in persons whose principal business is contracting with Governmental Bodies to deliver capital projects on a public-private partnership or performance-based infrastructure basis similar to the basis on which the Project was delivered and not other persons.

“Dispute” means any disagreement, failure to agree or other dispute between the County and the Project Company arising out of or in connection with this Project Agreement,

including in respect of the interpretation, breach, performance, validity or termination of this Project Agreement, whether in the law of contract or any other area of law.

“Dispute Resolution Procedure” means the Dispute resolution procedures set forth in Article 18 (Dispute Resolution);

“Distribution” means, without duplication or double counting:

Whether in cash or in kind, any:

- (1) Distribution to Unit Holders or other distribution in respect of Units;
- (2) Redemption or purchase of Units or reduction of limited liability company capital or the amount of a Unit Holder’s contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;
- (3) Payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);
- (4) Payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business and on commercially reasonable terms including to any current or former Unit Holder, or any current or former Affiliate of any current or former Unit Holder;
- (5) Conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Project Company; and
- (6) Other payment to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Project Company howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Units or other securities of or interests in the Project Company if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or
- (7) The early release of any reserves or any Contingent Funding Liabilities (as defined in Appendix 13 (Compensation on Termination)), the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Base Case Equity IRR in the Financial Model.

“Effective Date” means the date this Project Agreement is executed and delivered by the parties hereto.

“Employee Payments” means any liability that has been reasonably incurred by the Project Company or any Project Contractor (without duplication) arising as a result of termination of this Project Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project Company, including

severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution.

“Encumbrance” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“Equity IRR” means the Project Company's Nominal blended equity internal rate of return calculated on an after-tax basis at the level of the Project Company in accordance with the Financial Model as shown in Cell [] of the “[]” tab, having regard to Distributions made and projected to be made.

“Exempt Refinancing” means:

- (1) A change in taxation or change in accounting treatment pursuant to changes in Applicable Law or GAAP;
- (2) The exercise of rights, waivers, consents and similar actions that are solely in respect of:
 - (a) breach of representations, warranties, covenants or undertakings;
 - (b) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;
 - (c) late or non-provision of information or consents;
 - (d) amendments to Project Contracts;
 - (e) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);
 - (f) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to the Project Company under the Senior Financing Agreements, and which are given as a result of any failure by the Project Company to ensure that the Design-Build Work is carried out in accordance with the Project Schedule and which are notified in writing by the Project Company or the Senior Lenders to the County prior to being given;
 - (g) changes to milestones for drawdown set forth in the Senior Financing Agreements and which are given as a result of any failure by the Project Company to ensure that the Design-Build Work is carried out in accordance with the Project Schedule and which are notified in writing by the Project Company or the Senior Lenders to the County prior to being given;
 - (h) failure by the Project Company to obtain any consents from Governmental Bodies required by the Senior Financing Agreements; or
 - (i) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;

- (3) An amendment, variation or supplement of an agreement approved by the County as part of any Capital Modification, Design and Construction Requirement Change or Facilities Management Change;
- (4) A sale of Junior Debt or Units in the Project Company by Unit Holders or, in the case of Junior Debt, Affiliates of Partners or securitization of the existing rights or interests attaching to Junior Debt or Units in the Project Company;
- (5) A Qualifying Bank Transaction;
- (6) A conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to the Project Company by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to the Project Company by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion;
- (7) A secondary transaction in the Bond market; or
- (8) An amendment, modification or supplement to any Financing Document which does not provide a financial benefit to the Project Company.

“Existing Facilities” means the entirety of the OC Hilltop Building, located at 998 Library Court, Oregon City, OR and the Stewart Community Center, located at 1002 Library Court, Oregon City, OR, all as described in Reference Document 2 (Red Soils Master Plan) and identified in Attachment 1B (Site Plan of Existing Facilities and Developable Area) to Appendix 1 (Site-Related Information), and all other existing structures and improvements located at the Project Site as of the Technical Proposal Submittal Date.

“Expiration Date” means the date that is 30 years following the Scheduled Occupancy Readiness Date.

“Extended Relief Event” has the meaning set forth in Section 15.4 (Termination for Extended Relief Events).

“Extraordinary Item” has the meaning set forth in Section 16.6 (Extraordinary Items).

“Facilities Condition Index” has the meaning set forth in Section 1.3.2 (Facilities Condition Index) of Appendix 8 (Facilities Management Standards).

“Facilities Management Charge” means the portion of the Service Fee payable for the performance of Facilities Management Services, which is composed of the Ordinary O&M Component and the Renewal Component.

“Facilities Management Notice” means a notice given by one party to the other hereunder relating to routine operational matters arising under this Project Agreement following the Occupancy Readiness Date specifically required hereunder to be given as a “Facilities Management Notice”.

“Facilities Management Period” means the period between the Occupancy Readiness Date and the Termination Date.

“Facilities Management Plans” means the Master Maintenance Plan, the Renewal Work Plan, the Facilities Management Health and Safety Plan, the Facilities Management Communication Plan, and the Facilities Management Emergency Management Plan, and the Environmental Management Plan, each as established in preliminary draft form on the Effective Date in Appendix 9 (Facilities Management Proposal Extracts) and as further developed pursuant to Section 5 (Submittal Review Procedures) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), as well as any other plans required to be provided during the Facilities Management Period pursuant to Appendix 8 (Facilities Management Standards).

“Facilities Management Proposal Extracts” means extracts from the Proposal pertaining to the operation, maintenance, repair, replacement and management of the Project, including clarifications issued by the County after the date of submittal, as negotiated by the parties and appended hereto as Appendix 9 (Facilities Management Proposal Extracts).

“Facilities Management Requirements” means the requirements for the operation and maintenance of the Project as set forth in the Facilities Management Standards and the Facilities Management Proposal Extracts.

“Facilities Management Services” means everything required to be furnished and done for and relating to the operation and maintenance of the New Courthouse by the Project Company pursuant to this Project Agreement during the Facilities Management Period.

“Facilities Management Services Agreement” means the agreement between the Project Company and the Facilities Manager, a certified copy of which has been delivered by the Project Company to the County.

“Facilities Management Services Change” means a change, including an addition, deletion, alteration, substitution or modification, to the Project Company’s Facilities Management Services obligations under this Project Agreement, made pursuant to Section 10.8 (Facilities Management Services Changes).

“Facilities Management Services Change Certificate” means a certificate issued by the County describing and authorizing a Facilities Management Services Change, the value or method of valuation of the Facilities Management Services Change, and the adjustment, if any, to the Service Fee associated with the Facilities Management Services Change.

“Facilities Management Services Change Report” has the meaning set forth in subsection 10.8(B) (Project Company Facilities Management Services Change Report).

“Facilities Management Standards” means the standards for the operation and maintenance of the Project as set forth in Appendix 8 (Facilities Management Standards).

“Facilities Management Supervisor” has the meaning set forth in Section 4.4(B) (Facilities Management Supervisor).

“Facilities Manager” means [_____], or any assignee or replacement permitted under this Project Agreement.

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Final Completion” means completion of the Design-Build Work in compliance with the Design and Construction Requirements and the requirements of Section 7.20 (Final Completion).

“Financial Close” means satisfaction or waiver of the Financial Close Conditions in accordance with Appendix 3 (Financial Close Procedures and Conditions).

“Financial Close Conditions” means the Project Company Conditions Precedent and the County Conditions Precedent.

“Financial Close Date” means the date on which Financial Close occurs.

“Financial Close Deadline” has the meaning set forth in Section 5.2 (Financial Close Deadline).

“Financial Close Security” means the one or more letters of credit required of the Project Company pursuant to Section 5.3 (Financial Close Security) as security for the achievement of Financial Close in substantially the form set forth in Transaction Form A (Financial Close Security).

“Financial Model” means:

- (1) For purposes of the Project Company’s representations as to the financial model as of the Effective Date and prior to the Financial Close Date, the Initial Base Case Financial Model; and
- (2) For all other purposes, including the Project Company’s representations as to the financial model as of the Financial Close Date, the Base Case Financial Model, as updated and replaced from time to time in accordance with the terms of this Project Agreement.

“Financing Period” means the period, if any, from and including the Effective Date through the Financial Close Date.

“Fitch” means Fitch Ratings, Inc., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

“Force Majeure Event” means the occurrence of:

- (1) Landslides, underground movement, earthquakes, tidal waves, fires, tornadoes, hurricanes, floods and lightning;
- (2) Certified acts of terrorism as defined by the Terrorism Risk Insurance Act occurring during any period in which TRIA or a substantially identical federal law is in effect;

- (3) Pressure waves caused by aircraft or other aerial devices traveling at supersonic speeds;
- (4) Unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration, measured from the Technical Proposal Submittal Date) for the time of year and locality of the Project Site, and other acts of God not described in item (1) above;
- (5) Terrorism arising from nuclear, biological or chemical materials, or any act which would constitute a certified act of terrorism (as defined by the Terrorism Risk Insurance Act) occurring during any period in which TRIA or a substantially identical federal law is not in effect;
- (6) War, civil war, armed conflict, riot, insurrection, civil commotion or disturbance (including armed violence and hostage taking), blockade, embargo, sabotage and related causes;
- (7) Nuclear explosion or nuclear, radioactive, chemical or biological contamination; or
- (8) Epidemics, pandemics (excluding the COVID-19 pandemic, unless the impacts of COVID-19 or variants thereof are materially different from the impacts of COVID-19 as of the Technical Proposal Submittal Date), quarantine, or health alerts issued by a Governmental Body relating thereto;

the response to which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“Geotechnical Investigation Report” means the Geotechnical Investigation Report dated November 19, 2021 and prepared by Landslide Technology, a Division of Cornforth Consultants, Inc., as set forth in Reference Document 3 (Geotechnical Investigation Report).

“Good Design-Build Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the delivery of public or institutional buildings serving purposes similar to the Project on a design-build basis as observed in the State, as such practices exist as of the Technical Proposal Submittal Date and, only in circumstances described in Section 4.8 (Good Design-Build Practice and Good Facilities Management Practice), as such practices evolve over the Term.

“Good Facilities Management Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices for public or institutional buildings serving purposes similar to the Project as observed in the State, as such practices exist as of the Technical Proposal Submittal Date and, only in circumstances

described in Section 4.8 (Good Design-Build Practice and Good Facilities Management Practice), as such practices evolve over the Term.

“Governmental Approvals” means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including the County, acting in its governmental capacity other than as a party to this Project Agreement), or any official thereof, having jurisdiction in the United States in any way over or in respect of any aspect of the performance of this Project Agreement or the Project.

“Grant Funding Agreements” means the Master Funding Agreement and the Project Phase Funding Agreements.

“Handback Requirements” has the meaning set forth in subsection 9.13(A) (Required Project Condition).

“Handback Retainage Account” has the meaning specified in subsection 9.13(D) (Establishment and Use of Handback Retainage Account).

“Handback Survey” has the meaning set forth in subsection 9.13(B) (Handback Survey).

“Handback Work” has the meaning set forth in subsection 9.13(B) (Handback Survey).

“Handback Work Plan” has the meaning set forth in subsection 9.13(B) (Handback Survey).

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous goods, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“Health and Safety Plan” has the meaning set forth in Section 7.13(B) (Safety and Security).

“Help Desk” means the contact point to be established by the Project Company in respect of Section 3.2.2 (Help Desk Services) of Appendix 8 (Facilities Management Standards) for the notification of all matters arising in relation to the provision of Facilities Management Services.

“Income Tax” means any Tax imposed on the income of a person by any federal, State or local Governmental Body.

“Independent Building Expert” means the consultant appointed by the parties pursuant to subsection 8.1(A) (Engagement), or any assignee or replacement permitted under this Project Agreement and the Independent Building Expert Agreement.

“Independent Building Expert Agreement” means the agreement to be entered into between the County, the Project Company and the Independent Building Expert in substantially the form set forth in Transaction Form D (Independent Building Expert Agreement).

“Index-Linked” means, with respect to an amount at any time, that the amount is adjusted as of each July 1 commencing July 1, 20[23] by:

- and
- (1) Multiplying it by the Inflation Index for the immediately preceding April;
 - (2) Dividing it by [____], the Inflation Index for April 20[22].

“Inflation Index” means the All Items Consumer Price Index for All Urban Consumers (CPI-U) in the West region (Series CUUR0400SA0), not seasonally adjusted, as published by the Bureau of Labor Statistics using a reference year of 1982-1984 that equals 100.0, or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably.

“Initial Base Case Equity IRR” means [____]%, being the Nominal post-Income Tax internal rate of return on equity investment over the full Term assuming no early termination or extension of this Project Agreement, projected for the Project under the Initial Base Case Financial Model. **[NOTE TO PROPOSERS: To be inserted from the Initial base Case Financial Model.]**

“Initial Base Case Financial Model” means the Project Company’s financial model for the Project as of the Effective Date, and delivered in electronic format to the County pursuant to Article 17 (Financial Model).

“Insurable Force Majeure Event” means the occurrence of any of the events or circumstances set forth in items (1), (2) or (3) of the definition of Force Majeure Event.

“Insurance Proceeds” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under this Project Agreement.

“Insurance Receivables” means Insurance Proceeds which a person is entitled to receive but which have not yet been received.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Project Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Insurance Trust Account” has the meaning set forth in subsection 14.1(E) (Insurance Trust Account).

“Insurance Trust Agreement” means the agreement between the County, the Project Company, and [_____] in substantially the form set forth in Transaction Form E (Insurance Trust Agreement).

“Insurance Unavailability Event” has the meaning set forth in Section 14.6(A) (Insurance Unavailability Event).

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (1) National, international and foreign patents, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (2) Inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (3) Copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (4) Industrial designs and any registrations and applications therefor throughout the world;
- (5) Rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world;
- (6) Databases and data collections and all rights therein throughout the world;
- (7) Moral and economic rights of authors and inventors, however denominated, throughout the world; and
- (8) Any similar or equivalent rights to any of the foregoing anywhere in the world.

“Joint Technical Performance Review” has the meaning set forth in Section 9.7(B) (Joint Technical Performance Review).

“Junior Debt” means indebtedness owing by the Project Company to any of its Unit Holders or Affiliates of Unit Holders which ranks subordinate in all respects to the Senior Debt, excluding:

- (1) All amounts not actually paid to the Project Company by cash advance, rights entitling the Project Company to a cash advance, or other consideration;
- (2) All fees, including commitment fees, standby fees or other fees, paid or to be paid by the Project Company, other than to any Unit Holder or any Affiliate of a Unit Holder; and
- (3) Capitalized interest, and interest on overdue interest.

“Key Individuals” has the meaning set forth in Appendix 15 (Project Company and Project Contractors Information).

“LEED BD+C Gold Certification” means the formal certification by the U.S. Green Building Council that the Project meets the requirements for a Leadership in Energy and Environmental Design (LEED) “Gold” rating for new building design and construction.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Project Agreement, and all appeals therefrom.

“Lenders’ Remedies Agreement” means the agreement between the County, the Collateral Agent for the benefit of the Senior Lenders and the Project Company in substantially the form set forth as Transaction Form B (Lenders’ Remedies Agreement).

“Lien” means any and every lien against the Project or against any monies due or to become due from the County to the Project Company under this Project Agreement, for or on account of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Liquidated Damages Right” has the meaning set forth in subsection 19.2(A) (County Liquidated Damages Rights Defined).

“Local Business Plan” means the Project Company’s local business plan set forth in Attachment 15C (Local Business Plan) of Appendix 15 (Project Company and Project Contractors Information).

“Longstop Date” has the meaning set forth in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date).

“Loss-and-Expense” means, and is limited to, (in each case subject to Section 19.11 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify the County hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Project Agreement.

“Maintained Element” means all elements of the Project, constructed or installed pursuant to this Project Agreement, excluding Moveable Furniture, Fixtures and Equipment.

“Maintenance Services” has the meaning set forth in Section 3.1.2(b) of Appendix 8 (Facilities Management Standards).

“Master Funding Agreement” means the Clackamas County Courthouse Master Funding Agreement, dated [_____], between the County and the State.

“Material Contracts” means:

- (1) The Project Contracts; and
- (2) Any agreement between or among (a) the Project Company, (a) an Affiliate of the Project Company, (c) **[NOTE TO PROPOSERS: Equity Sponsors to be identified here.]** or (d) an Affiliate of **[NOTE TO PROPOSERS: Equity sponsors to be identified here.]**, with respect to the performance of the Contract Services.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings).

“Moody’s” means Moody’s Investors Service, Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

“Moveable Furniture, Fixtures and Equipment” means the State Moveable Furniture, Fixtures and Equipment and the County Moveable Furniture, Fixtures and Equipment.

“New Courthouse” means the new Clackamas County Circuit Courthouse and related structures and equipment to be designed, constructed, operated and maintained on the Project Site pursuant to this Project Agreement, including all utility connections and other Project Site improvements connected to or related to the new Clackamas County Circuit Courthouse and related structures, as further described in the Design and Construction Requirements and Facilities Management Requirements.

“Nominal” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation.

“Non-Binding Mediation” means the voluntary system of dispute resolution established by Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings) for addressing disputes arising under this Project Agreement.

“Occupancy Readiness” means satisfaction of the Occupancy Readiness Conditions.

“Occupancy Readiness Certificate” means a certificate delivered by the Independent Building Expert in accordance with subsection 4.3(B) of the Independent Building Expert Agreement.

“Occupancy Readiness Conditions” has the meaning set forth in Section 8.4 (Occupancy Readiness Conditions).

“Occupancy Readiness Date” means the date on which Occupancy Readiness of the Project occurs or is deemed to have occurred under Article 8 (Occupancy Readiness).

“Occupancy Readiness Milestone Payment” means a one-time lump sum payment of \$90,000,000 to be paid by the County to the Project Company upon achieving Occupancy Readiness pursuant to Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment).

“Operating Hours” means 6:30 A.M. to 6:30 P.M., Pacific time, on Business Days.

“Orderly Cleanliness” means, in general, a level of cleanliness representative of the industry standard for similar structures and includes: (a) floors and base moldings that shine or are bright and clean with no buildup in corners or along walls, but with up to two days’ worth of dirt, dust, stains, or streaks allowed; (b) all vertical and horizontal surfaces that are clean, but with marks, dust, smudges, and fingerprints are noticeable with close observation allowed; (c) washroom, kitchenettes, locker rooms, and shower tile and fixtures that gleam and are odor-free; (d) supplies that are adequate; (e) trash containers and pencil sharpeners that are empty, clean, and odor-free; and (f) exterior fixtures, walls, windows that are in good condition.

“Ordinary O&M Component” means the portion of the Facilities Management Charge reflecting compensation for all aspects of the Facilities Management Services except for Renewal Work, as further described in Section 16.4(A) (Ordinary O&M Component).

“Oregon Judicial Department” means the Oregon Judicial Department, constituting the judicial branch of the State government, including the State Circuit Court and any state court of appeals or superior court.

“ORS” means the Oregon Revised Statutes.

“OSHA” means the Oregon Occupational Safety and Health laws, codified as Chapter 654 of the Oregon Revised Statutes, and the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Other Relief Event” means the occurrence of any of the following events or circumstances:

- (1) The existence of a Differing Site Condition, to the extent provided in Section 7.4 (Differing Site Conditions);
- (2) The existence of a Regulated Site Condition, to the extent provided in Section 7.5 (Regulated Site Conditions);
- (3) A delay by a Governmental Body in issuing a Governmental Approval required for the performance of the Design-Build Work, as and to the extent provided in subsection 7.6(D) (Relief for Delays in the Issuance of Governmental Approvals Caused by Governmental Bodies);
- (4) At any time after (a) the issuance of a final Governmental Approval, and (b) the further issuance or granting of an approval or consent thereunder or pursuant thereto upon which the Project Company relied in good faith in incurring costs in performing Design-Build Work, the modification, revision or revocation of such further approval or consent by subsequent administrative action by the issuing Governmental Body;
- (5) Compliance by the Project Company, pursuant to subsection 9.1(E) (Emergency Orders and Directives) or otherwise, with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;
- (6) An official or unofficial strike, lockout, work rule or other labor dispute by:
 - (a) public sector employees, or
 - (b) private sector employees (other than solely with respect to employees of the Project Company, a Project Contractor or a Subcontractor that are working at the Project Site) (i) which (x) is regional or national in nature and affects the judicial system, the construction, building maintenance or facilities management industry generally or (y) takes place at a facility manufacturing materials or equipment for the Project and is not directed at the Project, and (ii) which event lasts for more than 15 days;

(7) Any failure of title to the Project or any placement or enforcement of any Encumbrance, including any Encumbrances placed of record subsequent to the date of the Preliminary Title Report (Reference Document 4) described in Section 2(d) of Appendix 1 (Site-Related Information), on the Project Site or the Project not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;

(8) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project;

(9) A change in the requirements to obtain LEED BD+C Gold Certification of the New Courthouse as provided in Section 7.21 (LEED BD+C Gold Certification);

(10) The failure (including delays) of any Governmental Body or utility company having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project that are required to perform this Project Agreement (including if such failure is as a result of the County's breach of its payment obligations under subsection 9.2(C) (Payment for Utilities));

(11) Any act of prevention, hindrance, obstruction, or other non-cooperation by a third party or the County or any defect or non-compliance with Applicable Law or the Contract Standards, in carrying out a Capital Modification, as contemplated by Section 10.7 (Alternative Procedures for Implementing Capital Modifications);

(12) The closure, due to an accident, construction or otherwise, of a road necessary for direct access to the Project by order of a Governmental Body having police power;

(13) Any other event that, under a specific provision of this Project Agreement, constitutes or is deemed to constitute or to be caused by an Other Relief Event, including:

(a) events referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes);

(b) a direction by the County to comply with revised professional and technical standards as provided in Section 7.1(G) (Technical Standards and Codes);

(c) a delay caused by County-directed testing, inspections and uncovering as provided in Section 7.14(F) (Notice of Covering Design-Build Work);

(d) a failure by the County to maintain, repair and replace Moveable Furniture, Fixtures and Equipment as provided in subsection 7.16(C) (No Project Company Obligation to Maintain, Repair or Replace Moveable Furniture, Fixtures and Equipment);

(e) operating performance by the Central Utility Plant that is not consistent with the Central Utility Plant Assumed Operating Performance Parameters;

(f) an act of prevention, hindrance or obstruction by the County or an outsourced service provider in operating the Café, as provided in subsection 9.9(B) (Café); and

(g) any special services that the Project Company is required to render with respect to the installation, protection, maintenance (such as anti-vandalism), or otherwise in connection with the Public Art;

(14) The issuance of an injunction (whether temporary or permanent) or any other final order by a court of competent jurisdiction, with the result that the County or the Project Company becomes unable to perform its material obligations under this Project Agreement;

(15) Any disruption, interference, delay or other material effect on the performance of the Contract Services caused by the construction, operation or use of any facilities on the Red Soils Campus, so long as such construction, operation or use was not existing on or before the date that is 30 days prior to the Technical Proposal Submittal Date;

(16) Conduct by an employee of the County or a State Courthouse Tenant or by any person visiting or otherwise present in the New Courthouse that constitutes an unwarranted, material disruption of or interference with the performance by the Project Company of the Facilities Management Services;

(17) A County Fault;

the response to which or compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Overdue Rate” has the meaning set forth in Section 16.15 (Interest on Overdue Amounts).

“Parking and Road Improvements” means the new surface parking and road improvements located on the Project Site to be constructed pursuant to this Project Agreement, as further described in the Design and Construction Requirements. The “Parking and Road Improvements” do not include secure parking located in the New Courthouse.

“Performance Failure” has the meaning set forth in Appendix 11 (Deductions).

“Performance Monitoring Report” means the report that the Project Company will prepare and deliver to the County’s Representative within five Business Days of the end of each Billing Period during the Facilities Management Period and which provides the supporting detail for the Service Fee, as further described in Section 3.6.3 (Periodic Reporting) of Appendix 8 (Facilities Management Standards).

“Permitted Debt” means:

(1) Trade or other similar indebtedness incurred in the ordinary course of business;

(2) Taxes and governmental charges, salaries, related employee payments and trade payables;

(3) Contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Governmental Approvals, the Project Contracts or this Project Agreement; and

(4) Debt incurred by way of loans from Unit Holders;

but does not include any Senior Debt (other than the Senior Debt incurred or issued on the Financial Close Date).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves in accordance with GAAP;

(2) Any encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company to construct the Project or operate the Project;

(3) Any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves;

(4) Servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company;

(5) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Project and operation of the Project by the Project Company;

(6) Encumbrances which are created on or before the Technical Proposal Submittal Date;

(7) Encumbrances which are created by a Change in Law Event on or after the Technical Proposal Submittal Date;

(8) Any encumbrance created by an act or omission by any Governmental Body or with respect to which the County has given its consent; and

(9) Any servitudes, licenses, easements, restrictions, rights-of-way, rights and encumbrances specifically identified in Appendix 1 (Site-Related Information).

“Personal Information” means “personal information” as described in the Public Meetings and Records Law, which is collected, acquired or obtained by the Project Company or

the County in relation to or in the course of providing the Contract Services, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address or business email of the individual.

“Post-Refinancing Financial Model” has the meaning set forth in Section 3.1 (Refinancing Financial Models) of Appendix 18 (Calculation and Payment of Refinancing Gains).

“Pre-Refinancing Equity IRR” means the Equity IRR calculated in the Pre-Refinancing Financial Model, and calculated for the entire Term taking into account:

- (1) Timing and amounts of the investment by Unit Holders;
- (2) Actual Distributions received by the Unit Holders up the estimated Refinancing date; and
- (3) Project Distributions as shown in the Pre-Refinancing Financial Model.

“Pre-Refinancing Financial Model” has the meaning set forth in Section 3.1 (Refinancing Financial Models) of Appendix 18 (Calculation and Payment of Refinancing Gains).

“Project” means the New Courthouse and includes the performance of the Contract Services with respect thereto. The Project also includes the Parking and Road Improvements and the Café, but only to the extent provided in Section 9.9 (Parking and Road Improvements and Café). Moveable Furniture, Fixtures and Equipment shall constitute part of the Project only to the extent provided in subsection 7.16(C) (No Project Company Obligation to Maintain, Repair or Replace Moveable Furniture, Fixtures and Equipment).

“Project Agreement” means this Project Agreement, and includes the Transaction Forms, Appendices and Reference Documents (as applicable).

“Project Agreement Amendment” has the meaning set forth in Section 25.8 (Project Agreement Amendments).

“Project Company” means [_____], a [limited liability company] organized and existing under the laws of [_____], which is registered to do business in and is in good standing in the State, and its permitted successors and assigns.

“Project Company Bankruptcy-Related Event” has the meaning set forth in subsection 20.1(C) (Project Company Bankruptcy-Related Event Defined).

“Project Company Conditions Precedent” has the meaning set forth in Section 3.1 (Project Company Conditions Precedent) of Appendix 3 (Financial Close Procedures and Conditions).

“Project Company Event of Default” has the meaning set forth in subsection 20.1(A) (Project Company Events of Default Defined).

“Project Company Fault” means:

- (1) A breach by the Project Company of any of its material obligations under this Project Agreement;

- (2) A breach of any representation or warranty made by the Project Company under this Project Agreement;
- (3) Willful misconduct of the Project Company or any Project Company Person; or
- (4) A negligent act or omission of the Project Company or a Project Company Person.

“Project Company Hazardous Substances” means the presence of Hazardous Substances in, on or under the Project Site (including presence in air, surface water, groundwater, soils, or subsurface strata) which is introduced to the Project Site by and caused by or attributable to any acts or omissions of the Project Company or any Project Company Person.

“Project Company Person” means:

- (1) Any director, officer, employee or agent of the Project Company in each case acting as such; or
- (2) Any Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

“Project Company Remediable Breach” has the meaning set forth in subsection 20.1(B) (Project Company Remediable Breach Defined).

“Project Company Representative” means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Project Agreement.

“Project Component” means each of the Project Components identified as such in Section 6.2.3 (Project Condition and Remaining Useful Life) to Appendix 8 (Facilities Management Standards).

“Project Contractor” means the Design-Builder or the Facilities Manager.

“Project Contractor Collateral Agreement” means the agreement to be entered into among the County, a Project Contractor and the Project Company in substantially the form set forth in Transaction Form C (Project Contractor Collateral Agreement).

“Project Contracts” means the Design-Build Contract and the Facilities Management Services Agreement.

“Project Equipment” means all manufactured equipment, systems, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, excluding Moveable Furniture, Fixtures and Equipment.

“Project Intellectual Property” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Project Company, any Project Contractor, any Subcontractor or any other third party, directly or indirectly, for the purposes of the Contract Services, but does not include the Financial Model.

“Project Phase Funding Agreements” means the Project Phase 1 Funding Agreement, the Project Phase 2 Funding Agreement, and the Project Phase 3 Funding Agreement.

“Project Phase 1 Funding Agreement” means the Clackamas County Courthouse Phase 1 Funding Agreement, dated [_____], between the County and the State.

“Project Phase 2 Funding Agreement” means the Clackamas County Courthouse Phase 2 Funding Agreement, dated [_____], between the County and the State.

“Project Phase 3 Funding Agreement” means the Clackamas County Courthouse Phase 3 Funding Agreement, dated [_____], between the County and the State.

“Project Requirements” means the Design and Construction Requirements and the Facilities Management Requirements.

“Project Schedule” has the meaning set forth in Section 2.4.1 (Scope of Application) of Appendix 6 (Design and Construction Standards).

“Project Site” means the real property described in Appendix 1 (Site-Related Information) on which the New Courthouse and Parking and Road Improvements is to be constructed by the Project Company.

“Project User” means any person employed at or visiting the Project for any authorized purpose.

“Proposal” means the proposal made by the Project Company in response to the submittal requirements of the RFP.

“Public Art” has the meaning set forth in subsection 7.1(T) (Installation of Public Art).

“Public Meetings and Records Law” means Oregon’s public meetings and records laws codified as Chapter 192 of the Oregon Revised Statutes, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Punch List” has the meaning set forth in subsection 8.6(A) (Punch List).

“Punch List Items” means any defects, deficiencies and items of outstanding work that would not materially impair court activities or the performance of the Facilities Management Services and could be rectified with minimal interference to the occupancy, use and lawful operation of the Project.

“Qualified Commercial Bank” means a reputable domestic or foreign commercial bank:

- (1) Whose long-term debt has at least two of the following ratings: “A2” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch; and
- (2) Which maintains a banking office, branch or agency in the United States.

“Qualified Insurer” has the meaning set forth in Section 4.1 (Policy Requirements) of Appendix 10 (Insurance Requirements).

“Qualifying Bank Transaction” means:

- (1) The disposition by a Senior Lender to a Qualifying Institution, any other Senior Lender or an Affiliate of such Senior Lender of any of its rights or interests in the Senior Financing Agreements;
- (2) The assignment of its interest in or grant by a Senior Lender of any rights of participation in respect of the Senior Financing Agreements in favor of:
 - (a) any of its Affiliates or another Senior Lender;
 - (b) any Qualifying Institution or any trustee thereof; or
 - (c) a local authority or public authority; or
- (3) The disposition or grant by a Senior Lender to a Qualifying Institution, any other Senior Lender or an Affiliate of such Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Project Company, whether by way of security or otherwise.

“Qualifying Institution” means:

- (1) A United States trust company, insurance company, investment company, pension fund or institution which has at least \$500 million in assets, including entities wholly-owned by any of the foregoing;
- (2) A bank regulated by the Board of Governors of the Federal Reserve System of the United States or a United States bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least \$500 million in assets and would be a “qualified institutional buyer” under United States securities law, including entities wholly-owned by any of the foregoing;
- (3) An institution which is recognized or permitted under the law of any member state of the European Economic Area (“EEA”) to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;
- (4) An institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the “OECD”) to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which has or manages at least \$500 million in assets, including entities wholly-owned by any such institution;
- (5) any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(6) (a) any pension fund, hedge fund, foundation or university or college endowment fund, (b) any entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (c) any person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (provided, that an entity described in this clause only qualifies if it is subject to the jurisdiction of state and federal courts in the State in any actions), each of (a) through (c) that have at least \$500 million in assets, including entities wholly owned by any of the foregoing;

(7) (a) any “qualified institutional buyer” under Rule 144(a) of the Securities Act of 1933 or any other similar Law hereinafter enacted that defines a similar category of investors by substantially similar terms and (b) the holders of debt issued by any conduit issuer or the trustee for such holders, so long as the indenture trustee for such holders of debt itself is an Qualifying Institution; or

(8) Any other institution the County designates in writing as a “Qualifying Institution”.

“Qualifying Refinancing” means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Re-Commissioning Plan” means the re-commissioning plan for the Project prepared pursuant to Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

“Red Soils Campus” means the Clackamas County Red Soils Campus, located in Oregon City, Oregon as described in Reference Document 2 (Red Soils Master Plan). The Project Site is located at the Red Soils Campus.

“Reference Documents” means those documents listed as Reference Documents in the Table of Contents.

“Refinancing” means:

(1) The Project Company incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;

(2) Any transaction in which the County, with the consent or at the request of the Project Company, grants rights to any person under an agreement similar to the Lenders’ Remedies Agreement or any other agreement that provides for step-in rights or similar rights to such person, other than the Lenders’ Remedies Agreement entered into on the Effective Date, any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;

(3) The exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;

(4) The disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the

creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of the Project Company whether by way of security or otherwise;

(5) The execution and delivery by the Project Company of any agreement or instrument relating in any way to the financing of the Project or the Contract Services, other than the Senior Financing Agreements, instruments relating to the Junior Debt and the organizational agreement governing the Project Company; or

(6) Any other arrangement put in place by the Project Company or another person which has an effect which is similar to any of (1) through (5) above or which has the effect of limiting the Project Company's ability to carry out any of the actions referred to in (1) through (5) above.

"Refinancing Gain" has the meaning set forth in Section 3.2 (Refinancing Gain Calculation) of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Regulated Site Condition" means, and is limited to,

(1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, paleontological, religious or similar significance;

(2) Any wetlands or habitat of an endangered or protected species as provided in Applicable Law;

(3) The presence anywhere in, on or under the Project Site on the Technical Proposal Submittal Date of wells or underground storage tanks for the storage of Hazardous Substances;

(4) The presence of Hazardous Substances (other than Project Company Hazardous Substances) in, on or under the Project Site (including presence in air, surface water, groundwater, soils or subsurface strata); and

(5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in, any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment.

"Reinstatement Plan" has the meaning set forth in subsection 14.3(C) (Delivery of Reinstatement Plan).

"Reinstatement Works" has the meaning set forth in subsection 14.3(A) (Draft Reinstatement Plan).

"Renewal Component" means the portion of the Facilities Management Charge reflecting compensation for Renewal Work exclusively, as further described in subsection 16.4(B) (Renewal Component).

"Renewal Work" means, as further described in the Renewal Work Plan, all work required (other than the Maintenance Services) for the renewal, repair, or replacement of worn-out, obsolete, damaged, or under-performing Project Components so that the New Courthouse does not prematurely deteriorate and otherwise remains fully functional in accordance with the Contract Standards.

“Relief Event” means:

- (1) An Insurable Force Majeure Event;
- (2) An Uninsurable Force Majeure Event;
- (3) A Change in Law Event; or
- (4) An Other Relief Event.

“Required Design-Build Period Insurance” means the insurance specified in part 1 of Appendix 10 (Insurance Requirements).

“Required Facilities Management Period Insurance” means the insurance specified in part 2 of Appendix 10 (Insurance Requirements).

“Required Insurance” means the Required Design-Build Period Insurance and the Required Facilities Management Period Insurance.

“Response Action” means any action taken in the investigation, removal, confinement, remediation, transportation, disposal or cleanup of a release of any Hazardous Substance, or to otherwise correct any non-compliance with Applicable Law pertaining to the environment or address any environmental condition as may be required by any relevant Governmental Body. “Response Action” includes any action which constitutes a “removal”, “response”, or “remedial action” as defined by Section 101 of CERCLA.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (1) Is debarred, suspended, or otherwise disqualified from federal, State, or County contracting for any services similar in nature to the Design-Build Work or the Facilities Management Services;
- (2) Was or is subject to any material claim of the United States, State, or County in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the County’s view, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Project Agreement;
- (3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offences or misdemeanors) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;
- (4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;
- (5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent.

“RFP” means the County’s Request for Proposals for a Public-Private Partnership to Design, Build, Partially-Finance, Operate and Maintain the New Clackamas County Circuit Courthouse, issued on September 14, 2021, as amended.

“Scheduled Occupancy Readiness Date” has the meaning set forth in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date), and includes (1) extensions for Relief Events as provided in subsection 8.7(C) (Extension for Relief Events), and (2) any other extensions provided for in a Change Order, Contract Administration Memorandum or Project Agreement Amendment).

“Secure Website” has the meaning set forth in subsection 17.1(A) (Access to the Financial Model).

“Senior Debt” means:

(1) All amounts outstanding, including interest and default interest accrued, from the Project Company to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by the Project Company for any reason other than a failure by the Project Company to pay any amount when due;

(2) Senior Debt Breakage Amounts payable by the Project Company (but not Senior Debt Breakage Amounts payable or credited to the Project Company); and

(3) All other reasonable transaction fees, costs and expenses for which the Project Company is responsible under the Senior Financing Agreements.

“Senior Debt Breakage Amounts” means any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of any hedging arrangement, that the Project Company must pay, or that may be payable or credited to the Project Company, under any Senior Financing Agreement or otherwise as a result of the payment, redemption, acceleration or reduction of all or any portion of the principal amount of Senior Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

“Senior Financing Agreements” means, collectively, the “Financing Documents”, as defined in the Lenders’ Remedies Agreement or, in the event of any Refinancing, any agreements replacing the Senior Financing Agreements, such security agreements and such other agreements in connection with such Refinancing.

“Senior Lenders” means the lenders to whom Senior Debt is owed.

“Service Fee” means the fee to be paid by the County to the Project Company as compensation for the Project Company’s performance of the Contract Services, calculated in accordance with Article 16 (Service Fee and Other Payments).

“Specified Change in Tax Law” means a Change in Law Event which results in:

(1) A change in the sales Tax imposed by the State or by the County and paid by the Project Company, the Project Contractor or any Subcontractors with respect to sales of goods purchased for the performance of the Contract Services; or

(2) A new Tax imposed by the United States, the State or the County and paid by the Project Company, the Project Contractor or any Subcontractors with respect to the performance of the Contract Services, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; any unincorporated business, payroll, franchise or employment Tax; or any Taxes imposed by a foreign government or any of their agencies.

“Standard & Poor’s” means Standard & Poor’s Financial Services LLC (d/b/a S&P Global Ratings), a division of S&P Global Inc., or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

“State” means the State of Oregon.

“State Article XI-Q Bonds” means the general obligation bonds of the State authorized to be issued under Article XI-Q of the State Constitution in the amount of \$94,500,000 pursuant to Senate Bill 5505, effective on July 16, 2021, to finance a portion of the costs of the Project.

“State Courthouse Tenants” means the Oregon Judicial Department, the Oregon Department of Human Services and the Oregon Office of Public Defense Services.

“State Funding Agreement Payment” means the payment of \$90,000,000 that is payable by the State to the County under the Project Phase 2 Funding Agreement.

“State Lease Agreements” means the respective lease agreements, each dated [_____], between the County and the State Courthouse Tenants.

“State Moveable FF&E Allowance Account” has the meaning set forth in subsection 7.16(E) (Payment for State Moveable Furniture, Fixtures and Equipment).

“State Moveable Furniture, Fixtures and Equipment” means the Moveable Furniture, Fixtures and Equipment to be utilized by the State and funded by the State, as identified in Attachment 6C (Preliminary List of State Moveable Furniture, Fixtures and Equipment) of Appendix 6 (Design and Construction Standards) or otherwise agreed to by the parties.

“Subcontract” means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of a Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Project Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor” means any person that enters into a Subcontract.

“Substantial Completion” has the meaning set forth in Section 7.18 (Substantial Completion).

“Superior Cleanliness” means, in general, a level of cleanliness intended for corporate site, donated building or historical focal points and includes: (a) floors and base moldings that shine or are bright and clean with fresh colors; (b) no buildup of dirt in corners or along walls; (c) vertical and horizontal surfaces that have a freshly cleaned or polished appearance and have no accumulation of dust, dirt, marks, streaks, smudges, or fingerprints; (d) washrooms, kitchenettes, locker rooms, and shower tile and fixtures that gleam and are odor-free; (e) supplies that are adequate; (f) trash containers and pencil sharpeners that are empty, clean, and odor-free; and (g) exterior fixtures, walls, and windows that are like new.

“Tax” means, from time to time, all taxes, surtaxes, duties, levies, imposts, tariffs, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges.

“Technical Proposal Submittal Date” means [_____].

“Term” has the meaning set forth in Section 3.1 (Effective Date and Term).

“Termination Amount” means the measure of compensation owing from the County to the Project Company upon termination of this Project Agreement prior to the Expiration Date, as set forth in Appendix 13 (Compensation on Termination).

“Termination Amount Due Date” means the date on which the County must pay the Termination Amount to the Project Company as provided for in Appendix 13 (Compensation on Termination).

“Termination by Court Ruling” means the issuance of a final, non-appealable court order by a court of competent jurisdiction:

(1) To the effect that this Project Agreement is void, unenforceable or impossible to perform in its entirety, except where void, unenforceable or impossible to perform by reason of Project Company Fault; or

(2) Upholding the binding effect on the Project Company or the County of a Change in Law that causes impossibility of performance of a fundamental obligation by the Project Company or the County under this Project Agreement or impossibility of exercising a fundamental right of the Project Company or the County under this Project Agreement.

“Termination Date” means the earlier of the Expiration Date or the date of termination of this Project Agreement provided in subsection 22.2(E) (Termination Date).

“Termination for an Extended Relief Event” has the meaning set forth in Section 15.4 (Termination for an Extended Relief Events).

“Termination for Convenience” has the meaning specified in subsection 22.2(A)(1) (County Termination Rights).

“Terrorism Risk Insurance Act” or **“TRIA”** means the Terrorism Risk Insurance Act of 2002.

“Total Constructive Loss” means the occurrence of damage or destruction to all or substantially all of the Project occurring after the Occupancy Readiness Date.

“Total Courthouse Unavailability” has the meaning set forth in Section 1.1 (Definitions) of Appendix 11 (Deductions).

“Transaction Form” means any of the Transaction Forms appended to this Project Agreement and identified as such in the Table of Contents.

“Transfer Restriction Date” has the meaning set forth in Section 23.1 (Limitation on Assignment by Project Company).

“Unavailability Event” has the meaning set forth in Section 1.1 (Definitions) of Appendix 11 (Deductions).

“Uninsurable Force Majeure Event” means the occurrence of any of the events or circumstances set forth in items (4), (5), (6), (7) or (8) of the definition of Force Majeure Event.

“Unit Holders” means the holder or owner of Units.

“Units” means units or other equity interests of any class in the capital of the Project Company.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, internet telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Vandalism” means willful or malicious damage to the Project (including all mechanical equipment, structures, improvements, grounds and all other property constituting the Project) that is caused by a Project User or any person visiting the Project, except to the extent such damage arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Vandalism Reserve Account” has the meaning set forth in Section 9.5(B) (Vandalism).

SECTION 1.2. INTERPRETATION.

This Project Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Agreement otherwise require.

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Project Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Project Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or legal entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) Entire Project Agreement. This Project Agreement, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Project Agreement. Without limiting the generality of the foregoing, this Project Agreement, shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(M) Counterparts and Delivery by Electronic Mail. This Project Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Project Agreement. Any party may deliver an executed copy of this Project Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that party will promptly deliver via mail or courier to the other parties an originally executed copy of this Project Agreement.

(N) Governing Law. This Project Agreement shall be governed by and construed in accordance with the applicable laws of the State and the County.

(O) Severability. Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as nearly as possible to its original intent and effect.

(P) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(Q) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(R) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(S) Applicability, Stringency and Consistency of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. For example, as between the requirements of Article 7 (Design and Construction), Appendix 6 (Design and Construction Standards), and the Design and Construction Proposal Extracts and as between the requirements of Article 9 (Facilities Management), Appendix 8 (Facilities Management Standards), and the Facilities Management Proposal Extracts, those provisions which provide better or greater Project size, quantity, quality, integrity, durability and reliability shall take precedence. Any reference in this Project Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Project Agreement.

(T) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third-party expense unless requested and reimbursed by the assisted party. Any failure of a party entitled to assistance hereunder to perform an obligation under this Project Agreement shall not be excused on account of any failure of the party obligated to provide assistance.

(U) Imputation of Knowledge to County. The County will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the County Representative) who have responsibilities or would be expected to supervise or monitor the performance of the Contract Services or any material aspect of the Project.

(V) Imputation of Knowledge to Project Company. The Project Company will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its agents, employees or workers (including the Project Contractors and the Subcontractors) who have responsibilities or would be expected to supervise or monitor the performance of the Contract Services or any material aspect of the Project.

(W) Third-Party Rights. This Project Agreement is exclusively for the benefit of the County and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party County Indemnitees as provided in Section 24.1 (Project Company's Obligation to Indemnify) and of the Senior Lenders as provided in the Lenders' Remedies Agreement) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(X) Discretion. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Project Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE COUNTY.

The County represents and warrants, as of the Effective Date, that:

(A) Existence and Powers. The County is a political subdivision duly organized and existing under and by virtue of the laws of the State and has full legal right, power and authority to execute, deliver and perform its obligations under this Project Agreement.

(B) Due Authorization. This Project Agreement has been duly authorized, executed and delivered by the County, and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. Neither the execution and delivery by the County of this Project Agreement nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by the County of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the County; or

(2) Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the County of this Project Agreement or the performance by the County of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the Project Company, there is no Legal Proceeding before or by any Governmental Body pending or, to the best of its knowledge, overtly threatened or publicly announced against the County, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the County or the validity, legality or enforceability of this Project Agreement against the County, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby or on the ability of the County to perform its obligations hereunder or under any such other agreement or instrument.

(F) County Ownership Interest in the Project Site; Existing Facilities. The County owns the Project Site in fee simple, subject to the easements and other exceptions to title indicated or referred to in Appendix 1 (Site-Related Information). The County has vacated the Existing Facilities.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Effective Date, that:

(A) Existence and Powers. The Project Company is a [limited liability company] duly organized, validly existing and in good standing under the laws of the State of [____], and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Project Agreement.

(B) Due Authorization and Binding Obligation. This Project Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. Neither the execution nor delivery by the Project Company of this Project Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company; or

(2) Conflicts with, violates or results in a material breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Agreement by the Project Company except as such have been duly obtained or made.

(E) No Litigation Affecting the Project Company. Except as disclosed in writing to the County, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the Project Company or the validity, legality or enforceability of this Project Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. Except as disclosed in writing to the County, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against any Project Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a

material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of any Project Contractor to perform its obligations under its respective Project Contract.

(G) Intellectual Property. The Project Company owns, has express rights to use, or can acquire on reasonable terms all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(H) Information Supplied by the Project Company. The information supplied and representations and warranties made by the Project Company in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Project Company (and to the Project Company's knowledge, all information supplied in such submittals with respect to the Project Contractors and the Subcontractors) is true, correct and complete in all material respects.

(I) Project Company Reviews. The Project Company has carefully reviewed the whole of this Project Agreement and has taken all steps it considers reasonably necessary to satisfy itself that nothing contained herein inhibits or prevents the Project Company from performing and completing the Project in accordance with the Contract Standards.

(J) Compliance with Applicable Law Generally. The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company's business and services. In addition and as required by ORS 305.385, the Project Company, under penalty of perjury, is to the best of its knowledge not in violation of any tax laws described in ORS 305.380.

(K) Representations as to the Initial Base Case Financial Model. The Project Company represents that the Financial Model:

- (1) Was prepared by or on behalf of the Project Company in good faith;
- (2) Was audited and verified by an independent recognized model auditor prior to the Effective Date;
- (3) Fully discloses all cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Project Agreement and by Unit Holders in purchasing Units;
- (4) Is substantially identical to the financial model presented to and relied upon by the Senior Lenders in entering into the Senior Financing Agreements; and
- (5) Is the only financial model used by the Project Company for the purposes described in items (3) and (4) of this subsection.

SECTION 2.3. CONTINUING ACCURACY OF PROJECT COMPANY REPRESENTATIONS AND WARRANTIES.

During the Term, the Project Company shall not take any action, or omit to perform any act, that results in a representation and warranty made in subsections 2.2(A), (B), (C), (D), (G), (H), (I), (J) and (K) (Representations and Warranties of the Project Company) becoming untrue. The Project Company shall promptly notify the County if any such representation and warranty becomes untrue. From time to time, the Project Company shall

provide the County, upon the County's request, with information reasonably requested by the County to substantiate the continuing accuracy of these representations and warranties.

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ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Project Agreement shall become effective, and the term hereof (the “**Term**”) shall commence, on the Effective Date. The Term shall continue to the Expiration Date or, if this Project Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Project Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Project Agreement, the following provisions hereof will survive the expiration or any earlier termination of this Project Agreement:

(1) Section 4.10 (Financial Books and Records);

(2) Section 9.13 (Project Handback); provided that the survival of Section 9.13 (Project Handback) is limited to circumstances where this Project Agreement expires without an earlier termination of this Project Agreement;

(3) Article 18 (Dispute Resolution);

(4) Article 21 (County Events of Default);

(5) Article 22 (Termination), as applicable to the obligations of the parties following the Termination Date;

(6) Section 24.2 (Indemnification Procedures);

(7) Section 25.12 (Confidentiality);

(8) Section 25.13 (Personal Information); and

(9) Section 1.2 (Professional Liability Insurance) of Appendix 10 (Insurance Requirements), to the extent the 10-year extended reporting or discovery “tail” period provided therein has not expired on the Termination Date;

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

CONTRACT SERVICES GENERALLY

SECTION 4.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Project Company. The Project Company shall, subject to the terms and conditions of this Project Agreement, design, construct, finance, operate and maintain the Project. The Project Company's operating rights and responsibilities shall not include any matter pertaining to the administration of justice, which shall remain the exclusive right and responsibility of the County and the State.

(B) County. The County shall, subject to the terms and conditions of this Project Agreement, pay the Service Fee and the other amounts required to be paid by the County hereunder to the Project Company for the performance of the Contract Services.

(C) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Service Fee.

SECTION 4.2. STATE FUNDING AND USE AND OCCUPANCY OF THE NEW COURTHOUSE.

(A) State Funding of the Occupancy Readiness Milestone Payment. Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment) obligates the County to make the Occupancy Readiness Milestone Payment to the Project Company in the amount of \$90,000,000 following the achievement of Occupancy Readiness. The State is obligated, pursuant to the Grant Funding Agreement, to make the State Grant Agreement Payment to the County in an amount not-to-exceed \$94,500,000 and in a time frame that will allow the County to use such proceeds to pay the Occupancy Readiness Milestone Payment in a timely manner. The County, based on these back-to-back commitments, expects to pay the Occupancy Readiness Milestone Payment from the proceeds of the State Funding Agreement Payment. As provided in subsection 8.11(B) (Payment Not Contingent on County's Receipt of the State Funding Agreement Payment), however, receipt by the County of the State Funding Agreement Payment is not a condition to the County's Occupancy Readiness Milestone Payment obligation.

(B) State and County Use and Occupancy of the New Courthouse. The Project Company acknowledges that the New Courthouse is being built and will be operated for conducting the judicial business of the Oregon Fifth Judicial Circuit and that the County has leased the New Courthouse to the State Courthouse Tenants as for such purposes pursuant to the State Lease Agreements. The Project Company further acknowledges that the County, as owner of the Project, will also use and occupy the New Courthouse for County governmental functions supporting conduct of judicial business by the State, including use by the Sheriff's Office and the District Attorney. This Project Agreement does not confer on the Project Company any rights or responsibilities with respect to the performance by the State and the County with respect to their respective judicial and governmental duties.

(C) State, County and Project Company Communications. During the Facilities Management Period, as provided in Section 25.7 (Project Agreement Administration) and notwithstanding the State's role as the primary user and occupant of the New Courthouse, all communications relating to the performance of this Project Agreement shall be between the County, through the County Representative, and the Project Company, through the Project

Company Representative. The County shall handle all matters of interest or concern to the State Courthouse Tenants, and conveying to the Project Company any such matters that it believes are relevant to the performance of the Facilities Management Services. The Project Company shall not be obligated to take direction from the State (or the State Courthouse Tenants) or to respond to any communication received from the State (or the State Courthouse Tenants). The Project Company acknowledges and agrees that the County may provide to the State, in its discretion, copies of all Contract Administration Memoranda, Contract Amendments and other communications and documents delivered to the County pursuant to this Project Agreement. In addition, the County may, at its discretion, identify representatives of the State to receive all Project Company communications related to the Facilities Management Services.

SECTION 4.3. DESIGN-BUILD WORK PERSONNEL.

(A) Staffing Requirements. The Project Company shall enforce discipline and good order during the Design-Build Period among the Project Company's employees and the Design-Builder. All persons engaged by the Project Company for Design-Build Work shall have requisite skills for the tasks assigned. The Project Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. All firms and personnel performing Design-Build Work, including Project Contractor and Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Design-Build Project Manager. The Project Company shall designate from time to time an employee of the Project Company or any Affiliate or an employee of the Project Contractor as the Project Company's construction manager (the "**Design-Build Project Manager**"), who shall be present on the Project Site with any necessary assistants on a full-time basis when the Project Company or any Project Contractor or Subcontractor is performing the Design-Build Work. The Design-Build Project Manager shall be appropriately trained, experienced and knowledgeable in all aspects of the Design-Build Work so as to knowledgeably interact and communicate with the County and the Project Contractors and all Subcontractors regarding the Project and appropriately oversee the day-to-day performance of the Design-Build Work. The Design-Build Project Manager shall, among other things:

- (1) Be familiar with the Design-Build Work and all requirements of this Project Agreement;
- (2) Coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision;
- (3) Maintain a daily status log of the Design-Build Work;
- (4) Attend all monthly construction progress meetings with the County; and
- (5) Coordinate, where appropriate, with the Independent Building Expert.

The Project Company shall keep the County continuously informed of all business telephone, mobile telephone, e-mail addresses and other means by which the Design-Build Project Manager may be contacted. The Design-Build Project Manager (or their designee with equal authority to bind and represent the Project Company) shall be available to be contacted by the County on a continuous 24-hours per day, 7 days per week, 365 days per year basis during the Design-Build Period for emergency response, information, coordination or any other purpose hereunder.

SECTION 4.4. FACILITIES MANAGEMENT SERVICES PERSONNEL.

(A) Staffing Requirements. The Project Company shall staff the Project during the Facilities Management Period in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of Applicable Law. The Project Company shall discipline or replace, as appropriate, any employee of the Project Company or any Subcontractor engaging in unlawful, unruly, offensive or significantly objectionable conduct. The Project Company shall notify the County of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely affect the ability of the Project Company to provide the Facilities Management Services in accordance with the Contract Standards.

(B) Facilities Management Supervisor. The Project Company shall appoint a full-time manager of the Project during the Facilities Management Period (the “**Facilities Management Supervisor**”) who shall be licensed, trained, experienced and proficient in the management and operation of institutional public buildings comparable to the Project, shall be appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Project Company’s performance of the Facilities Management Services. The Project Company acknowledges that the performance of the individual serving from time to time as the Facilities Management Supervisor will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the County and the Facilities Management Supervisor will be essential to effectuating the intent and purposes of this Project Agreement. Accordingly, not fewer than 15 days prior to the date on which any candidate for Facilities Management Supervisor from time to time during the Term is proposed by the Project Company to assume managerial responsibility for the Project, the Project Company shall:

- (1) Provide the County with a comprehensive resume of the candidate’s licenses, training, experience, skills and approach to management and customer relations; and
- (2) Afford the County an opportunity to interview the candidate with respect to such matters.

The County shall have the right to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The County shall provide notice of its approval or disapproval within 15 days following the interview, together with a reasonably detailed written explanation of the grounds of any disapproval. Failure of the County to deliver such notice within such 15-day period shall be deemed an approval of the proposed Facilities Management Supervisor by the County. The initial Facilities Management Supervisor, a Key Individual, shall not be replaced, unless otherwise approved by the County, acting reasonably, for a period of three years from the Occupancy Readiness Date, absent death, disability, retirement, resignation or cessation of employment with the Project Company. The Project Company shall replace the Facilities Management Supervisor at the request of the County, after notice and a reasonable opportunity for corrective action, in the event the County determines, acting reasonably, that an unworkable relationship has developed between the Facilities Management Supervisor and the County.

SECTION 4.5. KEY INDIVIDUALS.

(A) In General. Attached as Appendix 15 (Project Company and Project Contractors Information) is a list of persons (the “**Key Individuals**”) that the Project Company shall utilize in undertaking the Contract Services. With respect to each of the Key Individuals:

(1) The Project Company, while the Key Individuals remain within its employment or the employment of a Project Contractor or Subcontractor, shall use all reasonable efforts to deploy the Key Individuals to perform the duties for the Contract Services described in Appendix 15 (Project Company and Project Contractors Information); and

(2) If for any reason a Key Individual resigns, retires, dies, becomes disabled, receives maternity, parental or sick leave, is promoted or is terminated for cause, then the Project Company shall retain a replacement with equivalent expertise and experience to the unavailable Key Individual satisfactory to the County acting reasonably, and the Project Company shall not replace such Key Individual without the County's consent, acting reasonably.

(B) Replacement of Certain Key Individuals Prior to the Occupancy Readiness Date; Liquidated Damages. If certain Key Individuals are not available for the Design-Build Work, or do not maintain active involvement in the prosecution and performance of the Design-Build Work, the Project Company acknowledges that the County and the Project will suffer significant and substantial damages and that it is impracticable and extremely difficult to determine the actual damages that would accrue in such an event. As a result, if the Project Company, prior to the Occupancy Readiness Date, formally or informally replaces the Project Manager, Design Manager or Design-Build Project Manager absent a reason identified in subsection (A)(2) of this Section or at the direction of the County, then the Project Company agrees to pay liquidated damages, in the amount of \$50,000 per substitution, in addition to obtaining the required approval of the substituted Key Individual from the County pursuant to subsection (A)(2) of this Section. Any liquidated damage amount to be applied pursuant to this subsection shall be paid as an Extraordinary Item credit against the first Service Fee payment. The County may, in its discretion, waive the assessment of liquidated damages if the Project Company provides sufficient documentation that demonstrates that such Key Individual substitution has equal or better qualifications to the original Key Individual and will not have an adverse effect on the Project.

SECTION 4.6. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Project Company shall perform the Contract Services in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law, including:

- (1) the workers' compensation laws set forth in ORS Chapter 656;
- (2) the wages, hours and records laws set forth in ORS Chapter 652;
- (3) the conditions of employment laws set forth in ORS Chapter 653;
- (4) the safety and health regulations set forth in ORS Chapter 654;
- (5) the unemployment insurance laws set forth in ORS Chapter 657;
- (6) 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;
- (7) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
- (8) the Americans with Disabilities Act of 1990, as amended;

- (9) the Health Insurance Portability and Accountability Act of 1996;
- (10) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- (11) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- (12) discrimination against disabled persons, as set forth ORS 659A.142;
- (13) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
- (14) 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;
- (15) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (16) 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;
- (17) any other nondiscrimination provisions in the specific statutes if application for Federal assistance is being made;
- (18) the requirements of any other nondiscrimination statutes which may apply;
- (19) all other applicable requirements of federal and State civil rights and rehabilitation statutes, rules and regulations not set forth in this subsection; and
- (20) HB 2007 (2019 Oregon Laws, Chapter 645), relating to the use of diesel engines and non-road diesel engines.

(B) Governmental Approvals. The Project Company shall make all filings, applications and reports necessary to be made in order to obtain and maintain all Governmental Approvals required for the performance of the Contract Services and shall comply with the terms of all Governmental Approvals.

(C) Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Services, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) Investigations of Non-Compliance. In connection with any actual or alleged event of material non-compliance with Applicable Law in the performance of the Contract Services, the Project Company shall, in addition to any other duties which Applicable Law may impose:

- (1) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;

- (2) Attend all meetings and hearings with respect to the Project required by any Governmental Body;
- (3) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to the County; and
- (4) Promptly upon receipt thereof, provide the County with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and written summaries of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish the County with a prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. To the greatest extent practicable, the Project Company shall provide the County an opportunity to review and comment on any proposed Project Company response to any non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) Fines, Penalties and Remediation. Except to the extent excused by Relief Events, in the event that the Project Company, a Project Contractor or any Subcontractor fails at any time to comply with Applicable Law with respect to the Contract Services, the Project Company shall:

- (1) Immediately correct such failure and resume compliance with Applicable Law;
- (2) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (3) Indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
- (4) Make all changes in performing the Contract Services which are necessary to assure that the failure of compliance with Applicable Law will not recur; and
- (5) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, a Project Contractor or any Subcontractor to comply with Applicable Law.

(F) Tax Compliance. The Project Company represents and warrants that it has complied, and will continue to comply throughout the Term of this Project Agreement and any extensions, with all Tax laws of the State or any political subdivision of the State, including ORS 305.620 and ORS chapters 316, 317, and 318. The Project Company further represents and warrants that it will require the Design-Builder during the Design-Build Period and Facilities Manager during the Facilities Management Period to similarly comply with all Tax laws of the State or any political subdivision of the State, including ORS 305.620 and ORS Chapters 316, 317 and 318. Any violation of this subsection shall constitute a Project Company Event of Default pursuant to subsection 20.1(A)(4).

SECTION 4.7. RESTRICTIONS ON COUNTY-DIRECTED DESIGN AND CONSTRUCTION REQUIREMENT CHANGES, CAPITAL MODIFICATIONS AND FACILITIES MANAGEMENT SERVICES CHANGES.

The County shall not at any time during the Term require, and the Project Company may refuse to implement, a Change Order (relating to a County-Directed Design and Construction Requirement Change or a Design and Construction Requirement Change made due to a Relief Event), a Capital Modification or a Facilities Management Services Change which:

- (1) Would be contrary to Applicable Law;
- (2) Would render any policy of Required Insurance void or voidable unless the County agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;
- (3) Would cause the revocation of any Governmental Approval required for the Project Company to perform its obligations under this Project Agreement, and such Governmental Approval would not, using reasonable efforts, be capable of amendment or renewal;
- (4) Would require a new Governmental Approval for the Project Company to perform its obligations under this Project Agreement, which Governmental Approval would not, using reasonable efforts by the Project Company or the County, as applicable, be obtainable;
- (5) Would materially and adversely affect the risk allocation and payment regime under this Project Agreement with respect to the Design-Build Work or the Facilities Management Services, unless the material and adverse effects of such a Change Order on the Design-Build Work or the Facilities Management Services Change (as the case may be) are remedied by the County to the Project Company's reasonable satisfaction;
- (6) Would result in a change to the essential nature of the Project; or
- (7) The Project Company would not, using commercially reasonable efforts, be able to implement within the time specified.

SECTION 4.8. GOOD DESIGN-BUILD PRACTICE AND GOOD FACILITIES MANAGEMENT PRACTICE.

Good Design-Build Practice and Good Facilities Management Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Design-Build Practice or Good Facilities Management Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall be relieved of its obligation to comply with such evolved Good Design-Build Practice and Good Facilities Management Practice (but not Good Design-Build Practice and Good Facilities Management Practice as of the Technical Proposal Submittal Date) unless the County agrees to adjust the Service Fee on a lump sum or reimbursable basis (subject to Cost Substantiation), as appropriate, to account for such additional costs.

SECTION 4.9. DEVELOPMENT OF FINAL DESIGN-BUILD PLANS AND FACILITIES MANAGEMENT PLANS BASED ON PRELIMINARY PLANS.

The Project Company prepared and submitted certain preliminary plans with its Proposal, which describe the Project Company's approach for delivering certain Contract Services during the Term. Such preliminary plans were a material part of the County's selection of the Project Company's Proposal and have been incorporated as attachments to Appendix 7 (Design and Construction Proposal Extracts) and Appendix 9 (Facilities Management Proposal Extracts). In accordance with the applicable requirements of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), Appendix 6 (Design and Construction Standards) and Appendix 8 (Facilities Management Standards), the Project Company shall prepare final Design-Build Plans and Facilities Management Plans for the County that are consistent with the respective preliminary plans set forth in the attachments to Appendix 7 and Appendix 9.

SECTION 4.10. FINANCIAL BOOKS AND RECORDS.

(A) Recordkeeping Requirements. The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Services, this Project Agreement, the Project Contracts, any Subcontract or any transactions in which the County has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design and Construction Requirement Changes, Relief Event costs, or other changes in or additions to the Service Fee for which the County is or may be responsible under this Project Agreement. The Project Company shall produce such financial books and records for examination and copying for all such purposes promptly upon request by the County. All such information upon delivery to the County shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP. The Project Company shall not be required to provide the County any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the County through the Cost Substantiation process, through the use of the Financial Model as contemplated hereunder, or otherwise upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the seventh anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Project Agreement.

(B) Delivery of the Project Company's Internal Budget. Not later than March 31 of each Contract Year during the Facilities Management Period, the Project Company shall deliver to the County the Project Company's internal capital and operating annual budget for the forthcoming year, in at least as much detail as any similar budget required by the Senior Lenders, together with:

- (1) its internal capital and operating budgets, as applicable, for the immediately preceding three Contract Years during the Facilities Management Period (or for the total number of Contract Years including partial Contract Years since the Occupancy Readiness Date, whichever is less); and

(2) a detailed itemization of all capital and operating costs and expenses for the immediately preceding three Contract Years during the Facilities Management Period (or for the total number of Contract Years including partial Contract Years since the Occupancy Readiness Date, whichever is less), organized by the line items in the budgets.

(C) Inspection, Audit and Adjustment. The County shall have the right to perform or commission an inspection or independent audit of the financial information required to be kept under this Section. The County shall give the Project Company reasonable advance notice (at least three Business Days) prior to any such audit, and such audit shall be performed during business hours. The County shall, or shall cause the party conducting the inspection or audit, to provide a complete copy of the inspection or audit report to the Project Company following receipt of such report. If an inspection or audit reveals that the Project Company has overstated any component of the Service Fee, a County Design-Build Period Payment Obligation or any other County payment obligation arising out of this Project Agreement, then the Project Company shall, at the election of the County, either immediately reimburse to the County or offset against Service Fee payments, as a Service Fee adjustment, the overstated amount plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to the County. If the overpayment exceeds 1% of the total amount that should have been properly paid by the County during the period audited, then the Project Company shall, in addition, reimburse the County for any and all fees and costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the County may have, including remedies for a Project Company Event of Default.

SECTION 4.11. DELIVERY OF DOCUMENTS.

(A) Project Company. In this Project Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to the County both in printed form (in the number of copies indicated) and, at the County's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the County may reasonably request to facilitate the administration and enforcement of this Project Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) County. The County shall make available to the Project Company upon request copies of all information relating to the Project which is in the possession of the County and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

ARTICLE 5

FINANCING PERIOD

SECTION 5.1. FINANCIAL CLOSE.

(A) Financial Close Process. The Project Company shall finance the Project in accordance with the requirements of Article 6 (Project Financing and Refinancing) and, in connection therewith, the parties shall comply with their respective obligations for the achievement of Financial Close, as set forth in Appendix 3 (Financial Close Procedures and Conditions). Without limiting anything set forth in Appendix 3, Financial Close shall not occur until each of the Financial Close Conditions has been satisfied by the Project Company or the County, as applicable or waived in writing by the County or the Project Company, as applicable, in its discretion.

(B) Satisfaction of Financial Close Conditions on or Prior to Effective Date. The parties acknowledge the potential simultaneous occurrence of the Effective Date and the Financial Close Date as the result of the satisfaction of the Financial Close Conditions by the Project Company or the County, as applicable, on or before the Effective Date. In such event, the provisions of this Article 5 (Financing Period) and Appendix 3 (Financial Close Procedures and Conditions) shall have no applicability.

SECTION 5.2. FINANCIAL CLOSE DEADLINE.

The “**Financial Close Deadline**” is the date that is 90 days following the Effective Date. If, however:

(1) There shall be any Legal Proceeding, at law or in equity, before or by any court or Governmental Body, pending or threatened, which challenges, or might challenge, directly or indirectly, (a) the authorization, execution, delivery, validity or enforceability of this Project Agreement, or (b) the interest of the County in the Project Site, which can reasonably be expected to materially and adversely affect the ability of the County or the Project Company to comply with their respective obligations hereunder;

(2) Any Change in Law Event shall have occurred after the Effective Date and before the Financial Close Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Project Agreement a violation of Applicable Law;

(3) Any Relief Event occurs, which under the terms of an applicable commitment letter issued to the Project Company by the Senior Lenders, would be the basis for an extension of the loan commitment thereunder beyond the date that is 90 days following the Effective Date; or

(4) Any event described in Appendix 3 (Financial Close Procedures and Conditions) occurs permitting an extension of the Financial Close Deadline;

then the Financial Close Deadline shall, contingent upon a commensurate extension of the Financial Close Security, be extended for such period of time as any of the foregoing events shall be continuing; provided, however, that the Financial Close Deadline shall not be extended beyond 180 days following the Effective Date for any reason, except as such date may be extended by agreement of the parties and contingent upon a commensurate extension of the Financial Close Security. The parties shall execute a Contract Administration Memorandum as of the Effective Date to memorialize the Financial Close Deadline for all purposes of this Project Agreement and

such Contract Administration Memorandum may be amended to reflect any extension of the Financial Close Deadline. The failure to achieve Financial Close by the Financial Close Deadline may result in termination of this Project Agreement, as and to the extent provided in Appendix 3 (Financial Close Procedures and Conditions).

SECTION 5.3. FINANCIAL CLOSE SECURITY.

(A) Requirements. On the Effective Date (subject to subsection 5.1(B) (Satisfaction of Financial Close Conditions on or Prior to Effective Date)), the Project Company shall provide security for the performance of its obligations to achieve Financial Close by delivering to the County one or more irrevocable direct pay letters of credit meeting the requirements set forth in this subsection (the **“Financial Close Security”**). The Financial Close Security shall be:

- (1) Issued or confirmed by a Qualified Commercial Bank;
- (2) Substantially in the form set forth in the Transaction Forms and with an expiration date no earlier than 10 Business Days following the Financial Close Deadline; and
- (3) In an aggregate amount equal to \$10,000,000.

(B) County Drawing Rights. The County shall have the right to draw upon the Financial Close Security in the full stated amount thereof solely under the circumstances specified in Section 8.1 (County Termination for Failure to Achieve Financial Close by the Financial Close Deadline) of Appendix 3 (Financial Close Procedures and Conditions). The parties acknowledge and agree that the County’s rights to retain for its own account the proceeds of a drawing on the Financial Close Security under the circumstances specified in Appendix 3 are in the nature of liquidated damages and subject to the terms and conditions of Section 19.2 (County Liquidated Damages Rights).

(C) Return of Financial Close Security. The County shall return the Financial Close Security to the Project Company in accordance with Appendix 3 (Financial Close Procedures and Conditions) unless it has the right (including the contingent right) to draw on the Financial Close Security in accordance with subsection 5.3(B) (County Drawing Rights).

ARTICLE 6

PROJECT FINANCING AND REFINANCING

SECTION 6.1. PROJECT COMPANY RIGHT AND RESPONSIBILITY TO FINANCE PROJECT.

(A) Project Company Financing; County Occupancy Readiness Milestone Payment. The Project Company is solely responsible for obtaining and repaying all construction and other financing necessary for the Project at its own cost and risk and without recourse to the County and, following the Financial Close Date, exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms and conditions of its financing. The County shall make the Occupancy Readiness Milestone Payment to the Project Company as provided in Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment).

(B) Project Company Liability. Notwithstanding any foreclosure or other enforcement of any security interest created by a Senior Financing Agreement, the Project Company shall remain liable to the County for the payment of all sums owing to the County under this Project Agreement and the performance and observance of all of the Project Company's covenants and obligations under this Project Agreement.

(C) Project Company Cooperation with County Financings. The Project Company shall provide reasonable assistance to the County in connection with any County financing for any capital costs the County is obligated to pay pursuant to subsection 6.6(A) (County Financing) and Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment), including cooperating with the County with respect to any continuing disclosure requirements that apply to the County in accordance with any Applicable Law.

SECTION 6.2. SENIOR DEBT NON-RECOURSE TO COUNTY.

All Senior Debt or other obligations issued or incurred by the Project Company in connection with this Project Agreement or the Project shall be issued or incurred only in the name of the Project Company. The County shall have no obligation to pay debt service on any Senior Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company or the Senior Financing Agreement.

SECTION 6.3. COMPLIANCE WITH SENIOR FINANCING AGREEMENTS.

The Project Company shall keep the Senior Financing Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent the Project Company from performing its obligations under this Project Agreement. If at any time the Project Company receives a notice that an "event of default", any event entitling the Senior Lenders to enforce any security or any other similar event has occurred under the Senior Financing Agreements, the Project Company shall forthwith deliver to the County a copy of such notice.

SECTION 6.4. CHANGES TO SENIOR FINANCING AGREEMENTS.

The Project Company shall not, without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed, terminate, amend or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements if such action would materially adversely affect the Project Company's

ability to perform its obligations under this Project Agreement or have the effect of materially increasing any liability or potential liability of the County. If at any time any material amendment is made to any Senior Financing Agreement or the Project Company enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), the Project Company shall deliver to the County a copy of each such material amendment or agreement within 10 Business Days of the date of its execution and creation, certified as a true copy by an officer of the Project Company.

SECTION 6.5. REFINANCING.

(A) Consent Required for Refinancing. The Project Company shall not enter into any Refinancing other than an Exempt Refinancing or, without the prior written consent of the County, a Qualifying Refinancing. Such consent will not be unreasonably withheld or delayed if such Qualifying Refinancing occurs after the Occupancy Readiness Date, has no material and adverse effect on the Project Company's ability to perform its obligations under this Project Agreement and does not increase any liability or potential liability of the County (unless the County is specifically compensated for such liability or potential liability).

(B) County's Share of Refinancing Gain. The County shall be entitled to receive a 50 percent share of any Refinancing Gain arising from a Qualifying Refinancing, to be determined as set forth in Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. The County shall not require a share greater than 50 percent of the Refinancing Gain as a condition of receiving its consent to a Qualifying Refinancing.

(C) Project Company Proposal to Refinance. The Project Company shall promptly provide the County with full details of any proposed Qualifying Refinancing, as set forth in Section 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. The County shall (before, during and within two years after any Qualifying Refinancing) have unrestricted rights of audit over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Qualifying Refinancing.

(D) Payment to the County. Payment to the County of its portion of any Refinancing Gain shall be made as set forth in Section 5 (Payment of the County's Portion of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement.

(E) Calculation of Refinancing Gain. The Refinancing Gain shall be calculated as set forth in Section 3 (Calculation of the Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement.

(F) Transaction Expenses. The Project Company will pay its own transaction costs incurred in connection with a Qualifying Refinancing. The Project Company shall pay the County's reasonable and properly incurred out-of-pocket professional costs in connection with a Qualifying Refinancing. If the County delivers to the Project Company a written invoice therefor at least two Business Days prior to the scheduled date of closing, then the Project Company shall reimburse such costs at closing. If County does not deliver a written invoice at least two Business Days prior to closing, then it may deliver such invoice within 30 days after receiving written notice of closing and the Project Company shall reimburse the County for such costs within ten days after the County delivers the invoice to the Project Company. If for any reason the Qualifying Refinancing does not close, the Project Company shall reimburse such incurred County costs within 30 days after the County delivers to the Project Company a written invoice therefor. The

amounts payable under this subsection are payable even if the Refinancing Gain is determined to be zero.

(G) County Cooperation. The County shall cooperate, as reasonably requested by the Project Company, in connection with the closing of any Refinancing, including entering into a Lenders' Remedies Agreement in connection therewith and providing customary legal opinions and instruments and other documents.

SECTION 6.6. FINANCING CAPITAL COSTS FOR WHICH THE COUNTY IS RESPONSIBLE.

(A) County Financing. This Project Agreement obligates the County to pay: (1) costs of Capital Modifications required due to a Relief Event pursuant to Section 10.4 (Capital Modifications Required Due to Relief Events) or at the County's direction pursuant to Section 10.5 (Capital Modifications at County Direction); and (2) certain costs for Design-Build Work or Reinstatement Works required due to Uninsurable Force Majeure Events pursuant to Section 14.2 (Uninsurable Force Majeure Events), Section 15.1 (Change in Law Events) and Section 15.3 (Other Relief Events). All such costs shall be paid on a negotiated lump sum basis in accordance with Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 16.12 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation), to the Project Company or to the third party entitled to receive such payments. The County shall pay any such costs from currently available funds or from the proceeds of a County financing. The Project Company shall have no obligation to finance any such costs and adjust the Service Fee on account of any Project Company financing except following any agreement of the parties with respect thereto entered into based on a County request made pursuant to subsection (B) of this Section.

(B) Project Company Financing. At the County's request, and subject to the agreement of the parties as to the amount of the applicable costs and related terms and conditions, the Project Company shall use all reasonable efforts to obtain the financing required to pay the capital costs that the County is obligated to pay for as referred to in subsection (A) of this Section, on commercially reasonable terms and subject to the consent of the Senior Lenders, acting reasonably. To the extent the Project Company is able to obtain such financing, the cost of the financing will be taken into consideration by the parties in the negotiation of the adjustment of the Service Fee resulting from the implementation of the Capital Modification. The County shall pay the Project Company, as an Extraordinary Item, an amount equal to the reasonable out-of-pocket expenses incurred by the Project Company in seeking such financing, provided that the County approved such expenses prior to the Project Company incurring them.

(C) No Senior Lender Obligation. The County acknowledges that the Senior Lenders have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

ARTICLE 7

DESIGN AND CONSTRUCTION

SECTION 7.1. DESIGN-BUILD WORK GENERALLY.

(A) Commencement and Prosecution of Design-Build Work. On the Financial Close Date, the Project Company shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards. The Project Company's failure to satisfy the Occupancy Readiness Conditions by or before the Scheduled Occupancy Readiness Date shall result in the loss of Service Fee payments scheduled to be made by the County under Section 16.1 (Service Fee Generally) during the period of delay. Failure to satisfy the Occupancy Readiness Conditions by the Longstop Date shall constitute a Project Company Event of Default upon which the County may terminate this Project Agreement for cause in accordance with subsection 22.2(A) (County Termination Rights).

(B) Project Company Control of the Design-Build Work; No County Responsibility. The Project Company shall have total control of the Design-Build Work and shall effectively direct and supervise the Design-Build Work so that it is undertaken in compliance with the terms of this Project Agreement. The Project Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the fact that the RFP included certain minimum conceptual design criteria for the Design-Build Work and the Design and Construction Standards that the Project would be required to meet or the fact that in negotiating this Project Agreement, between the date the Project Company was selected as the preferred proposer pursuant to the RFP and the Effective Date, the County participated in certain design development activities that resulted in the finalization of the Design and Construction Requirements. The Project Company acknowledges that such minimum conceptual design criteria do not in any manner or to any degree impair the Project Company's ability to perform the Design-Build Work and the Facilities Management Services in compliance herewith. Nothing in this Project Agreement shall be interpreted as giving any responsibility for the Design-Build Work to the County, any County Indemnitee, or to the Independent Building Expert. The County's rights of review and comment with respect to any aspect of the Design-Build Work shall be for the County's benefit only, and no review or comment by the County Representative or any other representative of the County or the State shall in any way relieve the Project Company of its obligation for all aspects of the Design-Build Work of the Project. If, however, the County and the Project Company agree to specific changes to the Contract Standards, such agreement shall be binding on the parties.

(C) Materials, Labor and Services. The Project Company shall furnish all necessary architectural, design and engineering services, labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and utilities, completed structures, assemblies, fabrications, acquisitions, installations, testing, accounting, recordkeeping and other things and services of every kind whatsoever necessary for the full performance and completion of the Project Company's design, engineering, construction, start-up, Commissioning, obtaining and maintaining Governmental Approvals and related obligations with respect to the design, construction and Commissioning of the Project during the Design-Build Period under this Project Agreement. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Work shall be new, of recent manufacture, and meet or exceed the Design and Construction Requirements.

(D) Project Sequencing, Schedule and Reports. The Project Company shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. Throughout the Design-Build Period, the Project Company shall submit to the County a monthly progress schedule and report in accordance with the requirements of Section 27.2 (Monthly Progress Report) of Appendix 6 (Design and

Construction Standards). The Project Company's submittal of the monthly progress schedule and report (or any revised progress schedule and report) is for the County's information only and shall not limit or otherwise affect the Project Company's obligations to achieve Occupancy Readiness by the Scheduled Occupancy Readiness Date. The County's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the County in any manner and shall not imply County approval or consent to any of the matters set forth therein.

(E) Design and Construction Requirements. The Project Company shall perform the Design-Build Work in compliance with the Design and Construction Requirements. The Design and Construction Requirements are intended to include the basic design principles, concepts and requirements for the Design-Build Work but do not include the final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work or for achieving Occupancy Readiness. The Project Company agrees to prepare and furnish all necessary detailed designs, plans, drawings and specifications in conformity with the Design and Construction Requirements. The Project Company further agrees that it shall not have the right to bring any claim whatsoever against the County or any of its consultants or subcontractors, arising out of any designs, plans, drawings or specifications included in the RFP or made available during the procurement process.

(F) Standards of Workmanship and Materials. Where this Project Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Project Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Design and Construction Requirements, and the Design and Construction Requirements are to be interpreted accordingly.

(G) Technical Standards and Codes. References in this Project Agreement to all professional and technical standards, codes and specifications, except as otherwise provided in Appendix 6 (Design and Construction Standards), are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Technical Proposal Submittal Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Design and Construction Requirements, and (2) if any material revision occurs, to the Project Company's knowledge, after the Technical Proposal Submittal Date, and prior to completion of the applicable Design-Build Work, the Project Company shall notify the County. If so directed by the County, the Project Company shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code or specification, and such direction shall be deemed to be an Other Relief Event.

(H) Deliverable Material. The Project Company shall deliver to the County all design documents, reports, submittals and other materials ("**Deliverable Material**") required to be delivered under Appendix 6 (Design and Construction Standards), Appendix 8 (Facilities Management Standards), Appendix 10 (Insurance Requirements) and Appendix 14 (Reports and Records). With respect to those Deliverable Materials required to be delivered within a certain number of days after the Financial Close Date under Appendix 6 (Design and Construction Standards), Appendix 10 (Insurance Requirements) and Appendix 14 (Reports and Records), such obligation to provide such Deliverable Materials shall be counted from the Effective Date. The County shall have the right from and after the Effective Date to use (or permit use of) all such Deliverable Material, all oral information received by the County in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. The County's use of any such Deliverable Material for any purpose

other than the Project shall be at its own risk, and the Project Company shall have no liability therefor.

(I) Payment of Costs. Except as otherwise expressly provided or referred to in Section 7.22 (Payment Obligations of the County During the Design-Build Period), the Project Company shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including: (1) all costs of permitting (regardless of permittee); (2) regulatory compliance and Legal Proceedings brought against the Project Company; (3) obtaining and maintaining the Financial Close Security and the Required Insurance; (4) financing costs; (5) payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; (6) legal, financial, engineering, architectural and other professional services of the Project Company; (7) sales, use and similar Taxes on building supplies, materials and equipment; (8) general supervision by the Project Company of all Design-Build Work; (9) the preparation of schedules, budgets and reports; (10) keeping all construction accounts and cost records; and (11) all other costs required to achieve Substantial Completion, Occupancy Readiness and Final Completion.

(J) Quality Assurance and Quality Control. The Project Company shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan, which shall be developed by the Project Company in accordance with Section 26.3.3 (Design-Build Quality Management Plan) of Appendix 6 (Design and Construction Standards).

(K) Naming and Signs. The County shall have the exclusive right to name the Project and any parts thereof. The Project Company shall provide and maintain temporary Project identification and information signs during the Design-Build Period. No signs shall be erected (other than those required pursuant to subsection 7.13(B)(2) (Safety and Security)) until their appearance, content, and location have been fully reviewed and approved by the County, which approval shall not be unreasonably withheld, conditioned or delayed. The Project Company shall remove temporary signs from the Project Site when they are no longer necessary.

(L) Laydown and Staging Areas. Laydown and staging areas for construction materials shall be located on the Project Site or at other locations arranged and paid for by the Project Company.

(M) Construction Office Space; Use of Existing Facilities. The County hereby licenses, without fee or charge, the Existing Facilities, located on the Project Site, to the Project Company, for use as a construction office by the Project Company, the Design-Builder and Subcontractors, as reasonably required. Following the demolition of the Existing Facilities, the Project Company shall arrange and pay for the use of all required construction trailers or other facilities and buildings requested for the management of the remainder of the Design-Build Work at any construction office subsequently used by the Project Company during the Design-Build Period, as further described in Section 3.12 (Construction Office) of Appendix 6 (Design and Construction Standards). The Project Company shall also provide (1) discreet construction office space for three County employees and the Independent Building Expert, separate and apart from the staff of the Project Company, the Design-Builder and other Subcontractors, and (2) furniture and communications services in such County Construction Office, as further described in Section 3.12 (Construction Office) of Appendix 6 (Design and Construction Standards).

(N) Maintenance of the Project Site. During performance of the Design-Build Work following the Financial Close Date, the Project Company shall be responsible for the overall maintenance of the Project Site. The Project Company shall keep the Project Site neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Site as they accumulate in accordance with the Contract Standards.

(O) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to the County upon incorporation into the Project, free and clear of all Liens as provided in subsection (P) of this Section. The Project Company shall, however, subject to the Relief Event provisions hereof, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until Substantial Completion, regardless of the extent to which the loss was insured or the availability of Insurance Proceeds.

(P) Encumbrances. The Project Company shall not directly or indirectly, without the County's consent, create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance arising on the Project, the Project Site or the Design-Build Work, other than Permitted Encumbrances, arising out of the Project Company's construction of the Project.

(Q) Compliance with Easements and Limits; Surveying. The Project Company shall: (1) construct the Project in compliance with the requirements of the easements, exceptions to title, limits and setback requirements identified in Appendix 1 (Site-Related Information); (2) perform all construction surveying necessary in connection therewith; and (3) preserve or replace as necessary all existing property line and corner survey monuments encountered.

(R) Utilities. The Project Company shall make all arrangements necessary to secure the availability of all Utilities required to construct and operate the Project in the capacities required hereunder.

(S) Relocation of Existing Utilities. The Project Company shall be responsible for all construction activities required with regard to existing utility services and installations (e.g., conduits, pipelines, transmission mains and other utility equipment and appurtenances), including any relocation of Utilities, whether such construction activities are performed by the Project Company or by the owner of the existing utility. Residents shall be informed in advance of work that affects their utility service. A reasonable effort shall be made to coordinate with the needs of the affected residents.

(T) Installation of Public Art. The County may from time to time identify and select, in its discretion and in consultation with the Project Company, all works of art ("**Public Art**") that are not described in the Design and Construction Requirements as works of art that the Project Company shall be required to install as part of the Project. Public Art may consist of any statues, paintings and other objects or creations determined by the County as appropriate to enhance the aesthetic character of the Project. Public Art shall be funded by and furnished by the County, and the Project Company shall have no obligation to furnish any Public Art except following agreement with the County on the terms of County funding and payment.

(U) Notice of Default. The Project Company shall provide to the County, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, or Project Contract pertaining to the Design-Build Period, that may have a material and adverse effect on performance by the Project Company of its obligations under this Project Agreement.

SECTION 7.2. ACCESS TO AND SUITABILITY OF THE PROJECT SITE.

(A) Familiarity with the Project Site. The Project Company acknowledges: (1) that the Project Company's agents and representatives have visited, inspected and are familiar with the Project Site, its surface physical conditions relevant to the obligations of the Project Company pursuant to this Project Agreement, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions;

(2) that the Project Company is familiar with all local and other conditions which may be material to the Project Company's performance of its obligations under this Project Agreement (including transportation, seasons and climate, access, availability, disposal, handling and storage of materials and equipment, and availability and quality of labor and Utilities), and has received and reviewed all information regarding the Project Site provided to it hereunder or obtained in the course of performing its obligations under this Project Agreement, has made any other investigations that it deems necessary to make a determination as to the suitability of the Project Site; and (3) that based on the foregoing, the Project Site constitutes an acceptable and suitable site for the construction of the Project in accordance herewith, and the Project can be constructed on the Project Site by the Scheduled Occupancy Readiness Date and within the construction cost upon which the Service Fee is based.

(B) Access to Project Site Prior to Commencement of Construction. The execution of this Project Agreement shall be deemed to constitute the granting of a license to the Project Company for full access to the Project Site for the purposes of this Project Agreement, including mobilization and performing engineering, analysis and such additional subsurface and geotechnical studies or tests as deemed necessary by the Project Company prior to commencement of construction. The Project Company shall assume all risks associated with such activities (except to the extent provided otherwise in Section 7.5 (Regulated Site Conditions)) and shall, to the extent and in proportion to the degree of fault or negligence by the Project Company in causing any harm, indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company's Obligation to Indemnify) from and against all Loss-and-Expense arising therefrom.

SECTION 7.3. DEMOLITION WORK.

The Project Company shall demolish the Existing Facilities, including all existing buildings, existing parking lots, existing paving and other existing site improvements, and associated utilities; properly remove and dispose all demolition debris; and prepare the Project Site for construction of the Project, all in accordance with this Section, Section 3.7 (Demolition Work) of Appendix 6 (Design and Construction Standards) and Appendix 7 (Design and Construction Proposal Extracts) (the "**Demolition Work**"). As required by ORS 279C.510(1), the Project Company shall salvage or recycle construction and demolition debris, if feasible and cost-effective. The Project Company shall pay the cost of all such Demolition Work and have the right to any economic benefit associated with the sale or reuse of the demolition debris. The Demolition Work shall include the restoration of all undeveloped areas of the Project Site to a stabilized condition, which at a minimum shall include an established stand of grass with minimal landscape plantings. The Project Company shall determine the sequence and timing of the Demolition Work in accordance with the Project Schedule.

SECTION 7.4. DIFFERING SITE CONDITIONS.

(A) Further Investigations and Protection of Utilities. Prior to commencing any trenching or excavations, the Project Company shall, taking into account the information in the Project Site Geotechnical Investigation Report and in compliance with Good Design-Build Practice, conduct further site investigations, including exploratory excavations and further borings, to confirm the location and type of underground structures that could be damaged as a result of the excavations. Such underground structures include all sewer, water, gas, and other piping, and manholes, chambers, electrical conduits, wires, tunnels and other existing subsurface work located within or adjacent to the Project Site. The Project Company shall carefully sustain in their places and support, or if necessary relocate, all underground and surface structures located within or adjacent to the Project Site. The Project Company shall notify the County seven days in advance of any work that might impact utilities at the Red Soils Campus and businesses or residents in the area surrounding the Project Site so that the County can notify such businesses or residents of such work.

(B) Discovery of Differing Site Conditions. The Project Company and the County recognize the existence of certain surface and subsurface geotechnical conditions at the Project Site, as reflected in the Geotechnical Investigation Report. Upon discovering an alleged Differing Site Condition and before the condition is further disturbed, the Project Company shall immediately, after taking appropriate measures to secure the affected Design-Build Work, notify the County of the alleged Differing Site Condition. The Project Company's notice to the County shall be issued by telephone or in person and followed within 24 hours thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. The Project Company's written notice shall describe the specific subsurface geotechnical condition encountered that is alleged to constitute a Differing Site Condition and the measures taken to deal with such Differing Site Condition. Promptly upon receipt of the Project Company's notice, the County will investigate or cause to be investigated the alleged Differing Site Condition set out in the Project Company's notice. Notwithstanding anything set forth in subsection (C) (Relief for Differing Site Conditions) of this Section or in Article 13 (Relief Event Procedures), no relief based on the occurrence of a Relief Event shall be allowed for any alleged Differing Site Condition unless the Project Company provides the County with notice in accordance with this subsection.

(C) Relief for Differing Site Conditions. If the actual conditions encountered during construction (1) meet the criteria for a Differing Site Condition, and (2) have a direct and material adverse impact on the Project Company's cost or time of performance (or both), then the Project Company shall be entitled to relief based on the occurrence of an Other Relief Event as and to the extent provided in Article 13 (Relief Event Procedures).

SECTION 7.5. REGULATED SITE CONDITIONS.

(A) No Project Site Environmental Assessment. No environment assessment has been performed with respect to potential Hazardous Substances that may be present at the Project Site. Based on the County's long term ownership of the Project Site, and on the Phase 1 Environmental Assessment performed with respect to the adjacent Development Services Building site, the County is not aware of the presence of any Hazardous Substances at the Project Site.

(B) Avoidance of Exacerbation. In performing the Design-Build Work, the Project Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition that becomes actually known by the Project Company through physical observation (including any such observation made during excavations).

(C) Certain Regulated Site Conditions; County Obligations. If at any time the County receives written notice from a Governmental Body or the Project Company, or the Project Company receives a written notice from a Governmental Body, that a Regulated Site Condition has been determined to exist which:

- (1) Reasonably requires a Response Action or other action in order to comply with Applicable Law;
- (2) Interferes or delays with the performance of the Design-Build Work;
- (3) Increases the cost to the Project Company of performing the Design-Build Work; or
- (4) If not remediated or otherwise corrected, would reasonably be expected to result in the Project Company incurring costs, liabilities or obligations;

then the County shall promptly commence and diligently prosecute Response Actions or other actions as may be necessary under Good Design-Build Practice to dispose of, remediate, rectify or otherwise correct such Regulated Site Condition in compliance with Applicable Law. The County shall have the right to contest any determination of such a Regulated Site Condition and shall not be required to take any action under this subsection so long as: (1) the County is contesting any determination of a Regulated Site Condition in good faith by appropriate proceedings conducted with due diligence; (2) Applicable Law permits continued design or construction of the Project pending resolution of the contest, so that the Project Company shall have no liability as a result of the failure of the County to remediate or otherwise correct such a Regulated Site Condition during the period of contest; and (3) unless the County affords the Project Company appropriate relief, the pendency of the County's contest is not otherwise having a material and adverse effect on the Project Company.

(D) Relief for Certain Regulated Site Conditions. The existence of a Regulated Site Condition constitutes an Other Relief Event, and the Project Company shall be entitled to (1) relief on account thereof as provided herein and (2) compensation for any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims in connection with a Regulated Site Condition; provided, however, that no relief shall be provided to the Project Company to the extent (i) covered by the Required Insurance and (ii) such Regulated Site Condition relates to the demolition of the Existing Facilities and such Regulated Site Condition was disclosed to the Project Company in the as-built documents made available to the Project Company during the RFP process.

(E) Hazardous Substances Generator, Operator, Arranger and Transporter Status. The parties acknowledge and agree that the Project Company (1) is not the generator, operator, arranger or transporter of any Hazardous Substances present in, on or under the Existing Facilities and the Project Site prior to the Effective Date (irrespective of when such Hazardous Substances are discovered) and shall not be identified as such on any waste manifests and documentation relating thereto required under Applicable Law, (2) is not (other than in respect of Project Company Hazardous Substances) the generator, operator, arranger or transporter of any Hazardous Substances present in, on or under the Existing Facilities or the Project Site on or after the Technical Proposal Submittal Date (irrespective of when such Hazardous Substances are discovered), and shall not be identified as such on any waste manifests and documentation required under Applicable Law, and (3) other than in respect of Project Company Hazardous Substances, shall have no liability for any Hazardous Substances. In the event the Project Company, by reason of performing its responsibilities with respect to Hazardous Substances in connection with the Demolition Work or otherwise hereunder, is nonetheless deemed to be a generator, operator, arranger or transporter of such Hazardous Substances by any Governmental Body having jurisdiction, the County shall indemnify and hold the Project Company harmless therefrom and pay the Project Company an amount equal to all reasonable costs and expenses incurred by the Project Company as a result thereof. The parties further agree that the Project Company, a Subcontractor or another party responsible under Applicable Law (and not the County) will be the generator, operator, arranger and transporter of any Project Company Hazardous Substances and shall be identified as such on all waste manifests and documentation relating thereto required under Applicable Law. In the event the County is nonetheless deemed to be a generator, operator, arranger or transporter of any Project Company Hazardous Substances by any Governmental Body having jurisdiction, the Project Company shall pay the County an amount equal to all reasonable costs and expenses incurred by the County as a result thereof.

SECTION 7.6. DESIGN-BUILD GOVERNMENTAL APPROVALS.

(A) Generally. The Project Company shall make all applications and take all other action necessary to obtain and maintain all Design-Build Governmental Approvals and shall pay all fees, costs and charges due in connection therewith. Where required under

Applicable Law, such applications shall be made in the name of the County, subject to the County's rights hereunder. The Project Company shall manage the process of obtaining the Design-Build Governmental Approvals in a manner which affords the County a reasonable opportunity to review and comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith. The Project Company shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Design-Build Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or burden on the County or that would contravene any County policies with respect to the matters contained therein. The County reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Project Company which would have the effect described in the preceding sentence.

(B) Limited Permitting Assistance by the County. The County shall provide reasonable assistance to the Project Company in connection with the Project Company's obligation to obtain and maintain the Design-Build Governmental Approvals required under this Section, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Design-Build Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within the County's custody or control or are reasonably obtainable by the County and which are reasonably required for such purpose; provided, however, that the County's obligation to provide such reasonable assistance shall be limited, in light of the Project Company's primary role in the permitting and development of the Project, only to those actions which are legally required to be taken by the County as permittee or which involve providing information which is in the possession of or reasonably obtainable by the County. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to the County, and the County shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the County to staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Design-Build Governmental Approvals.

(C) Project Company General Assumption of Permitting Risk for Design-Build Work. Except as provided in subsection (D) of this Section, the Project Company explicitly assumes the risk of obtaining and maintaining the Design-Build Governmental Approvals, including the non-issuance or imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Project Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Relief Event (including relief from the risk of delay to the extent provided in item (3) of the definition of an Other Relief Event)). In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Design-Build Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company.

(D) Relief for Delays in the Issuance of Governmental Approvals Caused by Governmental Bodies. If in seeking to obtain a required Design-Build Governmental Approval set forth in Table 2-2 (Assumed Design-Build Governmental Approval Application Submittal and Approval Dates) of Appendix 2 (Governmental Approvals), (1) the Project Company has complied with the requirements of this Project Agreement and has in all respects used its commercially reasonable efforts to obtain the Design-Build Governmental Approval in a timely manner consistent with the Project Schedule; (2) the Project Company in a reasonably timely manner, based on the anticipated Project Schedule, has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Design-Build Governmental Approval; (3) the Project Company has consistently maintained a professional relationship with the staff

and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar permits in a timely manner in light of the discretion accorded Governmental Bodies under administrative law; (4) the Project Company has submitted a complete application for the Design-Build Governmental Approval by the “Assumed Governmental Approval Application Date” set forth in Table 2-2 of Appendix 2; and (5) there has been a failure by the Governmental Body to issue a Design-Build Governmental Approval by the “Assumed Governmental Approval Issuance Date” set forth in Table 2-2 of Appendix 2, then any such delay shall constitute an Other Relief Event.

SECTION 7.7. PROJECT COMPANY DESIGN – GENERAL.

(A) Design Considerations. The design for the Project undertaken and performed by the Project Company shall:

(1) Be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the date of this Project Agreement, and the Project Company shall appoint a design team that:

(a) is so qualified;

(b) includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner in accordance with the Contract Standards set out in this Project Agreement;

(2) Include specific consideration of “constructability” and “life cycle” cost issues at all stages of design, as appropriate; and

(3) Include consideration of efficient and cost-effective operation and maintenance.

(B) County Review and Comment on Design Documents. The Project Company shall comply with the design submittal and review procedures specified requirements set forth in Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements). The County shall have the right to review and comment on all Design Documents as provided in Section 5.2 (Comments) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements) in order to confirm the compliance and consistency of the Design Documents with the Design and Construction Requirements. In no event shall the Project Company proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the design submittal requirements and Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements); provided, however, that in the event extraordinary materials delivery or construction circumstances occur which in the good faith judgment of the Project Company warrant proceeding with physical construction of a particular segment of the Design-Build Work prior to making required design submittals, the Project Company may proceed with physical construction of the particular segment prior to complying with such design submitted requirements and with Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirement) at its own cost and risk, and shall undo, remove, replace and restore, as applicable, any parts of the Design-Build Work that do not comply with this

Project Agreement. The Project Company shall give due consideration and provide written responses in the time and manner provided in Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements) to any comments delivered by the County as to the Project Company's design submittals. Save to the extent the Project Company is entitled to an Other Relief Event pursuant to Section 7.14(F) (Notice of Covering Design-Build Work), neither compliance by the Project Company with the Design and Construction Requirements, nor review and comment by the County of the Project Company's Design Documents, nor any failure or delay by the County in commenting on any design submittals shall in any way relieve the Project Company of full responsibility for the design, construction, performance, operation and maintenance of the Project in accordance with the Contract Standards, subject to the last sentence of subsection 7.1(B) (Project Company Control of the Design-Build Work; No County Responsibility).

(C) Documents at the Project Site. The Project Company shall maintain at the Project Site all design and construction documents, including a complete set of record drawings. These documents shall be available to the County for reference, copying and use, and a complete set thereof shall be delivered to the County upon completion of the Design-Build Work.

(D) Ownership of Design. The County shall own the Design Documents upon making the Occupancy Readiness Milestone Payment or, if earlier, upon paying the Termination Amount. Except for reference purposes, the Design Documents shall not be used by the County or the Project Company on any other project. The County is the owner of the Proposal and the Design and Construction Requirements.

SECTION 7.8. PROJECT COMPANY DESIGN – REQUIREMENTS.

The Project Company shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. As of the Effective Date, the Project Company's design for the Project is not complete. The Design and Construction Requirements shall form the basis of design for the Project and all design work shall be completed in accordance therewith. The Project Company shall ensure that all of the working and final Design Documents comply with the Design and Construction Requirements and that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Design and Construction Requirements, subject to the last sentence of subsection 7.1(B) (Project Company Control of the Design-Build Work; No County Responsibility).

SECTION 7.9. CHANGES TO DESIGN AND CONSTRUCTION REQUIREMENTS GENERALLY.

The Project Company acknowledges the County's material interest in each provision of the Design and Construction Requirements, and agrees that, subject to Section 7.11 (Design and Construction Requirement Changes Made Due to Relief Events), no material change to the Design and Construction Requirements shall be made except with the consent of the County, which may be withheld or conditioned in its reasonable discretion taking into account the standards of quality, integrity, durability and reliability established for the Project by the Contract Standards. Any such changes shall be evidenced by a Contract Administration Memorandum, Project Agreement Amendment, or Change Order, as applicable. The County reserves the right to review and comment upon the final design of the Project insofar as it relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Project is in compliance with the Design and Construction Requirements applicable to such matters. The parties acknowledge that reasonable, minor variations from the Design and Construction Requirements shall be permitted in the final design of the Project without the need for County approval or consent to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Project. Examples of elements

of the Design and Construction Requirements from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms (to the extent overall functionality is not impaired or total square footage decreased); exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical cables, and control panels.

SECTION 7.10. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES MADE AT PROJECT COMPANY REQUEST.

The Project Company shall give the County written notice of, and reasonable opportunity to review and comment upon, any Design and Construction Requirement Changes proposed to be made at the Project Company's request. The notice shall contain sufficient information for the County to determine that the Design and Construction Requirement Change:

- (1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity, durability and reliability of the Project;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

The County shall have the right, acting reasonably, to accept, reject or modify any Design and Construction Requirement Change proposed by the Project Company. Any such Design and Construction Requirement Change accepted or modified by the County, and any related change in the terms and conditions of this Project Agreement, shall be reflected in a Change Order.

SECTION 7.11. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES, REPAIRS AND REPLACEMENTS REQUIRED DUE TO RELIEF EVENTS OCCURRING PRIOR TO THE OCCUPANCY READINESS DATE.

Upon the occurrence of a Relief Event occurring prior to the Occupancy Readiness Date, the Project Company shall promptly proceed to make or cause to be made any Design and Construction Requirement Changes, repairs and replacements reasonably necessary to address the Relief Event, as provided in Article 13 (Relief Event Procedures), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events), as applicable. The Project Company and the County shall consult concerning possible means of addressing and mitigating the effect of the Relief Event, and the Project Company and the County shall cooperate in order to minimize any delay, lessen any additional cost and repair, replace or modify the Project so as to permit the Project Company to continue providing the Contract Services in light of the Relief Event. The design and construction costs resulting from any such work shall be paid by the County as and to the extent provided in Section 6.6 (Financing Capital Costs for which the County is Responsible), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events). Any related operation, maintenance, repair and replacement costs shall be borne by the County (through an adjustment of the Service Fee payable solely following the Occupancy Readiness Date, subject to Article 15 (Change in Law Events and Other Relief Events)). The Project Company shall not be required to undertake any Design and Construction Requirement Change under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Design and Construction Requirement Change in accordance with all applicable provisions of this Project Agreement, and (2) the County has provided written assurances acceptable to the Project Company, acting reasonably, that

funds necessary to pay the cost of any such work (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 7.12. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES
MADE AT COUNTY DIRECTION.

The County shall have the right, but not the obligation, to make Design and Construction Requirement Changes at any time prior to the Occupancy Readiness Date at its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Project Agreement so long as such Design and Construction Requirement Change does not contravene the limitations referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes). The design and construction costs resulting from any such Design and Construction Requirement Change made at the County's direction under this Section shall be paid directly by the County during the Design-Build Period, unless otherwise financed by the Project Company pursuant to subsection 6.6(B) (Project Company Financing). Any related operation, maintenance, repair and replacement costs shall be borne by the County through an adjustment to the Service Fee. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Project Agreement shall be reflected in a Change Order. The Project Company's obligation to perform the work related to a Design and Construction Requirement Change is subject to the conditions set forth in Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date).

SECTION 7.13. CONSTRUCTION PRACTICE, SAFETY AND SECURITY.

(A) Means and Methods. The Project Company shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Project Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Project Company to provide the following construction requirements: (1) temporary offices and construction trailers; (2) required design certifications; (3) required approvals; (4) weather protection; (5) clean-up and housekeeping of the Project Site; (6) construction trade management; (7) temporary parking; (8) vehicle traffic; (9) safety and first aid facilities and equipment; (10) correction of or compensation for defective work or equipment; (11) Project Contractor and Subcontractors' insurance; (12) storage areas; (13) workshops and warehouses; (14) temporary fire protection; (15) security of the Project Site; (16) temporary utilities; (17) potable water; (18) sanitary services; (19) Project Contractor, Subcontractor and vendor qualification; (20) receipt and unloading of delivered materials and equipment; (21) erection rigging; (22) temporary supports; and (23) construction coordination.

(B) Safety and Security. The Project Company shall maintain safety and security at the Project Site at all times at a level consistent with the Contract Standards. Without limiting the foregoing, the Project Company shall:

(1) Take all necessary precautions for the safety and security of the Design-Build Work and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Design-Build Work, for:

(a) workers at the Project Site and all other persons who may be involved with deliveries or inspections;

- (b) visitors to the Project Site;
 - (c) passersby, neighbors and adjacent properties;
 - (d) materials and equipment under the care, custody or control of the Project Company or Subcontractors on the Project Site;
 - (e) other property constituting part of the premises or the Project under construction; and
 - (f) County property;
- (2) Establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;
 - (3) Implement a comprehensive safety program in accordance with Applicable Law;
 - (4) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
 - (5) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
 - (6) Provide for safe and orderly vehicular movements; and
 - (7) Develop and implement a written site-specific health and safety plan (the "**Health and Safety Plan**") that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections which shall:
 - (a) designate an appropriately certified safety professional with a minimum of five years of construction safety experience who is to develop and sign the Health and Safety Plan including all safety rules at the Project Site;
 - (b) designate a qualified safety professional stationed full-time at the Project Site during on-site construction activities whose primary/only duty shall be the implementation of safety rules at the Project Site, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with the County and all Governmental Bodies having jurisdiction;
 - (c) require the Project Contractors and all Subcontractors to implement the Health and Safety Plan; and
 - (d) comply with the Project Company's on-site safety requirements and designate a qualified safety professional whose duty shall be the implementation of safety rules at the Project Site and monitoring compliance of Project Contractor and Subcontractor employees with the Health and Safety Plan.

SECTION 7.14. CONSTRUCTION MONITORING, OBSERVATIONS,
TESTING AND UNCOVERING OF WORK.

(A) Observation and Design Review Program. During the progress of the Design-Build Work through Final Completion, the Project Company shall at all times afford the County every reasonable opportunity for observing all Design-Build Work, and shall comply with the Design-Build Work review procedures set forth in Section 5 (Submittal Review Procedure) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements). The Project Company shall use all reasonable efforts to provide County employees with safe access to the Design-Build Work. During any such observation, all representatives of the County shall comply with the Health and Safety Plan for the Design-Build Work applicable to areas visited and all reasonable instructions or directions made by the Design-Builder in this respect, and shall not interfere with the Project Company's performance of any Design-Build Work. The Project Company shall, upon reasonable notice, cooperate with the County to arrange for tours of the Project Site at reasonable times during normal working hours during construction for interested judges and other representative of the County and the State, provided that all such tours do not interfere with the progress of the Design-Build Work.

(B) Project Company Tests and Inspections. The Project Company shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Project Company shall give the County reasonable advance notice (at least one Business Day), prior to the conduct thereof, of those tests and inspections agreed to by the parties, acting reasonably, that are of a material nature warranting such advance notice; provided, however, that in no event shall the County's inability, failure or refusal to attend or be present at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design-Build Work. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the County or federal agency having jurisdiction and shall be subject to the approval of the County, which approval shall not be unreasonably withheld. In addition to the foregoing, Commissioning Tests of the completed Project shall be conducted in accordance with Section 7.19 (Commissioning) and Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

(C) County Tests, Observations and Inspections. The County, its employees, agents, representatives and contractors (which may be selected in the County's discretion) may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the County deems necessary or desirable to ascertain whether the Design-Build Work complies with this Project Agreement. The County's costs of any such test, observation or inspection shall be borne by the County, unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Project Agreement or Applicable Law, in which event the Project Company shall pay all reasonable costs and expenses of such observation, inspection or test within 30 Business Days of receipt of an invoice from the County. In the event that any requested test, observation or inspection causes a material delay in the Project Schedule, such delay shall be treated as having been caused by an Other Relief Event, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Project Company shall secure and deliver to the County promptly, at the Project Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract Standards. The Project Company shall provide to the County, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Project Company under or in connection with any Governmental Approval, Project Contract or Subcontract pertaining to the Design-Build Period.

(E) Independent Building Expert Responsibility for Testing and Inspections. The parties acknowledge that the Independent Building Expert Agreement allows the Independent Building Expert, on the terms provided therein, to: (1) review the Design Documents to confirm compliance of the Project with the Design and Construction Requirements and the County building code; (2) conduct structural peer reviews; (3) test construction materials; and (4) inspect the Project during construction. The rights of the County to review, comment on, test or inspect the Design-Build Work shall apply notwithstanding the performance by the Independent Building Expert or its subcontractors of similar duties. In the event that any test, observation or inspection by the Independent Building Expert causes a material delay in the Project Schedule, such delay shall be treated as having been caused by an Other Relief Event. The costs of any such test, observation or inspection shall be borne as provided in subsection (C) of this Section.

(F) Notice of Covering Design-Build Work. The Project Company shall give the County reasonable advance notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. The County shall give the Project Company reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the County a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the County's written request, the Project Company shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the County's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the County as to whether the disputed Design-Build Work complies with the requirements of this Project Agreement. The cost of uncovering, taking apart or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(1) By the Project Company, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which the County was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and

(2) In all other cases, as follows:

(a) by the Project Company, if such observation or test reveals a material failure of the Design-Build Work to comply with this Project Agreement; or

(b) by the County, promptly following receipt of an invoice therefor from the Project Company, if such observation or test reveals that the Design-Build Work complies with this Project Agreement.

In the event such Design-Build Work does comply with this Project Agreement, the delay caused by such observation or test shall be treated as having been caused by an Other Relief Event.

(G) Meetings and Design-Build Work Review. During the Design-Build Period, the Project Company and the County shall conduct periodic meetings in accordance with Section 2.1 (Project Meetings) of Appendix 6 (Design and Construction Standards).

SECTION 7.15. CORRECTION OF DESIGN-BUILD WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Project Company shall promptly complete, repair, replace, restore, re-

perform, rebuild and correct any Design-Build Work which does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming Design-Build Work. The County may elect by Change Order, at the Project Company's request, to accept non-conforming Design-Build Work and charge the Project Company (through an adjustment to the Service Fee) an amount agreed upon by the parties by which the value of the Project Company's services or Design-Build Work has been reduced.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Project Company's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Project Company under this Project Agreement. This Section is intended to supplement (and not limit) the Project Company's obligations under the Commissioning Tests, Occupancy Readiness Conditions and any other provisions of this Project Agreement or Applicable Law.

SECTION 7.16. FURNITURE, FIXTURES AND EQUIPMENT.

(A) Base Furniture, Fixtures and Equipment. The Project Company shall furnish, pay for, build-in and install all furniture, fixtures and equipment required for the Project under the Contract Standards, other than Moveable Furniture, Fixtures and Equipment.

(B) County Selection and Project Company Procurement and Financing of Moveable Furniture, Fixtures and Equipment. The County shall identify and select, in its discretion and in consultation with the Project Company, all furniture, fixtures and equipment the County requires for the Project that are not described in the Design and Construction Requirements as furniture, fixtures and equipment that the Project Company is required to furnish, finance and pay for (within the limits set forth in this Section) and install as part of the Project (the "**Moveable Furniture, Fixtures and Equipment**"). A preliminary list of expected Moveable Furniture, Fixtures and Equipment is set forth Attachment 6B (Preliminary List of County Moveable Furniture, Fixtures and Equipment) and Attachment 6C (Preliminary List of State Moveable Furniture, Fixtures and Equipment) of Appendix 6 (Design and Construction Standards). The Project Company shall procure the Moveable Furniture, Fixtures and Equipment identified and selected by the County, and the County shall determine the locations for the placement of the Moveable Furniture, Fixtures and Equipment. The parties shall agree on a schedule for the selection, procurement, delivery, placement and installation of the Moveable Furniture, Fixtures and Equipment that is consistent with and will not cause a material delay in the Project Schedule. In the event that the selection, procurement, delivery, placement and installation of the Moveable Furniture, Fixtures and Equipment causes a material delay in the Project Schedule, such delay shall be treated as having been caused by an Other Relief Event. The costs incurred by the Project Company in purchasing the Moveable Furniture, Fixtures and Equipment, shipping it to the Project Site, and installing it in the Project are for the account of the County and shall be payable as provided in subsections (D) and (E) of this Section. The costs incurred by the Project Company in assisting the County in selecting the Moveable Furniture, Fixtures and Equipment and scheduling and coordinating shipments are for the account of the Project Company and have been priced into the Capital Charge.

(C) No Project Company Obligation to Maintain, Repair or Replace Moveable Furniture, Fixtures and Equipment. Moveable Furniture, Fixtures and Equipment shall be deemed to be part of the Project only to the extent of the Project Company's obligations with respect thereto as provided in subsection (B) of this Section, and the Project Company shall have no maintenance, repair or replacement obligations with respect thereto; provided, however that the Project Company shall have maintenance, repair and replacement obligations with respect to the Moveable Furniture, Fixtures and Equipment identified as the responsibility of the Project

Company in Attachment 5A (Courthouse Equipment and Systems Responsibility Matrix) for the Facilities Management Period. The Project Company shall be entitled to claim the occurrence of an Other Relief Event during the Facilities Management Period to the extent that the County does not maintain, repair or replace the Moveable Furniture, Fixtures and Equipment (including any State Moveable Furniture, Fixtures and Equipment) in accordance with Good Facilities Management Practice and such failure has a material and adverse effect on the performance of, or the cost of providing, the Contract Services.

(D) Payment for County Moveable Furniture, Fixtures and Equipment. Prior to the Scheduled Occupancy Readiness Date, the Project Company shall establish and fund, as part of the consideration for the County's obligation to pay the Service Fee, an allowance account with a Qualified Commercial Bank in the amount of \$3,200,000 (the "**County Moveable FF&E Allowance Account**"). The County Moveable FF&E Allowance Account shall be utilized to pay for the out-of-pocket costs incurred by the Project Company that (i) relate to purchasing, shipping and installing any County Moveable Furniture, Fixtures and Equipment (including applicable sales tax, if any); and (ii) are customarily payable to the supplier or vendor of such County Moveable Furniture, Fixtures and Equipment. Amounts on deposit in the County Moveable FF&E Allowance Account shall not be used for any other purpose, including any mark-up. In the event the County directs the Project Company to purchase County Moveable Furniture, Fixtures and Equipment exceeding \$3,200,000 in aggregate cost, the Project Company shall not be obligated to fund such excess costs or purchase the additional County Moveable Furniture, Fixtures and Equipment except following agreement and documentation by way of Change Order with the County as to the terms (including funding and payment) for such additional County Moveable Furniture, Fixtures and Equipment. Any amounts remaining on and after the Occupancy Readiness Date in the County Moveable FF&E Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the County, to the costs of purchasing County Moveable Furniture, Fixtures and Equipment paid or incurred following the Occupancy Readiness Date, to the payment of the Service Fee, or to any other cost or expense for which the County is responsible pursuant to this Project Agreement. If this Project Agreement is terminated prior to the Occupancy Readiness Date, any amounts remaining in the County Moveable FF&E Allowance Account at such time shall be immediately applied to the Termination Payment.

(E) Payment for State Moveable Furniture, Fixtures and Equipment. Prior to the Scheduled Occupancy Readiness Date, the Project Company shall establish and fund, as part of the consideration for the County's obligation to pay the Service Fee, an allowance account with a Qualified Commercial Bank in the amount of \$8,200,000 (the "**State Moveable FF&E Allowance Account**"). The State Moveable FF&E Allowance Account shall be utilized to pay for the out-of-pocket costs incurred by the Project Company that (i) relate to purchasing, shipping and installing any State Moveable Furniture, Fixtures and Equipment (including applicable sales tax, if any); and (ii) are customarily payable to the supplier or vendor of such State Moveable Furniture, Fixtures and Equipment. Amounts on deposit in the State Moveable FF&E Allowance Account shall not be used for any other purpose, including any mark-up. In the event the County directs the Project Company to purchase State Moveable Furniture, Fixtures and Equipment exceeding \$8,200,000 in aggregate cost, the Project Company shall not be obligated to fund such excess costs or purchase the additional State Moveable Furniture, Fixtures and Equipment except following agreement and documentation by way of Change Order with the County as to the terms (including funding and payment) for such additional State Moveable Furniture, Fixtures and Equipment. Any amounts remaining on and after the Occupancy Readiness Date in the State Moveable FF&E Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the County, to the costs of purchasing State Moveable Furniture, Fixtures and Equipment paid or incurred following the Occupancy Readiness Date, to the payment of the Service Fee, or to any other cost or expense for which the County is responsible pursuant to this Project Agreement. If this Project Agreement is terminated prior to the Occupancy Readiness Date, any amounts remaining in the State

Moveable FF&E Allowance Account at such time shall be immediately applied to the Termination Payment.

SECTION 7.17. WARRANTIES OF DESIGN-BUILD WORK.

The Project Company shall, for the protection of the County, obtain from the Project Contractors, all Subcontractors, vendors, suppliers and other persons from which the Project Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Project such warranties and guarantees as are normally provided with respect thereto or, to the extent superior in scope or length, as are specifically required in Appendix 6 (Design and Construction Standards) and the Contract Standards, each of which shall be assigned to the Facilities Manager to the full extent of the terms thereof and subject to the security interest of the Senior Lenders under the Senior Financing Agreements. No such warranty shall relieve the Project Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or excuse any non-performance of the Project Design-Build Work unless such failure is itself attributable to a Relief Event. The Project Company shall enforce such warranties and guarantees as provided in Section 9.12 (Enforcement of Project Warranties).

SECTION 7.18. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. “**Substantial Completion**” shall occur only when all of the following conditions have been satisfied, as determined by the Independent Building Expert, except to the extent that any or all of such conditions have been waived by the County:

(1) Physical Completion. Construction of the Project is physically complete and all Design-Build Work pertaining to the Project, except the Commissioning Tests and the items on the Punch List, is complete and in all respects is in compliance with this Project Agreement;

(2) Project Equipment. The Project Equipment is installed such that the Project Equipment is ready for use and defect free, except for Punch List Items;

(3) Safety and Security Systems. The Project’s security and safety systems are functional in accordance with the requirements set forth in this Project Agreement; and

(4) Utilities. All Utilities specified or required under this Project Agreement to be arranged for by the Project Company are connected and functioning properly.

(B) Notice of Substantial Completion. The Project Company shall give the County Representative and the Independent Building Expert at least 30 days prior written notice of the expected date of Substantial Completion.

SECTION 7.19. COMMISSIONING.

(A) Commissioning Generally. The Project Company shall comply with the Commissioning requirements of Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards) and shall, as provided therein:

(1) Prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests, meeting the minimum requirements set forth therein;

- (2) Include criteria for achieving LEED BD+C Gold Certification for the Project;
- (3) Conduct Commissioning activities during design and construction;
- (4) Perform Commissioning Tests necessary to demonstrate Occupancy Readiness; and
- (5) Conduct Commissioning Tests during the Commissioning Fine Tuning Period.

(B) Commissioning Tests Report. Promptly upon its completion of the Commissioning Tests, the Project Company shall deliver to the County and the Independent Building Expert a copy of the Commissioning Tests report prepared by or on behalf of the Project Company pursuant to Section 25 (Commissioning) of Appendix 6 (Design and Construction Standards).

SECTION 7.20. FINAL COMPLETION.

(A) Requirements. “**Final Completion**” shall occur when all of the following conditions have been satisfied:

- (1) Occupancy Readiness. The Project Company has achieved Occupancy Readiness in accordance with Article 8 (Occupancy Readiness);
- (2) Design-Build Work Completed. All Design-Build Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Project Agreement;
- (3) Deliverable Material. The Project Company shall have delivered to the County all Deliverable Material required by subsection 7.1(H) (Deliverable Material);
- (4) Equipment Warranties and Manuals. The Project Company shall be in possession of, and shall have delivered to the County, copies of the warranties of equipment and fixtures constituting a part of the Project required to be obtained under Section 7.17 (Warranties of Design-Build Work), together with copies of all related operating manuals supplied by the equipment supplier;
- (5) Spare Parts In Storage. All spare parts required by the applicable Design and Construction Requirements have been delivered and are in storage at the Project;
- (6) Record Drawings. The Project Company has delivered to the County a final and complete red-lined set of construction record drawings;
- (7) Equipment Manufacturers’ Certificate. The Project Company has delivered to the County written certification from the equipment manufacturers (including manufacturers of information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers’ recommendations and requirements; and
- (8) Claims Statement. The Project Company has delivered to the County a claims statement setting forth in detail all outstanding claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Design-Build

Work, and arising out of or based on events prior to the date when the Project Company gives such statement to the County.

(B) Obligation to Achieve Final Completion; Punch List Items. The Project Company shall achieve Final Completion within 120 days after the Occupancy Readiness Date, and shall complete and rectify all Punch List Items as provided in Section 8.6 (Punch List Items).

SECTION 7.21. LEED BD+C GOLD CERTIFICATION.

The Project Company shall obtain a LEED BD+C Gold Certification of the Project in accordance with Section 6.2 (USGBC LEED Gold Certification) of Appendix 6 (Design and Construction Standards) and further as follows:

(1) Registration. Within 10 Business Days of the Effective Date, the Project Company shall register the Project with the U.S. Green Building Council. If, at any time after the Effective Date and before such registration, the requirements necessary to achieve LEED BD+C Gold Certification change, no such change shall be deemed to modify the Design and Construction Requirements, which shall only be modified by agreement of the parties, each acting in its discretion.

(2) Required Rating. The Project Company shall achieve all necessary prerequisites, record keeping, standards, credits and points necessary to achieve at least a LEED BD+C Gold Certification for the Project.

(3) Failure to Obtain Certification. The Project Company shall formally obtain LEED BD+C Gold Certification of the Project within three years following the Occupancy Readiness Date. In the event a certification is not obtained within three years of the Occupancy Readiness Date, or a certification less favorable than LEED BD+C Gold Certification is obtained, the Project Company shall, upon written demand from the County, immediately pay to the County \$2,000,000, which amount shall be paid as an Extraordinary Item credit against the Service Fee. Upon such payment, the Project Company shall have no further obligations in respect of obtaining LEED BD+C Gold Certification, except to provide the County with such information and administrative assistance as the County may reasonably require in relation to obtaining LEED BD+C Gold Certification of the Project. The failure to obtain LEED BD+C Gold Certification shall not be a Project Company Event of Default.

SECTION 7.22. PAYMENT OBLIGATIONS OF THE COUNTY DURING THE DESIGN-BUILD PERIOD.

(A) County Payment Obligations. The County shall pay the Project Company pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation) during the Design-Build Period, at the times provided for herein (each a “**County Design-Build Period Payment Obligation**”):

(1) The amounts specified in subsection 7.5(E) (Hazardous Substances Generator, Operator, Arranger and Transporter Status);

(2) The amounts specified in Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date);

(3) The amounts specified in Section 7.12 (Design and Construction Requirement Changes Made at County Direction);

(4) The amounts specified in subsection 7.14(C) (County Tests, Observations and Inspections) and subsection 7.14(F) (Notice of Covering Design-Build Work);

(5) The costs of equipment for, and fitting out, the Café, as provided in subsection 9.9(B) (Café);

(6) The amounts specified in subsection **Error! Reference source not found.** (Compensation Relief);

(7) The amounts specified in subsection 15.1(C) (Compensation Relief);

(8) The amounts specified in subsection 15.2(A) (Changes Prior to the Occupancy Readiness Date), relating to a Discriminatory Change in Tax Law or Specified Change in Tax Law;

(9) The amounts specified in subsection 15.3(C) (Compensation Relief); and

(10) Any other amounts specified in this Project Agreement as payable during the Design-Build Period.

(B) Limitations. Except as provided or referred to in this Section, and without limiting in any way the County's obligation to make the Occupancy Readiness Milestone Payment in accordance with Section 8.11 (County Obligation to Make the Occupancy Readiness Milestone Payment), the County shall have no payment obligations to the Project Company during the Design-Build Period.

ARTICLE 8

OCCUPANCY READINESS

SECTION 8.1. INDEPENDENT BUILDING EXPERT.

(A) Engagement. The Project Company shall select prior to the Financial Close Date, and the County shall approve, acting reasonably, a suitably qualified and experienced consultant to act as the Independent Building Expert for the purposes of this Project Agreement upon substantially the same terms set forth in Transaction Form D (Independent Building Expert Agreement). The Independent Building Expert shall act impartially and independently of the County and the Project Company in the performance of its duties as contemplated in this Project Agreement and the Independent Building Expert Agreement. In connection with the selection of the Independent Building Expert, the Project Company shall utilize a competitive bidding or competitive proposal process approved by the County in its discretion.

(B) Qualifications. The Independent Building Expert shall possess skills in: (1) design review (including architectural review, structural peer review, and mechanical, electrical and plumbing) for compliance with design requirements and technical specifications similar to the Design and Construction Requirements; (2) institutional building construction involving complex structural systems similar to the New Courthouse; (3) construction cost consulting; and (4) construction claims adjusting and structural retrofit construction. Such skills may be acquired through a joint venture, association or, with the approval of the County and the Project Company, a subcontractor.

(C) Limitations. Nothing in this Project Agreement shall be interpreted as giving the Independent Building Expert any responsibility or authority for any aspect of the Design-Build Work, or as relieving the Project Company of its responsibility for the Design-Build Work as set out in this Project Agreement, and neither the Project Company nor the Design-Builder nor any Subcontractor shall be entitled to rely on any advice or approvals that the Independent Building Expert may give with respect to the Design-Build Work.

SECTION 8.2. ACTIONS BY THE COUNTY AND PROJECT COMPANY AFFECTING THE INDEPENDENT BUILDING EXPERT.

(A) Joint Approval Required. The County and the Project Company shall not, without the other's prior written approval, which approval shall not be unreasonably withheld or delayed:

- (1) Terminate, repudiate or discharge the Independent Building Expert for any reason;
- (2) Waive, settle, compromise or otherwise prejudice any rights or claims which the other may have from time to time against the Independent Building Expert;
- (3) Amend or vary the terms of the Independent Building Expert Agreement or the services to be performed by the Independent Building Expert; or
- (4) Enter into a separate agreement with the Independent Building Expert in connection with the Project.

(B) Cooperation and Costs. The County and the Project Company shall cooperate with one another generally in relation to all matters within the scope of or in connection with the appointment of the Independent Building Expert. All instructions and representations

issued or made by either the County or the Project Company shall be simultaneously copied to the other and both the County and the Project Company shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Building Expert. Except as otherwise provided in the Independent Building Expert Agreement, all costs (including legal fees of any counsel retained by the Independent Building Expert) of the Independent Building Expert shall be borne equally by the Project Company and the County; provided that, the Independent Building Expert shall be required to separately send invoices to the Project Company and the County for their respective costs and the Project Company shall in any event bear the full cost of the third-party material test and inspections firm, pursuant to subsection 7.1(I) (Payment of Costs).

(C) Replacement of Independent Building Expert. In the event that the Independent Building Expert Agreement expires (and is otherwise not extended), is terminated by the County and the Project Company or the Independent Building Expert is otherwise unable or unavailable to perform its duties under the Independent Building Expert Agreement, the County and the Project Company shall cooperate with one another in order to appoint, in accordance with this Section, a replacement consultant to act as the Independent Building Expert as soon as reasonably practicable. The replacement Independent Building Expert shall be agreed to by both the County and the Project Company, acting reasonably. In the event that the County and the Project Company are unable to agree within 20 Business Days of the previous Independent Building Expert's appointment expiring or being terminated, or within 20 Business Days of the Independent Building Expert's inability to perform its duties under the Independent Building Expert Agreement, the matter may be referred to Non-Binding Mediation. To the extent possible, the County and the Project Company shall work with the Independent Building Expert in order for such Independent Building Expert to continue to fulfill its obligations under the Independent Building Expert Agreement until a replacement Independent Building Expert is appointed by the County and the Project Company.

SECTION 8.3. INDEPENDENT BUILDING EXPERT AS MEDIATOR PRIOR TO FINAL COMPLETION.

Prior to Final Completion, the Independent Building Expert shall be the Mediator for purposes of any Non-Binding Mediation conducted under Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings) with respect to any request made by either the County or the Project Company relating to the interpretation of:

- (1) This Project Agreement as it relates to design development matters and construction matters generally, including particularly time-sensitive determinations relating to the occurrence of a Relief Event during the Design-Build Period;
- (2) The schematic design and whether any Design and Construction Requirements are being complied with and interpretation of the intent of the Design and Construction Requirements;
- (3) Any proposed Design and Construction Requirement Change and delays in construction of the Project resulting from such Design and Construction Requirement Change; and
- (4) The cost impact associated with any proposed Design and Construction Requirement Change pursuant to Section 7.10 (Design and Construction Requirement Changes Made at Project Company Request), Section 7.11 (Design and Construction Requirement Changes Made Due to Relief Events) and Section 7.12 (Design and Construction Requirement Changes Made at County Direction).

SECTION 8.4. OCCUPANCY READINESS CONDITIONS.

(A) Conditions. The following conditions shall constitute the “**Occupancy Readiness Conditions**”, each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Occupancy Readiness and establish the Occupancy Readiness Date:

- (1) Substantial Completion. Substantial Completion has occurred;
- (2) Ready for Use. The Project in its entirety is ready for use for the purposes of normal courtroom, court office and other related County operations, except for Punch List Items, which in each case shall be in shell and core in accordance with the Design and Construction Requirements;
- (3) Architect Letter. The Architect has issued a letter of confirmation to the County and the Independent Building Expert indicating that all buildings and systems at the Project are ready for use, except for Punch List Items, and to the best of its knowledge have been designed and built in accordance with this Project Agreement;
- (4) No Encumbrances. There are no Encumbrances registered or recorded on the Project Site or any part of the Project other than Permitted Encumbrances;
- (5) Successful Commissioning. The Project Company has completed Commissioning the Project in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the Occupancy Readiness Date);
- (6) Certificate of Occupancy. A temporary or final certificate of occupancy has been issued for the Project by the City of Oregon City;
- (7) Governmental Body Readiness Confirmations. All other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures on the Project Site are ready for occupancy;
- (8) Required Facilities Management Period Insurance. The Project Company has obtained and submitted to the County certificates of insurance for all Required Facilities Management Period Insurance specified in Appendix 10 (Insurance Requirements);
- (9) Master Maintenance Plan. The Project Company has delivered to the County a reasonable Master Maintenance Plan as required by Appendix 8 (Facilities Management Standards);
- (10) Renewal Work Plan. The Project Company has delivered to the County a reasonable Renewal Work Plan as required by Appendix 8 (Facilities Management Standards); and
- (11) Moveable Furniture, Fixtures and Equipment. The Project Company has properly installed all Moveable Furniture, Fixtures and Equipment which it is required to procure under this Project Agreement.

(B) “Ready for Use”. For purposes of subsection (A) of this Section, in determining whether the Project or Project Equipment are “ready for use,” the following factors shall be taken into account:

- (1) The requirements of this Project Agreement;
- (2) The ability of the public to access the Project, and the risk of injury to members of the public and all Project Users;
- (3) The security requirements set forth in the Design and Construction Requirements are operational;
- (4) Any apparent hazard or nuisance;
- (5) The need to conduct court operations in a reasonably quiet and stable environment free from dust, chemical, smoke and other health and safety concerns;
- (6) The proper installation of all Project Equipment and Moveable Furniture, Fixtures and Equipment, and the functionality of all Project Equipment; and
- (7) Such other considerations as a reasonable person of ordinary prudence would take into account if asked to decide whether the Project is suitable for the commencement of court proceedings and ancillary government functions performed at the New Courthouse, all so that, subject to the Punch List Items, the Project in its entirety is ready to use for the purposes of normal courtroom, court office and other related County operations. This factor shall not be construed to impose additional obligations on the Project Company beyond the Contract Standards.

SECTION 8.5. OCCUPANCY READINESS CERTIFICATE.

(A) Generally. Upon request by the Project Company, the Independent Building Expert shall inspect the Project as soon as possible, but no later than two Business Days following such a request, and determine whether to issue the Occupancy Readiness Certificate in accordance with the Independent Building Expert Agreement and this Project Agreement.

(B) Certificate Issuance. If the Independent Building Expert determines that the Occupancy Readiness Conditions have been satisfied, the Independent Building Expert shall deliver, within two Business Days from the inspection referred to in subsection (A), a duplicate signed original Occupancy Readiness Certificate to the County and the Project Company pursuant to the Independent Building Expert Agreement.

(C) Deficiencies. If upon inspection and review, the Independent Building Expert determines that any of the Occupancy Readiness Conditions have not been satisfied, the Independent Building Expert shall identify any deficiencies in a written report delivered as soon as possible but no later than three Business Days following the date of the inspection performed under subsection (A) and pursuant to Section 4.4 (Occupancy Readiness Conditions Relating to the Design-Builder) of the Independent Building Expert Agreement. The Project Company shall thereupon rectify all such matters. Upon the Project Company’s notification of such rectification to the Independent Building Expert, the Independent Building Expert shall confirm such rectification and issue a duplicate signed original Occupancy Readiness Certificate to the County and the Project Company pursuant to the Independent Building Expert Agreement as soon as possible but no later than three Business Days following the date the Project Company informs the Independent Building Expert that such rectification has been completed.

(D) Effect of Issuance. The Occupancy Readiness Certificate shall establish the Occupancy Readiness Date and be final and binding on the County and the Project Company with respect to the occurrence of the Occupancy Readiness Date.

(E) Matters Not Affected By Certificate Issuance. Neither the issuance of the Occupancy Readiness Certificate, nor any use by the County of any part of the Project or the commencement of any court activities under the terms of this Project Agreement, shall:

- (1) Be final or conclusive as to whether any of the matters certified are correct, or whether the Occupancy Readiness Conditions have in fact been satisfied;
- (2) Limit the obligations of the Project Company under this Project Agreement, including its obligation to complete the Design-Build Work in accordance with this Project Agreement and to remedy any defects, deficiencies or items of outstanding Design-Build Work existing or discovered prior to or after the date of the Occupancy Readiness Certificate or the date of the Punch List;
- (3) Be construed as an approval by the County of the Project or the manner in which the Design-Build Work has been carried out by the Project Company; or
- (4) Have any effect other than as specified in subsection (D) of this Section.

The County shall retain all of its rights with respect to any matter not affected by the issuance of the Occupancy Readiness Certificate.

SECTION 8.6. PUNCH LIST ITEMS.

(A) Punch List. The Independent Building Expert, in consultation with the County and the Project Company, shall, prior to inspection of the Project to determine whether the Project has met the Occupancy Readiness Conditions, prepare a list of all Punch List Items (the "**Punch List**") identified at that time and an estimate of the cost and the time for rectifying such Punch List Items. The Independent Building Expert shall not withhold the Occupancy Readiness Certificate by reason solely that there are Punch List Items. The Punch List shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Independent Building Expert's opinion:

- (1) The Project Company can complete before the Final Completion deadline provided in Section 7.20 (Final Completion), and with minimal interference to the occupancy and use of the Project; and
- (2) Would represent, to perform or complete, a total cost of not more than 1% of the portion of the price payable under the Design-Build Contract (unless the County determines that a higher percentage is acceptable).

(B) Minimal Impact on Project Operations. The Punch List shall contain the schedule for the completion and rectification of the Punch List Items. In determining the relevant time for rectifying Punch List Items, the Project Company shall schedule the completion and rectification of Punch List Items so as to minimize, to the greatest extent reasonably possible, any impairment of Project Users' use and enjoyment of the Project, disruption of the Facilities Management Services and the court activities.

(C) Waiver of Occupancy Readiness Requirements. The County may, in its discretion, waive any Occupancy Readiness Condition, and the failure to meet any such requirement shall constitute a Punch List Item.

(D) Rectification of Punch List Items. The Project Company shall complete and rectify all Punch List Items within 120 days of the Occupancy Readiness Date or such other period as the Independent Building Expert may specify in the Punch List. The Project Company acknowledges and agrees that the completion and rectification of Punch List Items may require work outside of normal working hours in order to accommodate the efficient operation of the Project and conduct of County Activities.

(E) Failure to Rectify Punch List Items; Service Fee Holdback. In the event that the Project Company fails to complete and rectify the Punch List Items specified in the Punch List within the time period specified pursuant to subsection (D) of this Section, except as provided in subsection (F) of this Section:

(1) The County may withhold from the Service Fee a holdback amount that is 200% of the amount estimated by the Independent Building Expert for the County to complete and rectify Punch List Items (to the extent then outstanding); and

(2) The County may engage others to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of the Project Company, and the County may deduct such cost from the holdback amount set forth in subsection (E)(1) of this Section.

Upon completion and rectification of all of the Punch List Items pursuant to this subsection, the County shall release to the Project Company the then-remaining amount of the holdback. If the cost of such completion and rectification exceeds the amount of such holdback, then the Project Company shall reimburse the County for all such excess costs.

(F) Letter of Credit Alternative. The Project Company shall have the right to post a letter of credit from a qualified Commercial Bank with the County in an amount equal to the amount described in subsection (E)(1) of this Section in lieu of any Punch List Items holdback. In such event, upon completion and rectification of all Punch List Items pursuant to subsection (D) of this Section, the County shall cancel and return to the Project Company the letter of credit.

SECTION 8.7. SCHEDULED OCCUPANCY READINESS DATE AND LONGSTOP DATE.

(A) Scheduled Occupancy Readiness Date Defined. The Scheduled Occupancy Readiness Date is the date that is [_____] days following the Financial Close Date, as such date may be extended as provided in subsection (C) of this Section. **[NOTE TO PROPOSERS: To be completed based on the Selected Proposer's Proposal Form 10.]**

(B) Longstop Date Defined. The Longstop Date is the date 365 days following the Scheduled Occupancy Readiness Date, as such date may be extended as provided in subsection (C) of this Section.

(C) Extension for Relief Events. If a Relief Event occurs between the Financial Close Date and the Scheduled Occupancy Readiness Date, the Scheduled Occupancy Readiness Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Relief Event. If a Relief Event occurs after the Scheduled Occupancy Readiness Date, the Longstop Date shall be extended for such time as is reasonable to take into account the effect of the delay on the satisfaction of the Occupancy Readiness Conditions remaining to be satisfied.

SECTION 8.8. FAILURE TO ACHIEVE OCCUPANCY READINESS BY THE SCHEDULED OCCUPANCY READINESS DATE.

The obligation of the County to pay the Service Fee shall commence upon the Occupancy Readiness Date, but no earlier than the Scheduled Occupancy Readiness Date unless otherwise negotiated by the parties pursuant to Section 8.10(B) (Early Occupancy), as further described in Section 16.1 (Service Fee Generally). The Project Company acknowledges, accordingly, that any delay in achieving Occupancy Readiness beyond the Scheduled Occupancy Readiness Date will result in the loss of Service Fee payments to which the Project Company otherwise would have been entitled during the period of delay.

SECTION 8.9. FAILURE TO ACHIEVE OCCUPANCY READINESS BY THE LONGSTOP DATE.

In the event the Project Company fails to satisfy the Occupancy Readiness Conditions by the Longstop Date, a Project Company Event of Default hereunder shall be deemed to have occurred, and the County may pursue all remedies available under Article 19 (Remedies of the Parties and County Step-In Rights) and Article 22 (Termination) in accordance with the terms thereof.

SECTION 8.10. COUNTY RIGHT OF OCCUPANCY.

(A) Commencement of Use and Occupancy. The right of the County to occupy and use the Project under this Project Agreement shall commence on the Occupancy Readiness Date, except as provided in subsection (B) of this Section.

(B) Early Occupancy. The Project Company shall keep the County regularly apprised as to the date on which the Project Company reasonably expects the Occupancy Readiness Date to occur. Not later than 60 days prior to the Scheduled Occupancy Readiness Date, the Project Company shall notify the County in writing as to the date on which the Occupancy Readiness Date is definitively expected to occur. The County may rely on such notice in planning its move-in activities. If the proposed Occupancy Readiness Date is earlier than the Scheduled Occupancy Readiness Date, and the Project Company wishes to offer early occupancy of the Project, it shall so advise the County. The County shall be under no obligation to take early occupancy of the Project or commence payment of the Service Fee prior to the Scheduled Occupancy Readiness Date but may do so in its discretion under terms and conditions negotiated by the parties. The County shall notify the Project Company within 30 days of receipt of notice as to whether it intends to accept the Project Company's offer of early occupancy on such proposed Occupancy Readiness Date. If, after the parties negotiate and agree to establish a new proposed Occupancy Readiness Date, the Project Company fails to achieve Occupancy Readiness by the proposed Occupancy Readiness Date (as such proposed Occupancy Readiness Date may be extended on account of Relief Events) and the County incurs additional incremental direct, arm's length out-of-pocket costs (above those it would have incurred had the Project Company had achieved Occupancy Readiness by the newly agreed-upon Occupancy Readiness Date) as a result of reliance on the proposed Occupancy Readiness Date (such costs to be reasonably incurred and evidenced to the Project Company through reasonable substantiation of costs related to the move of court personnel and equipment into the New Courthouse), the Project Company shall pay an amount equal to such costs to the County. If the proposed Occupancy Readiness Date is earlier than the Scheduled Occupancy Readiness Date and the County does not notify the Project Company that it intends to take occupancy on such proposed Occupancy Readiness Date, then the Project Company shall not incur any liability under this Section unless and until the actual Occupancy Readiness Date occurs after the Scheduled Occupancy Readiness Date. Notwithstanding anything contained in this Project Agreement, the liability of the Project Company under this subsection for failure to achieve Occupancy Readiness by the agreed-upon proposed early Occupancy Readiness Date shall not exceed \$3,000 per day.

SECTION 8.11. COUNTY OBLIGATION TO MAKE THE OCCUPANCY READINESS MILESTONE PAYMENT.

(A) County Payment Obligation. Within five Business Days following the Occupancy Readiness Date, but no earlier than the Scheduled Occupancy Readiness Date unless otherwise negotiated by the parties pursuant to Section 8.10(B) (Early Occupancy), the County shall pay to the Project Company the Occupancy Readiness Milestone Payment.

(B) Payment Not Contingent on Receipt of the State Funding Agreement Payment. The obligation of the County to make the Occupancy Readiness Milestone Payment pursuant to this Section is not contingent on receipt by the County of the State Funding Agreement Payment. The County shall not be relieved of such obligation on account of any delay or failure, in whole or in part and for any reason, of the State in making the State Funding Agreement Payment.

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ARTICLE 9

FACILITIES MANAGEMENT

SECTION 9.1. PROJECT COMPANY OBLIGATIONS GENERALLY.

(A) Responsibility. Commencing on the Occupancy Readiness Date, the Project Company shall operate, maintain, repair, and replace the Project and perform the Facilities Management Services on a 24-hour per day, 7-day per week basis during the Term in accordance with the Facilities Management Requirements and the other Contract Standards, except to the extent the Project Company is relieved hereunder based on the occurrence of a Relief Event.

(B) Scope. The Project Company shall furnish all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery, accounting, record-keeping and other things and kinds of services whatsoever necessary for the full performance of the Project Company's operation, maintenance, repair, replacement, management, obtaining and maintaining Governmental Approvals and related obligations under this Project Agreement.

(C) Moveable Furniture, Fixtures and Equipment and Public Art. The Facilities Management Services do not include the obligation to provide ordinary maintenance or major maintenance, repair or replacement of Moveable Furniture, Fixtures and Equipment or Public Art, the costs and responsibility for which shall be borne by the County.

(D) Special Events. The County shall have the right to utilize the New Courthouse for planned, special events or activities outside of normal courtroom and court office operations upon reasonable notice to the Project Company and in a manner that does not materially interfere with or materially increase the cost of performing the Contract Services.

(E) Emergency Orders and Directives. The Project Company shall comply with all orders and directives given or issued by the County or any Governmental Body having police power or regulatory jurisdiction based on an emergency condition.

SECTION 9.2. UTILITIES GENERALLY.

(A) Supply. The Project Company shall arrange for and establish the supply of all Utility services required for the Project in accordance with Appendix 6 (Design and Construction Standards).

(B) Alternative Suppliers. The County shall have the right, following the Occupancy Readiness Date and upon reasonable notice, to direct the Project Company to change electricity or gas suppliers, and to negotiate and establish electric or gas rates with the replacement supplier. The Project Company shall cooperate with and assist the County in making such arrangements, and the County shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity or gas supply. The County shall pay the Project Company, as an Extraordinary Item, an amount equal to the reasonable out-of-pocket expenses incurred by the Project Company in making such arrangements, subject to Cost Substantiation.

(C) Payment for Utilities. The County, following the Occupancy Readiness Date, shall timely pay all utility bills for the Project.

(D) Energy Efficiency. The Project Company shall maintain the Project in accordance with the requirements of Section 6 (Sustainability Requirements) of Appendix 6

(Design and Construction Standards) and Section 3.4 (Utility Management Services) and Section 3.4.4 (Energy Consumption and Efficiency) of Appendix 8 (Facilities Management Standards) and as set forth in Appendix 9 (Facilities Management Proposal Extracts). Any failure of the Project Company to perform its maintenance and other obligations relating to the energy efficiency of the New Courthouse shall result in a Deduction as provided in Appendix 11 (Deductions).

SECTION 9.3. BUILDING HEATING AND COOLING.

(A) Central Utility Plant. The County owns and operates the existing Central Utility Plant on the Red Soils Campus. The Central Utility Plant was designed with a capacity expected to be sufficient to supply heated and chilled water for building heating and cooling purposes to the existing Development Services Building, Public Services Building and other smaller ancillary buildings also located on the Red Soils Campus, and for the planned New Courthouse.

(B) Interconnection. The Project Company is obligated, as part of the Design-Build Work, to interconnect New Courthouse with the Central Utility Plant in such a manner as will allow the Central Utility Plant to supply heated and chilled water to the New Courthouse and enable the Project Company to meet its heating and cooling performance obligations under this Project Agreement.

(C) Maintenance. The Project Company's responsibilities to operate and maintain the New Courthouse extend to the point of interconnection described in Section 2 (Utilidor Existing Conditions, Generally) in Appendix 4 (Central Utility Plant Description and Assumed Operating Performance Parameters).

(D) Central Utility Plant Service. The County, operating the Central Utility Plant, shall provide heated and chilled water to the Project Company for the Term of this Project Agreement without separate charge. The County acknowledges and agrees that the Project Company's ability to meet the Facilities Management Requirements is in part dependent on the operation of the Central Utility Plant in conformity with the Central Utility Plant Assumed Operating Performance Parameters. In the event that at any time the County fails for any reason to operate the Central Utility Plant in conformity with the Central Utility Plant Assumed Operating Performance Parameters, any such failure has a material and adverse effect on the Project Company's costs or ability to perform under this Project Agreement, such failure shall constitute an Other Relief Event and the Project Company shall be entitled to relief in accordance with the Relief Event provisions hereof. No such failure, however, shall constitute a breach of this Project Agreement or entitle the Project Company to damages or any other relief hereunder.

SECTION 9.4. DOCUMENTS AND REPORTS.

(A) Plans, Programs, Reports and Documents. The Project Company shall provide the County with the plans, programs, reports and documentation required with respect to the Facilities Management Services under Appendix 8 (Facilities Management Standards).

(B) Default Reports. The Project Company shall provide to the County, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Material Contract with respect to the Facilities Management Services.

SECTION 9.5. ORDINARY MAINTENANCE.

(A) Ordinary Maintenance and Repair. The Project Company, except as provided in subsection 9.1(C) (Moveable Furniture, Fixtures and Equipment) and subsection (B)

of this Section, shall perform all normal and ordinary maintenance of the mechanical equipment, structures, improvements and all other property constituting the Project, and shall keep the Project in good working order, condition and repair and in a neat and orderly condition, all in accordance with the Facilities Management Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the Project, as required by the Facilities Management Requirements.

(B) Vandalism.

(1) If any maintenance, repair or replacement of the Project is required due to Vandalism from any cause or to any extent, the Project Company shall perform such maintenance, repair or replacement. The County shall continue to have the right to impose Deductions for Unavailability Events and Performance Failures caused by Vandalism, in accordance with Appendix 11 (Deductions).

(2) No later than the Occupancy Readiness Date, the Project Company shall establish and fund a reserve account ("**Vandalism Reserve Account**") to remediate acts of Vandalism, that is not otherwise covered by the property insurance required by Section 2.1 (Property) of Appendix 10 (Insurance Requirements). The Project Company shall allocate such funds to the Vandalism Reserve Account at the rate of \$10,000 (Index-Linked) per Contract Year (such amount to be prorated to accommodate any partial Contract Year of operation of the Project by the Project Company). Amounts in the Vandalism Reserve Account that remain unused in any Contract Year will roll into the next Contract Year. Unused funds upon the Termination Date will be deducted from the final Service Fee payment or otherwise credited to the County in the final Annual Settlement Statement or calculation of the Termination Amount, as applicable. Subject to paragraph (3) of this subsection, the Project Company may withdraw funds from the Vandalism Reserve Account in such amounts and at such times as needed to pay amounts attributable to the reasonable, actual costs that have been incurred by the Project Company in respect of maintenance, repair or replacement activities that are required to remediate acts of Vandalism. If such costs exceed the total funds available in the Vandalism Reserve Account at any time, the cost of additional remediation shall be paid by the County as an Extraordinary Item.

(3) The Project Company shall provide the County on a monthly basis (or at other times as reasonably requested by the County) with a written report indicating: (i) any amounts that have been withdrawn from the Vandalism Reserve Account during the month, together with evidence of the costs that are the subject of such drawings; (ii) the purpose for which funds have been used; (iii) evidence that all Project Contractors and Subcontractors have waived any rights to Liens; (iv) the balance remaining in the Vandalism Reserve Account; and (v) such other supporting information as the County may reasonably require. Any amounts that are found to have been improperly withdrawn shall, at the election of the County, either be immediately returned to the Vandalism Reserve Account or offset against Service Fee payments, as a Service Fee adjustment. For purposes of this paragraph, the term "improperly withdrawn" refers to the Project Company's withdrawal of funds in circumstances where the Project Company cannot provide evidence establishing that the funds were used to remediate acts of Vandalism in accordance with paragraph (2) of this subsection and a finding of improper withdrawal is not being disputed in good faith by the Project Company.

SECTION 9.6. MAJOR MAINTENANCE, REPAIR AND REPLACEMENTS.

(A) Major Maintenance, Repair and Replacements Generally. The Project Company, in addition to its ordinary maintenance obligations described in Section 9.5 (Ordinary

Maintenance), and except as provided in subsection 9.1(C) (Moveable Furniture, Fixtures and Equipment), shall prepare, maintain and comply with its obligations under the Facilities Management Plans required pursuant to Appendix 8 (Facilities Management Standards) and shall perform all major maintenance, repair and replacement of the equipment, systems, structures, improvements and all other property constituting the Project during the Term required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The County’s approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification under Article 10 (Capital Modifications and Facilities Management Services Changes). The obligations of the Project Company under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency, and that in any event the Project is returned to the County at the end of the Term in a condition which fully complies with the Handback Requirements.

(B) Major Equipment Repair and Replacement Schedule and Schedule Changes. The parties acknowledge that, in light of the long-term nature of this Project Agreement and the practical limitations on predicting with specificity the life cycle of any particular asset of the Project, it may be appropriate from time to time to alter the Master Maintenance Plan and the Renewal Work Plan. Accordingly, the Project Company shall have the right to request County approval of alterations to the Master Maintenance Plan and the Renewal Work Plan at any time during the Term, provided that no such alterations shall be made unless the Project Company demonstrates to the satisfaction of the County that the sum of all major maintenance, repairs and replacements performed to date by the Project Company, and all major maintenance, repairs and replacements to be performed under any such alterations, shall result in a standard of overall Project maintenance, repair and replacement which is equal to or better than the standard represented by the activities to be performed under the current Master Maintenance Plan and Renewal Work Plan. Any alterations to the Master Maintenance Plan and the Renewal Work Plan shall be identified and justified in a Contract Administration Memorandum and shall be subject to the County’s approval, acting reasonably. The Project Company shall cooperate with the County in identifying any such alterations which may be desirable in order to anticipate or address the technical obsolescence or inefficient operation of any component, system or process of the Project, and in proposing such alterations for the County’s approval. In no event shall any such alteration of the Master Maintenance Plan or the Renewal Work Plan result in a change to the Service Fee. The Facilities Management Charge shall constitute the only compensation available to the Project Company for the performance of its major maintenance, repair and replacement obligations under this Article.

SECTION 9.7. MAINTENANCE INSPECTIONS AND JOINT TECHNICAL PERFORMANCE REVIEW.

(A) Maintenance Inspections. The County may at any time perform a limited or full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment and systems to determine their physical and operational condition. Any such inspection and review shall be performed at the County’s expense, and shall take place at such time as the County shall determine upon reasonable notice to the Project Company. The inspection may include a concurrent review of all relevant data, records and reports. The Project Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Project Company’s performance of the Contract Services.

(B) Joint Technical Performance Review. In accordance with Section 1.3.1 (Joint Technical Performance Review) of Appendix 8 (Facilities Management Standards), at the end of each five-year period through the first 15 years and at the end of each three-year period throughout the remaining Facilities Management Period, the Project Company and the County, supported by a duly qualified independent inspector and such technical resources as are

mutually deemed necessary, will conduct a Joint Technical Performance Review (the “**Joint Technical Performance Review**”) of the Project. The independent inspector shall be experienced in conducting facility condition assessments for courthouses. The Joint Technical Performance Review will assess the performance and effectiveness of both the maintenance, repair, replacement and life cycle works completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the then-current Master Maintenance Plan and Renewal Work Plan as further described in Appendix 8 (Facilities Management Standards). The cost of the independent inspector engaged to conduct a Joint Technical Performance Review will be split equally between the County and the Project Company.

SECTION 9.8. UNAVAILABILITY EVENTS AND PERFORMANCE FAILURES.

(A) Deductions. The County shall have the right to impose Deductions for Unavailability Events and Performance Failures as and to the extent provided in Article 16 (Service Fee and Other Payments) and Appendix 11 (Deductions).

(B) Additional Project Company Obligations. In the event the same Unavailability Event or Performance Failure occurs repeatedly or persistently, and the Project Company is not excused from performance as a result of a Relief Event, the Project Company shall, in addition to incurring Deductions, take any action (including making all capital investments, improvements or modifications or repairs, replacements and operating and management practices changes) necessary in order to continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of such Unavailability Event or Performance Failure. Further, if any such Unavailability Event or Performance Failure involves a violation of Applicable Law, the Project Company shall (1) promptly provide the County, within 24 hours, with copies of any notices sent to or received from any Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law and (2) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom.

(C) Minimizing Interruption to County Activities. The Project Company shall perform its maintenance, repair, replacement and related obligations, including such maintenance, repair, replacement and related obligations required in response to an Unavailability Event or Performance Failure, in a manner that minimizes disruption or interference with County Activities. Notwithstanding anything to the contrary in Section 25.5(B) (Mitigation by the County), the County has no obligation to conduct County Activities at a time or location or otherwise to accommodate any maintenance, repair, replacement or related activities, including such maintenance, repair, replacement and related obligations required in response to an Unavailability Event or Performance Failure.

SECTION 9.9. PARKING AND ROAD IMPROVEMENTS AND CAFÉ.

(A) Parking and Road Improvements. Following the completion of the design and construction of the Parking and Road Improvements by the Project Company, the County shall be responsible for the operation, maintenance and administration of the Parking and Road Improvements and, if applicable, the collection of any parking fee revenue. Any parking fee revenues shall be the property of the County.

(B) Café. The costs of equipment for, and fitting out, the Café are not priced into the Service Fee, and the County shall pay such costs directly as provided in Section 7.22 (Payment Obligations of the County During the Design-Build Period). The Café shall be operated and the Café equipment shall be maintained by the County or an outsourced service provider. The Project Company shall coordinate the Facility Management Services with the Café operator, but otherwise shall have no responsibility with respect thereto. Acts of the County or an

outsourced service provider in respect of Café operations that materially prevent, hinder or obstruct the performance of the Facility Management Services shall constitute an Other Relief Event.

SECTION 9.10. FUTURE COUNTY FACILITIES AT THE RED SOILS CAMPUS.

The County shall have the right to develop, construct, operate and use additional County office and ancillary facilities at the Red Soils Campus in proximity to the Project Site. The County shall keep the Project Company reasonably apprised of its plans for any such facilities. Any material interference with, or effect on, the performance of the Contract Services of the Project Company that is caused by the County's development, construction, operation or use of any new facilities shall constitute an Other Relief Event.

SECTION 9.11. DISPOSAL OF SURPLUS EQUIPMENT.

The Project Company may, at the direction of the County, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Project that is unused or obsolete and no longer needed. All proceeds from any sale, net of the Project Company's expense in removing the equipment and arranging the sale, shall be the property of the County.

SECTION 9.12. ENFORCEMENT OF PROJECT WARRANTIES.

During the Term, the Project Company shall be responsible for meeting the maintenance obligations under all manufacturers' warranties on new equipment purchased and installed in the Project by the Project Company (other than those warranties relating to (1) Moveable Furniture, Fixtures and Equipment, (2) any Parking and Road Improvements, or (3) any equipment provided as part of the Café pursuant to subsection 9.9(B) (Café), and shall be the agent of the County in enforcing all equipment warranties and guarantees, including warranties and guarantees of the Design-Build Work obtained by the Project Company pursuant to Section 7.17 (Warranties of Design-Build Work). The Project Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Project Company shall cooperate with and assist the County if the County seeks to enforce warranties and guarantees through litigation.

SECTION 9.13. PROJECT HANDBACK.

(A) Required Project Condition. On the Expiration Date (and not on any earlier Termination Date), the Project and each Project Component shall be in a condition which is:

(1) Consistent with the Project and each such Project Component having been designed and constructed in accordance with the applicable design life requirements set forth in Appendix 6 (Design and Construction Standards) and Appendix 7 (Design and Construction Proposal Extracts); and

(2) Consistent with the Project Company having performed the Facilities Management Services in accordance with the Facilities Management Requirements.

In any event:

(3) The Facilities Condition Index for the Project shall be no worse than 0.10;
and

(4) The remaining useful life of each Project Component shall be no less than the required useful life of Project Component set forth in Section 6.2.3 (Project Condition and Remaining Useful Life) of Appendix 8 (Facilities Management Standards).

The requirements of this subsection (A) constitute the “**Handback Requirements**”.

(B) Handback Survey. In conjunction with the Joint Technical Performance Review for the Contract Year commencing three years prior to the Expiration Date, the Project Company and the County shall perform a joint inspection and survey of the Project (the “**Handback Survey**”). If the Handback Survey indicates that any element of the Project, on the Expiration Date, shall not be in a condition consistent with the Handback Requirements upon the Project Company implementing the plans and programs required under Appendix 8 (Facilities Management Standards) over the remainder of the Term, within 90 days of completion of the Handback Survey, the Project Company shall deliver to the County:

(1) A description of the additional work (the “**Handback Work**”) necessary to meet the Handback Requirements;

(2) The Project Company’s plan to perform the Handback Work (the “**Handback Work Plan**”), including the method and schedule for performing the Handback Work outside of normal working hours; and

(3) A cost estimate for the Handback Work.

(C) Determination of Handback Retainage. Upon submittal of the items required by subsection (B) of this Section, the County:

(1) May review and comment on the Project Company’s Handback Work Plan in accordance with Section 5.8 (Submittal Review Procedures During the Facilities Management Period) of Appendix 5 (General Design, Construction and Facilities Management Technical Requirements); and

(2) Shall, after giving due consideration to the Project Company’s cost estimate, determine in good faith the amount (the “**Handback Retainage**”) it reasonably believes necessary to complete the Handback Work.

(D) Establishment and Use of Handback Retainage Account. The County shall hold back and retain from the Service Fee an amount equal to the Handback Retainage, and deposit such amount in an interest-bearing account held by a Qualified Commercial Bank (the “**Handback Retainage Account**”). The account shall be the property of the County, subject to the Project Company’s withdrawal rights under this Section. The Project Company shall have the right, upon the submittal of certified requisitions to the County with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the Handback Work. Notwithstanding the foregoing, the Project Company shall be entitled to (i) post a letter of credit from a Qualified Commercial Bank with the County, or (ii) request that the County accept other cash collateral satisfactory to the County, acting in its discretion, in lieu of posting such a letter of credit, in each case in an amount equal to the Handback Retainage in lieu of such holdback from the Service Fee.

(E) Performance of the Handback Work and Further Inspection. The Project Company shall implement the Handback Work Plan and take all other steps necessary to assure compliance with the Handback Requirements, notwithstanding the County’s participation in the Handback Survey or review of the Handback Work Plan or the fact that the actual cost of

compliance may be higher than the Handback Retainage or other agreed-upon security. At least 180 days prior to the Expiration Date, the Project Company and the County shall conduct a further joint inspection and survey of the condition of the Project and the progress of the Handback Work. Notwithstanding the County's participation in the Handback Survey or review of the Handback Work Plan, the Handback Retainage or other agreed-upon security, or the complete or partial performance of the Handback Work, the Project Company shall not be released from any obligation to conduct any other inspection or to provide any other Facilities Management Services in accordance with this Project Agreement.

(F) Final County Condition Assessment. On, or within five Business Days after the Expiration Date, the County shall either:

(1) Issue to the Project Company a handback certificate confirming compliance with the Handback Requirements and return any remaining amount in the Handback Retainage Account to the Project Company; or

(2) Notify the Project Company of its decision not to issue the handback certificate, setting out each respect in which the Handback Work was not properly performed or the Project does not comply with the Handback Requirements and stating the County's reasonable estimate of the cost it reasonably believes is necessary to complete all work required for the Project to comply with the Handback Requirements.

(G) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with subsection (F) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company's proposals in respect of such matters.

(H) Final Compliance. If the Project did not, at the Expiration Date, comply in all respects with the Handback Requirements, the Project Company shall complete any work necessary to cause such compliance within 60 days following the Expiration Date or pay to the County no later than 60 days after the Expiration Date an amount equal to the cost of completing any outstanding Handback Work based on the County's cost estimate pursuant to subsection 9.13(F)(2) (Final County Condition Assessment), net any amount remaining in the Handback Retainage Account, so that the Project is in a condition which complies with the Handback Requirements.

(I) Termination Prior to Expiration. If the Termination Date occurs prior to the Expiration Date, the amount standing to the credit of the Handback Retainage Account shall be taken into account in the calculation of any Termination Amount in accordance with Appendix 13 (Compensation on Termination).

ARTICLE 10

CAPITAL MODIFICATIONS AND FACILITIES MANAGEMENT SERVICES CHANGES

SECTION 10.1. CAPITAL MODIFICATIONS GENERALLY.

(A) County Approval. The County shall have the right, in its discretion, to accept, reject, approve or modify all Capital Modifications. All Capital Modifications and related changes to the terms and conditions of this Project Agreement shall be reflected in a Project Agreement Amendment.

(B) Conditioned Approvals. The County shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom or upon any further term or condition that the County may seek to establish with respect thereto.

(C) Responsibility for Costs. All Capital Modifications shall be made and implemented in accordance with this Article. The Project Company shall bear the cost and expense of all Capital Modifications required in accordance with Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Project Company Fault). The responsibility for the cost and expense of any Capital Modifications requested by the Project Company in accordance with Section 10.2 (Capital Modifications at Project Company Request) shall be determined by the County in its discretion in accordance with its approval rights under this Article. The County shall bear the cost and expense of all Capital Modifications made pursuant to Section 10.4 (Capital Modifications Required Due to Relief Events) and pursuant to Section 10.5 (Capital Modifications at County Direction).

(D) No Project Company Ownership. In no event shall the Project Company have any ownership interest in the Project as a result of any Capital Modification.

SECTION 10.2. CAPITAL MODIFICATIONS AT PROJECT COMPANY REQUEST.

The Project Company shall give the County written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company's request. To assist the County in the exercise of its approval rights under Section 10.1 (Capital Modifications Generally), the notice shall contain sufficient information for the County to determine that the Capital Modification:

- (1) Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not materially impair the quality, integrity, durability and reliability of the Project;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

SECTION 10.3. CAPITAL MODIFICATIONS ARISING FROM REPAIRS AND REPLACEMENTS OR REQUIRED TO REMEDY A PROJECT COMPANY FAULT.

In the event that (1) any repair or replacement proposed to be performed by the Project Company in satisfaction of its obligations under Article 9 (Facilities Management), or (2) any capital investment, improvement or modification required to be made by the Project Company in order to remedy a breach of this Project Agreement, can be reasonably expected to result in a material change to the Project, such repair, replacement, capital investment, improvement or modification shall constitute a Capital Modification. In no event shall the rejection or modification of any such Capital Modification by the County relieve the Project Company of its obligation to perform maintenance, repair and replacement required under Article 9 (Facilities Management) or perform any other obligation hereunder. Except as otherwise agreed to by the County, the design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Project Company.

SECTION 10.4. CAPITAL MODIFICATIONS, REPAIRS AND REPLACEMENTS REQUIRED DUE TO RELIEF EVENTS OCCURRING FOLLOWING THE OCCUPANCY READINESS DATE.

Upon the occurrence of a Relief Event occurring following the Occupancy Readiness Date, the Project Company shall promptly proceed to make or cause to be made all Capital Modifications, repairs and replacements and to the Project reasonably necessary to address the Relief Event, as provided in Section 10.6 (Primary Procedure for Implementing Capital Modifications), Article 13 (Relief Event Procedures), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events), as applicable. The Project Company and the County shall consult concerning possible means of addressing and mitigating the effect of the Relief Event, and the Project Company and the County shall cooperate in order to minimize any delay, lessen any additional cost and repair, replace or modify the Project so as to permit the Project Company to continue providing the Contract Services in light of the Relief Event. The design and construction costs resulting from any such work shall be paid by the County as and to the extent provided in Section 6.6 (Financing Capital Costs for which the County is Responsible), Article 14 (Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events). Any related operation, maintenance, repair and replacement costs shall be borne by the County (through an adjustment of the Service Fee payable solely following the Occupancy Readiness Date, subject to Article 15 (Change in Law Events and Other Relief Events)). The Project Company shall not be required to undertake any Capital Modification, repair or replacement under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification, repair or replacement, as applicable, in accordance with all applicable provisions of this Project Agreement, including Section 10.6 (Primary Procedure for Implementing Capital Modifications), and (2) the County has provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of any such work (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 10.5. CAPITAL MODIFICATIONS AT COUNTY DIRECTION.

The County shall have the right to make Capital Modifications at any time and for any reason whatsoever after the Occupancy Readiness Date, whether and however the exercise of such rights affects this Project Agreement so long as the implementation of such Capital Modification does not contravene the limitations referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes). The design and construction costs of any such Capital Modification made at the County's direction under this Section, and any related operation,

maintenance, repair and replacement costs, shall be borne by the County, and financed as provided in Section 6.6 (Financing Capital Costs for Which the County is Responsible). The Project Company shall not be required to undertake any Capital Modification under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Project Agreement including Section 10.6 (Primary Procedure for Implementing Capital Modifications), and (2) the County has provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Capital Modification (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 10.6. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. Subject to Section 10.7 (Alternative Procedures for Implementing Capital Modifications), the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications.

(B) Initial Assessment. When a Capital Modification is required or is proposed by either party, the Project Company, at its cost and expense, shall prepare and deliver to the County an initial assessment of the matter. The initial assessment shall describe the need for or objective of the Capital Modification, set forth an overview of potential approaches to addressing the need or objective, and contain a preliminary assessment of potential cost and schedule considerations. The purpose of the initial assessment shall be to furnish the County with a reasonable basis for authorizing funds to pay for a conceptual plan and implementation proposal provided for in subsections (C) and (D) of this Section.

(C) Project Company Conceptual Plan and County Review. Following the initial assessment made pursuant to subsection (B) of this Section, at the request of the County and, except with respect to Capital Modifications made pursuant to Section 10.3 (Capital Modifications Arising from Repairs or Replacements, or Required to Remedy a Project Company Event of Default) at the cost and expense of the County, the Project Company shall prepare and deliver to the County a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project Company is recommending. The County shall review the Project Company's conceptual plan and recommendations and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(D) Project Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the County and, except with respect to Capital Modifications made pursuant to Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Project Company Fault), at the County's expense, the Project Company shall submit a formal implementation proposal to the County for its consideration. With respect to any Capital Modification to be undertaken at the County's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Project Company services element, to be implemented through a Project Agreement Amendment and (2) a third-party services element, to be implemented through third-party contracting.

(1) Project Company Services Element. The Project Company services element shall contain: (a) the Project Company's offer to perform design, construction management and commissioning test services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a commissioning test and a guaranteed maximum construction price if so requested by the County and agreed to by the Project Company; and (b) as applicable, the Project Company's offer to operate, maintain, repair, replace, permit and manage the Capital Modification following construction and commissioning for compensation paid as an adjustment to the Facilities Management Charge with a revision of the composition or weighting of the inflation index or indices used to adjust the Facilities Management Charge, as appropriate, and shall include long-term performance guarantees appropriate to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Project Company to conduct, as allowed by Applicable Law, either a qualifications-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Project Company, unless required to be held by the County under Applicable Law. A "competitive proposal process" referred to herein may include a qualifications-based request for proposals and a design-build contract award to the most advantageous proposer.

(E) Negotiation and Finalization of Project Company Implementation Proposal. The parties shall proceed, promptly following the County's review of the Project Company's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Project Agreement resulting from the Capital Modification. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

- (1) Design requirements;
- (2) Construction management services;
- (3) Commissioning tests, standards and procedures;
- (4) A guarantee of completion;
- (5) Performance guarantees;
- (6) Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
- (7) A payment schedule for the design and construction management-related services;
- (8) Any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
- (9) A financing plan; and

- (10) Any other appropriate amendments to this Project Agreement.

The Project Company shall not be obligated to undertake any Capital Modification under Section 10.4 (Capital Modifications Required Due to Relief Events) or Section 10.5 (Capital Modifications at County Direction) except following agreement as to scope, price and schedule and the delivery by the County of assurances as to the availability of funds, as provided in such Sections. The County shall have no obligation to reimburse the Project Company for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Project Agreement.

(F) Implementation Procedures. With respect to each Capital Modification to be made by the Project Company, the County shall have the same substantive and procedural rights that it has with respect to the design, construction, commissioning, final completion and handback of the Project, as set forth in this Project Agreement.

SECTION 10.7. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS.

With respect to any Capital Modification to be undertaken at the County's expense and as otherwise required by Applicable Law, the County shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 10.6 (Primary Procedure for Implementing Capital Modifications), and may instead, in its discretion, utilize any other implementation procedure available to it or required under Applicable Law. Alternative implementation procedures may include contracting with the Project Company or any third party to implement the Capital Modification on a sole source or any competitive basis using any project delivery method available under Applicable Law. The County may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Project Company under the primary implementation procedure specified under Section 10.6 (Primary Procedure for Implementing Capital Modifications). No alternative implementation procedure for Capital Modifications shall contravene the limitations referred to in Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes).

SECTION 10.8. FACILITIES MANAGEMENT SERVICES CHANGES.

(A) Generally. The County may, on a quarterly basis each Contract Year during the Term (except more frequently as may be appropriate to address urgent County governmental circumstances), subject to Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes), require the Project Company to implement a Facilities Management Services Change in accordance with this Section. The implementation procedure set forth in this Section shall apply with respect to all Facilities Management Services Changes which the County may require during the Term. In the event the County requests a Facilities Management Services Change, the County shall issue to the Project Company a written notice including a sufficient description of the contemplated Facilities Management Services Change.

(B) Project Company Facilities Management Services Change Report. Within 15 Business Days, or such longer period as the parties agree acting reasonably, after receipt of the County's notice delivered pursuant to subsection (A) of this Section, the Project Company shall prepare and deliver to the County a report for the contemplated Facilities Management Services Change ("**Facilities Management Services Change Report**"). A Facilities Management Services Change Report shall include, to the extent that it is relevant to the proposed Facilities Management Services Change:

- (1) A description of the scope of the contemplated Facilities Management Services Change with respect to the Facilities Management Services;
- (2) A comparison of the scope of Facilities Management Services as a result of the contemplated Facilities Management Services Change as compared to the scope prior to the Facilities Management Services Change;
- (3) An estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Facilities Management Services Change, as further described in subsection (C) of this Section, including the following, as applicable:
 - (a) all Facilities Management Services labor, material and equipment costs, supported as the case may be by quotations from the applicable Facilities Manager and Subcontractors;
 - (b) any costs related to the Project Company's management and oversight of the Project that should reasonably be included in the contemplated Facilities Management Services Change;
 - (c) all costs of an amendment or renewal of a Governmental Approval required by the contemplated Facilities Management Services Change;
 - (d) all financing costs; and
 - (e) all insurance costs;
- (4) An estimate of the cost savings, if any, resulting from the contemplated Facilities Management Services Change;
- (5) A description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Facilities Management Services Change and an estimate of costs, if any, reasonably necessary for and directly associated therewith;
- (6) A description of any changes to the Service Fee that are required to reflect any costs or cost savings described in items (3), (4) and (5) above;
- (7) Identification of any amounts payable by the County to the Project Company, if any, other than the Service Fee;
- (8) The Project Company's proposal as to how any increased costs to the Project Company resulting from the contemplated Facilities Management Services Change may be funded;
- (9) The value of the loss or reduction of benefits resulting from the contemplated Facilities Management Services Change;
- (10) A description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated Facilities Management Services Change;
- (11) A description of any impact on the obligations of the Project Company under any Material Contracts;

(12) A description of the extent to which the contemplated Facilities Management Services Change or the implementation thereof would interfere with the Project Company's ability to comply with any of its obligations under this Project Agreement, the Material Contracts and any Governmental Approvals;

(13) The name of the Subcontractor, if any, which the Project Company intends to engage for the purposes of implementing the contemplated Facilities Management Services Change;

(14) A description of any further effects (including, without limitation, benefits and impairments) which the Project Company foresees as being likely to result from the contemplated Facilities Management Services Change or the implementation thereof;

(15) A description of any actions that would be reasonably required by the County to implement the contemplated Facilities Management Services Change;

(16) A description of the steps the Project Company will take to implement the contemplated Facilities Management Services Change, in such detail as is reasonable and appropriate; and

(17) A description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years.

If the Project Company prepares a Facilities Management Services Change Report pursuant to this subsection and the County elects not to proceed with the contemplated Facilities Management Services Change, then the County shall pay the Project Company's Facilities Management Services Change Report preparation costs subject to Cost Substantiation. Notwithstanding the foregoing, the County shall not be responsible for any Project Company costs associated with a Facilities Management Services Change Report prepared pursuant to subsection (J) of this Section.

(C) Valuation of Facilities Management Services Changes. The County and the Project Company shall negotiate in good faith the costs or savings associated with any Facilities Management Services Change in accordance with subsection (E) of this Section. If the parties fail to agree on the costs or savings of such Facilities Management Services Change, the costs or savings shall be determined as set forth in this subsection. The costs or savings of a Facilities Management Services Change shall be the net incremental additional costs or savings of implementing the Facilities Management Services Change, calculated as the aggregate cost, if any, of any additions to the Project Company's Facilities Management Services obligations required to implement the Facilities Management Services Change minus the aggregate cost savings, if any, from all reductions in the Project Company's Facilities Management Services obligations resulting from the implementation of such Facilities Management Services Change. A Facilities Management Services Change may have a net cost, a net saving, or may result in no net cost or saving. The costs of a Facilities Management Services Change are the aggregate of the costs reasonably incurred by the Project Company or the Facilities Manager to implement the Facilities Management Services Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:

(1) The amounts of all Subcontractor or supplier agreements;

(2) The direct costs incurred for the Facilities Management Services personnel, based on the number of personnel hours required to undertake the Facilities Management Services Change;

(3) The direct costs incurred for the procurement of materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment, including the costs of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering costs;

(4) The costs incurred for the evaluation of proposals and award of a contract for work associated with the Facilities Management Services Change, and the supervision and management of such contracts;

(5) All direct costs incurred by the Project Company in procuring and managing the Facilities Management Services Change (including costs of advisers and extra costs under any management services agreements entered into by the Project Company); and

(6) All other additional direct costs pertaining to the Facilities Management Services Change, including disposal, insurance, bonding, financing, Governmental Approvals and directly attributable overheads, calculated at the direct cost to the entity that directly incurs such costs, and the costs incurred or borne by the Project Company in preparing a Facilities Management Services Change Report.

The costs applied pursuant to this subsection shall be no greater than the market rates prevailing at the time of the implementation of the Facilities Management Services Change paid between parties contracting at arm's length. In addition to the costs incurred by the Project Company or Facilities Manager described above in this subsection, a mark-up shall be applied without duplication to such aggregate costs as full payment for all other costs, including indirect overhead costs and profit in accordance with subsection 16.12(E) (Mark-Ups).

(D) Justification and Supporting Documentation. The Project Company shall use, or will cause the Facilities Manager to use, reasonable efforts to obtain competitive quotations and proposals for all work, equipment and materials required to implement a Facilities Management Services Change. The cost estimates included in a Facilities Management Services Change Report shall be in sufficient detail to allow evaluation by the County and will include such supporting information and justification as is necessary to demonstrate that:

(1) The Project Company has used all reasonable efforts, including utilizing competitive quotes or proposals, to minimize the cost of a contemplated Facilities Management Services Change and maximize potential related cost savings;

(2) The Project Company and Facilities Manager have valued the Facilities Management Services Change as described in subsection (C) of this Section, and have not included other margins or mark-ups;

(3) The full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and

(4) The Project Company has mitigated or will mitigate the impact of the contemplated Facilities Management Services Change, including on the performance of the Facilities Management Services, the expected usage of Utilities, and the direct costs to be incurred.

(E) Agreement on a Facilities Management Services Change. Within 15 Business Days, or such longer period as the parties agree acting reasonably, following receipt by the County of a Facilities Management Services Change Report prepared in accordance with

subsection (B) of this Section, the County may deliver to the Project Company any requests for clarifications or amendments, and the parties' representatives shall meet and use all reasonable efforts to agree to the Facilities Management Services Change Report. Such agreement shall include the costs, payments (including payment of direct costs and adjustments to the Service Fee, if any) and other information contained in the Facilities Management Services Change Report. If the County would be required by Applicable Law to require the Project Company to competitively solicit any contract in relation to a contemplated Facilities Management Services Change, the County may require the Project Company to seek and evaluate competitive proposals for the proposed Facilities Management Services Change. The County may modify any Facilities Management Services Change request notice delivered pursuant to subsection (A) of this Section, in writing, at any time prior to the parties reaching an agreement on the Facilities Management Services Change Report pursuant to this subsection. In the event the County delivers notice of any such modification to the Project Company, the Project Company shall notify the County of any significant changes to the Facilities Management Services Change Report within 20 Business Days after receipt of such modification notice.

(F) Facilities Management Services Change Certificate. Upon agreement of the parties with respect to the Facilities Management Services Change in accordance with subsection (E) of this Section, the County shall issue a signed Facilities Management Services Change Certificate to the Project Company. In the event the County and the Project Company do not agree on the Facilities Management Services Change, the County may issue a Facilities Management Services Change Certificate in accordance with subsection (G) of this Section. The Project Company shall not proceed with a Facilities Management Services Change prior to receiving a signed Facilities Management Services Change Certificate from the County. A Facilities Management Services Change Certificate issued in accordance with this subsection shall be binding upon the County and the Project Company. Upon receipt of a Facilities Management Services Change Certificate the Project Company shall implement the Facilities Management Services Change, without prejudice to the Project Company's right to refer any dispute concerning the Facilities Management Services Change to Non-Binding Mediation, including valuation of the Facilities Management Services Change in accordance with subsection (C) of this Section.

(G) Disagreement on Facilities Management Services Change Report. In the event the County and the Project Company cannot agree on a Facilities Management Services Change Report, the County may elect not to proceed with the Facilities Management Services Change described in the notice delivered to the Project Company in accordance with subsection (A) of this Section. Alternatively, the County may issue the Facilities Management Services Change Certificate to the Project Company stating the County's determination of the matters referred to in the Facilities Management Services Change Report, and if the Project Company disagrees with all or any of the determinations set forth in the Facilities Management Services Change Certificate, then the Project Company may deliver the County a notice identifying any such disagreements within 10 Business Days of receipt of the Facilities Management Services Change Certificate. Following delivery of the notice to the County identifying any points of disagreement to the Facilities Management Services Change Certificate, the Project Company may, (1) pursuant to its rights under Section 4.7 (Restrictions on County-Directed Design and Construction Requirement Changes, Capital Modifications and Facilities Management Services Changes) refuse to implement the Facilities Management Services Change, or (2) without prejudice to its rights with respect to such disagreements, use all reasonable efforts to implement the Facilities Management Services Change as directed in the Facilities Management Services Change Certificate. If the Project Company fails to timely deliver the notice to the County identifying any points of disagreement with the Facilities Management Services Change Certificate as set forth in this subsection, the Project Company shall be deemed to have waived any such objections to the Facilities Management Services Change Certificate.

(H) Responsibility and Payment for Facilities Management Services Changes. Except as specifically provided in this Project Agreement, the County shall bear no risk or liability whatsoever arising from any Facilities Management Services Change other than the liability to make payment in connection therewith. The County shall bear the cost and expense of all Facilities Management Services Changes made pursuant to this Section. Payments by the County and any adjustments to the Service Fee with respect to Facilities Management Services Changes shall be made in accordance with Sections 16.6 (Extraordinary Items) and 16.12 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation).

(I) Cost Savings. In the event any Facilities Management Services Change is reasonably expected to result in a net cost savings to the Project Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the County, and the Service Fee shall be reduced accordingly.

(J) Facilities Management Services Changes at Project Company Request. The Project Company may give the County written notice of, and reasonable opportunity to review and comment upon, any Facilities Management Services Change proposed to be made at the Project Company's request. The County shall have the right, in its discretion, to accept, reject, approve or modify all such Facilities Management Services Change requests made by the Project Company. The responsibility for the cost and expense of any Facilities Management Services Change requested by the Project Company in accordance with this subsection shall be determined by the County in its discretion. The written notice provided by the Project Company shall contain sufficient information for the County to determine that the Facilities Management Services Change:

- (1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity and reliability of the Operation Services;
- (3) Is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) Is feasible.

The County shall not unreasonably deny any Facilities Management Change request made by the Project Company that complies with the requirements of this subsection and will result in cost savings to both the County and the Project Company. Any Facilities Management Change proposed to be made at the Project Company's request, and accepted by the County, shall be implemented as set forth in this Section, except that the notice provided by the Project Company pursuant to this subsection shall take the place of the notice provided by the County pursuant to subsection (A) of this Section.

ARTICLE 11

CONTRACTING AND LABOR PRACTICES

SECTION 11.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. The County acknowledges that the Project Company may carry out the Design-Build Work and the Facilities Management Services by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Local Business Participation. The Project Company acknowledges the County's policy of seeking to maximize the participation of local businesses in the Project and, accordingly, agrees to use all commercially reasonable efforts to comply with and carry out the Local Business Plan.

(C) Use of Project Contractors and Key Individuals. The Project Company shall use the Project Contractors and Key Individuals listed in Appendix 15 (Project Company and Project Contractors Information) or such others as the County may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Services in the roles indicated in Appendix 15 (Project Company and Project Contractors Information).

(D) Restricted Persons. In providing the Contract Services, the Project Company shall not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any person that at the time of such contracting, in the reasonable opinion of the County, is a Restricted Person.

(E) Oregon Construction Contractors Board. The Project Company shall ensure that all Subcontractors performing Contract Services described in ORS 701.005(2) will be registered with the Oregon Construction Contractors Board in accordance with ORS 701.035 to ORS 701.055 before the Subcontractors commence any Contract Services.

SECTION 11.2. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to the County under this Project Agreement for all matters related to the Contract Services. No failure of any Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Services shall relieve the Project Company from its obligations hereunder to perform the Contract Services. The Project Company shall be responsible for settling and resolving with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Project Company or a Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the Project Contractors and all Subcontractors all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against the County for labor, services, materials or equipment furnished for the Contract Services. The Project Company acknowledges that its indemnity obligations under Section 24.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by any Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services to the extent that those claims fall within the scope of the indemnity in Section 24.1 (Project Company's Obligation to Indemnify).

(C) Assignability. All Project Contracts or Subcontracts entered into by the Project Company with respect to the Project shall be assignable to the County, solely at the County's election and without cost or penalty, upon the expiration or termination of this Project Agreement, subject to the terms of the Project Contractor Collateral Agreement and provided that no Termination Amount is outstanding.

(D) Assurance of Project Completion. **[NOTE TO PROPOSERS: Proposed assurances as to performance bonds, letters of credit or other mechanisms, as provided in the Financial Proposal, to assure Project completion to be included here.]**

(E) Payment Bond. The Project Company shall cause the Design-Builder to furnish a labor and materials payment bond within 15 days following the Financial Close Date in an amount equal to the Design-Build Contract Price. The payment bond shall be in a form and from a surety acceptable to the County, acting reasonably. The Project Company shall cause the County to be named, upon issuance of such payment bond, as an additional obligee or beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to the County within 10 days after issuance. The County's rights in respect of any such security shall be subject to the rights of the Senior Lenders under the Lenders' Remedies Agreement.

(F) Project Company Payment Requirements in General. As required in ORS 279C.505(1), the Project Company shall (1) make payment promptly, as due to all persons and Subcontractors supplying the Project Company labor or material for the performance of the Contract Services, (2) pay all contributions or amounts due to the Oregon Industrial Accident Fund from the Project Company or Subcontractor incurred in the performance of the Contract Services; (3) not permit any lien or claim to be filed or prosecuted against the County, the State or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and (4) pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167.

(G) Design-Builder and Subcontractor Timely Payment Requirements. As required by ORS 279C.515(2), the Project Company shall obligate the Design-Builder, and shall obligate the Design-Builder to include in each Subcontract entered into by the Design-Builder, a payment clause that obligates the applicable contractor to pay its Subcontractors for satisfactory performance under its Subcontract within ten days out of such amounts as are paid by the Project Company to the Design-Builder. If the Design-Builder or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with this Project Agreement within 30 days after receiving payment from the Project Company, then the Design-Builder or first-tier Subcontractor shall owe such person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due shall be 9% per annum. The amount of interest may not be waived.

(H) Right to File a Complaint with the Oregon Construction Contractors Board. As required by ORS 279C.515(3), if the Project Company or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Project Agreement, such person may file a complaint with the Oregon Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

SECTION 11.3. MATERIAL CONTRACTS.

(A) County Consents. Unless the Project Company has, at its earliest practicable opportunity, submitted to the County notice of the proposed course of action (and

any relevant documentation) and the County has consented to such course of action, such consent not to be unreasonably withheld or delayed, the Project Company shall not:

- (1) Terminate, or agree to or permit the termination of, all or any material part of any Material Contract;
- (2) Make, or agree to or permit the making of:
 - (a) any material amendment of any Material Contract; or
 - (b) any departure by any party from any material provision of any Material Contract;
- (3) Permit any Project Contractor to assign or transfer to any person any of such Project Contractor's rights or obligations under a Material Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Material Contract; or
- (4) Enter into, or permit the entering into, any Material Contract other than those entered on or before the Effective Date.

(B) Timeframe for Consents. The County shall give or deny such consent within:

- (1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Material Contract immediately; and
- (2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

If the County fails to give or deny its consent within such time periods it shall be deemed to have given its consent. The giving or denial of consent by the County shall not create any liability of the County to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, the County's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request, the Project Company shall make a payment to the County against its obligation under this Section of \$15,000 (Index-Linked). After the County's decision is rendered, the County will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section with reasonable substantiation of such costs.

SECTION 11.4. REPLACEMENT MATERIAL CONTRACTS.

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project, the Project Company:

- (1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and

- (2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

SECTION 11.5. DELIVERY OF AMENDED OR REPLACEMENT MATERIAL CONTRACTS.

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, the Project Company shall deliver to the County a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 11.6. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Contract Services. The Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. The County shall have no responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company's Obligation to Indemnify) from any and all Loss-and-Expense resulting from any such labor dispute, except to the extent that such labor dispute is an Other Relief Event.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that may affect any of the Contract Services, the Project Company shall promptly:

- (1) Give notice thereof to the County, including all relevant information related to the dispute of which the Project Company has knowledge; and
- (2) Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Services including by applying for relief to appropriate tribunals or courts.

The Project Company acknowledges that if the labor dispute involves workers of a Project Contractor or Subcontractor, or of anyone employed by or through them, the County will not be required to provide any facilities, space or assistance in the Project or on the Project Site for the purposes of such workers or any applicable union.

SECTION 11.7. CONSTRUCTION CAREER PATHWAYS PROJECT (C2P2) REQUIREMENTS.

(A) Construction Career Pathways Project (C2P2) Workplace Environment Requirements. The Project Company and its Subcontractors, in accordance with the C2P2 Implementation Plan, shall:

- (1) promote a positive and inclusive workplace culture and implement a written jobsite-wide program promoting positive workplace culture,
- (2) enforce a zero tolerance policy for job site bullying, including bullying and harassment of women and minority workers; and

(3) implement a project for the benefit of regional trade/technical training program or school as part of the Project.

(B) Construction Career Pathways Project (C2P2) Allocation of Apprenticeable Work Requirements. The Project Company, in accordance with the C2P2 Implementation Plan, shall make a good faith effort to achieve: (1) 20% of apprenticeable total work hours for the Project being performed by state-registered apprentices, (2) 14% of total journey and apprentice-level work hours for the Project being performed by women and women-identified persons, and (3) 25% of total journey and apprentice-level work hours for the Project being performed by persons of color. The Project Company shall provide updates during the Design-Build Period with respect to the efforts being made to meet the above goals in accordance with Section 2.8 (C2P2 and D/M/W/ESB/SDVBE Reporting Requirements) of Appendix 6 (Design and Construction Standards).

(C) Disadvantaged Minority-Owned, Women-Owned, Emerging Small Businesses, Service Disabled Veterans Business Enterprises (D/M/W/ESB/SDVBE) Subcontracting Requirements. The Project Company, in accordance with the D/M/W/ESB/SDVBE Subcontracting Plan, shall make a good faith effort to subcontract 20% of the hard construction costs of the Project to D/M/W/ESB/SDVBE subcontractors, as properly certified within the State of Oregon Certification Office of Business Inclusion and Diversity, with a sub-goal that 14% of all Project hard construction costs be subcontracted to D/M/W subcontractors and 6% to ESB/SDVBE subcontractors, as certified within the State of Oregon Certification Office of Business Inclusion and Diversity. The Project Company shall provide updates during the Design-Build Period with respect to the efforts being made to meet the above goals in accordance with Section 2.8 (C2P2 and D/M/W/ESB/SDVBE Reporting Requirements) of Appendix 6 (Design and Construction Standards).

SECTION 11.8. PREVAILING WAGES.

(A) Payment of Prevailing Wages; Recordkeeping Requirements. The Project Company shall comply fully with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870. Pursuant to ORS 279C.830(1)(d), the Project Company shall pay workers at not less than the specified minimum hourly rate of wage for workers at the Project Site in the job classifications covered thereto, and shall include such requirement in all Subcontracts. The Project Company shall cause a copy of the prevailing rates of wages to be posted at the Project Site, shall keep and maintain payroll and other relevant information in order to permit the County to monitor compliance with this requirement, and shall furnish certified copies of such payrolls and other information to the County or its designee upon request.

(B) Public Works Bond to Assume Payment of Prevailing Wages. As required by ORS 279C.830(2) and ORS 279C.836, the Project Company shall file with the Oregon Construction Contractors Board, and maintain in full force and effect, a public works bond in the stated amount of \$30,000. The Project Company shall also include in every Subcontract a provision requiring the Subcontractor to have a public works bond filed with the Oregon Construction Contractors Board before starting any Design-Build Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to commence any Design-Build Work. Such public works bonds shall be subject to the notice of claim requirements set forth in ORS 279.605.

SECTION 11.9. OVERTIME.

(A) Employee Overtime Requirements. As required by ORS 279C.520(1)(a), ORS 279C.520(5), ORS 279C.540 and ORS 279C.545, the Project Company may not employ an employee for more than 10 hours in any one day, or 40 hours in any one week, except in cases

of necessity, emergency or when the public policy absolutely requires otherwise, and in such exceptional cases, the Project Company shall pay the employee at least time and a half pay for: (A)(1) all overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or (2) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and (B) all work the employee performs on Saturday and on any legal holiday specified in a collective bargaining agreement or pursuant to ORS 279C.540.

(B) Overtime Notice Requirements. As required by ORS 279C.520(2), the Project Company and Subcontractors shall give notice in writing to employees either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Project Company or Subcontractor may require the employees to work.

SECTION 11.10. OTHER LABOR REQUIREMENTS.

(A) Prohibition of Discriminatory Wage Rates Based on Sex. As required by ORS 279C.520(1)(b), the Project Company shall comply with the prohibition set forth in ORS 652.220. Compliance is a material element of this Project Agreement and a failure to comply shall constitute a Project Company Remediable Breach.

(B) Compensation Discussion Prohibitions Restricted. As required by ORS 279C.520(1)(c), the Project Company may not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

SECTION 11.11. WORKERS' COMPENSATION.

As required by ORS 279C.530(2), the Project Company and all Subcontractors that employ subject workers who work under this Project Agreement in the State shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such entity is exempt under ORS 656.126.

SECTION 11.12. EMPLOYEE HEALTH REQUIREMENTS.

(A) Employee Drug Testing Program. As required by ORS 279C.505(2), the Project Company shall, upon request, demonstrate that each Project Contractor has an employee drug testing program in place.

(B) Payment of Medical Care. As required by ORS 279C.530(1), the Project Company shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Project Company, of all sums that the Project Company agrees to pay for the services and all moneys and sums that the Project Company collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

ARTICLE 12

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 12.1. INSURANCE.

(A) Required Insurance. At all times during the Design-Build Period and the Operating Period, as applicable, the Project Company shall obtain or cause to be obtained, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

(B) Project Contractors and Subcontractors. The Project Company shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Project Company and the County shall comply promptly with the requirements of all insurers pertaining to the Project Site and the Project under any policy of Required Insurance to which such is a named insured, a co-insured, or an additional insured party. Neither party to this Project Agreement shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or the reduction of coverage under any policy of Required Insurance to which such party is an insured in accordance with Appendix 10 (Insurance Requirements).

(D) Failure to Provide Insurance Coverage. If the Project Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, or if the Project Company fails to provide evidence of Required Insurance to the County in accordance with Appendix 10 (Insurance Requirements), the County may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer, and upon such payment by the County, the amount thereof shall be immediately reimbursable to the County by the Project Company. Subject to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third-Party Liability), the failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses intended to be insured thereby, be a satisfaction of any Project Company liability under this Project Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

(E) Reductions for Insurance Proceeds and Insurance Receivables. Whenever this Project Agreement obligates the County to pay any amount to the Project Company in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Project Company under the Required Insurance, the amount which the County is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which the Project Company recovers or would have been entitled to recover if it had complied with the requirements of this Project Agreement or any policy of Required Insurance.

(F) Property Insurance Proceeds. Insurance Proceeds available from any policy of Required Insurance relating to property shall be deposited, held and applied as provided in subsection 14.1(E) (Insurance Trust Account) and subsection 14.1(F) (Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration).

SECTION 12.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) Protection. The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to the County and the insurers, immediately upon obtaining knowledge thereof, any damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to the County. The Project Company shall also submit to the County within 24 hours of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, claim adjuster or Governmental Body.

(B) Repair of Property. The Project Company shall promptly repair or replace all property owned by the County or any other public or private owner that is damaged by the Project Company or any Project Company Person in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

(C) Damage or Destruction from Uninsurable Force Majeure Events. Where damage or destruction of the Project is caused by the occurrence of an Uninsurable Force Majeure Event, the County shall be responsible for paying the cost of the Reinstatement Works (including debt service and expenses) in accordance with Section 14.2 (Uninsurable Force Majeure Events).

(D) Damage or Destruction from Other Relief Events. Where damage or destruction of the Project is caused by the occurrence of an Other Relief Event, the County shall be responsible for paying the cost of the Reinstatement Works (including debt service and expenses) in accordance with Section 15.3 (Other Relief Events).

(E) Damage or Destruction from Insurable Force Majeure Events. Where damage or destruction to the Project is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may, prior to the Termination Date, withdraw any Insurance Proceeds standing to the credit of the Insurance Trust Account, together with interest accrued thereon, from the Insurance Trust Account as required to enable it to comply with its obligations under Section 14.3 (Reinstatement Plan), and the parties shall comply with the signatory requirements governing the Insurance Trust Account to permit such payments to be made.

SECTION 12.3. PROJECT AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.

Except as provided in Section 22.2(C) (Required Termination Upon Total Constructive Loss Following the Occupancy Readiness Date) or otherwise as expressly provided herein or (with respect to the use of insurance proceeds) in the Lenders' Remedies Agreement, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Project Agreement or entitle the Project Company to surrender possession of the Project or to demand any increase in any amounts payable to the Project Company under this Project Agreement.

ARTICLE 13

RELIEF EVENT PROCEDURES

SECTION 13.1. RELIEF EVENTS GENERALLY.

(A) Extent of Relief Available to the Project Company. If a Relief Event occurs, the Project Company may seek relief from its obligations to perform the Contract Services and may seek extensions of time, may claim compensation, and may exercise a termination right under this Project Agreement, as and to the extent provided in this Article, Article 14 (Force Majeure Events), and Article 15 (Change in Law Events and Other Relief Events) and in accordance with Section 14.3 (Reinstatement Plan).

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Article on account of Relief Events shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 25.5 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Project Company of its obligation, following any and all Relief Events, to perform its obligations under this Project Agreement in compliance with Applicable Law.

SECTION 13.2. PROCEDURES UPON THE OCCURRENCE OF A RELIEF EVENT.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of a Relief Event, the Project Company shall give notice of the occurrence of the Relief Event to the County as soon as practicable, and in any event within 10 Business Days of the date the Project Company has knowledge that the Relief Event has caused or is likely to cause an entitlement under this Project Agreement. The Project Company's notice shall include a written report:

- (1) Describing the Relief Event and the cause thereof, to the extent known;
- (2) Stating the date on which the Relief Event began and its estimated duration;
- (3) Summarizing the consequences of the Relief Event and the expected impact on the performance of the Project Company's obligations under this Project Agreement; and
- (4) Indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company shall provide the County with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in subsection (A) of this Section. In particular, the Project Company shall notify the County as soon as the Relief Event has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Project Company shall submit to the County a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in subsection (A) of this Section. If the specific relief cannot reasonably be ascertained within such 30-day period,

the Project Company at the conclusion of such 30-day period shall furnish a further notice to the County establishing the date by which the appropriate relief is expected to be definitively requested and the basis for such extension. An additional notice shall be provided at the end of each 30-day period for the duration of the event. The Project Company shall then specify the specific requested relief by the date established in the final notice delivered following the conclusion of the event.

(D) Delay in Notification. If any Relief Event notice or any required information is submitted by the Project Company to the County after the dates required under this Section, then the Project Company shall be entitled to relief provided due to the occurrence of the Relief Event except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Project Company may make multiple but not duplicative claims with respect to a Relief Event.

(F) Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of a Relief Event and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 25.5 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of a Relief Event, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Project Agreement.

(H) Project Company Information. The County shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert a Relief Event claim.

(I) County Response. Within 30 days after receipt of a relief request by the Project Company pursuant to subsection (C) of this Section, the County shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of a Relief Event shall be evidenced by a Contract Administration Memorandum, a Project Agreement Amendment or a Change Order, as applicable. Either party may refer any dispute to the Dispute Resolution Procedure.

ARTICLE 14

FORCE MAJEURE EVENTS

SECTION 14.1. INSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Insurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition with materials of like kind and quality and without deduction for depreciation at the time and place of loss, and in compliance with Applicable Law, and in accordance with the requirements of Section 14.3 (Reinstatement Plan).

(B) Schedule Relief. If an Insurable Force Majeure Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of the Insurable Force Majeure Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(C) Performance Relief. If an Insurable Force Majeure Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by the Insurable Force Majeure Event.

(D) No Compensation Relief. If an Insurable Force Majeure Event occurs, the Service Fee shall continue to be payable, but shall:

(1) Be adjusted as provided in subsection 16.2(B) (Service Fee During the Continuance of an Insurable Force Majeure Event); and

(2) Not be increased to account for any costs resulting from the occurrence of the Insurable Force Majeure Event, it being understood that the Project Company shall be obligated to comply with its obligations under subsection 14.1(A) of this Section and otherwise perform the Contract Services notwithstanding the insufficiency for any reason of any Insurance Proceeds.

(E) Insurance Trust Account. The parties shall cause an insurance trust account ("**Insurance Trust Account**") to be created and held pursuant to the terms of the Insurance Trust Agreement.

(F) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. Upon the occurrence of an Insurable Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in the Insurance Trust Account and applied to such repair, replacement or restoration purposes in accordance with the terms of this Project Agreement or released to the agent of the Senior Lender, as provided in Article 7 of the Lenders' Remedies Agreement and following the procedures set forth in the Insurance Trust Agreement.

(G) Insurance Deductibles and Exceedances. The Project Company shall be responsible for and bear all costs associated with insurance deductibles; provided, however, the County shall bear such costs with respect to any insurance required under Appendix 10 (Insurance Requirements) to the extent such costs result from County Fault. The Project Company shall be responsible for any claims exceeding policy limits and sublimits to the extent any such costs and claims result from an Insurable Force Majeure Event; provided, however, the County shall be responsible for any claims exceeding the policy sublimits in Section 1.1(c) (Builder's Risk) of Appendix 10 (Insurance Requirements) or Section 2.1(c) (Property) of Appendix 10 (Insurance Requirements).

(H) County Remedies and Termination Right. The failure of the Project Company to comply with its obligations under subsection (A) of this Section shall constitute a Project Company Remediable Breach which, if not remedied by the Project Company, shall entitle the County to exercise all of its remedies, including the right, by notice to the Project Company, to terminate this Project Agreement in accordance with subsection (A)(2) of Section 20.4 (County Termination Right).

SECTION 14.2. UNINSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Uninsurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction and in compliance with Applicable Law and in accordance with subsections (D) through (F) of this Section and Section 14.3 (Reinstatement Plan). The obligation of the Project Company to perform work (including under any Reinstatement Plan), as it pertains to Uninsurable Force Majeure Events occurring prior to the Occupancy Readiness Date, is conditioned on the availability of funds as provided in Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date), and the County shall make all payments relating to such work provided for in subsection (D) of this Section. Compensation with respect to work described in this subsection (including under a Reinstatement Plan), as it pertains to an Uninsurable Force Majeure Event occurring on and after the Occupancy Readiness Date, shall be paid by the County as provided for in subsection (D) of this Section.

(B) Schedule Relief. If an Uninsurable Force Majeure Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of an Uninsurable Force Majeure Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(C) Performance Relief. If an Uninsurable Force Majeure Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by the Uninsurable Force Majeure Event.

(D) Compensation Relief. If an Uninsurable Force Majeure Event occurs, the parties shall comply with their respective obligations under Section 7.11 (Design and

Construction Changes made Due to Relief Events Occurring Prior to the Occupancy Readiness Date) and Section 10.4 (Capital Modifications Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, and the County shall pay the Project Company:

(1) An amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder) or making the Capital Modification, as applicable, to the extent resulting from the Uninsurable Force Majeure Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost or other appropriate relief measures; provided, however, that if the Project Company finances such costs pursuant to Section 6.6 (Financing Capital Costs for which the County is Responsible), then in lieu of such direct payment the additional amount negotiated by the parties pursuant to Section 6.6 reflecting such costs and the related financing costs shall be payable as an Extraordinary Item pursuant to Section 16.6 (Extraordinary Items); and

(2) If the Uninsurable Force Majeure Event occurs prior to the Scheduled Occupancy Readiness Date, an amount equal to the amount of debt service payable with respect to the Senior Debt (including debt service on borrowings made to finance the Project that were intended to be repaid from the proceeds of the Occupancy Readiness Milestone Payment) from the Scheduled Occupancy Readiness Date without taking into account the extension of such date in accordance with subsection 8.7(C) (Extension for Relief Events) through the Scheduled Occupancy Readiness Date extended in accordance with subsection 8.7(C) upon the occurrence of the Uninsurable Force Majeure Event, which amount shall be invoiced by the Project Company for each month by the fifteenth day following the end of such month and paid by the County within 30 days of receipt of the invoice.

Such amounts shall be paid by the County to the Project Company separate from and in addition to the Service Fee, except as provided in item (D)(1) above. In addition, the Facilities Management Charge shall be reduced by an amount equal to Avoidable Costs, and increased by an amount necessary to compensate the Project Company for any increase in the cost of performing the Facilities Management Services to the extent resulting from the Uninsurable Force Majeure Event.

(E) Disaster Relief Funds. Upon the occurrence of an Uninsurable Force Majeure Event, the County shall promptly apply for and use all reasonable efforts to obtain any available State and federal disaster relief funds in order to repair, replace or rebuild the Project. The County shall deposit any such funds it receives into the Insurance Trust Account promptly upon receipt.

(F) County and Project Company Termination Rights. If (1) the Project is completely or substantially destroyed, or if an Uninsurable Force Majeure Event occurs and is continuing and persists, or its effects are continuing and persisting so as to render the New Courthouse, or a substantial part thereof, unusable, and (2) a period of 180 days expires during which (a) the County or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, (b) the parties have not agreed upon a scope, price and schedule for the Reinstatement Plan, as applicable, and (c) the County has not provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Reinstatement Plan will be available for such purposes in the amounts and on the schedule agreed upon by the parties, as contemplated by Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date) or Section 10.4 (Capital Modifications, Repairs

and Replacements Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, then either party may, by notice to the other party, terminate this Project Agreement, in which case the County shall pay compensation to the Project Company in accordance with Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination).

SECTION 14.3. REINSTATEMENT PLAN.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction, whether on account of an Insurable Force Majeure Event or an Uninsurable Force Majeure Event, that is likely to cost more than \$1,000,000 (Index-Linked), to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of having been provided access to the site of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued provision of the Facilities Management Services to other parts of the Project, provide the County with a draft plan (the “**Draft Reinstatement Plan**”) for the carrying out of the works necessary (the “**Reinstatement Works**”) to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under subsection (C) of this Section.

(B) No Reinstatement in Same Form. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, the County:

(1) Shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan; and

(2) If it has decided that the Project is not required to be reinstated in the same form as prior to the damage or destruction, will issue a preliminary Capital Modification instruction to that effect.

(C) Delivery of Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of the County’s comments, the Project Company shall deliver to the County a revised plan (the “**Reinstatement Plan**”) to reasonably take into account the comments received from the County and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works.

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Facilities Management Services to be fully provided);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under this Project Agreement and on the payment obligations of the Project Company under the Project Contracts, including in respect of life cycle requirements;

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and

(5) The impact of any Capital Modification requested by the County as part of the reinstatement.

Thereafter, unless the damage or destruction was caused by an Uninsurable Force Majeure Event and a party elects to terminate this Project Agreement in accordance with the provisions of Section 22.2 (Termination), the Project Company shall repair, replace or restore the Project, subject to Applicable Law and, if the Uninsurable Force Majeure Event occurred prior to the Occupancy Readiness Date, to Section 7.11 (Design and Construction Requirement Changes, Repairs and Replacements Required Due to Relief Events Occurring Prior to the Occupancy Readiness Date) or Section 10.4 (Capital Modifications, Repairs and Replacements Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable.

SECTION 14.4. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Sections 14.1 (Insurable Force Majeure Events) or 14.2 (Uninsurable Force Majeure Events) shall be made or done in compliance with the Design and Construction Requirements, subject to any agreement made between the County and the Project Company to revise the Design and Construction Requirements as they pertain to the replacement, repair or reconstruction work.

SECTION 14.5. AVAILABILITY OF INSURANCE FOR UNINSURABLE FORCE MAJEURE EVENTS.

(A) Additional Insurance. If during the Term insurance is or has become available for a risk constituting an Uninsurable Force Majeure Event, the County may itself, or may direct the Project Company to, take out and maintain insurance on terms which are in accordance with the requirements of this Project Agreement and have been accepted by the Project Company, acting reasonably. The premiums for such additional insurance coverage shall be paid, as applicable, by the County to the insurer or by an adjustment to the Service Fee pursuant to Section 16.6 (Extraordinary Items).

(B) Additionally Insured Risk to Constitute an Insurable Force Majeure Event; Qualifications. In any period during which additional insurance is maintained pursuant to subsection (A) of this Section, the occurrence of the additionally insured risk shall be deemed to constitute an Insurable Force Majeure Event for the purposes hereof, and any Insurance Proceeds available due to the occurrence thereof shall be applied as provided in subsection 14.1(F) (Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration).

SECTION 14.6. UNAVAILABILITY OF INSURANCE FOR INSURABLE FORCE MAJEURE EVENTS OR FOR THIRD-PARTY LIABILITY.

(A) Insurance Unavailability Event. If during the Term the Project Company demonstrates to the County that:

(1) Any Required Insurance is not available to the Project Company with any Qualified Insurer; or

(2) The insurance premium payable or the terms and conditions for maintaining such Required Insurance at the levels and on the terms required by this Project Agreement with any Qualified Insurer are at such cost that the County, owners or others having a substantially similar interest in property such as the Project are not insuring against such risk with Qualified Insurers, and such premium payable, terms or conditions do not arise, directly or indirectly from Project Company Fault or the fault of any Project Contractor;

then such circumstance shall constitute an “**Insurance Unavailability Event**” hereunder.

(B) Termination by County. If and for so long as an Insurance Unavailability Event has occurred and is continuing and subject to subsection (C)(2)(b) of this Section, the County may by notice to the Project Company terminate this Project Agreement, whereupon the Project Company shall be entitled to compensation upon termination as provided in Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination).

(C) Continuance of Project Agreement. During any period prior to the Termination Date in which an Insurance Unavailability Event has occurred and is continuing, and the County has not exercised its termination right under subsection (B) of this Section or the County has exercised such right but the Termination Date has not yet occurred:

(1) The Project Company will not be obligated to maintain such Required Insurance and references in this Project Agreement to such Required Insurance will be construed accordingly. During such period the Service Fee shall be adjusted in accordance with Section 16.6 (Extraordinary Items) by agreement of the parties, acting reasonably, to reflect any savings in the Project Company’s insurance cost as a result of the Project Company not having to provide such Required Insurance; and

(2) On the occurrence of a loss with respect to which an Insurance Unavailability Event has occurred, the County will either:

(a) pay to the Project Company an amount equal to the insurance proceeds that would have been payable directly to the Project Company or to the relevant third party (in the case of third-party liability insurance) under the relevant policy of Required Insurance in respect of the loss had the relevant insurance continued to be available and in effect, and this Project Agreement will continue; or

(b) by notice to the Project Company, terminate this Project Agreement, whereupon the Project Company shall be entitled to compensation on termination as provided in Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination) together with an amount equal to the insurance proceeds that would have been payable directly to the Project Company or to the relevant third party (in the case of third-party liability insurance) under the relevant policy of Required Insurance in respect of the loss had the relevant insurance continued to be available and in effect; provided, however, that the County shall not have the right to terminate this Project Agreement under this subsection if the Project Company (1) releases the County from all obligations under subsection (C)(2)(a) of this Section, and (2) deposits into the Insurance Trust Account an amount equal, in the reasonable opinion of the County, to the Insurance Proceeds, and all amounts in respect of deductibles and waiting periods, that would have been the responsibility of the Project Company under Appendix 10 (Insurance Requirements), that would have been payable in respect of such claim that was made had the relevant insurance continued to be available

and in effect, and such payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant insurance continued to be available and in effect.

(D) Subrogation. If the County makes any payment to the Project Company pursuant to subsection (C)(2)(a) of this Section, then the County, to the extent of the amount paid, will be subrogated to the Project Company's rights against any third party (other than Project Company Persons) in respect of the occurrence or claim as a result of which the payment was made.

(E) County Right to Purchase Replacement Insurance Coverage. During the continuance of any Insurance Unavailability Event, the County may, but shall not be obligated to, purchase insurance policies in the commercial insurance market providing the coverage intended to be provided by the Required Insurance that is unavailable due to an Insurance Unavailability Event. The Service Fee shall be adjusted in accordance with Section 16.6 (Extraordinary Items) to reflect a credit in the amount of the cost to the County of any such replacement insurance coverage, but only to the extent that such costs would be considered commercially reasonable without giving effect to the occurrence of the Insurance Unavailability Event. By way of example, if the premium on a policy of Required Insurance was costing the Project Company \$5 and it suddenly jumps to \$100 due to an Insurance Unavailability Event, the Service Fee reduction would be \$5, not \$100.

SECTION 14.7. CONTINUING ATTEMPTS TO OBTAIN INSURANCE.

During any period when an Insurance Unavailability Event has occurred and is continuing, the Project Company shall approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Required Insurance remains unavailable. At the request of the County, the Project Company shall provide a list of Qualified Insurers it has approached, and their responses relative to the availability or cost of such unavailable Required Insurance.

ARTICLE 15

CHANGE IN LAW EVENTS AND OTHER RELIEF EVENTS

SECTION 15.1. CHANGE IN LAW EVENTS.

(A) Schedule Relief. If a Change in Law Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of a Change in Law Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(B) Performance Relief. If a Change of Law Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by a Change in Law.

(C) Compensation Relief. If a Change in Law Event occurs, the parties shall comply with their respective obligations under Section 7.11 (Design and Construction Changes made Due to Relief Events Occurring Prior to the Occupancy Readiness Date) and Section 10.4 (Capital Modifications Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, and the County shall pay the Project Company:

(1) An amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder) or making the Capital Modification, as applicable, to the extent resulting from the Change in Law Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost or other appropriate relief measures; provided, however, that if the Project Company finances such costs pursuant to Section 6.6 (Financing Capital Costs for which the County is Responsible), then in lieu of such direct payment the additional amount negotiated by the parties pursuant to Section 6.6 reflecting such costs and the related financing costs shall be payable as an Extraordinary Item pursuant to Section 16.6 (Extraordinary Items);

(2) If the Change in Law Event occurs prior to the Scheduled Occupancy Readiness Date, an amount equal to the amount of debt service payable with respect to the Senior Debt (including debt service on borrowings made to finance the Project that were intended to be repaid from the proceeds of the Occupancy Readiness Milestone Payment) from the Scheduled Occupancy Readiness Date without taking into account the extension of such date in accordance with subsection 8.7(C) (Extension for Relief Events) through the Scheduled Occupancy Readiness Date extended in accordance with subsection 8.7(C) upon the occurrence of the Change in Law Event, which amount shall be invoiced by the Project Company for each month by the fifteenth day following the end of such month and paid by the County within 30 days of receipt of the invoice; and

(3) If the Change in Law Event occurs prior to the Scheduled Occupancy Readiness Date and results in a delay to the Scheduled Occupancy Readiness Date

exceeding 90 days (measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events), an amount equal to the amount necessary to place the Project Company in a no better or worse position than the Project Company would have been had the Change in Law Event not delayed the Scheduled Occupancy Readiness Date by more than 90 days, by ensuring that:

(a) the Project Company is left in a position which is no better or worse in relation to the expected Equity IRR by comparing (i) the Financial Model applicable the date immediately prior to the relevant Change in Law Event, adjusted solely to reflect a 90 day delay to the Scheduled Occupancy Readiness Date (without reference to the actual financial performance of the Project), to (ii) the Financial Model applicable the date immediately prior to the relevant Change in Law Event adjusted solely to reflect the actual total number of days of delay to the Scheduled Occupancy Readiness Date caused by the Change in Law Event (without reference to the actual performance of the Project and measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events); and

(b) the ability of the Project Company to comply with this Project Agreement is not adversely affected or improved as a consequence of the relevant Change in Law Event.

Such amounts shall be paid by the County to the Project Company separate from and in addition to the Service Fee, except as provided in item (C)(1) above. In addition, the Facilities Management Charge shall be reduced by an amount equal to Avoidable Costs, and increased by an amount necessary to compensate the Project Company for any increase in the cost of performing the Facilities Management Services to the extent resulting from the Change in Law Event.

SECTION 15.2. DISCRIMINATORY OR SPECIFIED CHANGES IN TAX LAW.

(A) Changes Prior to the Occupancy Readiness Date. If a Discriminatory Change in Tax Law or a Specified Change in Tax Law occurs prior to the Occupancy Readiness Date, the Project Company or the County shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Unit Holder (as the case may be) directly attributable thereto, such additional compensation to the Project Company shall be payable by the County directly to the Project Company pursuant to Section 7.22 (Payment Obligations of the County During the Design-Build Period).

(B) Changes On or After the Occupancy Readiness Date. If a Discriminatory Change in Tax Law or a Specified Change in Tax law occurs on or after the Occupancy Readiness Date, the Project Company or the County shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Unit Holder (as the case may be) directly attributable thereto.

SECTION 15.3. OTHER RELIEF EVENTS.

(A) Schedule Relief. If an Other Relief Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of an Other Relief Event shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(B) Performance Relief. If an Other Relief Event occurs, the Project Company shall be relieved from its obligation to perform the Contract Services in accordance with Article 13 (Relief Event Procedures), and the County shall not have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by an Other Relief Event.

(C) Compensation Relief. If an Other Relief Event occurs, the parties shall comply with their respective obligations under Section 7.11 (Design and Construction Changes made Due to Relief Events Occurring Prior to the Occupancy Readiness Date) and Section 10.4 (Capital Modifications Required Due to Relief Events Occurring Following the Occupancy Readiness Date), as applicable, and the County shall pay the Project Company:

(1) An amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder) or making the Capital Modification, repair or replacement as applicable, to the extent resulting from the Other Relief Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.11 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.12 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost or other appropriate relief measures; provided, however, that if the Project Company finances such costs pursuant to Section 6.6 (Financing Capital Costs for which the County is Responsible), then in lieu of such direct payment the additional amount negotiated by the parties pursuant to Section 6.6 reflecting such costs and the related financing costs shall be payable as an Extraordinary Item pursuant to Section 16.6 (Extraordinary Items);

(2) If the Other Relief Event occurs prior to the Scheduled Occupancy Readiness Date, an amount equal to the amount of debt service payable with respect to the Senior Debt (including debt service on borrowings made to finance the Project that were intended to be repaid from the proceeds of the Occupancy Readiness Milestone Payment) from the Scheduled Occupancy Readiness Date without taking into account the extension of such date in accordance with subsection 8.7(C) (Extension for Relief Events) through the Scheduled Occupancy Readiness Date extended in accordance with subsection 8.7(C) upon the occurrence of the Other Relief Event, which amount shall be invoiced by the Project Company for each month by the fifteenth day following the end of such month and paid by the County within 30 days of receipt of the invoice; and

(3) If the Other Relief Event occurs prior to the Scheduled Occupancy Readiness Date and results in a delay to the Scheduled Occupancy Readiness Date exceeding 90 days (measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events), an amount equal to the amount necessary to place the Project Company in a no better or worse position than the Project Company would have been had the Other Relief Event not delayed the Scheduled Occupancy Readiness Date by more than 90 days, by ensuring that:

(a) the Project Company is left in a position which is no better or worse in relation to the expected Equity IRR by comparing (i) the Financial Model applicable the date immediately prior to the relevant Other Relief Event, adjusted solely to reflect a 90 day delay to the Scheduled Occupancy Readiness Date (without reference to the actual financial performance of the Project), to (ii) the

Financial Model applicable the date immediately prior to the relevant Other Relief Event adjusted solely to reflect the actual total number of days of delay to the Scheduled Occupancy Readiness Date caused by the Other Relief Event (without reference to the actual performance of the Project and measured on an aggregate basis with all other delays to the Scheduled Occupancy Readiness Date resulting from Change in Law Events and Other Relief Events); and

(b) the ability of the Project Company to comply with this Project Agreement is not adversely affected or improved as a consequence of the relevant Other Relief Event.

Such amounts shall be paid by the County to the Project Company separate from and in addition to the Service Fee, except as provided in item (C)(1) above. In addition, the Facilities Management Charge shall be reduced by an amount equal to Avoidable Costs, and increased by an amount necessary to compensate the Project Company for any increase in the cost of performing the Facilities Management Services to the extent resulting from the Other Relief Event.

SECTION 15.4. TERMINATION FOR EXTENDED RELIEF EVENTS.

(A) Termination Right. If any Relief Event occurs, which causes one or both parties to be unable to comply with its or their material obligations with respect to all or a material portion of the Project and such event and inability continues for a continuous period of at least 180 days (in each case, an “**Extended Relief Event**”), then either party may in its discretion, subject to subsection (B) of this Section, at any time thereafter during which such Extended Relief Event is continuing, terminate this Project Agreement by written notice to the other party (“**Termination for an Extended Relief Event**”).

(B) County Right to Reject. If the Project Company delivers notice of termination to the County pursuant to subsection (A) of this Section, the County may, in its discretion, reject such notice by written response to the Project Company within 10 Business Days following receipt, in which case:

(1) If prior to the Occupancy Readiness Date, such Extended Relief Event shall be deemed to be an Other Relief Event from the date on which termination of this Project Agreement would have otherwise been effective;

(2) If on or after the Occupancy Readiness Date, the County shall pay to the Project Company beginning on the date on which termination of this Project Agreement would have otherwise been effective:

(a) Service Fee payments as if the Contract Services were being fully performed during such period pursuant to the requirements of this Project Agreement net of:

(i) actual avoidable costs of the Contract Services not being performed as a result of the occurrence of such Extended Relief Event;

(ii) the amount the Project Company is (or, pursuant to Section 12.1 (Insurance), should be) entitled to recover under any “business interruption” or “loss of business income” coverage under the Required Insurance as a direct result of the occurrence of such Extended Relief Event; and

(iii) any Deductions the County was otherwise entitled to make pursuant to Appendix 11 (Deductions), but only to the extent the Project Company is not relieved from its obligation to pay Deductions under Article 14 (Force Majeure Events) or this Article; plus

(b) subject to Section 12.1 (Insurance), losses, costs and expenses reasonably incurred by the Project Company as a direct result of any damage or delay (including demobilization and remobilization costs) resulting from such Extended Relief Event;

(3) The Project Company shall remain responsible for the continuation of the Contract Services to the extent not relieved of its obligations under Article 13 (Relief Event Procedures) or as a result of the Extended Relief Event; and

(4) The County shall have the continued right to terminate this Project Agreement pursuant to this Section following any rejection of the Project Company's notice of termination.

ARTICLE 16

SERVICE FEE AND OTHER PAYMENTS

SECTION 16.1. SERVICE FEE GENERALLY.

(A) Service Fee Payment Obligation. From and after the Occupancy Readiness Date and through the Termination Date, except as provided in subsection (B) of this Section, the County shall pay the Service Fee to the Project Company as compensation for the Project Company's performance of the Contract Services.

(B) Service Fee Payments Where Occupancy Readiness Date Occurs Prior to Scheduled Occupancy Readiness Date. In the event the Occupancy Readiness Date occurs prior to the Scheduled Occupancy Readiness Date, except as may be otherwise agreed to by the parties in accordance with Section 8.10 (County Right of Occupancy), (1) the County shall have no obligation to pay the Service Fee and no right to occupy the Project during the period between the Occupancy Readiness Date and the Scheduled Occupancy Readiness Date, and (2) the Project Company shall have no obligation to provide the Facilities Management Services.

(C) Limitation on Payments. Other than the payments and compensation amounts expressly provided for herein, the Project Company shall have no right to any further payment from the County in connection with the Contract Services or otherwise in connection with the Project.

SECTION 16.2. SERVICE FEE FORMULA.

(A) Generally. Except as provided in subsection (B) of this Section, the Service Fee shall be calculated in accordance with the following formula:

$$SF = CC + FMO + FMR - DC \pm EI$$

Where,

SF = Service Fee

CC = Capital Charge

FMO = Facilities Management Charge – Ordinary O&M Component

FMR = Facilities Management Charge – Renewal Component

DC = Deductions Credit

EI = Extraordinary Items

(B) Service Fee Payable During the Continuance of an Insurable Force Majeure Event. If an Insurable Force Majeure Event occurs, then the Service Fee payable upon and during the continuance of the Insurable Force Majeure Event (determined as appropriate for each Billing Period) shall be the sum of (1) an amount equal to debt service payable by the Project Company with respect to the Senior Debt during the Billing Period (or if debt service is payable by the Project Company on a semi-annual basis, an amount for each Billing Period equal to one-sixth of the semi-annual debt service payment), and (2) the Facilities Management Charge, abated for the Billing Period in the proportion that the untenable area of the New Courthouse bears to the total area of the New Courthouse (each measured on a square footage basis). An area shall be considered untenable if the Insurable Force Majeure Event causes the area to

be out of compliance with the Availability Conditions, as set forth in Appendix 11 (Deductions). During the continuance of the Insurable Force Majeure Event, Deductions shall continue to be imposed with respect to the tenantable area, but not with respect to the untenable area.

SECTION 16.3. CAPITAL CHARGE.

The Capital Charge (the “**Capital Charge**”) shall be \$[_____], which amount shall be fixed for the Term, and shall not be Index-Linked. **[NOTE TO PROPOSERS: This paragraph will be used in the expected event of a simultaneous commercial and financial close. The Capital Charge amount to be inserted here will be the amount proposed in Proposal Form 18 of the Proposal, as adjusted as provided in Sections 11 (Revision of Capital Charge Prior to the Financial Close Date) and 12 (Capital Charge Update Protocol) of Appendix 3 (Financial Close Procedures and Conditions.)]**

The Capital Charge (the “**Capital Charge**”) shall be [\$_____], which amount shall be adjusted on the Financial Close Date as and to the extent provided in this Section, shall thereafter be fixed for the Term and shall not be Index-Linked. The Capital Charge shall be adjusted on the Financial Close Date as provided in Section 11 (Revision of the Capital Charge Prior to the Financial Close Date) of Appendix 3 (Financial Close Procedures and Conditions) and Section 12 (Capital Charge Update Protocol) of Appendix 3. The parties shall execute a Contract Administration Memorandum on the Financial Close Date reflecting the effect of any such adjustments as of the Financial Close Date. **[NOTE TO PROPOSERS: This paragraph will be used in the unexpected event of a commercial close and a financial close which are not simultaneous. The Capital Charge amount to be inserted here will be the amount proposed in Proposal Form 18 of the Proposal. On the Financial Close Date, the amount will be adjusted as described in this paragraph.]**

SECTION 16.4. FACILITIES MANAGEMENT CHARGE.

The Facilities Management Charge consists of two components: (a) the Ordinary O&M Component, and (b) the Renewal Component.

(A) Ordinary O&M Component. The Ordinary O&M Component of the Facilities Management Charge for the Contract Year ending June 30, 2023 shall be \$[_____]. **[NOTE TO PROPOSERS: The Ordinary O&M Component of the Facilities Management Charge proposed in Proposal Form 19 of the Proposal will be inserted here.]** The Ordinary O&M Component shall be adjusted annually (commencing on July 1, 2023) by utilizing the inflation indices (as identified and weighted below) and multiplying \$[_____] by such inflation indices for the immediately preceding April and dividing by the applicable inflation indices as they existed on April 2022.

| Ordinary O&M Component Inflation Index | April 2022 Inflation Index Value | Percentage of Ordinary O&M Component to be Escalated by Such Inflation Index |
|--|----------------------------------|--|
| | | |
| | | |
| | | |

[NOTE TO PROPOSERS: The proposed indexation of the Ordinary O&M Component of the Facilities Management Charge as indicated in Proposal Form 20 of the Proposal will be inserted here.]

(B) Renewal Component. The Renewal Component of the Facilities Management Charge in any given Billing Period shall be as provided in Appendix 19 (Facilities Management Charge – Renewal Component Payment Schedule). The Renewal Component values set forth in Appendix 19 shall be adjusted annually (commencing on July 1, 2023) by utilizing the inflation indices (as identified and weighted below) and multiplying the applicable values set forth in Appendix 19 to be paid in such Contract Year by such inflation indices for the immediately preceding April and dividing by the applicable inflation indices as they existed on April 2022.

| Renewal Component Inflation Index | April 2022 Inflation Index Value | Percentage of Renewal Component to be Escalated by Such Inflation Index |
|--|---|--|
| | | |
| | | |
| | | |

[NOTE TO PROPOSERS: The proposed indexation of the Renewal Component of the Facilities Management Charge as indicated in Proposal Form 20 of the Proposal will be inserted here.]

SECTION 16.5. DEDUCTIONS CREDIT.

The Deductions Credit shall be the sum of all Deductions imposed pursuant to Appendix 11 (Deductions) hereunder. Examples of the calculation of Deductions are included in Appendix 12 (Example Calculations of Deductions from Service Fee).

SECTION 16.6. EXTRAORDINARY ITEMS.

The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the net amount of the following items (each an **“Extraordinary Item”** hereunder):

- (1) Any amount payable by the Project Company to the County under subsection 4.5(B) (Replacement of Certain Key Individuals Prior to the Occupancy Readiness Date; Liquidated Damages);
- (2) Any adjustments reflecting the County’s share of any Refinancing Gain payable under Section 6.5 (Refinancing);
- (3) Any amount payable by the County on account of reasonable out-of-pocket expenses incurred by the Project Company in seeking such financing contemplated by subsection 6.6(B) (Project Company Financing);
- (4) Any payment relating to Hazardous Substances to be made by or to the County pursuant to subsection 7.5(E) (Hazardous Substances Generator, Operator, Arranger and Transporter Status);
- (5) Any amount payable by the County on account of a County-directed Design-Requirement Charge which is chargeable to the County hereunder pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction), net of any Avoidable Costs incurred by the Project Company that would have been saved

or avoided if the Project Company had acted reasonably and in accordance with this Project Agreement;

(6) Any amount payable by the Project Company to the County under Section 7.21 (LEED BD+C Gold Certification) on account of a failure to achieve LEED BD+C Gold Certification by the time required;

(7) Any adjustment to the Service Fee resulting from Vandalism pursuant to subsection 9.5(B) (Vandalism);

(8) Any adjustment to the Service Fee resulting from a Capital Modification, from a repair or replacement, or from a Facilities Management Services Change under the provisions of Article 10 (Capital Modifications and Facilities Management Services Changes);

(9) Any adjustment reflecting additional insurance costs incurred pursuant to Section 14.5 (Availability of Insurance for Uninsurable Force Majeure Events);

(10) Any adjustment reflecting savings in insurance costs, or additional insurance costs paid by the County for replacement insurance coverage, pursuant to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third Party-Liability);

(11) Any amount payable by the County for increased design, construction, operation, maintenance, repair, replacement or other costs incurred on account of a Relief Event pursuant to Article 14 (Force Majeure Events), and Article 15 (Change in Law Events and Other Relief Events);

(12) Any amounts the County is entitled to set off as provided in Section 16.13 (County's Right of Set Off);

(13) Avoidable Costs achieved by the Project Company in mitigating the effects of the occurrence of a Relief Event;

(14) Any adjustment resulting from the exercise by the County of its rights under Article 19 (Remedies of the Parties and County Step-In Rights);

(15) Any indemnification payments owed by the Project Company pursuant to Section 24.1 (Project Company's Obligation to Indemnify) or any other provision hereof;

(16) As required by ORS 279C.515(1), any amount paid by the County in the event (a) the Project Company fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Project Company or a Subcontractor in connection with this Project Agreement as the claim becomes due, and (b) the proper officer that represents the County elects to pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against the Service Fee; and

(17) Any other payment or increase or reduction in the Service Fee provided for under any other provision of this Project Agreement.

SECTION 16.7. BILLING AND PAYMENT.

(A) Installments. The County shall pay the Service Fee in monthly installments in an amount equal to the sum of:

- (1) One-twelfth of the annual Capital Charge;
- (2) One-twelfth of the annual Ordinary O&M Component of the Facilities Management Charge;
- (3) The applicable Renewal Component of the Facilities Management Charge, if any for the corresponding Billing Period, as set forth in Appendix 19 (Facilities Management Charge – Renewal Component Payment Schedule)
- (4) Any Deductions Credit;
- (5) Any Extraordinary Items that are determined on a monthly basis; and
- (6) Any adjustments, plus or minus, to reconcile any prior Service Fee payments that may reasonably be made within the course of the Contract Year.

Any overpayment from prior monthly periods shall be credited against the next monthly Service Fee payment.

(B) Invoicing and Service Fee Payment Due Date. The Project Company shall provide the County with an invoice for each Billing Period by the fifteenth day following the end of such Billing Period. The invoice shall set forth the amount of the Service Fee due with respect to such Billing Period and, in addition, shall state the annual Service Fee and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such invoice and such other documentation or information as the County may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Project Agreement. The County shall pay the invoice within 30 days of receipt.

(C) Late Service Fee Payments. In the event the County fails to make a Service Fee Payment when due under subsection (B) of this Section:

- (1) Interest shall accrue thereon, as and to the extent provided in Section 16.15 (Interest on Overdue Amounts); and
- (2) If such failure continues for the period described in subsection 21.1(2) (County Events of Default), then such failure shall constitute a County Event of Default as provided in such subsection and the Project Company shall have the right to terminate this Project Agreement as provided in subsection 22.2(B) (Project Company Termination Rights).

SECTION 16.8. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Annual Service Fee Estimate for County Budgeting Purposes. For County budgeting purposes, no later than 90 days preceding each Contract Year (beginning with the

Contract Year in which Occupancy Readiness occurs) the Project Company shall provide to the County a written statement setting forth for such Contract Year (i) its reasonable estimate of the aggregate Service Fee, each component thereof, (ii) the inflation indices used to escalate the Ordinary O&M Component and Renewal Component of the Facilities Management Charge pursuant to subsection 16.4(A) (Ordinary O&M Component) and subsection 16.4(B) (Renewal Component), respectively; and (iii) the Inflation Index. The estimate shall not be binding on the Project Company but, upon concurrence by the County and finalization of how the Service Fee will be Index-Linked for such Contract Year, shall establish the basis for Billing Period invoicing for such Contract Year, subject to annual settlement pursuant to this Article.

SECTION 16.9. ANNUAL SETTLEMENT.

Within 60 days after the end of each Contract Year during the Facilities Management Period, the Project Company shall provide to the County an annual settlement statement (the “**Annual Settlement Statement**”) setting forth (A) the actual aggregate Service Fee payable with respect to such Contract Year; (B) a reconciliation of such amount with the amounts actually paid by the County with respect to such Contract Year (taking into account intra-Contract Year reconciliations pursuant to Section 16.7(A)(6) (Installments)); and (C) as required by ORS 305.385, a written certification, under penalty of perjury, that the Project Company is to the best of its knowledge not in violation of any tax laws described in ORS 305.380. The County or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Project Company shall file with the County an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 16.10. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

There shall be no adjustment of the Service Fee or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

(1) Except as provided in Section 15.1 (Change in Law Events) with respect to a Discriminatory Change in Tax Law, any change in any provision of Income Tax law to take effect after the Effective Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Service Fee or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Project Agreement or any Material Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person,

(2) Any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,

(3) Any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or

(4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

SECTION 16.11. NEGOTIATED LUMP SUM PRICING OF ADDITIONAL WORK.

This Project Agreement obligates the County to pay for certain additional costs resulting from Relief Events and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the County will pay for such costs on a lump sum basis, and that the lump sum price will be negotiated in advance of the Project Company's performance of the work. For example, if a Change in Law Event occurs, as required under Article 15 (Change in Law Events and Other Relief Events), the parties will assess the impact of the Change in Law Event, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Project Company shall furnish the County with all information reasonably required by the County regarding the Project Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Project Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Project Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 16.12. COST SUBSTANTIATION OF ADDITIONAL WORK NOT SUBJECT TO LUMP SUM PRICE NEGOTIATION.

(A) Cost Substantiation Generally. The Project Company shall provide a Cost Substantiation Certificate in accordance with subsection (C) of this Section for (1) costs paid from the County Moveable FF&E Allowance Account, (2) costs paid from the State Moveable FF&E Allowance Account, and (3) any additional costs for which the County is financially responsible hereunder which have not been subject to lump sum price negotiation. In incurring costs which are or may be subject to Cost Substantiation, the Project Company shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs expected to be in excess of \$50,000 (Index-Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and the County's potential obligation to pay for it; provided, however, that during the Design-Build Period, the Project Company shall not be required to utilize competitive practices for additional work self-performed by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Project Company is not required to utilize competitive practices, it shall instead demonstrate to the County that the costs for which the County is financially responsible are commercially reasonable.

(B) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Project Company. Examples of costs which require substantiation include:

(1) Work done on an emergency basis to respond to a Relief Event, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work; and

(2) Work done by the Project Company under Article 22 (Termination) upon the expiration or termination of this Project Agreement, to the extent such costs are the responsibility of the County under Article 22 (Termination).

Cost Substantiation shall also be required where the parties agree that the Project Company shall perform additional work on a guaranteed maximum price basis, subject to the limitations set forth in subsection (E) of this Section.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Project Agreement under which such cost is chargeable to the County, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Project Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid. Such documentation shall be in a format reasonably acceptable to the County and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

- (1) The amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes;
- (2) A statement of the equipment used and any rental payable therefor;
- (3) Employee hours, duties, wages, salaries, benefits and assessments; and
- (4) Profit, administration costs, bonds, insurance, Taxes, premiums overhead and other expenses.

The Project Company's entitlement to reimbursement for the costs of self-performed work shall be subject to Cost Substantiation and the limitations set forth in this Section.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the County, with the request for reimbursement of such costs.

(E) Mark-Ups. For any self-performed work requiring Cost Substantiation, the Project Company shall be entitled to a mark-up of 15% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 5% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors.

SECTION 16.13. COUNTY'S RIGHT OF SET OFF.

Once the County determines that any credits, payments, reimbursements or liquidated damages are owed to the County in accordance with the terms and conditions of this Project Agreement and have not been reflected in any previously submitted Billing Statement, the County shall notify the Project Company and the Project Company shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to the County under this Article. In the event the Project Company does not include such amounts in the next Billing Period invoice provided to the County in accordance with this Section, the County shall have the right to offset the Service Fee otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing,

the County shall have the right to offset the Service Fee otherwise payable to the Project Company for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to the County under this Project Agreement.

SECTION 16.14. BILLING STATEMENT DISPUTES.

If the County disputes in good faith any amount billed by the Project Company, the County shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to the County for the dispute. When any billing dispute is finally resolved, if payment by the County to the Project Company of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, with interest as provided in Section 16.15 (Interest on Overdue Amounts).

SECTION 16.15. INTEREST ON OVERDUE AMOUNTS.

If payment of any amount payable by either party under this Project Agreement is not made when due (including the Occupancy Readiness Milestone Payment and any Termination Amount), then interest shall be payable on such overdue amount at the rate of interest specified in ORS 279C.570(2) (the “**Overdue Rate**”). The party to whom payment is owed and overdue shall notify the other party at least monthly of the overdue amount.

SECTION 16.16. COUNTY APPROPRIATION OF PAYMENTS.

(A) All County Payment Obligations Subject to Appropriation. This Project Agreement is expressly subject to the debt and liability limitation on Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefor. Any provisions herein which would conflict with Applicable Law are deemed inoperative to that extent.

(B) County Obligation to Include the Service Fee in Annual Budget Request. The County shall prepare, before the end of each fiscal year, its annual budget request to include funds necessary to make the full anticipated Service Fee payments to the Project Company for the coming fiscal year under this Project Agreement. The County shall use reasonable efforts to obtain the authorization and appropriation of the full anticipated Service Fee before the beginning of the coming fiscal year. If the County becomes aware that it will not obtain appropriations for any fiscal year sufficient, in combination with any other available funds, to pay all compensation owing to the Project Company under this Project Agreement for such fiscal year, the County shall promptly notify the Project Company regarding the anticipated shortfall, and shall consult with the Project Company to discuss the situation and possible solutions.

ARTICLE 17

FINANCIAL MODEL

SECTION 17.1. FINANCIAL MODEL.

(A) Access to the Financial Model. The following terms shall govern the placement, storage and access to the Financial Model:

(1) The Financial Model shall be posted by the Project Company on www.[_____]com, or a similar secure website if www.[_____]com is no longer available (the “**Secure Website**”), in a password-protected manner prior to or on the Effective Date. The Project Company shall also deliver to the County, prior to or on the Effective Date, (i) the web address to the Secure Website and (ii) access instructions for the Secure Website. To assist in confirming the validity of the Financial Model posted to the Secure Website, a printout summary of the Financial Model is attached hereto as Appendix 17 (Financial Model Summary). **[NOTE TO PROPOSERS: It is currently anticipated the Selected Proposer will host the secure website.]**

(2) The Project Company shall ensure that at all times during the Term, the Financial Model is available to the parties on the Secure Website. The Project Company shall at all times have exclusive responsibility for maintaining the Secure Website and providing any instruction to the Secure Website operator.

(3) The Secure Website shall allow access to the Financial Model to the persons designated from time to time by each of the parties, who shall obtain access to the Secure Website by way of an individual password and be provided a separate password to the Financial Model, which shall be provided by the Secure Website operator. The County and the Project Company shall not designate more than five persons at any time to have access to the Secure Website and each party shall notify the other in writing of any such change in designees.

(4) The Secure Website shall issue notifications to all designated users of the County and Project Company anytime a change, deletion or addition is made to the Secure Website.

(5) Access to the Secure Website shall include the ability of the County to download the Financial Model in its entirety.

(6) If requested by the County, or if necessary due to no Secure Website being available, the Project Company shall provide a flash drive (or similar format as reasonably requested by the County) containing the Financial Model. Any such physical copy shall held by the County in a location mutually agreed upon by the parties. The Project Company may access the Financial Model at such location between 8:00 AM and 5:00 PM on any Business Day, upon receipt of 24-hour advanced written notice from the Project Company between 8:00 AM and 5:00 PM on a Business Day or upon 48-hour advanced written notice at a time other than regular business hours.

(B) Liability and Indemnification. The parties agree that the County bears no responsibility in the event that the Secure Website is hacked or illegitimately accessed by any means, including misuse of any login credentials. The Project Company agrees to indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Project Company’s Obligation to Indemnify) from and against all Loss-and-Expense arising from any claims relating to the Secure Website.

(C) Risk of Errors or Omissions. The Project Company shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation from or other redress against the County in relation to any loss or damage that it suffers in consequence of such error or omission.

(D) No Guaranteed Return. In no event shall the agreement of the parties to establish and maintain the Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

(E) Confidential Information. The Financial Model shall be treated as Confidential Information in accordance with Section 25.12 (Confidentiality).

SECTION 17.2. FINANCIAL MODEL UPDATES.

(A) Updates. The Financial Model shall only be updated in the following circumstances:

(1) In connection with a Qualifying Refinancing in accordance with Section 6.5 (Refinancing);

(2) In connection with certain Change in Law Events and Other Relief Events which delay the Scheduled Occupancy Readiness Date by more than 90 days, as further described in Section 15.1 (Change in Law Events) and Section 15.3 (Other Relief Events); and

(3) As otherwise required from time to time, to reflect changes as required by this Project Agreement, upon agreement of both parties.

The Financial Model update shall only incorporate (a) changes to revenues and expenses that arise directly from the circumstances described above, and (b) consequential changes to the Senior Debt draw down schedule, funding and release of reserves, financing costs, debt service profile, equity draw down schedule, and the Project Company's profile of Distributions. The Financial Model update shall not (i) generally update projections through the end of the Term based on current market conditions, or (ii) incorporate information or assumptions based on the Project Company's actual financial performance, except by mutual agreement as set forth in Section 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. Following approval by the County, the Financial Model update shall become the Financial Model and shall be attached to this Project Agreement.

(B) Financial Model Updates and Audit Reports on the Secure Website. Any update to the Financial Model shall be (i) uploaded to the same Secure Website as the prior version of the Financial Model, (ii) clearly labeled with the date of the update, and (iii) uploaded to the Secure Website within two Business Days of finalization of any update to the Financial Model. In addition, any Financial Model audit shall be uploaded to the Secure Website concurrently with the applicable Financial Model update.

(C) Financial Model Audits. Any Financial Model update required under subsection (A) of this Section shall be audited by an independent audit firm, and the Project Company shall deliver a copy of the firm's audit and opinion to the County prior to such Financial Model update becoming effective under this Project Agreement. In such a case, the Project Company shall solely bear the cost of the audit.

(D) Project Company Preparation. The Project Company shall prepare the Financial Model updates and shall provide the County with each Financial Model update and a complete set of the updated and revised assumptions, and other data that form a part of the Financial Model as updated, including updated and revised projections and calculations with respect to revenues, expenses, the repayment of Senior Debt and Distributions.

(E) Access and Challenges. The County shall have the right at all times to gain access, on an open book basis, to the Financial Model and each Financial Model update and the set of updated and revised assumptions and other data that form part of each such model. The County shall have the right to challenge the validity, accuracy or reasonableness of any Financial Model update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Financial Model version that has not been challenged shall remain in effect pending the outcome of the challenge or until a new Financial Model update is issued and unchallenged.

(F) Changes to Financial Model Formulas. In no event shall the Financial Model formulas be changed except with the prior written agreement of both parties.

(G) County Audit. Prior to making any use of the output of the Financial Model, the County may, at its own expense, review and audit the Financial Model and all amendments and updates thereto prepared by the Project Company. The Project Company shall provide such information as is reasonably required by the County to conduct such audit on an annual basis and as otherwise required from time to time.

ARTICLE 18

DISPUTE RESOLUTION

SECTION 18.1. FORUM FOR DISPUTE RESOLUTION.

The Project Company and the County each agree that the exclusive venue for all Legal Proceedings related to this Project Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be the appropriate federal or state court located within the State, and no other court. The parties further agree that the dispute resolution procedures under this Article exclusively govern claims under this Project Agreement.

SECTION 18.2. INFORMAL NEGOTIATIONS TO RESOLVE CONTRACT SERVICES DISPUTES.

Representatives of the County and the Project Company with day-to-day involvement in the administration of this Project Agreement and the performance of the Contract Services shall initially and promptly enter into negotiations to attempt to address and resolve any disputes that may arise concerning the Contract Services to be performed under this Project Agreement. In connection with such negotiations, the party asserting the dispute shall provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation, and the parties shall meet to attempt to address and resolve the dispute no later than five Business Days following receipt of such information. The parties shall consider involving senior representatives and other upper management personnel of each party in the informal negotiation process, as well as other representatives of the parties not actively involved in the day-to-day activities associated with the dispute who might be able to take a broader look at the dispute in the context of the overall objectives of the Project and this Project Agreement. At the County's request, the Project Company shall involve senior representatives of any of its Subcontractors in such negotiations. If a dispute is not resolved through such informal negotiations within 15 Business Days of the first meeting of the parties, a party may declare that the informal negotiations have been exhausted and such party may request Non-Binding Mediation in accordance with Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings).

SECTION 18.3. NON-BINDING MEDIATION GENERALLY; JUDICIAL LEGAL PROCEEDINGS.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Project Agreement, whether technical or otherwise. Except as provided in Section 18.5 (Non-Binding Mediation of Certain Technical Disputes During the Facilities Management Period), the non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the County and the Project Company.

(B) Procedure. The Mediator shall be a professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Project Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Project Agreement by the other party or in respect of any dispute under this Project Agreement, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 18.4. ROLE AND DECISIONS OF THE INDEPENDENT BUILDING EXPERT DURING THE DESIGN-BUILD PERIOD.

The parties acknowledge and agree that the Independent Building Expert shall serve as Mediator for any disputes arising during the Design-Build Period as and to the extent provided in Article 8 (Occupancy Readiness), and that the issuance of the Independent Building of the Occupancy Readiness Certificate shall be final and binding on the County and the Project Company with respect to the occurrence of the Occupancy Readiness Date as provided in subsection 8.5(D) (Effect of Issuance).

SECTION 18.5. NON-BINDING MEDIATION OF CERTAIN TECHNICAL DISPUTES DURING THE FACILITIES MANAGEMENT PERIOD.

(A) Obligation to Participate. In the event either party requests Non-Binding Mediation with respect to certain technical matters as described in subsection (B) of this Section, the non-requesting party shall participate in Non-Binding Mediation as and to the extent provided in Section 18.3 (Non-Binding Mediation Generally; Judicial Legal Proceedings).

(B) Certain Technical Matters Defined. “Technical Matters”, for purposes of this Section, shall mean disputes arising under this Project Agreement relating to matters pertaining to the proper functioning or maintenance of the physical assets comprising the Project during the Facilities Management Period.

ARTICLE 19

REMEDIES OF THE PARTIES AND COUNTY STEP-IN RIGHTS

SECTION 19.1. REMEDIES FOR BREACH.

The parties agree, subject to all other terms and conditions of this Project Agreement, that in the event either party breaches this Project Agreement the other party may exercise any legal rights it may have under this Project Agreement and under Applicable Law. Neither party shall have the right to terminate this Project Agreement for breach except as provided or referred to in Section 20.4 (County Termination Right), Section 21.2 (Project Company Options Upon County Event of Default) or Article 22 (Termination). The foregoing is subject to the provisions of Section 19.2 (County Liquidated Damages Rights) and Section 19.11 (No Special, Consequential or Punitive Damages).

SECTION 19.2. COUNTY LIQUIDATED DAMAGES RIGHTS.

(A) County Liquidated Damages Rights Defined. The County's rights under this Project Agreement include the right (each of the following, a "**Liquidated Damages Right**"):

- (1) To be paid \$2,000,000 in the event the Project Company fails to obtain LEED BD+C Gold Certification for the Project under the circumstances set forth in subsection 7.21(3) (Failure to Obtain Certification);
- (2) To be paid \$50,000 per substitution of certain Key Individuals pursuant to subsection 4.5(B) (Replacement of Certain Key Individuals Prior to the Occupancy Readiness Date; Liquidated Damages);
- (3) To retain the proceeds of a draw on the Financial Close Security under the circumstances set forth in Appendix 3 (Financial Close Procedures and Conditions); and
- (4) To obtain the credit for the Project Company's loss of Service Fee payments arising from the delay in achieving Occupancy Readiness beyond the Scheduled Occupancy Readiness Date under the circumstances set forth in subsection 8.8 (Failure to Achieve Occupancy Readiness by the Scheduled Occupancy Readiness Date);
- (5) To be paid \$3,000 per day under the circumstances set forth in subsection 8.10(B) (Early Occupancy); and
- (6) To impose Deductions from the Service Fee under the circumstances set forth in Appendix 11 (Deductions).

The parties acknowledge and agree that the amounts referred to in items (1) through (5) above do not constitute Deductions.

(B) Sole Remedy; Exceptions. The parties acknowledge and agree that the County's actual damages or losses in each such circumstance are impossible to ascertain as of the Effective Date and that the amounts payable to, or to be retained by, the County through the exercise of any Liquidated Damages Right are a fair and reasonable estimate of fair compensation to the County for the intended circumstance, as applicable, shall constitute liquidated damages in each such circumstance and are not a penalty against the Project Company. The Project Company is expressly estopped from claiming, and waives any right to claim, that the exercise of any Liquidated Damages Right by the County amounts to a penalty or is not enforceable. The liquidated damages resulting from the County's exercise of a Liquidated Damages Right shall

constitute the only damages payable by the Project Company to the County to compensate the County for the damages or losses resulting from the specific circumstances contemplated by such Liquidated Damages Right, and the exercise of such right by the County shall constitute the County's sole remedy in respect of such circumstances; provided, however, that such limitation is subject and without prejudice to:

- (1) Any entitlement of the County to specific performance of any obligation of the Project Company under this Project Agreement;
- (2) Any right of the County under subsection 9.8(B) (Additional Project Company Obligations) to require the Project Company to take additional action upon the repeated or persistent occurrence of unexcused Unavailability Events or Performance Failures;
- (3) Any entitlement of the County to injunctive relief;
- (4) The County's step-in rights under this Article;
- (5) Any right of the County to declare the occurrence of a Project Company Remediable Breach under subsection 20.1(B) (Project Company Remediable Breach Defined), including a Remediable Breach resulting from the significant accumulation of Deductions based on the occurrence of Unavailability Events or Performance Failures;
- (6) The Project Company's indemnification obligations under Article 24 (Indemnification) in respect of third-party claims;
- (7) The determination of Project Company liability in respect of a termination for Project Company Event of Default made pursuant to Section 4.1 (Calculation) of Appendix 13 (Compensation on Termination); or
- (8) Any other express right of the County pursuant to this Project Agreement.

SECTION 19.3. COUNTY'S TEMPORARY STEP-IN RIGHTS DURING THE FACILITIES MANAGEMENT PERIOD.

If during the Facilities Management Period the County reasonably considers that a breach by the Project Company of any obligation under this Project Agreement or an event: (a) is likely to create an immediate and serious threat to the health or safety of any Project User, any property, the environment or the reputation, integrity of, or public confidence in, the Project and any related operations, or (b) is prejudicial to the ability to carry on County Activities to a material degree, then the County, acting reasonably, may either:

- (1) If it considers that there is sufficient time and that it is likely that the Project Company shall be willing and able to provide assistance, require the Project Company by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any terms or conditions of this Project Agreement, and the Project Company shall use all reasonable efforts to comply with the County's requirements as soon as reasonably practicable; or
- (2) If it considers there is not sufficient time, or that the Project Company is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Contract Services to the standards required by this Project Agreement (or as close as possible to those standards as the

circumstances permit). The County will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with the Project Company's performance of its obligations under this Project Agreement.

The Project Company shall ensure that all Project Contracts and Subcontracts permit the County to exercise its rights under this Article.

SECTION 19.4. COUNTY'S RECTIFICATION RIGHTS.

If the County gives notice to the Project Company under Section 19.3 (County's Temporary Step-In Rights During the Facilities Management Period) and the Project Company either:

(1) Does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the County to mitigate, rectify and protect against such circumstances then the County may, within a further five Business Days, accept or reject, acting reasonably; or

(2) Fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set forth in such notice or accepted alternate plan or within such time as the County, acting reasonably, will stipulate;

then the County may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Project Company to provide the relevant Contract Services, but only for so long as the circumstances referred to in Section 19.3 (County's Temporary Step-In Rights) subsist.

SECTION 19.5. NOTICE OF CAPITAL MODIFICATION.

The County shall notify the Project Company of any Capital Modification which the County intends to make pursuant to the exercise of the County's rights under Section 19.3 (County's Temporary Step-In Rights) or Section 19.4 (County's Rectification Rights) and provide the Project Company a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, the County will reasonably consider comments received in a timely manner from the Project Company on the proposed Capital Modification.

SECTION 19.6. NO EFFECT ON CONTRACT SERVICES.

The exercise by the County of any of its rights under this Article 19 (Remedies of the Parties and County Step-In Rights) shall not reduce or affect in any way the Project Company's responsibility hereunder to perform the Contract Services.

SECTION 19.7. ALLOCATION OF COSTS AND PROVISION OF RELIEF FOR COUNTY'S EXERCISE OF STEP-IN RIGHTS.

To the extent that any of the circumstances set forth in Section 19.3 (County's Temporary Step-In Rights) arise as a result of any breach by the Project Company of its obligations under this Project Agreement, then the Project Company shall pay the County the amount of all costs and expenses reasonably incurred by the County in exercising its rights under Section 19.3 (County's Temporary Step-In Rights) or Section 19.4 (County's Rectification Rights) and an additional mark-up of 20% of such costs and expenses in respect of indirect costs

and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, the County shall compensate the Project Company, and provide schedule and performance relief to the Project Company, for actions taken under Section 19.3 (County's Temporary Step-In Rights) or Section 19.4 (County's Rectification Rights) in the manner provided in Article 15 (Change in Law Events and Other Relief Events) as if such circumstances constituted a Relief Event affecting the Project Company.

SECTION 19.8. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Project Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 19.9. EXERCISE OF REMEDIES.

(A) Remedies Exclusive. The respective rights and remedies of the parties set out in this Project Agreement shall be the exclusive rights and remedies for breach of this Project Agreement, and the parties shall have no obligations or liabilities in connection with this Project Agreement and the Contract Services except as expressly set out in this Project Agreement.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 19.10. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE THIS PROJECT AGREEMENT.

Every right to claim compensation, indemnification or reimbursement under this Project Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Agreement. Notwithstanding any other provision of this Project Agreement to the contrary, neither party shall be entitled to recover compensation or make a claim under this Project Agreement in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Project Agreement.

SECTION 19.11. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Project Agreement, or any representation made in this Project Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory. This Section shall not limit the recovery of any such losses or damages under Article 24 (Indemnification) in respect of claims by third parties.

ARTICLE 20

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 20.1. PROJECT COMPANY EVENTS OF DEFAULT.

(A) Project Company Events of Default Defined. For the purposes of this Project Agreement, “**Project Company Event of Default**” means any of the following events or circumstances:

(1) The occurrence of a Project Company Remediable Breach that is not remedied in accordance with Section 20.3 (Project Company Remediable Breach Cure and Remedial Program);

(2) The occurrence of a Project Company Bankruptcy-Related Event;

(3) The Project Company abandons the Project by failing to perform a material part of the Contract Services for a continuous period in excess of 25 days where such failure is not consistent with the Project Schedule, as applicable, and is not expressly permitted or excused by the terms of this Project Agreement other than pursuant to its right to suspend performance or terminate in accordance with this Project Agreement, and the Project Company does not recommence such Contract Services within five days of notice from the County;

(4) The Project Company breaches subsection 4.6(F) (Tax Compliance), and has not cured such breach within 10 days of notice from the County;

(5) The Financial Close Date does not occur before the Financial Close Deadline as provided in Section 5.2 (Financial Close Deadline) and Appendix 3 (Financial Close Procedures and Conditions);

(6) The Occupancy Readiness Date does not occur on or before the Longstop Date as provided in Section 8.9 (Failure to Achieve Occupancy Readiness by the Longstop Date);

(7) The Project Company breaches Section 6.5 (Refinancing); or

(8) The Project Company breaches Section 23.1 (Limitation on Assignment by Project Company) or a Change in Control occurs which is prohibited by Section 23.2 (Limitation on Change in Control).

(B) Project Company Remediable Breach Defined. For purposes of this Project Agreement, “**Project Company Remediable Breach**” means any of the following breaches, unless the breach is due to the occurrence of a Relief Event:

(1) A failure by the Project Company to pay any amount due and owing to the County under this Project Agreement on the due date (which amount is not being disputed in good faith) where the Project Company has not remedied such failure to pay within 10 Business Days following notice from the County;

(2) A failure by the Project Company to maintain the policies of insurance required to be maintained by the Project Company under this Project Agreement and to comply with its obligation under Appendix 10 (Insurance Requirements) to name the County as an insured party;

(3) A failure by the Project Company to comply with its obligations under subsection 11.10(A) (Prohibition of Discriminatory Wage Rates Based on Sex).

(4) A failure by the Project Company to comply with its obligation under Section 14.1 (Insurable Force Majeure Events) to repair, replace or restore the Project following the occurrence of an Insurable Force Majeure Event;

(5) The Project Company fails to immediately take all appropriate action in the event that the County notifies the Project Company that a public health or safety emergency exists or is threatened due to the Project Company's failure to comply with the Contract Standards;

(6) Except as provided for in items (1) through (5) of this subsection (B), a breach, or series of breaches, by the Project Company of any agreement, covenant or undertaking made to the County or any representation or warranty made by the Project Company to the County in this Project Agreement (or any ancillary certificate, statement or notice issued hereto) being incorrect when made or at any time during the Term, the consequence of which is:

(a) a material risk to the health or safety of the public;

(b) a risk of material liability of the County to third persons;

(c) an adverse effect on the performance of the Design-Build Work or the Facilities Management Services to the extent that the County is reasonably likely to be materially deprived of the benefit of this Project Agreement; or

(d) any material provision of this Project Agreement being unenforceable against the Project Company; or

(7) A material breach occurs (or series of breaches occur, including the occurrence of Unavailability Events or Performance Failures) which, due to their number, frequency or recurrence, demonstrates either a persistent inability, or a persistent unwillingness, of the Project Company to comply with its obligations under this Project Agreement.

(C) Project Company Bankruptcy-Related Event Defined. For purposes of this Project Agreement, "**Project Company Bankruptcy-Related Event**" means any of the following events:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Project Company and, if such appointment or process is commenced against the Project Company and is disputed by the Project Company, such appointment or process is not discontinued, withdrawn, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(2) Any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(3) The Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(4) The Project Company ceasing to carry on business.

SECTION 20.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify the County of the occurrence, and details, of any Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Project Company Event of Default, in either case promptly on the Project Company becoming aware of its occurrence.

SECTION 20.3. PROJECT COMPANY REMEDIABLE BREACH CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program. After the occurrence of a Project Company Remediable Breach and while it is subsisting, the County may serve a notice on the Project Company specifying in reasonable detail the type and nature of the Project Company Remediable Breach and:

(1) The Project Company shall remedy such Project Company Remediable Breach referred to in such notice (if it is continuing) within 20 Business Days of such notice; or

(2) If either the County (as set forth in its notice) or the Project Company reasonably considers that a Project Company Remediable Breach cannot reasonably be remedied within 20 Business Days of such notice, the Project Company shall deliver to the County within 10 Business Days of such notice a reasonable program (set forth, if appropriate, in stages) for remedying the Project Company Remediable Breach. The program will specify in reasonable detail the manner in, and the latest date by which the Project Company Remediable Breach is proposed to be remedied.

(B) County Acceptance or Non-Acceptance. If the Project Company puts forward a program in accordance with subsection (A)(2) of this Section, the County will have 10 Business Days from receipt of the program within which to notify the Project Company that the County, acting reasonably, does not accept the program, failing which the County will be deemed to have accepted the program. If the County notifies the Project Company that it does not accept the program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the program put forward. In the absence of an agreement within such five Business Days, the question of whether the program (as it may have been amended by agreement) will remedy such Project Company Remediable Breach in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party to Non-Binding Mediation.

(C) Remediable Program Limited to Project Company Remediable Breaches. The Project Company Remediable Breach and remedial program provisions of this Section shall apply only to a Project Company Remediable Breach, and not to any other event or circumstance constituting a Project Company Event of Default.

SECTION 20.4. COUNTY TERMINATION RIGHT.

(A) Termination Right. If:

(1) Any Project Company Event of Default occurs (other than that with respect to a Project Company Remediable Breach as set forth in subsection 20.1(A)(1) (Project Company Events of Default Defined); or

(2) With respect to a Project Company Remediable Breach;

(a) a Project Company Remediable Breach is not remedied before the expiration of the period referred to in subsection 20.3(A)(1) (Notice and Remedy or Remedial Program) and no program has been put forward by the Project Company under subsection 20.3(A)(2) (Notice and Remedy or Remedial Program);

(b) the Project Company puts forward a program pursuant to subsection 20.3(A)(2) (Notice and Remedy or Remedial Program) which has been accepted by the County (including after agreement under Section 20.3 (Project Company Remediable Breach Cure and Remedial Program) to amendments to the program) and the Project Company fails to achieve any material element of the program or the end date for the program, as the case may be; or

(c) any program put forward by the Project Company pursuant to subsection 20.3(A)(2) (Notice and Remedy or Remedial Program), after good faith negotiations, is rejected by the County as not being reasonable;

then the County may (if the Project Company Event of Default continues unwaived and unremedied), subject to subsection 22.2(H) (Continued Performance) and the terms of the Lenders' Remedies Agreement, terminate this Project Agreement by notice to the Project Company. The right of the County to terminate this Project Agreement under this Section is in addition, and without prejudice, to any other right which the County may have in connection with the Project Company's non-compliance with this Project Agreement, including those set forth in Article 19 (Remedies of the Parties and County Step-In Rights).

(B) Relief Events Affecting Performance of Remedial Program. For the purposes of item (2)(b) of subsection (A) of this Section, if the Project Company's performance of the program is adversely affected by the occurrence of a Relief Event or a breach by the County of its obligations under this Project Agreement, then, subject to the Project Company complying with the mitigation and other requirements in this Project Agreement concerning such events, the time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events.

(C) Lenders' Remedies Agreement. The rights of the County under this Section are subject to the terms of the Lenders' Remedies Agreement.

ARTICLE 21

COUNTY EVENTS OF DEFAULT

SECTION 21.1. COUNTY EVENTS OF DEFAULT.

For the purposes of this Project Agreement, “**County Event of Default**” means any of the following events or circumstances:

- (1) A failure by the County to pay the Occupancy Readiness Milestone Payment by the due date for the Occupancy Readiness Milestone Payment;
- (2) A failure by the County to pay the Service Fee within 5 days of the due date for the Service Fee;
- (3) A failure by the County to pay an amount due during the Design-Build Period as provided or referred to in Section 7.22 (Payment Obligations of the County During the Design-Build Period) within 5 days of the due date for such amount;
- (4) A failure by the County to pay the Termination Amount on the Termination Amount Due Date;
- (5) A failure by the County to pay any other amount due from the County to the Project Company hereunder within 5 days of the due date for such amount; or
- (6) Except as provided in subsections (1), (2), (3), (4) or (5) of this Section, a breach, or series of breaches, by the County of any term, covenant or undertaking to the Project Company or any representation or warranty made by the County to the Project Company in this Project Agreement being incorrect when made, which has a material and adverse effect on the Project Company.

SECTION 21.2. PROJECT COMPANY OPTIONS UPON COUNTY EVENT OF DEFAULT.

After the occurrence of a County Event of Default and while a County Event of Default is continuing, the Project Company may, at its option, serve notice on the County of the occurrence and specifying the details of such a County Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the County:

- (1) In the case of a County Event of Default under subsections 21.1(1),(2), (3), (4) or (5) within 30 days of such notice; or
- (2) In the case of a County Event of Default under subsection 21.1(6), within 30 days of such notice or within such longer period as is reasonably required for the County to rectify or remedy such County Event of Default as long as the County is diligently pursuing such rectification or remedy;

the Project Company may serve a further notice on the County either (i) suspending its performance of the Contract Services until the County rectifies or remedies such County Event of Default; or (ii) terminating this Project Agreement with immediate effect and, in the case of a County Event of Default under subsections 21.1(1), (2), (3), (4) or (5) within 30 days of such notice, the Project Company also may bring an action to enforce payment of the amount due.

ARTICLE 22

TERMINATION

SECTION 22.1. EXCLUSIVE RIGHTS OF TERMINATION.

(A) Termination Prior to Financial Close Date. Prior to the Financial Close Date, the parties' sole right to terminate this Project Agreement shall be as set forth in Appendix 3 (Financial Close Procedures and Conditions).

(B) Termination Subsequent to Financial Close Date. Subsequent to the Financial Close Date, the parties' sole right to terminate this Project Agreement shall be as set forth in this Article (other than subsection (A) of this Section).

(C) Exclusive Termination Rights. This Article, together with any other provisions of this Project Agreement expressly referred to in this Article and (subsequent to the Financial Close Date) the provisions of the Lender's Remedies Agreement, contain the entire and exclusive provisions and rights of the parties regarding termination of this Project Agreement, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Applicable Law; provided that termination of this Project Agreement shall not relieve the Project Company, insurer, surety or financial institution that provides security for performance hereunder of its obligation for claims arising prior to termination.

SECTION 22.2. TERMINATION.

(A) County Termination Rights. This Project Agreement may be terminated by the County prior to the Expiration Date:

(1) In its discretion and for its convenience at any time, by delivery of notice to the Project Company stating that the termination is for the convenience of the government (a "**Termination for Convenience**"), together with a written certification that the County has obtained the necessary legal authorization and approvals to issue County obligations and that the proceeds of such obligations will be in an amount sufficient to pay the applicable Termination Amount in full and in a timely manner, both of which must be delivered no less than 60 days prior to the intended Termination Date;

(2) In connection with a Project Company Event of Default, pursuant to Article 20 (Project Company Events of Default);

(3) In connection with an Uninsurable Force Majeure Event, pursuant to Section 14.2 (Uninsurable Force Majeure Events);

(4) In connection with the unavailability of Required Insurance for an Insurable Force Majeure Event or Third-Party Liability, pursuant to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third-Party Liability);

(5) In the event of a Termination by Court Ruling; or

(6) In connection with the occurrence and persistence of an Extended Relief Event pursuant to Section 15.4 (Termination for Extended Relief Events).

(B) Project Company Termination Rights. This Project Agreement may be terminated by the Project Company prior to the Expiration Date:

- (1) In connection with a County Event of Default, pursuant to Article 21 (County Events of Default);
- (2) In connection with an Uninsurable Force Majeure Event, pursuant to Section 14.2 (Uninsurable Force Majeure Events);
- (3) In the event of a Termination by Court Ruling; or
- (4) In connection with the occurrence and persistence of an Extended Relief Event pursuant to Section 15.4 (Termination for Extended Relief Events).

(C) Required Termination Upon Total Constructive Loss Following the Occupancy Readiness Date. Notwithstanding any other provision of this Project Agreement, this Project Agreement shall terminate automatically and without the election of either party upon the occurrence of a Total Constructive Loss following the Occupancy Readiness Date in circumstances where the average projected senior debt coverage ratio for the Project is lower than the required level, as more particularly described in Article 7 (Insurance) of the Lenders' Remedies Agreement and Section 3.2 (Determination of Average Projected Senior Debt Service Coverage Ratio) of the Insurance Trust Agreement. The Termination Amount payable in such circumstances pursuant to Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination) shall not be limited by the amount of any available Insurance Proceeds.

(D) Extent of Termination Rights. Except as provided or referred to in subsections (A) and (B) of this Section, neither party shall have the right to terminate this Project Agreement.

(E) Termination Date. The Termination Date for any early termination of this Project Agreement as provided in subsections (A) or (B) of this Section shall be the date specified in the table below, subject to the rights of the Senior Lenders under the Lenders' Remedies Agreement. It shall not be a condition to the establishment of the Termination Date that the County shall have paid the applicable Termination Amount.

| <u>Termination Circumstance</u> | <u>Termination Date</u> |
|---|---|
| Termination for Convenience by the County | The date specified in the County's written notice of termination which shall be no less than 60 days after the date on which such termination notice is given |
| Termination Upon an Event of Default | The date notice of termination is delivered by the terminating party |
| Termination by Court Ruling | The date of issuance of a final, non-appealable court order by a court of competent jurisdiction |
| Termination for Extended Relief Events | The date that is 30 days from the delivery of notice thereof by the terminating party |
| Termination for Uninsurable Risk | The date that is 30 days from the delivery of notice thereof by the terminating party |
| Termination upon Total Constructive Loss | The date determined under Section 3.2 (Determination of Average Projected Senior Debt Service Coverage Ratio) of the Insurance Trust Agreement. |

(F) Termination Amount Due Date. The County shall pay the Termination Amount by the date provided in Section 7.1 (Termination Amount Due Date) of Appendix 13 (Compensation on Termination).

(G) Consideration for Convenience Termination Amount. The right of the County to terminate this Project Agreement for its convenience and in its discretion in accordance with this Article constitutes an essential part of the overall consideration for this Project Agreement, and the Project Company shall not be entitled to any damages (other than damages for failure to pay the Termination Amount provided for in Appendix 13 (Compensation on Termination)) by reason of a County breach of this Project Agreement, including a breach of the County's implied covenant of good faith and fair dealing, in the exercise of its right to terminate this Project Agreement under subsection 22.2(A)(1) (County Termination Rights) for the convenience of the government.

(H) Continued Performance. The parties shall continue to perform their obligations under this Project Agreement (including the County continuing to pay the Service Fee) until the Termination Date, notwithstanding the giving of any notice of default or notice of termination.

(I) Completion or Continuance by County. After the Termination Date, subject to Section 22.4 (Transitional Arrangements), the County may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other operators and contractors.

SECTION 22.3. TRANSFER TO THE COUNTY OF ASSETS, CONTRACTS AND DOCUMENTS.

(A) Transfer Responsibilities. On or promptly after the Termination Date:

(1) If the Termination Date occurs prior to the Occupancy Readiness Date:

(a) the Project Company shall preserve and protect the structures, equipment, materials and other property comprising the Project as so far constructed; and

(b) insofar as any transfer will be necessary to fully and effectively transfer property to the County, the Project Company shall transfer to, and there will vest in, the County, free from all financial encumbrances, such part of the Project as has been constructed on or has become affixed to the Project Site and, subject to payment by the County of the Design-Builder's reasonable charges, if the County so elects:

(i) the construction plant and equipment will remain available to the County for the purposes of completing the Design-Build Work; and

(ii) all other Project-related plant and all materials on or near the Project Site will remain available to the County for the purposes of completing the Design-Build Work,;

(2) If the County so elects, the Project Company shall cause any or all of the Project Contracts (and any related contracts which govern the obligations between the Project Company and the Project Contractor whose obligations have been assigned (such as a coordination or interface agreement)) to be novated or assigned to the County,

provided that if termination occurs under Section 21.2 (Project Company Options Upon County Event of Default), the consent of the applicable Project Contractor will be required;

(3) The Project Company shall, or will cause any Project Contractor to, offer to sell to the County at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or any Project Contractor and reasonably required by the County in connection with the operation of the Project or the provision of the Contract Services;

(4) The Project Company shall deliver to the County (to the extent not already delivered to the County):

(a) all existing designs, plans and other documents produced in connection with the Project and in the control of the Project Company;

(b) one complete set of existing constructions drawings showing all alterations made to the Project since the commencement of operation of the Project;

(c) one complete set of existing, up-to-date maintenance, operation and training manuals for the Project, subject to reasonable generally applicable third-party licensing terms;

(d) relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Design-Build Work or the Facilities Management Services (or any Subcontracts); and

(e) copies of all Subcontracts, together with a statement of:

(i) the items ordered and not yet delivered pursuant to each agreement;

(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment;
and

(iv) the estimated cost of canceling each agreement;

(5) The Project Company shall use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment used or made available by the Project Company under this Project Agreement and included in the Project but not previously assigned or licensed to the County are assigned, licensed or otherwise transferred to the County to permit the operation, maintenance or improvement of the Project following termination of this Project Agreement;

(6) To the extent permitted by Applicable Law, the Project Company shall assign to the County all Governmental Approvals;

(7) The Project Company shall deliver to the County all books, records and files required to be kept by the Project Company hereunder (the Project Company having the right to retain copies thereof) unless such documents are:

(a) required by Applicable Law to be retained by the Project Company or a Project Contractor or Subcontractor, in which case complete copies will be delivered to the County; or

(b) privileged from production pending resolution of any outstanding dispute, in which case such records will be delivered forthwith upon resolution of such dispute, provided that any records that are necessary for the performance of the Contract Services will be delivered to the County no later than the Termination Date;

(8) The Project Company shall give written notice of termination, promptly under each policy of Required Insurance (with a copy of each such notice to the County), but permit the County to continue such policies thereafter at its own expense, if possible; and

(9) The Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the County's costs, and take no action which shall increase any amount payable by the County under this Project Agreement.

(B) No Additional Compensation. The Project Company shall ensure, subject to the security interest of the Senior Lenders, that provision is made in all applicable contracts to ensure that the County will be in a position to exercise its rights, and the Project Company shall be in a position to comply with its obligations, under this Section without (except to the extent expressly provided for in subsection (A) of this Section) additional payment or compensation to any person.

(C) Use of Design Documents Following Termination During the Design-Build Period. If this Project Agreement is terminated during the Design-Build Period and the County (or any designee of the County) uses any Design Documents or other Intellectual Property developed by or on behalf of the Project Company without the involvement of the Project Company, the Design-Builder and the Architect for such work, then:

(1) The Project Company, the Design-Builder and the Architect are hereby thereupon released from all liability on account of such use, except to the extent caused by any of the matters referred to in subsections (1) through (5), inclusive, of Section 24.1 (Project Company's Obligation to Indemnify); and

(2) The County shall reimburse the Project Company, the Design-Builder and the Architect for all losses, liabilities, damages, fines, costs and expenses that any of the Project Company, the Design-Builder, or the Architect may sustain in connection with any loss of or physical damage to property of any County Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property) or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any County Indemnitee, arising by reason of such use or the results of such use, except to the extent caused by any of the matters referred to in subsections (1) through (5), inclusive, of Section 24.1 (Project Company's Obligation to Indemnify).

SECTION 22.4. TRANSITIONAL ARRANGEMENTS.

The Project Company shall, in connection with the expiration or termination of this Project Agreement:

- (1) Stop the Contract Services on the Termination Date;
- (2) On the Termination Date deliver to the County:
 - (a) all keys, access codes or other devices required to operate the Project; and
 - (b) any Project Intellectual Property required to be delivered by the Project Company pursuant to subsection 22.3(A)(5) (Transfer Responsibilities);
- (3) As soon as practicable after the Termination Date vacate, and cause the Project Company Persons to vacate, the Project Site, and leave the Project Site and the Project in a safe, clean and orderly condition;
- (4) On request by the County and on payment of the Project Company's reasonable costs by the County, for a period not to exceed 90 days after the Termination Date, co-operate fully with the County and any successor providing to the County services in the nature of any of the Contract Services or any part of the Contract Services, in order to achieve a smooth transfer of the manner in which the County obtains services in the nature of the Contract Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the County and members of the public;
- (5) As soon as practicable following the Termination Date, remove from the Project Site all property of the Project Company or any Project Company Person that is not acquired by the County pursuant to Section 22.3 (Transfer to the County of Assets, Contracts and Documents) (or not belonging to the County) and if it has not done so within 60 days after any notice from the County requiring it to do so, the County may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and
- (6) Comply with all requirements of Section 9.13 (Project Handback).

SECTION 22.5. PROJECT COMPANY TO COOPERATE.

If the County wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Contract Services or any of them) following the Termination Date, the Project Company shall prior to the Termination Date co-operate with the County fully in such competition process, including by:

- (1) Providing any information in the Project Company's control or possession which the County may reasonably require to conduct such competition, except that information which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project

Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) Assisting the County by providing any participants in such competition process with access to the Project Site and the Project provided such access does not affect the Contract Services in a way that results in any reduction in Service Fee.

The Project Company shall be entitled to reimbursement for all reasonable out-of-pocket expenses and internal costs incurred in connection with the foregoing services.

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ARTICLE 23

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 23.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Project Agreement or a Project Contract except:

- (1) As security, substantially in a form approved by the County, acting reasonably, for any loan made to the Project Company under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement;
- (2) In connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements in accordance with the Lenders' Remedies Agreement; or
- (3) Otherwise:
 - (a) prior to the day that is two years after the Occupancy Readiness Date (the "**Transfer Restriction Date**"), with the prior written consent of the County, which may be given or withheld in the County's discretion; and
 - (b) after the Transfer Restriction Date, with the prior written consent of the County, which will not be unreasonably withheld or delayed;

provided that in the case of an assignment under subsections (2) or (3) of this Section, the assignee assumes all the obligations of the Project Company under this Project Agreement.

SECTION 23.2. LIMITATION ON CHANGE IN CONTROL.

(A) Change in Control Defined. For purposes of this Project Agreement "**Change in Control**" means with respect to a person any direct or indirect change in the ownership or control of any legal, beneficial or equitable interest in any or all of the shares, units or equity in the person (including the control over the exercise of voting rights conferred on equity share capital, unit interests or equity interests or the control over the right to appoint or remove directors, a general partner, a managing member or other managers), including changes arising from assignment or transfer of existing shares, units or equity, issuance of new shares, units or equity or amalgamation, merger consolidation, amendment of a limited partnership certificate or other reorganization, or any other direct or indirect change which results in an equity holder or group of equity holders, other than the equity holders immediately prior to the change, directly or indirectly:

- (1) Controlling the composition of the majority of the board of directors of the person or of a general partner or manager of the person;
- (2) Controlling the decisions made by or on behalf of the person, including by controlling the voting power of the board of directors or by controlling the voting power of any class of shareholders or equity holders of any of the person, a general partner of the person or a manager of the person or otherwise;
- (3) Holding equity (either beneficially or otherwise) of that person with a subscribed value (taking into account contributions to be made in the case of a limited partnership) of more than one half of the subscribed value (taking into account

contributions to be made in the case of a limited partnership) or equity (either beneficially or otherwise) of that person with more than one half of the voting rights; or

(4) Having the ability to direct or cause the direction of the management, actions or policies of the person.

(B) Limitations. No Change in Control of the Project Company shall be permitted (whether by the Project Company or otherwise) to occur except:

(1) In connection with the exercise of rights of the Senior Lenders under the Senior Financing Agreements;

(2) Arising from any bona fide open market transaction in any shares or other securities of the Project Company or of any Unit Holder or of any holding company of a Unit Holder effected on a recognized public stock exchange;

(3) Any assignment, sale or transfer by a shareholder, general partner, manager or member of the Project Company of any legal, beneficial or equitable interest in any shares, units or equity of the Project Company to any of the following infrastructure investment funds, each of which is an Affiliate of **[NOTE TO PROPOSERS: Equity sponsors to be named here.]**;

(4) A reorganization or transfer of interests within a group of persons under common control of ownership interests (whether directly or indirectly) in any person, or of any intermediate entity in the chain of ownership of such person, or a group of funds or similar entities managed (whether directly or indirectly) by any Unit Holder or any Affiliate thereof, so long as there is no substantive change in the entity or group of entities that ultimately have control (individually or collectively) of such person or in the person or group of persons that ultimately manage (individually or collectively) such funds or similar entities, as applicable; or

(5) Otherwise:

(a) prior to the Transfer Restriction Date, with the prior written consent of the County, which may be given or withheld in the County's discretion; or

(b) after the Transfer Restriction Date, with the prior written consent of the County, which will not be unreasonably withheld or delayed.

(C) Transfer of Minority Interests in the Project Company. Notwithstanding that a sale or transfer by [_____] of its minority interest in the Project Company does not constitute a Change in Control, the County may: (1) in its discretion, prohibit any sale or transfer by [_____] of its minority interest prior to the Transfer Restriction Date; and (2) acting reasonably, prohibit any sale or transfer by [_____] of its minority interest on or after the Transfer Restriction Date. The County may also, in its discretion, prohibit any sale or transfer of any minority interest in the Project Company to any Restricted Person at any time during the Term. **[NOTE TO PROPOSERS: To be removed unless there are multiple equity sponsors.]**

SECTION 23.3. FACTORS THE COUNTY MAY CONSIDER.

In determining whether to provide its consent under subsections 23.1(3)(b) (Limitation on Assignment by Project Company), 23.2(A)(1) (Change in Control Defined) or

23.2(B)(5)(b) (Limitations), and without limiting the County's discretion thereunder, it will be reasonable for the County to refuse its consent if:

- (1) The proposed assignee or the new party in control of the Project Company, as the case may be, or any of their Affiliates, is a Restricted Person;
- (2) The proposed assignee cannot comply with the County's conflict of interest requirements;
- (3) The proposed assignee or the new party in control of the Project Company, as the case may be, has, in the reasonable opinion of the County, insufficient creditworthiness to assume the Project Company's obligations under the Project Agreement;
- (4) The experience, background or reputation of the proposed assignee and the key individuals in operating projects or facilities of a similar nature, in the reasonable opinion of the County, is not sufficient to meet the Project Company's obligations under this Project Agreement; or
- (5) The assignment or Change in Control could, in the reasonable opinion of the County, have a material and adverse effect on the County or the Project.

SECTION 23.4. LIMITATION ON ASSIGNMENT BY THE COUNTY.

The County shall not assign, transfer or otherwise dispose of any interest in this Project Agreement except to another Governmental Body, with a credit profile equal to or better than the credit profile of the County at the time of such assignment, transfer or disposition, which assumes in writing and is legally capable of discharging all the obligations of the County under this Project Agreement.

SECTION 23.5. COSTS OF REQUEST FOR CONSENT.

If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 23.1 (Limitation on Assignment by Project Company) or to a Change in Control pursuant to Section 23.2 (Limitation on Change in Control), the Project Company shall pay the County's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to the County against its obligation under this Section of \$25,000 (Index-Linked). After the decision of the County is rendered, the County will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section with reasonable substantiation of such costs.

ARTICLE 24

INDEMNIFICATION

SECTION 24.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

The Project Company shall defend, indemnify and keep each County Indemnitee indemnified at all times from and against all Loss-and-Expense that any County Indemnitee may sustain in connection with any loss of or physical damage to property or assets of any County Indemnitee, or any claim made by one or more third parties for loss of or physical damage to property or assets, or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any County Indemnitee, arising by reason of any:

- (1) Project Company Fault;
- (2) Non-compliance by the Project Company with any of the provisions of this Project Agreement or any document, instrument or agreement delivered to the County as required under this Project Agreement;
- (3) Claim relating to the storage of any information on the Secure Website, as described in subsection 17.1(B) (Liability and Indemnification);
- (4) Project Company Hazardous Substances; or
- (5) Breach by the Project Company of, or non-compliance by the Project Company with, any Governmental Approval or Applicable Law, or the failure of the Project Company to obtain all necessary Governmental Approvals in accordance with this Project Agreement;

except to the extent caused by County Fault, or a County Event of Default. The Project Company's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. This Section may be relied upon by the County Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.

SECTION 24.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a County Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the County Indemnitee is, or may become entitled to, indemnification or compensation under this Project Agreement in respect of the entire claim, the County Indemnitee shall give notice in writing to the Project Company as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof.

(B) Project Company Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Project Company shall be entitled to dispute the claim in the name of the County Indemnitee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The County Indemnitee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection (B) of this Section in which there is a conflict of interest between the Project Company and the

County Indemnitee, the County Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the County Indemnitee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the County Indemnitee in so doing will be included in the indemnity or compensation from the Project Company.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to subsection (B) of this Section:

(1) The Project Company shall keep the County Indemnitee fully informed and consult with it about material elements of the conduct of the claim;

(2) The Project Company shall demonstrate to the County Indemnitee, at the reasonable request of the County Indemnitee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) The Project Company shall not pay or settle such claims without the consent of the County Indemnitee, such consent not to be unreasonably withheld or delayed.

(E) County Indemnitee Rights to Conduct Defense. The County Indemnitee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Project Company is not entitled to take conduct of the claim in accordance with subsection (B) of this Section; or

(2) The Project Company fails to notify the County Indemnitee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the County Indemnitee under subsection (B) of this Section or notifies the County Indemnitee that it does not intend to take conduct of the claim; or

(3) The Project Company fails to comply in any material respect with subsection (D) of this Section.

(F) Transfer of Conduct of Claim to County Indemnitee. The County Indemnitee may at any time give notice to the Project Company that it is retaining or taking over, as the case may be, (in each case at its own cost and risk) the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection (B) of this Section applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the County Indemnitee, and will provide to the County Indemnitee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim, but shall otherwise be released from its indemnification obligations hereunder with respect thereto.

(G) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

(1) The replacement is performed without additional cost to the County; and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 25

MISCELLANEOUS PROVISIONS

SECTION 25.1. OWNERSHIP OF THE PROJECT.

The Project shall be owned by the County at all times.

SECTION 25.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of the County and the relationship between the parties shall be limited to performance of this Project Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Project Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Project Agreement or the performance thereof.

SECTION 25.3. NO OTHER BUSINESS.

The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or otherwise as expressly permitted hereunder.

SECTION 25.4. PROJECT COMPANY PERSONS.

The Project Company shall, as between itself and the County, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and willful misconduct of each Project Company Person, and all references in this Project Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of the Project Company shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or willful misconduct committed by a Project Company Person.

SECTION 25.5. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Project Company. In all cases where the Project Company is entitled to receive any relief from the County or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Relief Events or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid by the County to the Project Company by the County under this Project Agreement, or the length of the extension of time. Such mitigation measures shall include compliance with all procedures and other requirements necessary to obtain any available waiver or exemption from Taxes that would otherwise be borne directly or indirectly by the County. Upon request from the County, the Project Company shall promptly submit a detailed description, supported by all such documentation as the County may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this subsection.

(B) Mitigation by the County. In all cases where the County is entitled to receive from the Project Company any compensation, costs or damages, but not in any other cases, the County shall use all reasonable efforts to mitigate such amount required to be paid

by the Project Company to the County under this Project Agreement, provided that such obligation shall not require the County to:

- (1) Take any action which is contrary to the public interest, as determined by the County in its discretion;
- (2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or
- (3) Alter the amount of deductions for Deductions it is entitled to make in accordance with Appendix 11 (Deductions).

The County shall have no obligation to mitigate, implied or otherwise, except as set forth in this subsection or otherwise as expressly provided in this Project Agreement. Upon request by the Project Company, the County shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by the County to mitigate and meet its obligations under this subsection.

SECTION 25.6. OPPORTUNITIES.

Except as may be specifically agreed in writing between the County and the Project Company during the Term, the County reserves the right to all commercial and other opportunities for, or related to, the Project.

SECTION 25.7. PROJECT AGREEMENT ADMINISTRATION.

(A) Authority of County Representative. The Project Company understands and agrees that the County Representative has only limited authority with respect to the implementation of this Project Agreement, and cannot bind the County with respect to any Project Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the County Representative. The County Representative shall have the right at any time to issue the Project Company a written request for information relating to this Project Agreement. Any written request designated as a "priority request" shall be responded to by the Project Company within three Business Days.

(B) Facilities Management Notices. Facilities Management Notices hereunder shall be given by e-mail, and may be given personally or by telephone promptly followed by e-mail confirmation. Facilities Management Notices to the Project Company shall be given by the County Representative and Facilities Management Notices to the County shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Project Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Project Agreement between the parties which

do not require a Project Agreement Amendment shall be a “**Contract Administration Memorandum**”. A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the County and the Project Company as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) Issues as to the meaning, interpretation or application of this Project Agreement in particular circumstances or conditions;
- (2) Calculations required to be made;
- (3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
- (4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the County reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the County Representative and the Project Company Representative. The County and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from any Project Agreement Amendments and all other documents relating to the administration and performance of this Project Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Project Agreement.

SECTION 25.8. PROJECT AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 25.7 (Project Agreement Administration), no change, alteration, revision or modification of the terms and conditions of this Project Agreement shall be made except through a written amendment to this Project Agreement (a “**Project Agreement Amendment**”) duly authorized, approved or ratified by the County and duly authorized by the Project Company. Project Agreement Amendments shall be dated and signed by the County Representative and the Project Company Representative.

(B) Project Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Project Agreement, when a Project Agreement Amendment or other agreement with respect to this Project Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging this Project Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 25.9. COUNTY APPROVALS AND CONSENTS.

When this Project Agreement requires any approval or consent by the County to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of subsection 25.7(A) (Authority of County Representative), be given by the County Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the County with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Project Agreement, and except for (1) approvals provided for in Section 5 (Submittal Review Procedure) of Appendix 5 (General

Design, Construction and Facilities Management Technical Requirements), which shall be governed by the terms of such Appendix, and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Project Agreement, require a response or action, if the County does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 30 days of the County's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the County's approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the County pursuant to some specific term of this Project Agreement shall be deemed acceptable to the County if the County shall not have objected thereto within 30 days of the receipt thereof.

SECTION 25.10. DISCLOSED DATA.

It is the Project Company's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Project Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. Without limiting the Project Company's right to claim relief for Differing Site Conditions and Regulated Site Conditions pursuant to this Project Agreement, the Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any County Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Project Agreement on the grounds:

- (1) Of any misunderstanding or misapprehension in respect of the Disclosed Data;
- (2) That the Disclosed Data was incorrect or insufficient; or
- (3) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than the County,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Project Agreement on any such ground.

SECTION 25.11. ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Project Agreement shall be interpreted as limiting the rights and obligations of the County (or any department or agency thereof) under Applicable Law in their governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against the County (or any department or agency thereof), not based on this Project Agreement, arising out of any act or omission of the County (or any department or agency thereof) in their governmental capacity.

SECTION 25.12. CONFIDENTIALITY.

(A) Confidential Information. Subject to subsection (B) of this Section, each party will hold in confidence any Confidential Information received from the other party, except that this Section will not restrict either party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project

Agreement, and provided further that the Project Company may, subject to obtaining confidentiality restrictions similar to those set forth in this Project Agreement:

(1) Provide to the Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreement or related agreements; and

(2) Provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Project Company to perform (or to cause to be performed) its obligations under this Project Agreement.

(B) Exceptions. Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) Which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Agreement;

(2) To the extent any person is required to disclose such Confidential Information by Applicable Law;

(3) Any Governmental Body which requires the information in relation to the Project; or

(4) That the County may be entitled to receive from the Project Company pursuant to this Project Agreement for the operation, maintenance or improvement of the Project in the event of, or following, termination of this Project Agreement.

(C) Security Plan. If requested by the County, the Project Company shall prepare a security plan to assure that Confidential Information obtained from the County or as a consequence of the performance of the Contract Services is not used for any unauthorized purpose or disclosed to unauthorized persons. The Project Company shall advise the County of any request for disclosure of information or of any actual or potential disclosure of information.

(D) Public Communications of Confidential Information. Unless expressly provided in this Project Agreement or otherwise required by Applicable Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information, without the written consent of the other party (which will not be unreasonably withheld or delayed). The parties will comply with Appendix 16 (Public Communications).

(E) Equitable Relief. Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of subsection (A) of this Section, and that the other party will, in such case, be entitled to seek the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of subsection (A) of this Section.

SECTION 25.13. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information:

- (1) With the prior consent of the County;
- (2) To the extent necessary to perform the Project Company's obligations under this Project Agreement; and
- (3) In accordance with Applicable Law, including the Public Meetings and Records Law as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow the County on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

SECTION 25.14. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under agreements of the Project Company which are material to the performance of its obligations under this Project Agreement. The County shall comply with its obligations under agreements of the County which are material to the performance of its obligations hereunder.

SECTION 25.15. BINDING EFFECT.

This Project Agreement shall inure to the benefit of and shall be binding upon the County and the Project Company and any assignee acquiring an interest hereunder consistent with Article 23 (Assignment and Change in Control).

SECTION 25.16. CONSENTS. Any consent required to be given under this Project Agreement shall be in writing.

SECTION 25.17. NOTICES.

(A) Procedure. All notices, consents or approvals or written communications (other than Facilities Management Notices or other communications required by the Project Requirements) given pursuant to the terms of this Project Agreement shall be transmitted in writing to the electronic mail address of each party set forth below in this Section and shall contain a subject line stating the following in block capital letters: "CLACKAMAS PROJECT AGREEMENT SECTION 25.17 NOTICE; RESPONSE CONTRACTUALLY REQUIRED". The recipient of any such notice or communication shall promptly (within 24 hours of receipt) confirm receipt thereof with the sender by electronic mail. If the recipient fails to comply with its obligation under this subsection to respond to the sender confirming receipt of any notice or communication, the sender shall promptly (within 24 hours of such failure), transmit the notice or communication either: (i) in person by hand, (ii) by certified mail, return, receipt requested, postage prepaid, or (iii) by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery. Any such notice or communication will be deemed to be effective on the day the electronic mail transmission is sent; except that, if the electronic mail transmission is not sent on a Business Day or is sent after 5:00 p.m. local time in the place of receipt on a Business Day, then the notice or communication will be deemed to be effective on the next Business Day. Either party may, by like notice, designate further or different electronic mail addresses to which subsequent notices shall be sent.

(B) County Notice Address. Notices required to be given to the County pursuant to this Section shall be addressed as follows:

[_____]

with a copy to:

[_____]

(C) Project Company Notice Address. Notices required to be given to the Project Company pursuant to this Section shall be addressed as follows:

[_____]

with a copy to:

[_____]

SECTION 25.18. NOTICE OF LITIGATION.

In the event the Project Company or County receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 25.19. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Project Agreement to be executed and delivered by their duly authorized representatives on the day and year first above written.

[PROJECT COMPANY]

CLACKAMAS COUNTY, OREGON

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Oregon Business Registry #: _____

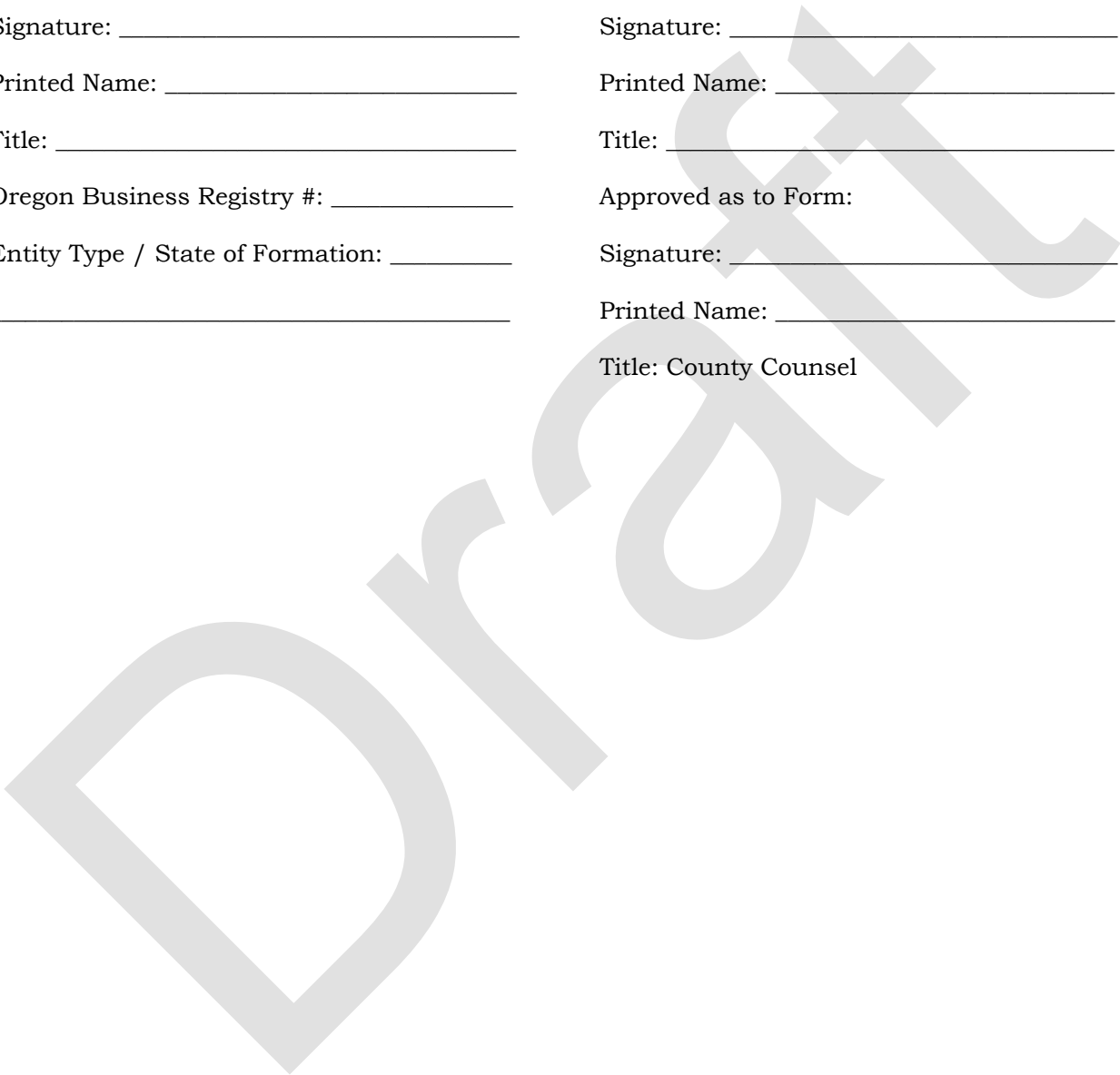
Approved as to Form:

Entity Type / State of Formation: _____

Signature: _____

Printed Name: _____

Title: County Counsel



APPENDICES
TO THE
PROJECT AGREEMENT

FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

BETWEEN

CLACKAMAS COUNTY, OREGON

AND

[_____]

DATED

[____], 2022

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APPENDIX 19

FACILITIES MANAGEMENT CHARGE – RENEWAL COMPONENT PAYMENT SCHEDULE

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APPENDIX 1
SITE-RELATED INFORMATION

APPENDIX 1

SITE-RELATED INFORMATION

1. PROJECT SITE

The Project Site is located in Oregon City, Oregon on the Red Soils Campus between the Development Services Building located at 150 Beaver Creek Road and the Public Services Building located at 2051 Kaen Road. The Project Site's legal description is set forth in Attachment 1A. During the Design-Build Period, the Project Site also includes (1) the area currently occupied by the existing alignment of Kaen Road, (2) the area designated for the proposed Loop Road alignment and (3) Parking Lot "F", as indicated in Attachment 1B. Information disclosed to the Project Company pertaining to the Project Site includes the following:

- (a) [_____] **[NOTE: TO PROPOSERS: To be finalized based on documents included in the RFP Procurement Website. In particular, the Geotechnical Investigation Report, Title Report, Development Services Building site plans and the Red Soils Campus Master Plan will be identified here as well as any other documents relating to the Project Site included in the RFP Procurement Website]**

2. EXCEPTIONS TO TITLE

The following exceptions to title are also exceptions to the representation of the County set forth in Section 2.1(F) (County Ownership Interest in the Project Site) of this Project Agreement:

- (a) Any liens or encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the County;
- (b) Any lien or encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors' or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the County;
- (c) Servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the construction of the Project or the operation of the Project by the Project Company; and
- (d) All easements, liens, encumbrances and other matters of record including without limitation those set forth in the Preliminary Title Report dated as of August 27, 2021 and issued by Fidelity National Title (Reference Document 5).

3. EXISTING FACILITIES AND DEVELOPABLE AREA PLAN

The site plan of Existing Facilities and developable area is described in Attachment 1B.

4. PROJECT SITE PLAN

The Project Company's Project Site plan is described in Attachment 1C.

ATTACHMENT 1A

LEGAL DESCRIPTION OF PROJECT SITE

Lot and Plat Description

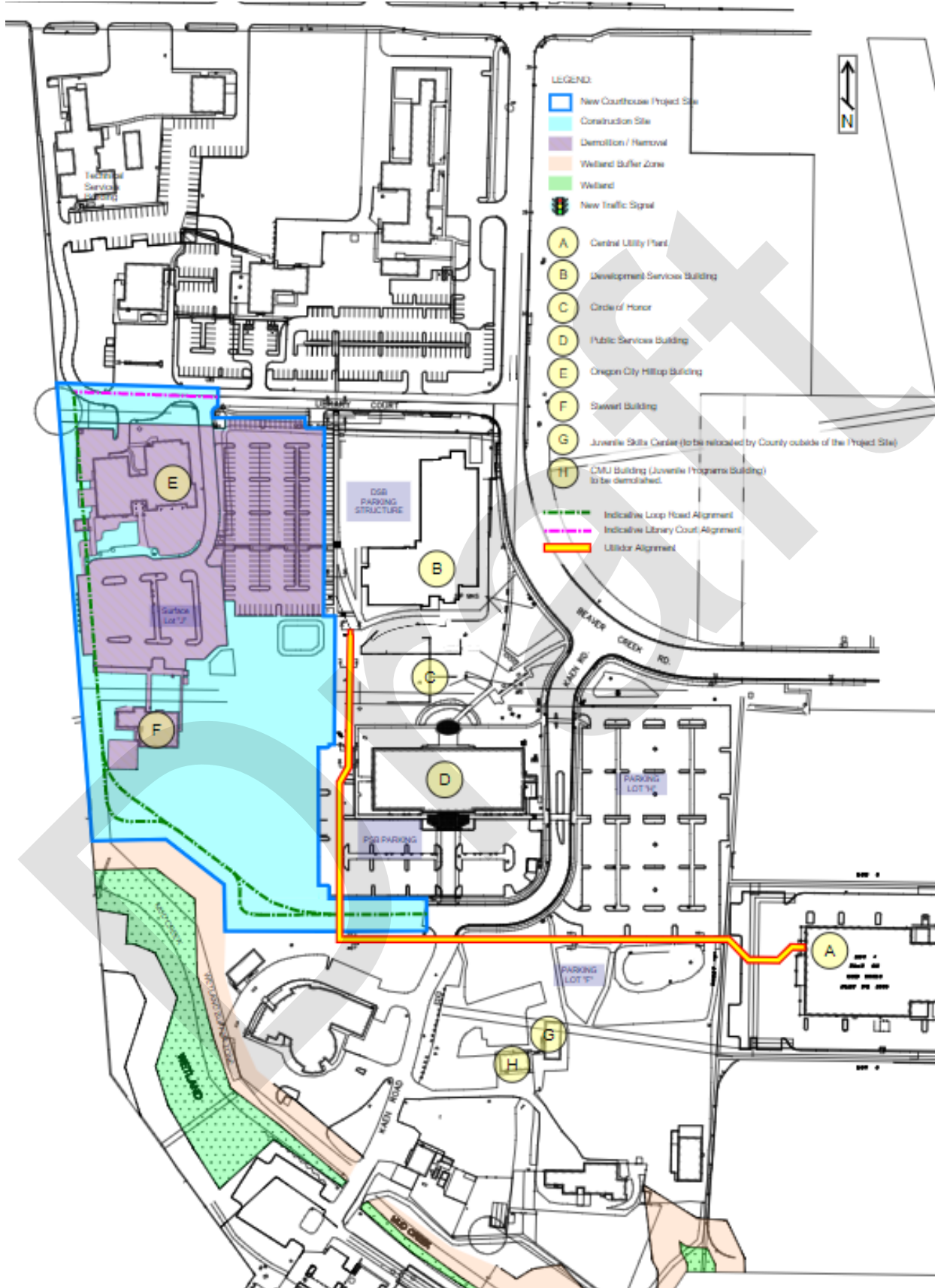
“Tract B” of the “Red Soils” plat as provided in the Samuel N. Vance D. L. C. No. 51 S.W. 1/4 Section 5, S.E. 1/4 Section 6, N.E. 1/4 Section 7, N.W. 1/4 Section 8, T. 3 S., R. 2 E., W. M.

Metes and Bounds Description

Beginning at a point on the west line of that tract conveyed to Clackamas County, a political subdivision of the State of Oregon in Clackamas County, Oregon, in Deed Book 210, Page 9, in the Southwest quarter of Section 5 T.3 S., R.2 E., of the W.M. in Clackamas County, Oregon, which is 670 feet more or less Southerly of the Northwest corner thereof; said point also being South 89°55' West from the extension of the South line of a public road described in Clackamas County Deed Volume 614, Page 228; thence North 89°55' East 265 feet to a point on the South line of said public road; thence Southerly parallel with the West line of aforesaid parcel described in Book 210, Page 9, a distance of 245.6 feet; thence South 89°55' West a distance of 265 feet to the Westerly line of said parcel in Clackamas County Deed Book 210, Page 9; thence Northerly along said west line 246.6 feet to the point of beginning.

ATTACHMENT 1B
SITE PLAN OF EXISTING FACILITIES AND DEVELOPABLE AREA

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ATTACHMENT 1C

PROJECT SITE PLAN

[NOTE TO PROPOSERS: The Project Site Plan submitted in Section 2-1-7 of Package B-1 of the Technical Proposal will be included here as appropriate.]

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APPENDIX 2
GOVERNMENTAL APPROVALS

APPENDIX 2

GOVERNMENTAL APPROVALS

1. PURPOSE

The purpose of this Appendix is to provide a preliminary outline of the Governmental Approvals that are expected to be required for the Project Company’s construction and operation of the Project. The Project Company shall obtain and maintain all Governmental Approvals necessary to construct and operate the Project, irrespective of whether any such Governmental Approval is identified in this Appendix.

2. DESIGN-BUILD GOVERNMENTAL APPROVALS

Table 2-1 sets forth the Design-Build Governmental Approvals that are expected to be required for the construction of the Project. Table 2-2 sets forth the assumed Design-Build Governmental Approval application submittal and approval dates, which the Project Company may utilize to claim an Other Relief Event pursuant to Section 7.6(D) (Relief for Governmental Body Caused Permitting Issuance Delays). The Project Company will be responsible for complying with the terms and conditions contained in the applicable Design-Build Governmental Approvals.

**Table 2-1
Expected Design-Build Governmental Approvals**

| Name of Governmental Approval | Issuing Entity | Permittee / Approval Holder | Application Manager | Information Supply Responsibility | Fee Payment Responsibility |
|--|-------------------------------------|------------------------------------|----------------------------|--|-----------------------------------|
| Land Use Application | City of Oregon City | Project Company | Project Company | Project Company | Project Company |
| Final Site Development Plan | City of Oregon City | Project Company | Project Company | Project Company | Project Company |
| Building Permit | City of Oregon City | Project Company | Project Company | Project Company | Project Company |
| Demolition Permit | City of Oregon City | Project Company | Project Company | Project Company | Project Company |
| Grading and erosion control Permit (public improvement permit) | Department of Environmental Quality | Project Company | Project Company | Project Company | Project Company |
| Stormwater Discharge Permit | Department of Environmental Quality | Project Company | Project Company | Project Company | Project Company |
| Public / Street Tree Removal Permit (may be included as part of the | City of Oregon City | Project Company | Project Company | Project Company | Project Company |

| Name of Governmental Approval | Issuing Entity | Permittee / Approval Holder | Application Manager | Information Supply Responsibility | Fee Payment Responsibility |
|--|---|------------------------------------|----------------------------|--|-----------------------------------|
| Land Use Application) | | | | | |
| Trucking and Over Dimension Vehicle Permits | Oregon Department of Transportation / City of Oregon City | Project Company | Project Company | Project Company | Project Company |
| Construction Hours (Out of Hours) | City of Oregon City | Project Company | Project Company | Project Company | Project Company |

**Table 2-2
Assumed Design-Build Governmental Approval Application Submittal and Approval Dates**

| Name of Governmental Approval | Issuing Entity | Assumed Governmental Approval Application Date (Number of days from the Effective Date) | Assumed Governmental Approval Issuance Date (Number of days from Assumed Governmental Approval Application Date) |
|--|-------------------------------------|--|---|
| Land Use Application | City of Oregon City | | |
| Final Site Development Plan | City of Oregon City | | |
| Building Permit | City of Oregon City | | |
| Demolition Permit | City of Oregon City | | |
| Grading and erosion control Permit (public improvement permit) | Department of Environmental Quality | | |
| Stormwater Discharge Permit | Department of Environmental Quality | | |
| Public / Street Tree Removal Permit (may be included as part of the Land Use Application) | City of Oregon City | | |
| Trucking and Over | Oregon Department of | | |

| Name of Governmental Approval | Issuing Entity | Assumed Governmental Approval Application Date (Number of days from the Effective Date) | Assumed Governmental Approval Issuance Date (Number of days from Assumed Governmental Approval Application Date) |
|--|--------------------------------------|---|--|
| Dimension Vehicle Permits | Transportation / City of Oregon City | | |
| Construction Hours (Out of Hours) | City of Oregon City | | |

[NOTE TO PROPOSERS: Table 2-2 to be completed prior to commercial close based on the Master Project Schedule submitted in Section 2-2-6 in Package B-2.]

3. FACILITIES MANAGEMENT GOVERNMENTAL APPROVALS

As of the Effective Date, there are no Governmental Approvals that are expected to be required during the Facilities Management Period.

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APPENDIX 3
FINANCIAL CLOSE PROCEDURES AND CONDITIONS

APPENDIX 3

FINANCIAL CLOSE PROCEDURES AND CONDITIONS

1. DEFINITIONS AND SECTION REFERENCES

1.1. Definitions. In this Appendix, in addition to the definitions set out in this Project Agreement:

“Benchmark Interest Rate” means the publicly-documented interest rates of each maturity included in the following indices:

(1) **[NOTE TO PROPOSERS: To be based on Selected Proposer’s Financial Model.]**

The Benchmark Interest Rates do not include any additional credit spread, margin or fee components.

“Benchmark Interest Rate Adjustment Date” means the earlier of:

- (1) The Financial Close Deadline;
- (2) The actual time of Financial Close on the Financial Close Date;
- (3) The date of execution of any interest rate hedging instrument by the Project Company; or
- (4) The Bond Pricing Date.

“Benchmark Interest Rate Protection Period” means the period from the Benchmark Interest Rate Protection Start Date to and including the Benchmark Interest Rate Adjustment Date.

“Benchmark Interest Rate Protection Start Date” means [_____]. **[NOTE TO PROPOSERS: To be the date of Benchmark Interest Rate Submittal, as set forth in RFP Section 3.1.]**

“Construction Cost Index” means the 20-city average construction cost index, as published by Engineering News-Record, for which the base year is 1913, or if such publication ceases to be in existence, a comparable index selected by the County and approved by the Project Company, acting reasonably.

“County Conditions Precedent” has the meaning set forth in Section 3.2 of this Appendix.

“Financial Close Termination Sum” means:

- (1) \$500,000; plus
- (2) The lesser of:
 - (a) the Project Company’s reasonable and proper costs (without mark-up for overhead or profit) incurred in performing Design-Build Work and seeking

to achieve Financial Close from the Effective Date through the date of any notice of termination delivered pursuant to this Appendix 3; or

(b) \$500,000.

“Key Financial Event” has the meaning set forth in Section 4.1 of this Appendix.

“Market Disruption Event” has the meaning set forth in Section 4.1 of this Appendix.

“Project Company Condition Precedent” has the meaning set forth in Section 3.1 of this Appendix.

“Proposal Validity Period End Date” means [_____]. **[NOTE TO PROPOSERS: To be 180 days following the Financial Proposal Due Date, as set forth in RFP Section 3.1.]**

1.2. Section References. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections or Articles of this Project Agreement.

2. FINANCIAL CLOSE

2.1. Financial Close Conditions. Financial Close will occur upon:

- (a) Satisfaction (or waiver by the County) of each of the Project Company Conditions Precedent; and
- (b) Satisfaction (or waiver by the Project Company) of each of the County Conditions Precedent.

2.2. Closing Checklist and Timeline. Without limiting or otherwise modifying either party’s obligations under this Project Agreement in respect of Financial Close:

- (a) No later than five Business Days following the Effective Date, the Project Company shall submit to the County for its acceptance, acting reasonably, a closing checklist and timeline identifying all documents, submissions and other actions (including actions of the parties and any required action of a third party) then reasonably anticipated by the Project Company to be necessary to achieve Financial Close by the Financial Close Deadline; and
- (b) The parties shall use all reasonable efforts to deliver, respond to and comment on documents, including draft documents, necessary to satisfy the Financial Close Conditions in conformity with the closing checklist and timeline, as accepted by the County in accordance with Section 2.2.(a) above.

2.3. Certifications. Any matter that must be “certified” by a party under this Appendix shall be certified in writing by an authorized representative of such party and any such written certification shall be in form and substance reasonably acceptable to the party receiving such certification.

2.4. Section References in this Appendix. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections or Articles of this Project Agreement.

3. CONDITIONS PRECEDENT TO FINANCIAL CLOSE

3.1. Project Company Conditions Precedent. The Project Company shall be responsible for satisfying the following conditions precedent to Financial Close (each a “**Project Company Conditions Precedent**”):

- (a) The Senior Financing Agreements, the equity contribution agreements, the Project Contracts and any amendments or supplements thereto, shall be in form and substance reasonably acceptable to the County (such approval only to be capable of being withheld by the County if the relevant document fails to comply with the terms of this Project Agreement, to the extent applicable, or is otherwise materially inconsistent with the relevant term sheet provided in the Proposal, as modified on account of the occurrence of Key Financial Events; and the Project Company shall have provided fully executed versions of each such document to the County that are certified by the Project Company as being true, complete and accurate copies of the originals;
- (b) The Project Company shall have provided the County with a counterpart of the Lenders’ Remedies Agreement and the Project Contractor Collateral Agreements, in each case, (1) executed by an authorized officer of each party thereto other than the County and (2) in the form set forth in the Transaction Forms;
- (c) All conditions precedent to closing and funding the Senior Debt under the Senior Financing Agreements shall have been met (or otherwise waived) and the Project Company shall have provided the County with a certificate evidencing the same;
- (d) The Project Company shall have delivered to the County: (1) not less than five Business Days prior to the anticipated Benchmark Interest Rate Adjustment Date and the anticipated Financial Close Date, (i) an updated unrestricted electronic version of the Initial Base Case Financial Model, which version incorporates any amendments made between the Effective Date and such day, and (ii) the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the financial model and any other documentation necessary or reasonably requested by the County to operate the financial model; and (2) on or before the Financial Close Date, an update to the model audit report previously submitted by the Project Company in its Proposal, which update shall be in compliance with Section 17.2 (Financial Model Updates) of this Project Agreement;
- (e) All representations and warranties of the Project Company under this Project Agreement shall be true and correct in all material respects when made and at the Financial Close Date, and the Project Company shall have delivered to the County a certificate certifying the same;
- (f) On and from the Effective Date through and including the Financial Close Date, the Project Company shall have performed and complied with its material obligations under this Project Agreement that are required to be performed or complied with as of the Financial Close Date, and no Project Company Event of Default (or event that, with the passage of time or the giving of any notice, would become a Project Company Event of Default) shall have occurred and be continuing on the Financial Close Date;
- (g) The Project Company shall have provided the County with insurance binders or copies of certificates of insurance for all Required Insurance required to be in place on or before Financial Close and a certificate certifying compliance with the Insurance Requirements as of Financial Close;

- (h) The Project Company shall have provided the County with such documents and certificates as the County may reasonably request evidencing the organization, existence and good standing of the Project Company, the authorization of the entry by the Project Company into this Project Agreement and the Project Contracts to which it is a party, all in form and substance reasonably satisfactory to the County; and
- (i) The Project Company shall have provided the County with a legal opinion of the Project Company's counsel in form and substance customary for project finance transactions.

3.2. County Conditions Precedent. The County shall be responsible for satisfying the following conditions precedent to Financial Close (each a "**County Conditions Precedent**"):

- (a) All representations and warranties of the County under this Project Agreement shall be true and correct in all material respects when made and, at the Financial Close Date, the County shall have performed and complied with all material covenants and obligations of the County under this Project Agreement to have been performed or complied with as of the Financial Close Date, and the County shall have delivered to the Project Company a certificate certifying to the same;
- (b) The County shall have provided the Project Company and the Senior Lenders with a legal opinion of the County's counsel in form and substance customary for project finance transactions;
- (c) Subject to Section 3.1(b), the County shall have executed and delivered to the Project Company and each other party thereto the Lenders' Remedies Agreement and the Project Contractor Collateral Agreement; and
- (d) The County shall have cooperated with the Project Company in providing disclosure information to the Project Company about the County and shall have provided to the Project Company customary certifications and opinions, including appropriate opinions in connection with the issuance of any Bonds, and executed an agreement with respect to any continuing disclosure requirements that apply to the underwriter of any Senior Debt in accordance with any Applicable Law.

4. KEY FINANCIAL EVENTS AND MARKET DISRUPTION EVENTS

4.1. Definitions of Key Financial Events and Market Disruption Events.

- (a) "**Key Financial Event**" means a fluctuation in the Benchmark Interest Rates during the Benchmark Interest Rate Protection Period that would result in an upward adjustment to the Capital Charge pursuant to Section 11 of more than 10%, or, in the reasonable opinion of the County, is likely to result in an upward adjustment to the Capital Charge of more than 10%.
- (b) "**Market Disruption Event**" means (i) a general banking moratorium has been declared by either federal or New York authorities having jurisdiction and is in force, or (ii) the Benchmark Interest Rates are not available to the market, including for example the applicable Bloomberg screen page is not available or is not publishing such rates and no alternative commercially available source for obtaining such rates at such time has been generally recognized by the financial markets as an accurate and reliable source for the quotation of such rates.

4.2. County Rights with Respect to Key Financial Events. If a Key Financial Event occurs, then the County may, in its discretion, by written notice to the Project Company:

- (a) Terminate this Project Agreement pursuant to Section 5.1; or
- (b) Take any action pursuant to Section 4.3.

4.3. Mitigation of Key Financial Events Prior to Financial Close. If a Key Financial Event has occurred and the County elects to take action pursuant to Section 4.2(b), the County may, in consultation with the Project Company, attempt to mitigate the impact of the event by:

- (a) Increasing the Capital Charge by an amount in excess of ten percent (10%) of the amount of the Capital Charge on the Effective Date;
- (b) Requiring the Project Company to introduce alternative sources of debt or debt structures into its Financial Plan, in which case the County may require the Project Company to use reasonable efforts to conduct a timely, transparent financing competition to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to the Project Company; provided, that the Project Company shall be entitled to recoup from the County the reasonably incurred costs associated with such a funding competition; or
- (c) Taking any other action mutually agreed by the County and the Project Company, including those which may be proposed by the Project Company to mitigate any material adverse change in the Project Company's overall risk profile with respect to the Project.

4.4. Project Company Rights with Respect to Market Disruption Events. If a Market Disruption Event occurs, then the Project Company may, in its discretion, by written notice to the County:

- (a) Terminate this Project Agreement pursuant to Section 5.2; or
- (b) Take any of the following actions:
 - (i) Incorporate alternative sources of debt or debt structures into its Financial Plan, in which case the County may require the Project Company to use reasonable efforts to conduct a timely, transparent financing competition to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to the Project Company; provided, however, that the Project Company shall be entitled to recoup from the County the reasonably incurred costs associated with such a funding competition; or
 - (ii) Take any other action mutually agreed by the County and the Project Company, including those which may be proposed by the Project Company to mitigate any material adverse change in the Project Company's overall risk profile with respect to the Project.

5. TERMINATION PRIOR TO FINANCIAL CLOSE DEADLINE

5.1. County Termination Prior to Financial Close Deadline – Key Financial Events. To the extent that the County makes an election pursuant to Section 4.2(a), then this Project Agreement shall terminate upon 15 days' written notice to the Project Company and, in such

event, the County shall have no right to draw on the Financial Close Security and shall promptly return the Financial Close Security; provided, that the County will suspend its notice of termination, if within 10 days after delivery such notice to the Project Company, the Project Company confirms to the County in writing that:

- (a) The Project Company agrees to limit the relevant increase in the Capital Charge to 10% or less, without any changes in the Term, or any other changes in the Service Fee or other Proposal commitments or terms and conditions of this Project Agreement; and
- (b) The Project Company shall conduct, at its own cost and expense, a timely, transparent process to identify and arrange for the lowest-priced debt financing commercially available on terms reasonably satisfactory to the Project Company, consistent with Section 4.3(b);

and provided, further, that the County's notice of termination shall be suspended for a maximum period equal to the lesser of (1) the period during which the Project Company diligently pursues such debt financing, and (2) 60 days after the date on which the Project Company shall have provided such confirmation to the County that:

- (i) It has been able to complete a successful debt financing competition and provide details of the resulting Service Fee and proposed date for Financial Close; or such debt financing competition has not been successful or
- (ii) Such debt financing competition has not been successful; and

If such debt financing competition has been successful pursuant to item (i) the County shall have a further period of 30 days to decide whether to accept or reject the revised Service Fee and the new proposed Financial Close Date.

If the County does not accept the new proposed Financial Close Date or item (ii) applies then the County shall have no right to draw on the Financial Close Security, shall promptly return the Financial Close Security to the Project Company and the obligations of the parties shall be the same as if the Project Company's election pursuant to this Section 5.1 had not occurred. If the County terminates this Project Agreement pursuant to this Section 5.1 and the Project Company shall have complied with all of its obligations under this Project Agreement, the County shall pay the Project Company the Financial Close Termination Sum within 10 days of such termination.

5.2. Project Company Termination Prior to Financial Close Deadline. The Project Company may terminate this Project Agreement without forfeiting its Financial Close Security if:

- (a) a Key Financial Event occurs and:
 - (i) The County notifies the Project Company that it will not take any action pursuant to Section 4.3;
 - (ii) The County takes action pursuant to Section 4.3 but, after taking into account the effect of such action, the Equity IRR would be less than the Equity IRR would have been had the Key Financial Event not occurred; or
 - (iii) The County does not, within 25 Business Days of receiving a written request from the Project Company, notify the Project Company of its intent to take any action pursuant to Section 4.3; provided, that the Project

Company shall not under such circumstances be required to consummate Financial Close until such period shall have lapsed; or

- (b) the Project Company exercises its termination right under Section 4.4.

Upon such termination, if the Project Company shall have complied with all of its obligations under this Project Agreement, and so long as the County is not disputing in good faith pursuant to Article 18 (Dispute Resolution) whether the Project Company has the right to terminate this Project Agreement, the County shall return to the Project Company the Financial Close Security within 10 days after the County's receipt of notice of such termination and shall also pay the Project Company the Financial Close Termination Sum within such 10 day period.

6. IMPLEMENTATION OF COUNTY AND PROJECT COMPANY ELECTIONS

To the extent that the County makes an election pursuant to Section 4.3 or the Project Company issues a written notice pursuant to Section 5.1, then:

- (a) This Project Agreement will be amended (in a manner agreed between the County and the Project Company) to reflect the relevant action;
- (b) If requested by the Project Company, the County will extend the Financial Close Deadline by such time as is reasonable given the action that the County elected to take; provided that the Project Company extends the expiration date of the Financial Close Security to no earlier than 10 Business Days following the extended Financial Close Deadline; and
- (c) The Project Company will proceed in taking all actions required to achieve Financial Close in accordance with the requirements of this Project Agreement.

7. ACHIEVEMENT OF FINANCIAL CLOSE

7.1. Delivery of Base Case Financial Model. The Project Company shall deliver to the County, on or before the Business Day following Financial Close, an electronic version of the Base Case Financial Model based on the Initial Base Case Financial Model, which version incorporates any amendments to the Initial Base Case Financial Model agreed between the Effective Date and the Financial Close Date (including any revision to the Capital Charge pursuant to Section 11), together with the books and documents setting forth all assumptions, calculations and methodology used in the preparation of the Base Case Financial Model and any other documentation necessary or reasonably requested by the County to operate the Base Case Financial Model. The Base Case Financial Model shall:

- (a) Be prepared by or on behalf of the Project Company in good faith and in accordance with generally accepted standards prevailing for the preparation of similar models in connection with the project financing of major public works projects of a similar value and nature;
- (b) Be audited and verified by an independent recognized model auditor, with a copy of the audit opinion letter provided to the County;
- (c) Be the financial model provided to the Senior Lenders for Financial Close purposes and used as the basis for the decision by the Senior Lenders to enter into the Senior Financing Agreements;

- (d) Fairly disclose all material cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Project Agreement; and
- (e) Be treated as Confidential Information in accordance with Section 25.12 (Confidentiality) of this Project Agreement.

7.2. Required Insurance Verifications. Except as otherwise specified in Appendix 10 (Insurance Requirements), The Project Company shall deliver to the County, on or before the Business Day following Financial Close, insurance binders or certificates of insurance from the relevant issuers or their authorized agents showing that the Required Insurance to be in place on or before Financial Close under Appendix 10 (Insurance Requirements) of this Project Agreement has been obtained and that the relevant policies are in full force and effect.

7.3. Delivery of Proposed Financial Close Amendment. The Project Company shall deliver to the County, on or before the Business Day following Financial Close, proposed revisions to this Project Agreement to reflect any adjustments or amendments which have been accepted or agreed, as applicable, by the County and the Project Company in accordance with Section 11 (the "**Financial Close Amendment**").

7.4. Return of Financial Security and Execution of Financial Close Amendments. Upon the satisfaction of each of the Financial Close Conditions, delivery of confirmation of the Required Insurance in accordance with Section 7.2 and agreement among the parties, acting reasonably, as to any Financial Close Amendment, (1) the County and the Project Company shall execute a Contract Administration Memorandum specifying the Financial Close Date, (2) the County shall return the Financial Close Security to the Project Company within 5 Business Days, and (3) the parties shall enter into the Financial Close Amendment.

8. FAILURE TO ACHIEVE FINANCIAL CLOSE BY FINANCIAL CLOSE DEADLINE

8.1. County Termination for Failure to Achieve Financial Close by the Financial Close Deadline. Provided that (1) no Key Financial Event or Market Disruption Event exists or (2) this Project Agreement has not been terminated pursuant to Section 5, if each County Conditions Precedent (other than the conditions specified in Section 3.2(c) and the execution of any agreement under Section 3.2(d)) has been satisfied and any Project Company Conditions Precedent is not satisfied or waived in writing by the County on or before the Financial Close Deadline, as such date may be extended hereunder due to the occurrence of any event described in Section 6.2(A) (Financial Close Deadline Defined) of this Project Agreement that permits an extension of the Financial Close Deadline, the County shall have the right, on the Financial Close Deadline and anytime thereafter, to:

- (a) Terminate this Project Agreement by written notice to the Project Company with immediate effect; and
- (b) Draw and retain the full amount of the Financial Close Security as the sole remedy of the County against the Project Company hereunder.

8.2. Project Company Termination for Failure to Achieve Financial Close Deadline. If each Project Company Conditions Precedent (other than the conditions specified in Sections 3.1(c) and 3.1(e) (in the case of Section 3.1(e), to the extent such Section requires that representations and warranties be correct as at the Financial Close Date; provided that such representations and warranties are correct as at the date when the Project Company exercises its rights under this Section 8.2)) has been satisfied and any County Conditions Precedent is not satisfied (unless otherwise agreed by the parties) on or before the Financial Close Deadline, then the Project Company shall have the right to terminate this Project Agreement by written notice

to the County with immediate effect and the County shall have no right to draw on the Financial Close Security. Within 10 days following receipt of such notice in accordance with this Project Agreement, the County shall return the Financial Close Security to the Project Company and shall pay the Project Company the Financial Close Termination Sum.

9. COUNTY CONVENIENCE TERMINATION RIGHT PRIOR TO FINANCIAL CLOSE

The County shall have the right of Termination for Convenience in accordance with Section 22.2(A) (County Termination Rights) of this Project Agreement at any time during the Financing Period. Within 10 days following the exercise by the County of such right, the County shall return the Financial Close Security to the Project Company and shall pay the Project Company the Financial Close Termination Sum.

10. POST TERMINATION OBLIGATIONS

If this Project Agreement terminates pursuant to this Appendix, neither party shall have any obligation or liability to the other party, except:

- (a) Any County entitlement to draw on the Financial Close Security as and to the extent provided in this Appendix;
- (b) Any obligation of the County to return the Financial Close Security and pay the Financial Close Termination Sum;
- (c) In respect of any antecedent breach of this Project Agreement (except for any breach contemplated in Section 8.1 or Section 8.2); and
- (d) As provided in Section 3.2 (Survival) of this Project Agreement.

11. REVISION OF THE CAPITAL CHARGE PRIOR TO THE FINANCIAL CLOSE DATE

11.1. Changes in Financing Terms. To the extent that the Project Company makes changes to the Benchmark Interest Rate index used or changes in the debt structure (e.g., fixed or variable rate, bank financing or bond financing) prior to Financial Close that constitute a deviation from the assumptions in the Initial Base Case Financial Model, the parties agree that, except as may be approved by the County (in its discretion), the County shall provide Benchmark Interest Rate protection in accordance with Section 11.2, on the basis of the Benchmark Interest Rates and debt structure included in the Initial Base Case Financial Model.

11.2. Benchmark Interest Rate Protection Changes. Benchmark Interest Rate protection changes in any Benchmark Interest Rate shall have the following effect:

- (a) Subject to the County's rights to terminate under this Appendix, the County will bear the risk and have the benefit of 100% of the impact (either positive or negative) on the Capital Charge of changes in any Benchmark Interest Rate for the period beginning at [_____] a.m. (local time Portland, OR) on the Benchmark Interest Rate Protection Start Date and ending on the Benchmark Interest Rate Adjustment Date.
- (b) The interest rate adjustment will be based on the movement, if any, in the applicable Benchmark Interest Rate.

- (c) On the Financial Close Date, the Project Company shall adjust the Initial Base Case Financial Model according to the terms of Section 12 (Capital Charge Update Protocol).

11.3. Design-Build Contract Price Changes.

- (a) If Financial Close (a) occurs after the Proposal Validity Period End Date, and (b) the Project Company used reasonable commercial efforts to (i) achieve the Project Company Conditions Precedent and (ii) cooperate with and assist the County in achieving the County Conditions Precedent, the Capital Charge shall be adjusted to reflect the adjustment to the Design-Build Contract Price calculated in accordance with subsection (b) of this Section.
- (b) If the Capital Charge is required to be adjusted pursuant to subsection (a) of this Section, then:
 - (i) The Design-Build Contract Price shall be multiplied by a fraction, (i) the numerator of which is the most recently published Construction Cost Index, as of the Financial Close Date; and (ii) the denominator of which is the Construction Cost Index for the month in which the Proposal Validity Period End Date occurs; and
 - (ii) On the Financial Close Date, the Project Company shall adjust the Initial Base Case Financial Model according to the terms of Section 12 (Capital Charge Update Protocol).

11.4. Independent Building Expert Cost Adjustment.

- (a) If the Project Company's share of the Independent Building Expert costs as determined prior to the Financial Close Date differs from the Independent Building Expert allowance contained in the Initial Base Case Financial Model (\$750,000), the Capital Charge shall be adjusted to reflect the Project Company's actual share of the Independent Building Expert costs as established by the Independent Building Expert Agreement.
- (b) On the Financial Close Date, the Project Company shall adjust the Initial Base Case Financial Model according to the terms of Section 12 (Capital Charge Update Protocol).

12. CAPITAL CHARGE UPDATE PROTOCOL

The parties will use the Initial Base Case Financial Model to calculate the changes under Section 11, positive or negative, in the Capital Charge. The parties shall make such calculation and produce the Base Case Financial Model in the following manner:

- (a) The Initial Base Case Financial Model shall be run to solve for the Capital Charge, inputting only the changes, if any, in financial terms recognizable under Section 11.3 of this Appendix, and holding the Initial Base Case Equity IRR constant.
- (b) The Initial Base Case Financial Model as updated to incorporate any changes resulting from subsection (a) of this Section shall be run to solve for the Capital Charge, inputting only the changes, if any, in financial terms recognizable under Section 11.4 of this Appendix, and holding the Initial Base Case Equity IRR constant.

- (c) As a means of mitigating against the negative impact of any changes in Benchmark Interest Rates for any Bonds or Bank Debt which is part of the Project Company's financing, as applicable, on the minimum prevailing debt covenants established in the Initial Base Case Financial Model, the Project Company will optimize, to the extent possible, the maturities and make consequential amendments to the Initial Base Case Financial Model as updated to incorporate any changes resulting from subsections (a) and (b) of this Section.
- (d) The Initial Base Case Financial Model as updated to incorporate any changes resulting from subsections (a), (b) and (c) of this Section, shall be run to solve for the lowest possible Capital Charge, inputting only the changes, if any, in Benchmark Interest Rates as described in Section 11.2, and holding the Initial Base Case Equity IRR constant. As part of this process it will be ensured that the minimum prevailing debt covenants in the Initial Base Case Financial Model are not breached.
- (e) The Capital Charge resulting from the calculations in subsection (d) of this Section shall be the final Capital Charge for the purposes of Section 16.3 (Capital Charge) of this Project Agreement.
- (f) The interim financial model resulting from the calculations in subsection (d) of this Section above shall be adjusted to reflect all other changes in terms of financing between those assumed and indicated in the Initial Base Case Financial Model and those set out in the Senior Financing Agreements as obtained on the Financial Close Date. The resulting financial model shall be the Base Case Financial Model, and the resulting Equity IRR shall be the Base Case Equity IRR.
- (g) Notwithstanding anything in this Appendix to the contrary and without limiting Section 11.1, the Project Company shall bear the full risk of changes to any financing terms not explicitly identified within this Section 12.

APPENDIX 4
CENTRAL UTILITY PLANT DESCRIPTION AND ASSUMED OPERATING PERFORMANCE
PARAMETERS

APPENDIX 4

**CENTRAL UTILITY PLANT DESCRIPTION AND ASSUMED OPERATING PERFORMANCE
PARAMETERS**

[NOTE TO PROPOSERS: This appendix is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 4A

CUP EQUIPMENT SCHEDULE

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 4B

PSB EQUIPMENT SCHEDULE

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 4C

AS-BUILT UTILIDOR ALIGNMENT

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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APPENDIX 5
**GENERAL DESIGN, CONSTRUCTION AND FACILITIES MANAGEMENT TECHNICAL
REQUIREMENTS**

APPENDIX 5

**GENERAL DESIGN, CONSTRUCTION AND FACILITIES MANAGEMENT TECHNICAL
REQUIREMENTS**

[NOTE TO PROPOSERS: This appendix is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 5A

COURTHOUSE EQUIPMENT AND SYSTEMS RESPONSIBILITY MATRIX

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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APPENDIX 6
DESIGN AND CONSTRUCTION STANDARDS

APPENDIX 6

DESIGN AND CONSTRUCTION STANDARDS

[NOTE TO PROPOSERS: This appendix is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 6A

COURTHOUSE PROGRAM AND ROOM DATA SHEETS

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 6B

PRELIMINARY LIST OF COUNTY MOVEABLE FURNITURE, FIXTURES AND EQUIPMENT

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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ATTACHMENT 6C

PRELIMINARY LIST OF STATE MOVEABLE FURNITURE, FIXTURES AND EQUIPMENT

[NOTE TO PROPOSERS: This attachment is provided as a separate document but will ultimately be inserted here.]

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APPENDIX 7
DESIGN AND CONSTRUCTION PROPOSAL EXTRACTS

APPENDIX 7

DESIGN AND CONSTRUCTION PROPOSAL EXTRACTS

[NOTE TO PROPOSERS: Technical Proposal extracts from package B-1 and B-2 relating to design and construction will be included here.]

1. PURPOSE

This Appendix includes the portion of the Project Company's proposal pertaining to the design and construction of the Project, including clarifications, as negotiated by the parties. The Design and Construction Standards along with the Design and Construction Proposal Extracts, constitute the binding Design and Construction Requirements for the Project. Nothing in these Design and Construction Proposal Extracts shall relieve the Project Company of its obligation to achieve Occupancy Readiness in accordance with Article 7 (Design and Construction) and Article 8 (Occupancy Readiness).

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ATTACHMENT 7A

PROJECT SCHEDULE

[NOTE TO PROPOSERS: Master Project Schedule submitted in Section 2-2-6 in Package B-2 will be included here.]

ATTACHMENT 7B

PRELIMINARY DESIGN-BUILD HEALTH AND SAFETY PLAN

[NOTE TO PROPOSERS: Preliminary Design-Build Health and Safety Plan submitted in Section 2-2-7 in Package B-2 will be included here.]

ATTACHMENT 7C

PRELIMINARY DESIGN-BUILD COMMUNICATION PLAN

[NOTE TO PROPOSERS: Preliminary Design-Build Communication Plan submitted in Section 2-2-8 in Package B-2 will be included here.]

ATTACHMENT 7D

PRELIMINARY DESIGN-BUILD QUALITY MANAGEMENT PLAN

[NOTE TO PROPOSERS: Preliminary Design-Build Quality Management Plan submitted in Section 2-2-9 in Package B-2 will be included here.]

ATTACHMENT 7E

PRELIMINARY COMMISSIONING PLAN

[NOTE TO PROPOSERS: Preliminary Commissioning Plan submitted in Section 2-2-10 in Package B-2 will be included here.]

ATTACHMENT 7F

DESIGN VALIDATION PACKAGE

[NOTE TO PROPOSERS: Any advancement of the design of the Project between the Technical Proposal Submittal Date and Effective Date will be incorporated here. This Attachment 7F will be deleted if there is no advancement during this time period.]

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APPENDIX 8
FACILITIES MANAGEMENT STANDARDS

APPENDIX 8

FACILITIES MANAGEMENT STANDARDS

[NOTE TO PROPOSERS: This appendix is provided as a separate document but will ultimately be inserted here.]

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APPENDIX 9
FACILITIES MANAGEMENT PROPOSAL EXTRACTS

APPENDIX 9

FACILITIES MANAGEMENT PROPOSAL EXTRACTS

[NOTE TO PROPOSERS: Technical Proposal extracts from Package B-3 relating to facilities management will be included here.]

1. PURPOSE

This Appendix includes the portion of the Project Company's proposal pertaining to the facilities management of the Project, including clarifications, as negotiated by the parties. The Facilities Management Standards along with the Facilities Management Proposal Extracts, constitute the binding Facilities Management Requirements for the Project. Nothing in these Facilities Management Proposal Extracts shall relieve the Project Company from the imposition of Deductions in accordance with Appendix 11 (Deductions).

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ATTACHMENT 9A

PRELIMINARY MASTER MAINTENANCE PLAN

[NOTE TO PROPOSERS: Preliminary Master Maintenance Plan submitted in Section 2-3-9 in Package B-3 will be included here.]

ATTACHMENT 9B

PRELIMINARY RENEWAL WORK PLAN

[NOTE TO PROPOSERS: Preliminary Renewal Work Plan submitted in Section 2-3-10 in Package B-3 will be included here.]

ATTACHMENT 9C

PRELIMINARY FACILITIES MANAGEMENT HEALTH AND SAFETY PLAN

[NOTE TO PROPOSERS: Preliminary Facilities Management Health and Safety Plan submitted in Section 2-3-11 in Package B-3 will be included here.]

ATTACHMENT 9D

PRELIMINARY FACILITIES MANAGEMENT COMMUNICATION PLAN

**[NOTE TO PROPOSERS: Preliminary Facilities Management Communication Plan
submitted in Section 2-3-12 in Package B-3 will be included here.]**

ATTACHMENT 9E

PRELIMINARY FACILITIES MANAGEMENT EMERGENCY MANAGEMENT PLAN

[NOTE TO PROPOSERS: Preliminary Facilities Management Emergency Management Plan submitted in Section 2-3-13 in Package B-3 will be included here.]

APPENDIX 10
INSURANCE REQUIREMENTS

APPENDIX 10

INSURANCE REQUIREMENTS

1. DEFINITIONS AND SECTION REFERENCES

1.1. Definitions. In this Appendix, in addition to the definitions set out in this Project Agreement:

“County Insured Parties” means the County Indemnitees other than the advisors, contractors and subcontractors (of any tier) of either the County or the State.

“Qualified Insurer” has the meaning set forth in Section 5.1(a)(3).

1.2. Section References. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections or Articles of this Project Agreement.

2. INSURANCE DURING THE DESIGN-BUILD PERIOD

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, the following policies of insurance, in accordance with the terms of this Section. Insurance certificates, including relevant endorsements, or other evidence of insurance as may be specified by the County shall be delivered to the County promptly when received by the Project Company. Unless otherwise specified in this Appendix, each policy shall be obtained and be effective prior to the performance of any work or commencement of any activity intended to be insured by each policy. At the Project Company’s option, the Project Company may provide any or all of the following insurance policies by means of an owner or contractor controlled insurance program.

2.1. Builder’s Risk. Builder’s risk course of construction insurance policy, covering all Design-Build Work (including testing and commissioning) at the Project Site, while in transit, and at any temporary off-site storage location; all materials, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project or incidental to the construction; all temporary structures at the Project Site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project. The builder’s risk policy shall:

- (a) be maintained until the Occupancy Readiness Date;
- (b) be provided on a full replacement cost basis in an amount not less than the Full Insurable Value (as defined in Section 4.1) of the Project;
- (c) be written on an “all risk” policy form basis, including coverage for the perils of equipment breakdown, flood, water intrusion, earth movement, collapse and terrorism, and subject to aggregate sublimits of not less than \$25,000,000 for flood and \$100,000,000 for earth movement;
- (d) include London Engineering Group (LEG) 3 endorsement or equivalent;
- (e) include delay in start-up coverage for the Project Company and Senior Lenders for not less than 180 days of loss of revenue and payment of debt service, with a deductible period not to exceed 30 days;

- (f) list the Project Company, Design-Builder and all Subcontractor's performing work on the Project Site as named insureds;
- (g) list the County, the County Insured Parties and the Senior Lenders as additional named insureds; and
- (h) name the Senior Lenders as first loss payee, as their interests may appear.

2.2. Property. "All risk" property insurance on a replacement cost basis (not subject to coinsurance) for the Full Insurable Value of all Moveable Furniture, Fixtures and Equipment that is placed on the Project Site by the Project Company. Such insurance shall:

- (a) provide coverage for the perils of theft, vandalism and terrorism; and
- (b) provide coverage for the perils of flood, water damage and earth movement.

2.3. Professional Indemnity Insurance. Protective professional indemnity insurance shall be obtained and kept in force as of the Financial Close Date and shall:

- (a) be in an amount not less than \$10,000,000 per claim and in the aggregate and dedicated to the Project;
- (b) have coverage for rectification of design errors discovered prior to the Occupancy Readiness Date;
- (c) have a coverage period of not less than 10 years, commencing on the date that construction activities begin on the Project Site; and
- (d) have a retroactive date effective no later than the commencement of any design or professional activities.

2.4. Professional Liability Insurance. The Architect and other professional consultants to the Project Company shall obtain and keep in force professional liability insurance in an amount not less than \$5,000,000 per claim and annual aggregate. Such insurance shall include coverage for all prior acts and remain in force for no less than 10 years following completion of the Project. The Architect shall require its subconsultants to provide such coverage in an amount appropriate to the exposure to loss, but not less than \$1,000,000 per claim and annual aggregate. Such insurance shall provide coverage for all prior acts and remain in force for no less than three years following completion of the Project. Each professional liability policy shall not include any exclusionary language relative to design-build joint ventures or partnerships or otherwise invalidate or limit coverage available for losses arising out of the Project.

2.5. Commercial General Liability. The Project Company, the Design-Builder, and the Subcontractors performing Design-Build Work shall provide and keep in force commercial general liability insurance with general aggregate limits dedicated to the Project, on the latest ISO Form CG 00 01 or equivalent reasonably acceptable to County. Coverage may be provided in the form of a controlled insurance program. Such coverage shall be maintained for a period of not less than 10 years following the Occupancy Readiness Date or the Termination Date, whichever occurs first. This insurance shall:

- (a) provide limits to Project Company and Design-Builder of not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, and \$4,000,000 products/completed operations aggregate dedicated to the Project;

- (b) provide minimum limits to Subcontractors appropriate to their exposure to loss, but not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products/completed operations aggregate;
- (c) apply on an occurrence basis;
- (d) provide defense in addition to policy limits;
- (e) provide the broadest available coverage for damage: (i) to that particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or (ii) to that particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it; or (iii) "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard" (i.e., exclusions in Section 2. j(5), j(6), and (l) of the CG 00 01 policy form);
- (f) apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the policy limits of liability;
- (g) not include limitation or exclusion of coverage for suits between the insureds and each other, or any other insureds or additional insureds;
- (h) name the County, County Insured Parties and Senior Lenders as additional insureds; and
- (i) include a duty to defend additional insureds and shall state that the coverage afforded to the additional insureds is primary and noncontributory to any other insurance maintained by the additional insureds.

2.6. Commercial/Business Auto Liability. The Project Company, the Design-Builder and its Subcontractors shall provide and keep in force an auto liability insurance policy on a current ISO Form CA 00 01 covering liability arising from the ownership, maintenance or use of any auto, including owned, hired or non-owned autos, assigned to or used in connection with the construction of the Project. Such coverage shall:

- (a) cover and trailers or semi-trailers, including any machinery or apparatus attached thereto, including loading and unloading;
- (b) provide limits to the Project Company, the Design-Builder and Subcontractors of not less than \$1,000,000 per accident;
- (c) in the event that any covered automobile will be used to transport hazardous materials, provide FMCSA Form MCS 90, and the applicable policy shall be endorsed with ISO form CA 99 48 for the operator of the automobile;
- (d) name any entity operating autos on behalf of the Project Company the Design-Builder or a Subcontractor and in connection with the Project as named insureds;
- (e) name the County, County Insured Parties and Senior Lenders as additional insureds; and

- (f) include a duty to defend additional insureds and shall state that the coverage afforded to the additional insureds is primary and noncontributory to any other insurance maintained by the additional insureds.

2.7. Workers' Compensation. The Project Company, the Design-Builder and its Subcontractors shall provide and keep in force workers' compensation insurance (including, if applicable, coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act). Coverage may be provided in the form of a controlled insurance program. Such insurance shall contain a waiver of right of recovery (subrogation) to the benefit of the County, County Insured Parties and the Senior Lenders. The insurance shall (a) provide limits required by the applicable workers' compensation statute and contain an "other states endorsement" if applicable.

2.8. Employers' Liability. The Project Company, the Design-Builder and its Subcontractors shall provide and keep in force employer's liability insurance having coverage limits of not less than \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit). The minimum limits may be satisfied with a combination of primary employers' liability and excess liability insurance. Coverage may be provided in the form of a controlled insurance program. Such insurance shall contain a waiver of right of recovery (subrogation) to the benefit of the County, the County Insured Parties and the Senior Lenders.

2.9. Contractors Pollution Liability. The Project Company or the Design-Builder shall provide and keep in force contractors pollution liability insurance policy (including mold coverage) applicable to claims arising out of the Project. Such coverage shall be maintained (by renewal or extended completed operations period) for a period of not less than 10 years following the Occupancy Readiness Date or the Termination Date, whichever occurs first. This coverage shall:

- (a) be written on an occurrence form with limits of not less than \$10,000,000 per occurrence and a \$10,000,000 project aggregate limit, covering liability due to pollution caused by or exacerbated by construction activities, including mold;
- (b) provide limits to the Design-Builder of not less than \$10,000,000 per occurrence/claim;
- (c) be written on an occurrence basis if available;
- (d) name the County, County Insured Parties and Senior Lenders as additional insureds; and
- (e) may be written on a wrap-up basis including coverage for Subcontractors.

2.10. Aircraft Liability Insurance. Should aircraft be utilized in connection with the Project, the operator of such aircraft shall provide aircraft liability insurance, in addition to the required regulatory and license documents. This insurance shall:

- (a) provide limits of not less than \$5,000,000 for operation of unmanned aircraft/drones;
- (b) name the County, County Insured Parties and Senior Lenders as additional insureds; and
- (c) provide limits of not less than \$25,000,000 for operation of manned aircraft.

2.11. Contractors Tools and Equipment. The Project Company and its Subcontractors shall obtain and keep in force whatever insurance the Project Company deems necessary for protection against loss of owned, rented, or borrowed capital equipment and tools, including, but not limited to, any tools, equipment, scaffolding, trailers, cranes, towers, and forms owned, rented, or borrowed by the Project Company or its Subcontractors.

2.12. Prefabricator's Property Insurance. If applicable to the Project, the Project Company shall obtain and keep in force, or cause to be obtained and kept in force, property insurance to protect insureds against damage and loss to Design-Build Work fabricated or assembled at a fabrication site, prior to delivery to the Project Site. Such property insurance shall cover all physical loss and damage to the Design-Build Work including damage or loss incurred during: (a) performance and/or storage of Design-Build Work at the fabrication site, and (b) transportation of Design-Build Work from the fabrication site to the Project Site.

2.13. Excess/Umbrella Liability. Provide and keep in force excess or umbrella liability insurance with coverage at least as broad as the general liability, automobile liability, and employer's liability insurance required herein. Coverage may be provided in the form of a controlled insurance program. Such coverage shall be maintained for a period of not less than 10 years following the Occupancy Readiness Date or the Termination Date, whichever occurs first. This insurance shall:

- (a) provide limits to the Project Company and the Design-Builder of not less than \$100,000,000 per occurrence, \$100,000,000 aggregate;
- (b) provide limits to the Subcontractors appropriate to the exposure to loss, but not less than \$1,000,000 per occurrence, \$1,000,000 aggregate;
- (c) shall afford insured status to all individuals and entities required to be insureds on the underlying insurance, to the same extent as the underlying insurance; and
- (d) include a duty to defend additional insureds and shall state that the coverage afforded to the additional insureds is primary and noncontributory to any other insurance maintained by the additional insureds.

3. INSURANCE DURING THE FACILITIES MANAGEMENT PERIOD

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Facilities Management Period the following policies of insurance, in accordance with the terms of this Section. Insurance certificates or other evidence of insurance as may be specified by the County shall be delivered to the County promptly when received by the Project Company.

3.1. Property. "All risk" property insurance on a replacement cost basis (not subject to coinsurance) for the Full Insurable Value insuring all buildings, improvements, furnishings (including all Moveable Furniture, Fixtures and Equipment) and equipment that are built or placed on the Project Site by the Project Company. Such insurance shall:

- (a) provide coverage for business interruption and soft costs, as further described in Section 3.3;
- (b) provide coverage for the perils of theft, vandalism and terrorism;

- (c) provide coverage for the perils of flood, water damage and earth movement, with sublimits of not less than \$25,000,000 for flood and \$100,000,000 for earth movement;
- (d) provide coverage for expediting expense;
- (e) list the Project Company as the named insured;
- (f) name the Senior Lenders as first loss payee, as their interests may appear;
- (g) list the Facilities Manager, County, County Insured Parties and Senior Lenders as additional named insureds; and
- (h) provide ordinance or law coverage with no sublimit for the undamaged portion of the building and not less than \$10,000,000 for demolition and increased cost of repair or replacement.

3.2. Equipment Breakdown. Equipment breakdown insurance with limits of liability of not less than \$10,000,000 per loss, insuring covered equipment that are in use or connected and ready for use and are located on the Project Site, and including coverage for business interruption and soft costs as further described in Section 3.3. Such insurance shall provide coverage to the Project Company, Facilities Manager, County, County Insured Parties and Senior Lenders (who should also have first loss payee status) as their interest may appear in covered property.

3.3. Business Interruption Insurance. Business interruption coverage for loss of anticipated revenue including debt servicing and economic additional expenditures necessarily and reasonably incurred for the purpose of avoiding or reducing loss of revenue of the Project Company arising from loss or damage covered by property damage or equipment breakdown insurances effected in accordance with Sections 3.1 and 3.2 with a period of indemnity of twelve months after a 30 day deductible period. Such insurance shall:

- (a) provide coverage for extra and expediting expenses with a sublimit of not less than \$5,000,000;
- (b) provide coverage for changes in ordinance or law with a sublimit of not less than \$2,000,000;
- (c) provide coverage for utility service interruptions with a sublimit of not less than \$5,000,000;
- (d) provide coverage for Project Company computer equipment and data restoration expense with a sublimit of not less than \$2,000,000;
- (e) list the Project Company and Senior Lenders as named insured; and
- (f) list the Senior Lenders as first lost payee.

3.4. Commercial General Liability. The Project Company, the Facilities Manager and its Subcontractors shall provide and keep in force commercial general liability insurance on the latest version of ISO Form CG 00 01, or equivalent reasonably acceptable to the County. Such insurance shall:

- (a) provide limits of not less than limits of \$1,000,000 per occurrence, \$1,000,000 aggregate for products/completed operations and \$2,000,000 general aggregate for other than products/completed operations;
- (b) apply on an occurrence basis;
- (c) provide defense in addition to policy limits;
- (d) apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the policy limits of liability;
- (e) not include limitation or exclusion of coverage for suits between the insureds and each other, or any other insureds or additional insureds;
- (f) list the County, County Insured Parties and Senior Lenders as additional insured; and
- (g) include a duty to defend additional insureds and shall state that the coverage afforded to the additional insureds is primary and noncontributory to any other insurance maintained by the additional insureds.

3.5. Commercial/Business Auto Liability. The Project Company, Facilities Manager and Subcontractors shall provide and keep in force an auto liability insurance policy on a current ISO Form CA 00 01 covering liability arising from the ownership, maintenance or use of any auto, including owned, hired or non-owned autos, assigned to or used in connection with the construction of the Project. Such coverage shall:

- (a) cover and trailers or semi-trailers, including any machinery or apparatus attached thereto, including loading and unloading;
- (b) provide limits to the Project Company, the Facilities Manager and Subcontractors of not less than \$1,000,000 per accident;
- (c) in the event that any covered automobile will be used to transport hazardous materials, provide FMCSA Form MCS 90, and the applicable policy shall be endorsed with ISO form CA 99 48 for the operator of the automobile;
- (d) name any entity operating autos on behalf of the Project Company the Facilities Manager or a Subcontractor and in connection with the Project as named insureds;
- (e) name the County, County Insured Parties and Senior Lenders as additional insureds; and
- (f) include a duty to defend additional insureds and shall state that the coverage afforded to the additional insureds is primary and noncontributory to any other insurance maintained by the additional insureds.

3.6. Workers' Compensation. The Project Company, the Facilities Manager and its Subcontractors shall provide and keep in force workers' compensation insurance (including, if applicable, coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act). Coverage may be provided in the form of a controlled insurance program. Such insurance shall contain a waiver of right of recovery (subrogation) to the benefit of the County, County

Insured Parties and the Senior Lenders. The insurance shall (a) provide limits required by the applicable workers' compensation statute and contain an "other states endorsement" if applicable.

3.7. Employers' Liability. The Project Company, the Facilities Manager and its Subcontractors shall provide and keep in force employer's liability insurance having coverage limits of not less than \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit). The minimum limits may be satisfied with a combination of primary employers' liability and excess liability insurance. Coverage may be provided in the form of a controlled insurance program. Such insurance shall contain a waiver of right of recovery (subrogation) to the benefit of the County, the County Insured Parties and the Senior Lenders.

3.8. Excess/Umbrella Liability. The Project Company shall provide and keep in force excess or umbrella liability insurance with coverage at least as broad as the general liability, automobile liability, and employer's liability insurance required herein. Coverage may be provided in the form of a controlled insurance program. Such coverage shall be maintained for a period of not less than 10 years following the Termination Date, whichever occurs first. This insurance shall:

- (a) provide limits to the Project Company and the Facilities Manager of not less than \$25,000,000 per occurrence, \$25,000,000 aggregate;
- (b) provide limits to the Subcontractors appropriate to the exposure to loss, but not less than \$1,000,000 per occurrence, \$1,000,000 aggregate;
- (c) shall afford insured status to all individuals and entities required to be insureds on the underlying insurance, to the same extent as the underlying insurance; and
- (d) include a duty to defend additional insureds and shall state that the coverage afforded to the additional insureds is primary and noncontributory to any other insurance maintained by the additional insureds.

3.9. Garagekeepers Insurance. Garagekeepers legal liability for autos situated in the New Courthouse's secured parking and under the care, custody or control of the Project Company, Facilities Manager and their Subcontractors. The minimum limit shall be not less than \$1,000,000 for each loss. The County, County Insured Parties and Senior Lenders shall be named as additional insureds.

3.10. Pollution Legal Liability. Pollution legal liability insurance, covering third-party bodily injury and property damage and remediation costs for pollution conditions that manifest subsequent to the commencement of the Facilities Management Period. The insurance shall:

- (a) provide limits not less than \$10,000,000 per claim and annual aggregate;
- (b) include coverage for mold, other airborne pollutants and Legionella; and
- (c) include the Project Company, Facilities Manager, County, County Insured Parties, and Senior Lenders as named insureds.

3.11. Directors and Officers. Directors and officers legal liability and corporate indemnification insurance providing coverage for any one occurrence or claim of not less than \$5,000,000.

3.12. Employee Dishonesty. Employee theft (crime) insurance against the fraudulent/dishonest acts of employees of the Project Company and the Facilities Manager, including additional coverage for inside the premises – theft of money and securities and outside the premises, money orders and counterfeit paper currency, forgery or alteration, computer fraud and funds transfer fraud, expenses incurred to establish amount of covered loss, and credit, debit or charge card forgery with coverage for any one occurrence or claim of not less than \$1,000,000. This coverage shall include Clients coverage and loss resulting from impersonation fraud (social engineering). The Senior Lenders shall be listed as the first loss payee.

3.13. Other. Any other form of insurance and with such limits, in such form, in amounts and for risks as the County, acting reasonably, may require from time to time. The Service Fee shall be adjusted to reflect the cost of any such additionally required insurance.

4. FULL INSURABLE VALUE

4.1. Full Insurable Value Defined. For the purposes of this Appendix, “Full Insurable Value” of any building, improvement, equipment or other property shall be determined on a replacement cost valuation by the Project Company, acting reasonably, at the time the insurance is initially effective and thereafter at least once every 60 months, and the Project Company shall promptly notify the County in writing of each such determination, provided that the County may at any time (but not more frequently than once in any 12 month period), by written notice to the Project Company, require the Full Insurable Value of any building, improvement, equipment or other property to be redetermined on a replacement cost basis by an independent qualified appraiser designated by the Project Company’s insurance agent/broker and approved by the County and the property insurance company. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to the Project Company and the County.

4.2. Adequacy of Contemplated Insurance. In addition to the determination of “Full Insurable Value”, as part of the periodic review contemplated in the preceding paragraph of Section 4.1, the Project Company shall determine whether the policies set out in Section 3 and the limits of such policies are adequate for the Project, and the Project Company shall promptly notify the County in writing of each such determination, provided that the County may at any time (but not more frequently than once in any 36 month period), by written notice to the Project Company, require the policies or the limits of such policies be redetermined, in the manner described in the preceding paragraph. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to the Project Company and to the County. The Service Fee shall be adjusted to reflect the reduced or increased cost of any County-directed insurance redetermination. By requiring the insurance and insurance limits herein, the County does not represent that coverage and limits will necessarily be adequate to protect the Project Company, Design-Builder, Facilities Manager or any Subcontractor.

5. GENERAL POLICY REQUIREMENTS

5.1. Policy Requirements. Each policy of insurance required under this Appendix shall:

- (a) be issued by an insurer that:
 - (i) is admitted in the State, or if not admitted in the State an insurer that makes any placement in accordance with the requirements applicable to surplus line placements;

- (ii) has a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of A.M. Best Company, Inc., or a comparable rating from any other nationally-recognized rating agency, unless the County grants specific approval for an exception; and
- (iii) is acceptable to the County, acting reasonably (a "**Qualified Insurer**");
- (b) be in a form approved by the County, such approval not to be unreasonably withheld;
- (c) be non-contributing with and shall apply only as primary and not excess to any other insurance, self-insurance, or other risk financing program available to the County and the Senior Lenders;
- (d) contain an undertaking by the insurers to notify the County and the Senior Lenders in writing not less than 30 days before any material change, lapse, cancellation or termination; provided, however, that if such undertaking cannot be acquired the Project Company shall make all commercially reasonable efforts to notify the County of any such material change, cancellation, lapse, cancellation or termination within such 30-day period;
- (e) contain an undertaking by the insurers to notify the County and the Senior Lenders in writing not less than 10 days following any non-payment of premiums; provided, however, that if such undertaking cannot be acquired the Project Company shall make all commercially reasonable efforts to notify the County of any such non-payment within such 10-day period; and
- (f) include a waiver of all rights of subrogation or action which insurers may acquire against the Senior Lenders, the County, and the County Insured Parties, whether or not the damage is caused by its act, omission or negligence.

5.2. Mutual Waivers of Claims and Subrogation. The County and the Project Company hereby waive all rights against each other and any of their subcontractors, agents, consultants and employees, each of the other, to the extent of valid and collectible property insurance. The County shall ensure that the property insurance it obtains relative to the Project includes a waiver of subrogation against the Project Company, Design-Builder, Facilities Manager, and their Subcontractors performing work at the Project Site. The Project Company shall ensure that the insurance it obtains in accordance with the requirements of this Appendix includes a waiver of subrogation in favor of the County and County Insured Parties. The Project Company shall require that the Design Builder, Facilities Manager, and all Subcontractors obtain waivers of subrogation waivers in favor of the County and County Insured Parties for all insurance they are required to provide in accordance with this Appendix. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damage.

5.3. Waiver of Insurance Requirements. If the Project Company does not fulfill all requirements of Required Insurance in this Project Agreement, it shall forward a written request to the County for a waiver in writing of the requirements not met or approval in writing of alternate insurance coverage or self-insurance arrangements. If the County denies the request, the Project Company must comply with the requirements as specified in this Project Agreement. Failure of the County to obtain copies of the policies or other evidence of full compliance with the insurance requirements or failure of the County to identify a deficiency in the policies or

evidence provided shall not be construed as a waiver of any obligation to maintain the Required Insurance.

5.4. County Acceptance of Insurance. No acceptance or approval of any insurance by the County shall be construed as relieving or excusing any other party, or their surety from any liability or obligation imposed upon any of them by the provisions of this Project Agreement. Nothing herein shall be construed as permitting the Project Company, Design-Builder, Facilities Manager or any Subcontractor to allow the insurance coverage required by this Project Agreement to lapse.

5.5. Subcontractors. The Project Company shall require all Subcontractors to maintain during the term of this Project Agreement commercial general liability insurance, business auto liability insurance, workers' compensation and employers' liability insurance to the same extent required of Project Company, Design-Builder and Facilities Manager, except as otherwise specified herein or agreed to by the County pursuant to Section 5.3. Subcontractors' certificates of insurance shall be provided to the County immediately upon request, in the manner indicated in Section 6.

5.6. Deductibles and Self-Insured Retentions. The Project Company, the Design-Builder and the Facilities Manager shall disclose deductibles and self-insured retentions in excess of the following (which shall be subject to the County's written approval): (i) any deductible under a controlled insurance program, contractors pollution liability policy, or any property insurance policy that exceeds \$250,000; (ii) any self-insured retention under a pollution or professional liability/indemnity policy that exceeds \$100,000; and (iii) any self-insured retention of \$50,000 or greater for any other Required Insurance. Any deductible or self-insured retention amounts elected by the Project Company, Design-Builder and Facilities Manager or any Subcontractors or imposed by the Project Company's, Design-Builder's and Facilities Manager's or any Subcontractor's insurers shall be the sole responsibility of the party purchasing such insurance are not chargeable as expenses, other than as provided for in Section 14.1(G) (Insurance Deductibles and Exceedances) of the Project Agreement.

5.7. Required Insurance Issued on a "Claims Made" Basis. If any Required Insurance purchased by the Project Company, Design-Builder, Facilities Manager or any Subcontractor has been issued on a "claims made" basis, the purchaser of such claims made coverage must comply with the following additional conditions. The limits of liability and the extensions to be included remain the same. The Project Company must either:

- (a) Agree to provide certificates of insurance to the County evidencing annual renewal of the above coverages for a minimum period of three years after termination, unless a longer period is specified in this Appendix. Such certificates shall evidence a retroactive date no later than the beginning of work or services under this Project Agreement, or
- (b) Purchase an extended (minimum three years) reporting period endorsement (unless a longer period is specified in this Appendix) for each such "claims made" policy in force as of the date of termination and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance and a copy of the endorsement itself. Such certificates and copy of the endorsement shall evidence a retroactive date no later than the beginning of work or services under this Project Agreement.

6. EVIDENCE OF INSURANCE

Upon the issuance, renewal, extension, or replacement of a policy of insurance required herein, and otherwise upon request by the County, the Project Company shall deliver to the

County a binder or certificate of insurance or other evidence of adequate to confirm that the insurance is in compliance with the requirements herein and acceptable to the County. At the request of the County, the Project Company shall timely provide copies of the policies and applicable endorsements. The Project Company, acting reasonably, may redact proprietary information from the copy of the policies delivered to the County. Upon request by the County, the Project Company shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. No review or approval of any insurance certificate or insurance policy by the County shall derogate from or diminish the County's rights under this Project Agreement. All evidence of insurance required by this Appendix should be sent in both hardcopy and electronic form by the Project Company to the following representative of the County:

[NAME]
[ADDRESS]
[EMAIL ADDRESS]

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APPENDIX 11
DEDUCTIONS

APPENDIX 11

DEDUCTIONS

1. DEFINITIONS AND SECTION REFERENCES

1.1. Definitions. In this Appendix, in addition to the definitions set out in this Project Agreement:

“Accessibility Condition” means a state or condition of the relevant Functional Unit or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Unit to enter and leave the Functional Unit safely and conveniently and using normal access routes, as further described in Section 1.2 (Accessibility Requirements) of Appendix 6 (Design and Construction Standards).

“Availability Condition” means (1) an Accessibility Condition, (2) a Use Condition, or (3) an Operational Condition.

“Critical Event” means an Event which (1) is a Judicial Impediment; (2) results in a material breach of binding regulatory requirements or standards; (3) results in noncompliance with an Availability Condition for Functional Units 73, 74, 75, 76, 80, 82, 88, or 89 (unless such Event is an Emergency Event); or (4) may deteriorate, if not corrected within the next 24 hours, into an Event described in subsections (1), (2) or (3) of this definition.

“Emergency Event” means an Event which (1) presents a clear and present threat to human life, safety or security (including any failure of any fire or security alarm system); (2) creates any chain of custody issues or concerns regarding the integrity of evidence to be used in a court proceeding; or (3) may deteriorate, if not corrected within the next 24 hours, into an Event described in subsections (1) or (2) of this definition or Total Courthouse Unavailability.

“Event” means an incident or state of affairs leading to a Performance Failure or Unavailability Event.

“Field Maintenance Person” means an appropriately trained and skilled field maintenance person available for the performance of required Facilities Management Services.

“Functional Unit” means a room or space which is specified as such in Attachment 11A to this Appendix.

“Judicial Impediment” means any Event that the County determines, in consultation with the affected judge, (1) materially delays, restricts or impedes the ability of any judge to conduct court proceedings or other judicial duties; or (2) materially delays, restricts or impedes the ability of jurors to gather and deliberate in a typical and ordinary manner.

“Operational Condition” means a state or condition of the relevant Functional Unit which is complete, operational, functional and fit for its intended use or purpose, as further described in the Design and Construction Requirements, including the room data sheets set forth in Attachment 4A (Courthouse Program and Room Data Sheets).

“Performance Failure” means any failure by the Project Company, as set forth in Table 11B-1 of Attachment 11B.

“Performance Failure Deduction” means a Deduction which may be made in respect of a Performance Failure that is not Rectified prior to the expiration of an applicable Rectification

Period, if any. “Performance Failure Deductions” are set forth in Table 11B-1, Table 11B-2, Table 11B-3, Table 11B-4 and Table 11B-5 of Attachment 11B.

“**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 8 of this Appendix.

“**Permanent Repair Deadline**” has the meaning set out in Section 8.1(a)(iv) of this Appendix.

“**Recording Frequency**” means the frequency with which a Performance Failure is evaluated, as set out in Table 11B-1 of Attachment 11B.

“**Rectification**” means making good, permanently, an Event so that the subject matter of such Event complies with the levels of service and performance of the Facilities Management Services required pursuant to this Project Agreement. “Rectification” shall, without prejudice to the generality of the foregoing, include:

- (1) restoring all functional capability affected by the Event; and
- (2) ensuring that any affected Functional Unit is returned to the Availability Conditions existing immediately prior to the occurrence of the Event.

“**Rectification Period**” means the period of time, if any, within which Rectification of the relevant Unavailability Event or Performance Failure must be completed, as specified in Attachment 11A or Attachment 11B of this Appendix. A “Rectification Period” is calculated from the end of the Required Response Time; provided however that the end of the Required Response Time for any Performance Failure that does not have a “high” priority classification, any Critical Event or any Routine Event shall be deemed to occur at 6:30 A.M. Pacific time of the next Business Day if the end of the Required Response Time would otherwise occur during non-Operating Hours. Subject to Section 3.2 (Functional Units Unavailable But Nonetheless Used), there shall be multiple “Rectification Periods” of identical length for each Event until the Event has been Rectified.

“**Reported Event Time**” means the time at which an event is reported to the Help Desk by either the Project Company or the County.

“**Required Response Time**” means the times set forth in Section 6.3 and Section 6.4 of this Appendix.

“**Routine Event**” means an Event which is not an Emergency Event or a Critical Event.

“**Temporary Availability Condition**” has the meaning set out in Section 8(a)(ii) of this Appendix.

“**Temporary Repair**” means, in respect of the occurrence of an Unavailability Event, works of a temporary nature that do not constitute Rectification.

“**Temporary Repair Proposal**” has the meaning set out in Section 8.1(a) of this Appendix.

“**Total Courthouse Unavailability**” occurs when:

- (a) any of the following Functional Units are Unavailable and the first Rectification Period has expired with respect to each Event that caused such Unavailability:

- (i) all Public Elevators (Functional Unit 47);
 - (ii) all Staff Elevators (Functional Unit 48);
 - (iii) all In-Custody Elevators (Functional Unit 50);
 - (iv) the MDF, Main, County & OJD Server Room (Functional Unit 54);
 - (v) the Main Lobby (Functional Unit 6);
 - (vi) the In-Custody Control Room (Functional Unit 358); or
 - (vii) the Building Monitoring Room (Functional Unit 362);
- (b) any of the Functional Units of a particular type of holding cell (Functional Units 329, 330, 331, 332, 333, or 339) or the Transport Sally Port (Functional Unit 325) are Unavailable, causing a Judicial Impediment, and the first Rectification Period has expired;
- (c) any of the following experiences a failure or issue lasting more than two consecutive hours after being reported to the Help Desk by either the Project Company or the County:
- (i) the fire alarm system;
 - (ii) the sprinkler system;
 - (iii) the servers in the MDF, Main, County & OJD Server Room (Functional Unit 54), due to an Unavailability Event in the server room; or
 - (iv) 5% or more of the total field of view provided by the security cameras; or
- (d) multiple Unavailability Events are occurring concurrently and resulting in an aggregate Deduction exceeding \$4,000 (Index-Linked) per every two hour period during Operating Hours;

and the County has not approved any Temporary Repair Proposal put forward by the Project Company.

“Unavailable” or **“Unavailability”** means, with respect to a Functional Unit, that such Functional Unit is in a state or condition that does not comply with the Availability Conditions and therefore deemed to be unfit for its intended use.

“Unavailability Deduction” means a Deduction which may be made in respect of an Unavailability Event that is not Rectified prior to the expiration of the applicable Rectification Period. “Unavailability Deductions” are set forth in Attachment 11A to this Appendix.

“Unavailability Event” means an incident or state of affairs which causes one or more Functional Units to be Unavailable.

“Use Condition” means a state or condition of the relevant Functional Unit which satisfies the functional requirements for the proper use and enjoyment of a Functional Unit for its particular purpose relating to (1) temperature; (2) humidity; (3) air-quality; (4) lighting; (5) power (essential and non-essential); (6) all audiovisual equipment incorporated as part of the

real property constituting the Project, as more particularly described in Section 19 (Audiovisual Systems) of Appendix 6 (Design and Construction Standards); and (7) safe water (relating to availability, temperature, quality and safe sewerage system), as the same are further described in Sections 16 (Plumbing Systems) of Appendix 6 (Design and Construction Standards).

1.2. Section References in this Appendix. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections, Articles, or Appendices of this Project Agreement.

2. DEDUCTIONS GENERALLY

2.1. General Entitlement to Make Deductions. If at any time after the Occupancy Readiness Date an Unavailability Event or a Performance Failure occurs, the County will be entitled to make Deductions in accordance with this Appendix in respect of that Unavailability Event or Performance Failure (and, for greater certainty, in respect of all other Unavailability Events and Performance Failures) from the Service Fee for the relevant Billing Period. The Deduction Credit to be applied to the Service Fee in any Billing Period shall be the total amount of Deductions accrued in such Billing Period determined in accordance with this Appendix.

2.2. Maximum Deduction Amount in Any Billing Period. The maximum Deductions Credit with respect to any Billing Period shall not exceed such Billing Period's Facilities Management Charge. Any Deductions in excess of a Billing Period's Facilities Management Charge shall be carried over and applied to the next Billing Period.

2.3. Deductions Multiplier for Persistent Underperformance. Subject to Section 2.2 of this Appendix:

- (a) If, during the three immediately preceding Billing Periods, the Project Company has incurred Deductions in excess of \$30,000 (Index-Linked) in the aggregate, but equal to or less than \$60,000 (Index-Linked), the Deductions Credit incurred in a Billing Period shall be multiplied by two immediately prior to being applied to the Service Fee.
- (b) If, during the three immediately preceding Billing Periods, the Project Company has incurred Deductions in excess of \$60,000 (Index-Linked) in the aggregate, the Deductions Credit incurred in a Billing Period shall be multiplied by four prior to being applied to the Service Fee.
- (c) For the purposes of this Section, when calculating the amount of Deductions incurred in preceding Billing Periods: (i) any multiplier previously applied pursuant to this Section and (ii) any Deductions that were carried over from any previous Billing Period pursuant to Section 2.2 (Maximum Deduction Amount in Any Billing Period) of this Appendix, shall not be included in such calculations.

2.4. Relief Events. To the extent that an Unavailability Event or a Performance Failure is caused by a Relief Event, as provided in Article 14 (Insurable and Uninsurable Force Majeure Events) and Article 15 (Change in Law Events and Other Relief Events), the County will not be entitled to make a Deduction.

2.5. Classification of Event as an Unavailability Event or a Performance Failure. The classification of an Event as a particular Unavailability Event or a particular Performance Failure will be made by the Project Company at the time at which the occurrence of the Event is reported to the Help Desk or otherwise reported to the Project Company. If an Event can properly be classified as both an Unavailability Event and a Performance Failure at the time it is reported, it

will be classified as the Event that has the highest potential initial Deduction applicable to it. An Event which is incorrectly classified may be reclassified, after such Event is reported in a Performance Monitoring Report, only with the approval of the County, acting reasonably. If such an Event is re-classified, the appropriate Deduction (if applicable) will be made and any Deduction incorrectly applied will be withdrawn.

2.6. Performance Failure Becoming Unavailability Event. A Performance Failure may become or lead to an Unavailability Event if circumstances change or the Performance Failure continues. In such a circumstance, when the Functional Unit becomes Unavailable, the Performance Failure will have ended (without prejudice to the Performance Failure Deductions that have accrued to that point) and an Unavailability Event will commence. The Response Time for such Unavailability Event, as described in the preceding sentence, shall be zero minutes. The Rectification Period for such Unavailability Event shall be deemed to have begun with the last completed Rectification Period of the related Performance Failure, or if there is no completed Rectification Period, the first Rectification Period of such Unavailability Event shall be deemed to be the lesser of the length of the balance of the uncompleted Rectification Period of the related Performance Failure or the Rectification Period of the Unavailability Event.

2.7. Other Remedies of the County. The right of the County to impose Deductions is without prejudice to the other County remedies, as provided in subsection 9.7(B) (Additional Project Company Obligations) and Section 19.2 (County Liquidated Damage Rights) of this Project Agreement.

3. UNAVAILABILITY DEDUCTIONS

3.1. Deductions for Unavailability Events. In respect of an Unavailability Event there shall be one Deduction per Functional Unit that is Unavailable for each completed Rectification Period that the Functional Unit continues to be Unavailable, in accordance with Attachment 11A.

3.2. Functional Units Unavailable But Nonetheless Used. If a Functional Unit is Unavailable, the County may, at its discretion, continue to use such Functional Unit for its intended use or purpose. Notwithstanding the County's continued use of any Functional Unit that is deemed Unavailable, any Deduction required by this Appendix shall continue to apply, but at a 50% reduction, as if the County is unable to use such Functional Unit until the Event is Rectified; provided, however that if the County's continued use directly impacts the Project Company's ability to Rectify the Unavailability Event, the Rectification Period shall be extended as and to the extent the County's continued use prevents the Project Company from being able to Rectify such Unavailability Event.

4. SPECIAL DEDUCTIONS FOR MAJOR OR PROLONGED UNAVAILABILITY EVENTS

4.1. Total Courthouse Unavailability. Notwithstanding any other provision of this Appendix (including Section 3.2 of this Appendix), if Total Courthouse Unavailability occurs, the only Unavailability Deduction that shall apply is a Deduction of \$4,000 (Index-Linked), to be applied (1) upon the commencement of Total Courthouse Unavailability and (2) at the expiration of each subsequent two hour interval that Total Courthouse Unavailability persists during Operating Hours.

4.2. Deductions for Ongoing Unavailability Events. Where the Unavailability Event continues beyond six consecutive Rectification Periods (including the first Rectification Period) and the Project Company has failed to Rectify that Unavailability Event, the Unavailability Deduction for the fourth and each subsequent Unavailability Deduction, calculated in accordance with Attachment 11A of this Appendix, shall be multiplied by two.

4.3. Multiple Unavailability Events With the Same Root Cause. If the root cause of a series of Unavailability Events is substantially the same, whether or not the Project Company Rectifies any or all of the Events within the applicable Rectification Period, a Deduction of \$250 (Index-Linked) in addition to any other Unavailability Deduction imposed under this Appendix, will apply per Event on the occurrence of any of the following:

- (a) the third such Event in a single day and on the occurrence of each subsequent such Event following the third such Event on the same day; and
- (b) the fourth such Event in a rolling consecutive seven-day period and on the occurrence of each subsequent such Event in that seven-day period.

5. PERFORMANCE FAILURE DEDUCTIONS

5.1. Deductions for Performance Failure Events. The amount of the total Deductions, for any Billing Period, in respect of a Performance Failure will be as follows:

- (a) where a Performance Failure has a Rectification Period, one Deduction per failure for each completed Rectification Period that the Performance Failure persists, in accordance with Table 11B-2 of Attachment 11B, and
- (b) where a Performance Failure has no Rectification Period, one Deduction per Recording Frequency, in accordance with Table 11B-3, Table 11B-4 and Table 11B-5 of Attachment 11B, as applicable.

5.2. Unavailability as Sole Cause of Performance Failure Deductions. No Performance Failure Deduction will be made if the Performance Failure to which it relates arises solely as a result of the Unavailability of the Functional Unit in which the Facilities Management Service was to be provided.

6. RESPONSE TIMES

6.1. Help Desk and Maintenance Personnel Responses to an Event. The parties acknowledge that the Help Desk may be automated or may be staffed by administrative staff not charged with the responsibility for Rectifying reported Events and the responsibility for Rectification will rest with the Project Company's appropriately trained and skilled field maintenance personnel. The Help Desk shall promptly inform the Field Maintenance Person, on duty at the time the Event is reported to the Help Desk, that an Event has been reported. The Field Maintenance Person shall promptly respond to the Help Desk acknowledging that he or she has received the report and is aware of the Event. The Project Company shall also promptly inform the appropriate County Facilities Management Representative, by any means that is deemed acceptable by the County, including verbal, written or electronic communication, that the Field Maintenance Person has received the report and is aware of the Event.

6.2. Calculation of Required Response Times. The Required Response Time for the Field Maintenance Person to respond to the Help Desk and for the Project Company to inform the appropriate County Facilities Management Representative that a Field Maintenance Person has responded to the Help Desk, shall be measured from the Reported Event Time. Required Response Times shall accumulate on a 24 hour basis; provided, however, that the end of a Required Response Time for any Performance Failure that does not have a "high" priority classification, any Critical Event or any Routine Event shall be extended to occur at 6:30 A.M. Pacific time of the next Business Day if the end of a Required Response Time would otherwise occur during non-Operating Hours.

6.3. Required Response Times for Unavailability Events. The Required Response Time for Unavailability Events shall be as follows:

| Unavailability Event Classification | Required Response Time (Minutes) |
|--|---|
| Emergency Event | 30 |
| Critical Event | 30 |
| Routine Event | 60 |

Failure of the Project Company to achieve an actual response time for an Unavailability Event within the applicable Required Response Time provided in this Section shall result in a Deduction determined in accordance with item 29 of Table 11B-1 of Attachment 11B.

6.4. Required Response Times for Performance Failures. The Required Response Time for Performance Failures shall be as follows:

| Performance Failure Priority Classification | Required Response Time (Minutes) |
|--|---|
| High | 30 |
| Medium | 30 |
| Low | 60 |

Failure of the Project Company to achieve an actual response time for a Performance Failure within the applicable Required Response Time provided in this Section shall result in a Deduction determined in accordance with item 29 of Table 11B-1 of Attachment 11B.

7. RECTIFICATION PERIODS

7.1. No Rectification Period. If a Performance Failure for which there is no Rectification Period (as indicated in Table 11B-1 of Attachment 11B) occurs, the County shall make the applicable Performance Failure Deduction, in accordance with Section 5.1(b) of this Appendix, immediately upon occurrence of the Performance Failure.

7.2. Calculation of Rectification Periods.

- (a) Rectification Periods for all Critical Events, all Routine Events, and Performance Failures that do not have a “High” priority classification, as set forth in Table 11B-1 of Attachment 11B, shall begin at the end of the applicable Required Response Time and accumulate only during Operating Hours.
- (b) Rectification Periods for Emergency Events and Performance Failures that have a “High” priority classification, as set forth in Table 11B-1 of Attachment 11B, shall begin at the at the end of the applicable Required Response Time and accumulate on a 24 hour basis.

7.3. First Rectification Period. If (a) a Performance Failure or an Unavailability Event occurs, for which there is a Rectification Period (other than a deemed Unavailability Event due to Total Courthouse Unavailability), and (b) the Project Company Rectifies the Performance Failure or Unavailability Event within the first Rectification Period, no Deduction will be made for such Performance Failure or Unavailability Event.

7.4. Subsequent Rectification Periods. For any Performance Failure or Unavailability Event described in Section 7.3 of this Appendix which is not rectified by the end of the first Rectification Period, a Deduction shall be applied at the start of the second Rectification Period and an additional Deduction shall be applied at the start of each subsequent Rectification Period until the Performance Failure or Unavailability Event is Rectified.

8. TEMPORARY REPAIRS TO ADDRESS CERTAIN UNAVAILABILITY EVENTS

If the Project Company is unable to Rectify an Unavailability Event within the applicable Rectification Period due to the need for specialized materials or personnel that are not required by this Project Agreement to be immediately available at the New Courthouse and are not, and cannot reasonably be expected to be, available at the New Courthouse, then:

- (a) The Project Company may provide the County with a proposal (the **“Temporary Repair Proposal”**) for:
 - (i) a Temporary Repair;
 - (ii) a temporary modification to the Availability Condition for the relevant Functional Unit until the Permanent Repair is completed (the **“Temporary Availability Condition”**);
 - (iii) the Permanent Repair; and
 - (iv) the period within which to complete the Permanent Repair (the **“Permanent Repair Deadline”**);
- (b) the County may, in its discretion, consider and accept the Temporary Repair Proposal, and the Project Company will not carry out the Temporary Repair until the Temporary Repair Proposal is accepted by the County;
- (c) if the County accepts the Temporary Repair Proposal, the Project Company will carry out the Temporary Repair in accordance with the Temporary Repair Proposal;
- (d) if the Temporary Repair is completed in accordance with the Temporary Repair Proposal, the Availability Condition for the relevant Functional Unit will be modified to be the Temporary Availability Condition until the Permanent Repair Deadline;
- (e) if the Permanent Repair is not completed by the Permanent Repair Deadline, the Temporary Availability Condition will cease to be the Availability Condition and the County may make all applicable Unavailability Deductions with effect from the Permanent Repair Deadline; and
- (f) except with respect to the applicable modification of the Availability Condition, nothing in this Section 8 will limit the County’s entitlement to Deductions within the applicable Rectification Periods.

9. PHASE-IN OF DEDUCTIONS

9.1. In General. During the first (the Billing Period in which the Occupancy Readiness Date falls) and second Billing Period, the amount of any Deduction will be reduced by 75%. During the third Billing Period, the amount of any Deduction will be reduced by 50%. During

the fourth Billing Period the amount of any Deduction will be reduced by 25%. After the fourth Billing Period, the full Deduction amounts will apply.

9.2. Punch List Items Excepted. No Deductions shall be imposed for Unavailability Events or Performance Failures to the extent caused by work performed by the Project Company in accordance with the Contract Standards to address Punch List Items.

9.3. Fine Tuning Excepted. No Deductions shall be imposed for Unavailability Events or Performance Failures to the extent caused by work performed by the Project Company in accordance with the Commissioning Plan for seasonal fine tuning or commissioning fine tuning performed pursuant to Section 25.8 (Commissioning Tests During the Commissioning Fine-Tuning Period) of Appendix 6 (Design and Construction Standards).

10. FAILURE TO MONITOR OR REPORT OR MISCONDUCT BY THE PROJECT COMPANY

10.1. Performance Monitoring Report. The Performance Monitoring Report produced by the Project Company for any Billing Period will be the initial source of the information regarding the performance of the Facilities Management Services for the relevant Billing Period for the purposes of calculating the relevant Deductions.

10.2. Failure to Monitor or Report. If the Project Company fails to monitor or timely and accurately report an Event:

- (a) A Deduction, determined in accordance with item 30 of Table 11B-1 of Attachment 11B, shall apply for each Event that has been misreported. The relevant Deduction for the misreporting will be made in addition to the Deductions that would have been made had there been no failure to monitor or report, provided that any such Deduction shall not exceed the equivalent of such Event not being rectified for 30 Business Days;
- (b) The County will be entitled to make Deductions in respect of any Performance Failures or Unavailability Events in the manner described in this Appendix, and the Performance Monitoring Reports and invoices with respect to all Billing Periods affected by such failure will be restated to include any such Deductions; and
- (c) The Project Company will forthwith pay to the County the amount, if any, by which the amount paid to it for the affected Billing Periods exceeds the amount in the restated invoices for such Billing Periods.

10.3. Misconduct. If the County's inspection or investigation of records reveals, on the part of the Project Company or a Project Company Person:

- (a) fraudulent action or inaction;
- (b) deliberate misrepresentation; or
- (c) gross misconduct or incompetence;

then a Performance Failure Deduction, determined in accordance with item 31 of Table 11B-1 of Attachment 11B, shall apply for each Event that has been misreported. The relevant Deduction for the misconduct will be made in addition to the Deductions that would have been made had there been no misreporting or misconduct.

11. INCENTIVE PAYMENTS FOR SUPERIOR PERFORMANCE

In the event that, in any Contract Year, Deductions do not exceed \$20,000 (Index-Linked), the County shall pay the Project Company, as an incentive payment for superior performance, an amount equal to 50% of the Deductions incurred in such Contract Year. Such incentive payment shall be reflected in the final Billing Period of such Contract Year as an Extraordinary Item. For example, if in the fifth Contract Year the Project Company incurs a total of \$12,000 in Deductions, the County would make an Extraordinary Item payment of \$6,000 to the Project Company in the final Billing Period of the fifth Contract Year.

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ATTACHMENT 11A

UNAVAILABILITY DEDUCTIONS

Unavailability Deductions shall be determined in accordance with this Attachment 11A and may be imposed by the County in accordance with this Appendix 11.

Table 11A-1 lists and defines the Functional Units which may become Unavailable. Each Functional Unit is identified in Table 11A-1. Table 11A-1 also indicates the priority classification of each Functional Unit (low, medium or high). The priority classification of each Functional Unit reflects the degree to which each Functional Unit is central to the primary mission and purpose of the New Courthouse (to advance the resolution of pending cases) and thus results in more severe deductions for higher priority Functional Units. Table 11A-2, when read with Table 11A-1, establishes the appropriate Deduction for each Unavailability Event. Table 11A-3 provides a summary of other factors that may affect an Unavailability Event's Deduction amount.

[NOTE TO PROPOSERS: The number of each type of elevators will be based on the proposed design. Additional Functional Units may be added to Table 11A-1 based on the Selected Proposer's proposed design.]

Table 11A-1 – Functional Unit Priority Classification

| Funct. Unit No. | Department | Category | Subcategory | Funct. Unit Name | No. of Units | Priority |
|------------------------|---|-----------------------|------------------------------------|-----------------------------|---------------------|-----------------|
| 1. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Entry and Security Screening Areas | Building Entrance Vestibule | 1 | High |
| 2. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Entry and Security Screening Areas | Interior Public Queuing | 1 | High |
| 3. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Entry and Security Screening Areas | Screening Stations | 2 | High |
| 4. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Entry and Security Screening Areas | Staff By-Pass Lane | 1 | High |

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| 5. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Entry and Security Screening Areas | Security Officer Desk | 2 | High |
| 6. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Main Lobby | Main Lobby | 1 | High |
| 7. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Main Lobby | Info Center Clerk – JSS2 / Info Desk | 2 | Medium |
| 8. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Main Lobby | Information Kiosks | 3 | Medium |
| 9. | Public Facilities & Building Support Spaces | Main Entrance & Lobby | Main Lobby | Information Monitors (Wall Hung) | 3 | High |
| 10. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Public Spaces & Amenities | Toilet, Multi-Occupancy, Public | 10 | Medium |
| 11. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Public Spaces & Amenities | Toilet, Family, Public | 5 | Medium |
| 12. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Public Spaces & Amenities | Lactation Room, Public | 1 | Medium |
| 13. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Public Spaces & Amenities | Public Lounge Area | 4 | Low |

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| 14. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Public Spaces & Amenities | Vending Alcove | 1 | Low |
| 15. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Public Spaces & Amenities | Café | 1 | Low |
| 16. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Child Respite | Registration / Check-In | 1 | Medium |
| 17. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Child Respite | Play Room | 1 | Low |
| 18. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Child Respite | Kitchenette | 1 | Low |
| 19. | Public Facilities & Building Support Spaces | Public Spaces & Amenities | Child Respite | Toilet, Family, Public | 1 | Medium |
| 20. | Public Facilities & Building Support Spaces | Building and General Staff Support | Building and General Staff Support | Mail Room | 1 | High |
| 21. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Toilet, Single Occupancy, Staff | 3 | Medium |
| 22. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Lactation Room, Staff Dedicated | 4 | Medium |

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| 23. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Personal Lockers (Male) | 15 | Low |
| 24. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Showers/Changing (Male) | 1 | Low |
| 25. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Personal Lockers (Female) | 15 | Low |
| 26. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Showers/Changing (Female) | 1 | Low |
| 27. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Showers/Changing (ADA/Unisex) | 1 | Low |
| 28. | Public Facilities & Building Support Spaces | Building and General Staff Support | Staff Toilets and Locker Rooms | Staff Lounge / Wellness Room | 1 | Low |
| 29. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Facility Manager Office | 1 | Medium |
| 30. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Dock Area | 1 | Medium |
| 31. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Receiving / Holding Area | 1 | High |

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| 32. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Central Janitorial Storage | 1 | Low |
| 33. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Central Maintenance Shop | 1 | Medium |
| 34. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Janitor Floor Closets (every 20K SF) | 10 | Low |
| 35. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Large Item Storage (Furniture, Office Equip.) | 1 | Low |
| 36. | Public Facilities & Building Support Spaces | Building and General Staff Support | Loading Dock | Technology Receiving/Holding | 1 | Low |
| 37. | Public Facilities & Building Support Spaces | Building and General Staff Support | Bicycle Storage | Bicycle Hangers | 25 | Low |
| 38. | Public Facilities & Building Support Spaces | Building and General Staff Support | Bicycle Storage | Bicycle Lockers | 25 | Low |
| 39. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Judge & Referee Parking | 16 | High |
| 40. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Future - Judge Parking | 3 | High |

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| 41. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Court Administration | 1 | High |
| 42. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | District Attorney Official | 4 | High |
| 43. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Maintenance Trucks | 2 | High |
| 44. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Records State Vehicle | 1 | High |
| 45. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Sheriff Patrol/Squad Cars | 4 | High |
| 46. | Public Facilities & Building Support Spaces | Secure Parking | Secure Parking | Sheriff Oversized Transport Vans | 3 | High |
| 47. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | Public Elevators | [] | High |
| 48. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | Staff Elevators | [] | High |
| 49. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | Service Elevators | [] | High |

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| 50. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | In-Custody Elevators | [] | High |
| 51. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | Elevator Machine Room | [] | High |
| 52. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | Public Ceremonial Stair or Escalator | 1 | High |
| 53. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Elevators & Vertical Transportation | Egress Stair | 4 | High |
| 54. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Data/Network Support Areas | MDF, Main, County & OJD Server Room | 1 | High |
| 55. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Data/Network Support Areas | Tech Distribution Rooms (IDF) | 5 | High |
| 56. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Data/Network Support Areas | Vendor Server Room | 1 | High |
| 57. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Data/Network Support Areas | Court Floor IDF Room | 4 | High |
| 58. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Data/Network Support Areas | Entrance Facility Room | 1 | High |

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| 59. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Mechanical Areas | Central Plant (CUP) Connection | 1 | High |
| 60. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Mechanical Areas | Central Mechanical Areas | 1 | High |
| 61. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Mechanical Areas | AHU Shafts | 2 | Low |
| 62. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Electrical Areas | Central Electrical Room | 1 | High |
| 63. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Electrical Areas | Floor Electrical Distribution Room | 6 | High |
| 64. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Electrical Areas | Generator | 1 | High |
| 65. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Electrical Areas | UPS | 1 | High |
| 66. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Primary Electrical Areas | Green Power Inverter | 1 | High |
| 67. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Plumbing Areas | Fire Control Center | 1 | High |

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| 68. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Plumbing Areas | Rainwater Storage Tank & Pumps | 1 | High |
| 69. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Garbage and Recycling | Garbage | 1 | Low |
| 70. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Garbage and Recycling | Recycling | 1 | Low |
| 71. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Garbage and Recycling | Document Shredding Storage Room | 1 | Low |
| 72. | Public Facilities & Building Support Spaces | Building Systems Support Spaces | Media Areas | Media Central Switching Room | 1 | High |
| 73. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtrooms | Large Courtroom | 1 | High |
| 74. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtrooms | High Volume Courtroom | 3 | High |
| 75. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtrooms | Standard Courtroom | 10 | High |
| 76. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtrooms | Juvenile/Motion Courtrooms | 2 | High |

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| 77. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Small Conference Room - Attorney/Client | 28 | Medium |
| 78. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Large Conference Room - Attorney/Client | 4 | Medium |
| 79. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Victims/Witness Waiting | 8 | Medium |
| 80. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Police Waiting | - | Medium |
| 81. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Sound-Lock Vestibule | 16 | High |
| 82. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Courtroom Waiting | 16 | Medium |
| 83. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Staff ADA Access Ramp | 4 | High |
| 84. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Toilet, Single Occupancy, Judicial Staff | 8 | Medium |
| 85. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | A/V Storage Closet | 4 | High |

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| 86. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | A/V Equipment Closet | 8 | High |
| 87. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Storage Closet | 4 | Low |
| 88. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Ancillary Spaces | Clerk's Printer Room | 8 | Medium |
| 89. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Jury Deliberation | Small Jury Deliberation Room - 8-Person | 4 | High |
| 90. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Jury Deliberation | Large Jury Deliberation Room - 16-Person | 5 | High |
| 91. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Jury Deliberation | Toilet, Single Occupancy, Jury Deliberation | 9 | Medium |
| 92. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Jury Deliberation | Sound-Lock Vestibule | 9 | High |
| 93. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Jury Deliberation | Lactation Room, Judicial Staff & Jury | 4 | Medium |
| 94. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Holding | Elevator Vestibule | 8 | Medium |

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| 95. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Holding | In-Custody/ Attorney Interview Booth | 8 | High |
| 96. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Holding | Individual Holding Cell | 8 | High |
| 97. | Courtrooms and Chambers | Courtrooms and Ancillary Support Spaces | Courtroom Holding | In-Custody Holding Dock | 3 | High |
| 98. | Courtrooms and Chambers | Judicial Chambers | Presiding Judge Chambers | Presiding Judge | 1 | High |
| 99. | Courtrooms and Chambers | Judicial Chambers | Presiding Judge Chambers | Toilet, Single Occupancy, Presiding Judge | 1 | High |
| 100. | Courtrooms and Chambers | Judicial Chambers | Presiding Judge Chambers | Judicial Clerk Workstation | 1 | Medium |
| 101. | Courtrooms and Chambers | Judicial Chambers | Presiding Judge Chambers | Judicial Assistant Workstation | 1 | Medium |
| 102. | Courtrooms and Chambers | Judicial Chambers | Judge Chambers | Judge's Office + Visiting Judge | 16 | High |
| 103. | Courtrooms and Chambers | Judicial Chambers | Judge Chambers | Toilet, Single Occupancy, Judge | 16 | High |
| 104. | Courtrooms and Chambers | Judicial Chambers | Judge Chambers | Court Clerk Workstation | 15 | Medium |
| 105. | Courtrooms and Chambers | Judicial Chambers | Judge Chambers | Judicial Assistant Workstation | 15 | Medium |
| 106. | Courtrooms and Chambers | Judicial Chambers | Trial Court Admin Referee Chambers | Referee Office | 1 | High |
| 107. | Courtrooms and Chambers | Judicial Chambers | Trial Court Admin Referee Chambers | Trial Court Clerk Workstation | 2 | Medium |

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| 108. | Courtrooms and Chambers | Judicial Chambers | Shared Collegial Spaces | Visitor Waiting | 4 | Medium |
| 109. | Courtrooms and Chambers | Judicial Chambers | Shared Collegial Spaces | Small Judicial Conference Room | 4 | Medium |
| 110. | Courtrooms and Chambers | Judicial Chambers | Shared Collegial Spaces | Break Room | 4 | Low |
| 111. | Courtrooms and Chambers | Judicial Chambers | Shared Collegial Spaces | Copy/Work Room | 4 | Medium |
| 112. | Courtrooms and Chambers | Judicial Chambers | Shared Collegial Spaces | Supply Storage | 8 | Low |
| 113. | Courtrooms and Chambers | Judicial Chambers | Shared Collegial Spaces | A/V Equipment Control Closet | 8 | High |
| 114. | Court Administration | Circuit Court Administration Management Offices | Circuit Court Administration Management Offices | Trial Court Administrator | 1 | High |
| 115. | Court Administration | Circuit Court Administration Management Offices | Circuit Court Administration Management Offices | Toilet, Single Occupancy, Staff | 1 | Medium |
| 116. | Court Administration | Circuit Court Administration Management Offices | Court Administration | OJD Manager 2 | 1 | High |
| 117. | Court Administration | Circuit Court Administration Management Offices | Court Administration | Management Assistant 2 | 1 | Low |
| 118. | Court Administration | Circuit Court Administration Management Offices | Court Administration | OJD Analyst 2 | 2 | Low |

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| 119. | Court Administration | Circuit Court Administration Management Offices | Court Administration | Waiting Area | 1 | Low |
| 120. | Court Administration | Circuit Court Administration Management Offices | Court Administration | Large Conference Room - 10-Person | 1 | Medium |
| 121. | Court Administration | Circuit Court Administration Management Offices | Court Administration | Court Admin Storage | 1 | Low |
| 122. | Court Administration | Circuit Court Administration Management Offices | Court Administration | Galley / Beverages | 1 | Low |
| 123. | Court Administration | Circuit Court Administration Management Offices | Treatment Court | Program Coordinator 3 | 1 | Medium |
| 124. | Court Administration | Circuit Court Administration Management Offices | Treatment Court | Program Staff | 3 | Low |
| 125. | Court Administration | Circuit Court Administration Management Offices | Treatment Court | Secure Administrative Files | 1 | Low |
| 126. | Court Administration | Circuit Court Administration Management Offices | Treatment Court | Meeting Space | 1 | Medium |

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| 127. | Court Administration | Circuit Court Administration Management Offices | Family Law | Family Law Facilitator + Staff (2-Person) | 1 | Medium |
| 128. | Court Administration | Circuit Court Administration Management Offices | Family Law | Future - Facilitator (2-Person) | 1 | Medium |
| 129. | Court Administration | Circuit Court Administration Management Offices | Family Law | Public Filing | 1 | Low |
| 130. | Court Administration | Circuit Court Administration Management Offices | Technical Support | Information Technology Specialist 2 | 2 | Medium |
| 131. | Court Administration | Circuit Court Administration Management Offices | Technical Support | Information Technology Specialist 3 | 1 | Medium |
| 132. | Court Administration | Circuit Court Administration Management Offices | Technical Support | Future - Information Technology Specialist | 1 | Low |
| 133. | Court Administration | Circuit Court Administration Management Offices | Technical Support | New Equipment Storage | 1 | Low |
| 134. | Court Administration | Circuit Court Administration Management Offices | Technical Support | Equipment Repair and Testing | 1 | Medium |

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| 135. | Court Administration | Circuit Court Administration Management Offices | Technical Support | Consultant Workstation | 1 | Low |
| 136. | Court Administration | Circuit Court Administration Management Offices | Technical Support | Printer/Scan/Copy Station | 1 | Medium |
| 137. | Court Administration | Public Help Center | Public Help Center - Information Area | Help Desk | 1 | Medium |
| 138. | Court Administration | Public Help Center | Public Help Center - Information Area | Public Queuing at Help Desk | 10 | Medium |
| 139. | Court Administration | Public Help Center | Public Help Center - Information Area | Public Computer Terminals | 8 | Medium |
| 140. | Court Administration | Public Help Center | Public Help Center - Information Area | Public Forms Computer Terminals | 6 | Medium |
| 141. | Court Administration | Public Help Center | Public Help Center - Information Area | Public E-Filing Stations | 2 | Medium |
| 142. | Court Administration | Public Help Center | Public Help Center - Information Area | Future - Public Stations | 2 | Medium |
| 143. | Court Administration | Public Help Center | Public Help Center - Information Area | Public Work Table | 4 | Medium |
| 144. | Court Administration | Public Help Center | Public Counter (Window) | Cashier | 1 | Medium |
| 145. | Court Administration | Public Help Center | Public Counter (Window) | Public Windows (Unassigned) | 8 | Medium |
| 146. | Court Administration | Public Help Center | Public Counter (Window) | Public Waiting Area for Windows | 40 | Low |

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| 147. | Court Administration | Public Help Center | Public Counter (Window) | Public Service Window Drop Box | 1 | Low |
| 148. | Court Administration | Public Help Center | Public Counter (Window) | Staff Printer Stations at Windows | 2 | Medium |
| 149. | Court Administration | Public Help Center | Interpreter | Interpreter Workstation | 2 | Low |
| 150. | Court Administration | Law Library | Law Library | Reception/Waiting | 1 | Medium |
| 151. | Court Administration | Law Library | Law Library | Law Librarian Director Office | 1 | High |
| 152. | Court Administration | Law Library | Law Library | Staff Office | 1 | Medium |
| 153. | Court Administration | Law Library | Law Library | Copy / Print / Scan / Fiche / Film Room | 1 | Low |
| 154. | Court Administration | Law Library | Law Library | Legal Reference Desk | 3 | Low |
| 155. | Court Administration | Law Library | Law Library | Circulation Desk | 1 | Low |
| 156. | Court Administration | Law Library | Law Library | Compact Shelving System Area | 1 | Low |
| 157. | Court Administration | Law Library | Law Library | Reading Room | 1 | Medium |
| 158. | Court Administration | Law Library | Law Library | Work Room | 1 | Medium |
| 159. | Court Administration | Law Library | Law Library | Public Computers | 4 | Low |
| 160. | Court Administration | Law Library | Law Library | Study Carrel (Quiet) | 12 | Low |
| 161. | Court Administration | Law Library | Law Library | Work Table | 2 | Low |
| 162. | Court Administration | Civil Case Unit | Civil Case Unit | OJD Supervisor 3 | 1 | Medium |

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|------|----------------------|---|---|---|---|--------|
| 163. | Court Administration | Civil Case Unit | Civil Case Unit | Civil Clerk/Foreclosure – JSS4 | 1 | Low |
| 164. | Court Administration | Civil Case Unit | Civil Case Unit | Civil Clerk – JSS3 | 4 | Low |
| 165. | Court Administration | Civil Case Unit | Civil Case Unit | Civil Lead/Trainer – JSS3 | 1 | Low |
| 166. | Court Administration | Civil Case Unit | Domestic Relations | Law Clerk - JSS3 | 4 | Low |
| 167. | Court Administration | Civil Case Unit | Domestic Relations | Civil and Family Law | 1 | Low |
| 168. | Court Administration | Civil Case Unit | Domestic Relations | Future | 3 | Low |
| 169. | Court Administration | Civil Case Unit | Shared Amenities | Galley / Beverages | 1 | Low |
| 170. | Court Administration | Civil Case Unit | Shared Amenities | Copy/Work Room | 1 | Medium |
| 171. | Court Administration | Civil Case Unit | Shared Amenities | File Cabinet Storage | 1 | Low |
| 172. | Court Administration | Probate | Probate | Probate Coordinator – Analyst 1 | 1 | Low |
| 173. | Court Administration | Probate | Probate | Probate Clerk – JSS3 | 1 | Low |
| 174. | Court Administration | Probate | Probate | Probate Auditor – JSS3 | 1 | Low |
| 175. | Court Administration | Probate | Probate | Meeting Space (Coordinator + Attorneys) | 1 | Medium |
| 176. | Court Administration | Accounting / Collections / Indigent Defense | Accounting / Collections / Indigent Defense | Supervisor 3 | 1 | Medium |
| 177. | Court Administration | Accounting / Collections / Indigent Defense | Accounting | Disbursement Clerk | 1 | Low |

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|------|----------------------|---|------------------------------------|---------------------------------------|---|--------|
| 178. | Court Administration | Accounting / Collections / Indigent Defense | Accounting | Accounting Clerk | 2 | Low |
| 179. | Court Administration | Accounting / Collections / Indigent Defense | Accounting | Future - Clerk | 1 | Low |
| 180. | Court Administration | Accounting / Collections / Indigent Defense | Collections & Criminal Restitution | Collection Agent - Restitution - Lead | 1 | Low |
| 181. | Court Administration | Accounting / Collections / Indigent Defense | Collections & Criminal Restitution | Collection Agent - Restitution | 1 | Low |
| 182. | Court Administration | Accounting / Collections / Indigent Defense | Collections & Criminal Restitution | Small Claims/Landlord Tenant - JSS3 | 1 | Low |
| 183. | Court Administration | Accounting / Collections / Indigent Defense | Collections & Criminal Restitution | Collection Clerk - General | 3 | Low |
| 184. | Court Administration | Accounting / Collections / Indigent Defense | Collections & Criminal Restitution | Future - Clerk | 1 | Low |
| 185. | Court Administration | Accounting / Collections / Indigent Defense | Indigent Defense | Court Appointed Attorney Clerk | 1 | Low |
| 186. | Court Administration | Accounting / Collections / Indigent Defense | Shared Spaces and Amenities | Money Counting Room | 1 | Medium |
| 187. | Court Administration | Accounting / Collections / Indigent Defense | Shared Spaces and Amenities | Safe | 2 | Medium |
| 188. | Court Administration | Accounting / Collections / Indigent Defense | Shared Spaces and Amenities | Printer/Scan/Copy Station | 1 | Medium |
| 189. | Court Administration | Criminal and Traffic | Criminal and Traffic | OJD Supervisor 2 | 1 | Medium |

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|------|----------------------|-------------------------------|-------------------------------|---|---|--------|
| 190. | Court Administration | Criminal and Traffic | Criminal and Traffic | Judicial Specialist II-Part Time 60% | 1 | Low |
| 191. | Court Administration | Criminal and Traffic | Criminal and Traffic | Judicial Specialist III | 8 | Low |
| 192. | Court Administration | Criminal and Traffic | Criminal and Traffic | Judicial Specialist IV / Lead Supervisor II (WOC) | 1 | Low |
| 193. | Court Administration | Criminal and Traffic | Criminal and Traffic | Galley / Beverages | 1 | Low |
| 194. | Court Administration | Criminal and Traffic | Criminal and Traffic | Printer/Scan/Copy Station | 1 | Medium |
| 195. | Court Administration | Calendaring / Juvenile / Jury | Calendaring / Juvenile / Jury | OJD Supervisor 2 | 1 | Medium |
| 196. | Court Administration | Calendaring / Juvenile / Jury | Calendaring | Calendaring Clerk - JSS3 | 5 | Low |
| 197. | Court Administration | Calendaring / Juvenile / Jury | Calendaring | Future - Calendaring Clerk | 2 | Low |
| 198. | Court Administration | Calendaring / Juvenile / Jury | Juvenile Dependency | Juvenile Dependency Clerk | 2 | Low |
| 199. | Court Administration | Records | Records | OJD Supervisor 1 | 1 | Medium |
| 200. | Court Administration | Records | Records / Mail / Info Center | Records Clerk - JSS2 | 8 | Low |
| 201. | Court Administration | Records | Records / Mail / Info Center | Appeals Clerk - JSS3 | 1 | Low |
| 202. | Court Administration | Records | Records / Mail / Info Center | Active Records | 4 | Low |
| 203. | Court Administration | Records | Records / Mail / Info Center | Printer/Scan/Copy Station | 1 | Medium |
| 204. | Court Administration | Records | Records / Mail / Info Center | Public Records Viewing Room | 1 | Medium |

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| 205. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Toilet, Multi-Occupancy, Staff | 2 | Medium |
| 206. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Toilet, Single Occupancy, Staff, Unisex | 1 | Medium |
| 207. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Large Conference Room - 10-person | 1 | Medium |
| 208. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Evidence Storage | 1 | High |
| 209. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Exhibit Storage | 1 | High |
| 210. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Copy/Work Room | 2 | Medium |
| 211. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Scanning Station | 2 | Low |
| 212. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Break Room | 1 | Low |
| 213. | Court Administration | Shared Administration Staff Support Spaces | Shared Administration Staff Support Spaces | Mail Sorting | 1 | Medium |
| 214. | Court Administration | Jury Assembly | Jury Assembly Check-In | Jury Coordinator - JSS3 | 2 | Low |

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|------|----------------------|-------------------|------------------------|--|----|--------|
| 215. | Court Administration | Jury Assembly | Jury Assembly Check-In | Jury Clerk | 2 | Low |
| 216. | Court Administration | Jury Assembly | Jury Assembly Check-In | Juror Assembly Entrance/ | 1 | Medium |
| 217. | Court Administration | Jury Assembly | Jury Assembly Check-In | Juror Check-In Counter/Staff Workstation | 2 | Medium |
| 218. | Court Administration | Jury Assembly | Jury Assembly Check-In | Printer/Scan/Copy Station | 1 | Low |
| 219. | Court Administration | Jury Assembly | Jury Assembly Check-In | Check-In Kiosk | 2 | Low |
| 220. | Court Administration | Jury Assembly | Main Jury Assembly | Jury Room Main Assembly Area | 1 | High |
| 221. | Court Administration | Jury Assembly | Main Jury Assembly | Jury Room Lounge Area (Unit area per person) | 1 | Medium |
| 222. | Court Administration | Jury Assembly | Juror Support Areas | Break Area / Galley | 1 | Medium |
| 223. | Court Administration | Jury Assembly | Juror Support Areas | Break Area - Seating at Tables | 1 | Medium |
| 224. | Court Administration | Jury Assembly | Juror Support Areas | Phone Charging Area | 1 | Low |
| 225. | Court Administration | Jury Assembly | Juror Support Areas | Toilet, Multi-Occupancy, Juror | 2 | High |
| 226. | Court Administration | Jury Assembly | Juror Support Areas | Toilet, Single Occupancy, Juror | 1 | High |
| 227. | Court Administration | Jury Assembly | Juror Support Areas | Juror Lactation Room | 1 | Medium |
| 228. | Court Administration | Jury Assembly | Juror Support Areas | Locker Area / Alcove | 10 | Low |
| 229. | District Attorney | Criminal Division | Main Reception | Main Reception / Waiting | 1 | High |

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|------|-------------------|-------------------|----------------------|-------------------------------------|----|--------|
| 230. | District Attorney | Criminal Division | Main Reception | Front Desk Customer Info Specialist | 1 | High |
| 231. | District Attorney | Criminal Division | Main Reception | Front Desk (Specialist 1) | 2 | Medium |
| 232. | District Attorney | Criminal Division | District Attorney | District Attorney | 1 | High |
| 233. | District Attorney | Criminal Division | District Attorney | Toilet, Single Occupancy, DA | 1 | High |
| 234. | District Attorney | Criminal Division | District Attorney | Chief Deputy District Attorney | 2 | High |
| 235. | District Attorney | Criminal Division | Administrative Staff | Senior Administrator | 1 | High |
| 236. | District Attorney | Criminal Division | Administrative Staff | Operations Manager | 1 | Medium |
| 237. | District Attorney | Criminal Division | Administrative Staff | Legal Office Supervisor | 1 | Medium |
| 238. | District Attorney | Criminal Division | Persons Felony Unit | Senior Deputy District Attorney | 1 | Medium |
| 239. | District Attorney | Criminal Division | Persons Felony Unit | Deputy District Attorney 3 | 6 | Medium |
| 240. | District Attorney | Criminal Division | Persons Felony Unit | Senior Legal Secretary | 1 | Low |
| 241. | District Attorney | Criminal Division | Persons Felony Unit | Legal Secretary | 1 | Low |
| 242. | District Attorney | Criminal Division | Property Felony Unit | Senior Deputy District Attorney | 1 | Medium |
| 243. | District Attorney | Criminal Division | Property Felony Unit | Deputy District Attorney 3 | 1 | Medium |
| 244. | District Attorney | Criminal Division | Property Felony Unit | Deputy District Attorney 2 | 11 | Medium |
| 245. | District Attorney | Criminal Division | Property Felony Unit | Senior Legal Secretary | 1 | Low |
| 246. | District Attorney | Criminal Division | Property Felony Unit | Office Specialist 2 | 1 | Low |
| 247. | District Attorney | Criminal Division | Misdemeanor | Senior Deputy District Attorney | 1 | Medium |
| 248. | District Attorney | Criminal Division | Misdemeanor | Deputy District Attorney 1 | 7 | Medium |
| 249. | District Attorney | Criminal Division | Misdemeanor | Senior Law Clerk | 1 | Low |
| 250. | District Attorney | Criminal Division | Misdemeanor | Law Clerk | 5 | Low |
| 251. | District Attorney | Criminal Division | Misdemeanor | Senior Legal Secretary | 1 | Low |

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| 252. | District Attorney | Criminal Division | Misdemeanor | Legal Secretary | 1 | Low |
| 253. | District Attorney | Criminal Division | Misdemeanor | Office Specialist 2 | 1 | Low |
| 254. | District Attorney | Criminal Division | Domestic Violence | Senior Deputy District Attorney | 1 | Medium |
| 255. | District Attorney | Criminal Division | Domestic Violence | Deputy District Attorney 2 | 4 | Medium |
| 256. | District Attorney | Criminal Division | Domestic Violence | Senior Legal Secretary | 1 | Low |
| 257. | District Attorney | Criminal Division | Domestic Violence | Legal Secretary | 1 | Low |
| 258. | District Attorney | Criminal Division | DA Juvenile | Senior Deputy District Attorney | 1 | Medium |
| 259. | District Attorney | Criminal Division | DA Juvenile | Deputy District Attorney 2 | 3 | Medium |
| 260. | District Attorney | Criminal Division | DA Juvenile | Legal Secretary | 1 | Low |
| 261. | District Attorney | Criminal Division | Investigators | Senior DA Investigator | 1 | Medium |
| 262. | District Attorney | Criminal Division | Investigators | DA Investigator | 4 | Medium |
| 263. | District Attorney | Criminal Division | Technology | IS Project Analyst Senior | 1 | Medium |
| 264. | District Attorney | Criminal Division | Technology | Microcomputer Analyst 2 | 1 | Medium |
| 265. | District Attorney | Criminal Division | Cyber Crime Unit | Senior Deputy District Attorney | 1 | Medium |
| 266. | District Attorney | Criminal Division | Cyber Crime Unit | Deputy District Attorney | 3 | Medium |
| 267. | District Attorney | Criminal Division | DA Support Positions | Paralegal (Elec. Evid. Fugitives Homicide Discovery) | 2 | Low |
| 268. | District Attorney | Criminal Division | DA Support Positions | Office Specialist 2 (In-Custody Docket) | 1 | Low |
| 269. | District Attorney | Criminal Division | DA Support Positions | Office Specialist 2 (Calendaring) | 1 | Low |
| 270. | District Attorney | Criminal Division | DA Support Positions | Legal Secretary (Calendaring) | 1 | Low |
| 271. | District Attorney | Criminal Division | DA Support Positions | Office Specialist 2 (Grand Jury Coordinator) | 1 | Low |

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|------|-------------------|---------------------------|---------------------------|---|---|--------|
| 272. | District Attorney | Criminal Division | DA Support Positions | Office Specialist 2 (Intake Desk) | 2 | Low |
| 273. | District Attorney | Criminal Division | DA Support Positions | Office Specialist 2 (FT Temp) | 1 | Low |
| 274. | District Attorney | Criminal Division | DA Support Positions | Office Specialist 1 (PT Temp) | 1 | Low |
| 275. | District Attorney | Criminal Division | DA Support Positions | Senior Budget and Payroll | 1 | Low |
| 276. | District Attorney | Criminal Division | DA Support Positions | Budget and Payroll | 3 | Low |
| 277. | District Attorney | Criminal Division | Staff Support Spaces | Large Conference / Law Library - 20-25 People | 1 | High |
| 278. | District Attorney | Criminal Division | Staff Support Spaces | Printer Station | 4 | Medium |
| 279. | District Attorney | Criminal Division | Staff Support Spaces | Galley / Beverages | 2 | Low |
| 280. | District Attorney | Criminal Division | Records Storage | Budget/Payroll/Personnel Files | 1 | High |
| 281. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Copy/Work Room | 2 | Medium |
| 282. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Supplies Storage | 2 | Low |
| 283. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Break Room | 1 | Low |
| 284. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Evidence Storage & Viewing | 1 | High |
| 285. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Equipment Storage | 1 | Low |
| 286. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Handgun Storage | 1 | High |
| 287. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Medium Conference Room - 8-Person | 1 | Medium |
| 288. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Small Conference Room - 6-Person | 2 | Medium |
| 289. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Scanning Station | 1 | Medium |

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|------|-------------------|---------------------------|------------------------------------|---|---|--------|
| 290. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Scanning Document Staging Area | 1 | Medium |
| 291. | District Attorney | Shared Spaces & Amenities | Shared Spaces & Amenities | Toilet, Multi-Occupancy, Staff | 4 | Medium |
| 292. | District Attorney | Victims Services | Reception Area | Reception/Waiting | 1 | High |
| 293. | District Attorney | Victims Services | Reception Area | Reception Counter Workstation | 1 | Medium |
| 294. | District Attorney | Victims Services | Reception Area | Central Victims Lounge | 1 | Medium |
| 295. | District Attorney | Victims Services | Reception Area | Toilet, Single Occupancy, Public - Victims Lounge | 1 | Medium |
| 296. | District Attorney | Victims Services | Staff Workstations | Victim Assistance Program Director | 1 | Medium |
| 297. | District Attorney | Victims Services | Staff Workstations | Victim Assistance Supervisor | 1 | Medium |
| 298. | District Attorney | Victims Services | Staff Workstations | Victim Advocate | 8 | Low |
| 299. | District Attorney | Victims Services | Staff Workstations | P/T Victim Advocate | 3 | Low |
| 300. | District Attorney | Victims Services | Victim Assistance Shared Amenities | Printer Station | 1 | Medium |
| 301. | District Attorney | Victims Services | Victim Assistance Shared Amenities | Galley / Beverages | 1 | Low |
| 302. | District Attorney | Victims Services | Victim Assistance Shared Amenities | Interview Room | 3 | Medium |
| 303. | District Attorney | Family Law | Family Law | Reception/Waiting | 1 | Medium |
| 304. | District Attorney | Family Law | Family Law | Counter Workstation | 1 | Low |
| 305. | District Attorney | Family Law | Staff Offices/Workstations | Senior Deputy District Attorney | 1 | Medium |
| 306. | District Attorney | Family Law | Staff Offices/Workstations | Deputy District Attorney (FS) | 1 | Medium |

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| 307. | District Attorney | Family Law | Staff Offices/Workstations | Legal Office Supervisor (FS) | 1 | Medium |
| 308. | District Attorney | Family Law | Staff Offices/Workstations | Senior Child Support Agent | 8 | Low |
| 309. | District Attorney | Family Law | Staff Offices/Workstations | Legal Secretary (FS) | 1 | Low |
| 310. | District Attorney | Family Law | Staff Offices/Workstations | Office Specialist 2 | 2 | Low |
| 311. | District Attorney | Family Law | Family Support Shared Amenities | Printer Station | 1 | Medium |
| 312. | District Attorney | Family Law | Family Support Shared Amenities | Galley / Beverages | 1 | Low |
| 313. | District Attorney | Family Law | Family Support Shared Amenities | Small Conference Room / FED space - 4-Person | 1 | Medium |
| 314. | District Attorney | Family Law | Family Support Shared Amenities | Large Conference Room - 10-15 People | 1 | Medium |
| 315. | District Attorney | Grand Jury | Grand Jury Coordinator | Legal Secretary | 1 | Medium |
| 316. | District Attorney | Grand Jury | Courtroom | Grand Jury Hearing Room | 2 | High |
| 317. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Reception/Waiting | 1 | Medium |
| 318. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Counter Workstation | 1 | Low |
| 319. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Touch-Down Workstations | 2 | Low |
| 320. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Victims/Witness Waiting | 1 | High |
| 321. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Sound-Lock Vestibule | 2 | High |
| 322. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Staff ADA Access Ramp | 1 | High |

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| 323. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | A/V Equipment Closet | 1 | High |
| 324. | District Attorney | Grand Jury | Grand Jury Ancillary Spaces | Galley / Beverages | 1 | Low |
| 325. | Sheriff Transport & Holding | Sally Port | Sally Port | Transport Sally Port | 1 | High |
| 326. | Sheriff Transport & Holding | Sally Port | Sally Port | Sally Port Vestibule/In-Custody Staging | 1 | High |
| 327. | Sheriff Transport & Holding | Sally Port | Sally Port | Gun Lockers | 1 | Medium |
| 328. | Sheriff Transport & Holding | Central Holding Area | In-Custody Intake | In-Custody Intake | 1 | High |
| 329. | Sheriff Transport & Holding | Central Holding Area | Holding Cells | Large Group Holding (Male) | 2 | High |
| 330. | Sheriff Transport & Holding | Central Holding Area | Holding Cells | Large Group Holding (Female) | 2 | High |
| 331. | Sheriff Transport & Holding | Central Holding Area | Holding Cells | Small Holding (Male) | 2 | High |
| 332. | Sheriff Transport & Holding | Central Holding Area | Holding Cells | Small Holding (Female) | 1 | High |
| 333. | Sheriff Transport & Holding | Central Holding Area | Holding Cells | Individual Holding (Male or Female) | 3 | High |
| 334. | Sheriff Transport & Holding | Central Holding Area | Holding Cells | Small Holding (Juvenile) | 1 | High |
| 335. | Sheriff Transport & Holding | Transport Operations Support | Transport Operations Support | Break Room/Muster | 1 | Low |
| 336. | Sheriff Transport & Holding | Transport Operations Support | Transport Operations Support | In-Custody Control Room | 1 | High |
| 337. | Sheriff Transport & Holding | Transport Operations Support | Transport Operations Support | Toilet, Single Occupancy, Staff - Unisex | 1 | Medium |
| 338. | Sheriff Transport & Holding | Transport Operations Support | Transport Operations Support | Information Services Utility Closet | 1 | High |

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| 339. | Sheriff Transport & Holding | Transport Operations Support | Transport Operations Support | Equipment Storage | 1 | Low |
| 340. | Sheriff Transport & Holding | Transport Operations Support | Transport Operations Support | Food Service Area | 1 | Low |
| 341. | Sheriff Transport & Holding | Transport Operations Support | Locker Rooms & Showers | Locker Room, Women's | 1 | Low |
| 342. | Sheriff Transport & Holding | Transport Operations Support | Locker Rooms & Showers | Toilet/ Shower, Women's | 1 | Medium |
| 343. | Sheriff Transport & Holding | Transport Operations Support | Locker Rooms & Showers | Locker Room, Men's | 1 | Low |
| 344. | Sheriff Transport & Holding | Transport Operations Support | Locker Rooms & Showers | Toilet/ Shower, Men's | 1 | Medium |
| 345. | Sheriff Transport & Holding | Transport Operations Support | Toilets | Toilet, Single Occupancy, Staff - Women's | 1 | Medium |
| 346. | Sheriff Transport & Holding | Transport Operations Support | Toilets | Toilet, Single Occupancy, Staff - Men's | 1 | Medium |
| 347. | Sheriff Transport & Holding | Transport Operations Support | Toilets | Toilet, Single Occupancy, Staff - Unisex | 1 | Medium |
| 348. | Sheriff Main Offices | Security Screening | Security Screening | Lead Entrance Screening Officer (ESO) | 1 | Medium |
| 349. | Sheriff Main Offices | Security Screening | Security Screening | Entrance Screening Officer Breakroom | 1 | Low |
| 350. | Sheriff Main Offices | Sheriff Administration | Public Service | Sheriff Public Window | 2 | High |
| 351. | Sheriff Main Offices | Sheriff Administration | Public Service | Public Waiting at Window | 1 | High |
| 352. | Sheriff Main Offices | Sheriff Administration | Public Service | CCSO Office | 1 | High |
| 353. | Sheriff Main Offices | Sheriff Administration | Courthouse Security | Captain Office | 1 | Low |
| 354. | Sheriff Main Offices | Sheriff Administration | Courthouse Security | Sergeant Office | 1 | Medium |

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| 355. | Sheriff Main Offices | Sheriff Administration | Courthouse Security | Deputy Workstation | 7 | Low |
| 356. | Sheriff Main Offices | Sheriff Administration | Courthouse Security | Future - Deputy Workstation | 7 | Low |
| 357. | Sheriff Main Offices | Sheriff Administration | Civil Division | Process Sergeant Office | 1 | Medium |
| 358. | Sheriff Main Offices | Sheriff Administration | Civil Division | Admin Staff | 3 | Low |
| 359. | Sheriff Main Offices | Sheriff Administration | Civil Division | Future - Admin Staff | 1 | Low |
| 360. | Sheriff Main Offices | Sheriff Administration | Civil Division | Technical Staff | 1 | Low |
| 361. | Sheriff Main Offices | Sheriff Administration | Civil Division | Printer/Copy/Scan Station | 1 | High |
| 362. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Building Monitoring Room | 1 | High |
| 363. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Evidence Storage Closet | 1 | High |
| 364. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Large Conference Room - 14-Person | 1 | Low |
| 365. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Personnel File Room/Record Storage | 1 | High |
| 366. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Copy/Work Room | 1 | Low |
| 367. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Office Supply Storage Closet | 1 | Low |
| 368. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Toilet, Single Occupancy, Staff - Women's | 1 | Medium |
| 369. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Toilet, Single Occupancy, Staff - Men's | 1 | Medium |
| 370. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Toilet, Single Occupancy, Staff - Unisex | 1 | Medium |

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| 371. | Sheriff Main Offices | Sheriff Administration | Shared Amenities | Weapons Storage | 1 | High |
| 372. | State Offices | Department of Human Services | Department of Human Services | Biological Parent Entry / Waiting Area | 1 | Medium |
| 373. | State Offices | Department of Human Services | Department of Human Services | Waiting Area Foster Parent /Drop Off Area | 1 | Medium |
| 374. | State Offices | Department of Human Services | Department of Human Services | Visit Rooms | 2 | Medium |
| 375. | State Offices | Department of Human Services | Department of Human Services | Viewing Room | 1 | Medium |
| 376. | State Offices | Department of Human Services | Department of Human Services | Family Meeting Room | 1 | Medium |
| 377. | State Offices | Department of Human Services | Staff Offices/Workstations | Private Office | 1 | Medium |
| 378. | State Offices | Department of Human Services | Staff Offices/Workstations | Workstations | 6 | Low |
| 379. | State Offices | Department of Human Services | Staff Offices/Workstations | Future - Workstations | 3 | Low |
| 380. | State Offices | Department of Human Services | Shared Amenities | Galley / Beverages | 1 | Low |
| 381. | State Offices | Department of Human Services | Shared Amenities | Large Conference Room - 12-15 People | 1 | Medium |
| 382. | State Offices | Department of Human Services | Shared Amenities | Copy/Print/Scan Station | 1 | Medium |
| 383. | State Offices | Department of Human Services | Shared Amenities | Lactation Room, Public | 1 | Medium |
| 384. | State Offices | Department of Human Services | Shared Amenities | Toilet, Single Occupancy, Public - Unisex | 1 | Medium |
| 385. | State Offices | Department of Human Services | Miscellaneous Additional Space | Miscellaneous Additional Space | 1 | Low |
| 386. | State Offices | Public Defense & CIDC & JACL | Public Space | Reception/Waiting | 1 | Medium |

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| 387. | State Offices | Public Defense & CIDC & JACL | Public Space | OPDS Reception Counter | 1 | Medium |
| 388. | State Offices | Public Defense & CIDC & JACL | Public Defense Workspace | Hoteling Workstations | 1 | Low |
| 389. | State Offices | Public Defense & CIDC & JACL | Public Defense Workspace | Touchdown Office | 2 | Medium |
| 390. | State Offices | Public Defense & CIDC & JACL | CIDC Workspace | Administration | 1 | Low |
| 391. | State Offices | Public Defense & CIDC & JACL | CIDC Workspace | Touchdown Office | 2 | Medium |
| 392. | State Offices | Public Defense & CIDC & JACL | CIDC Workspace | Attorney Hoteling Station | 1 | Low |
| 393. | State Offices | Public Defense & CIDC & JACL | CIDC Workspace | Touchdown Office | 2 | Medium |
| 394. | State Offices | Public Defense & CIDC & JACL | CIDC Workspace | Equipment Storage Room | 1 | Low |
| 395. | State Offices | Public Defense & CIDC & JACL | Shared Space | Printer Station | 1 | Medium |
| 396. | State Offices | Public Defense & CIDC & JACL | Shared Space | Galley/Beverage | 1 | Low |
| 397. | State Offices | Public Defense & CIDC & JACL | Shared Space | Small Conference Room - 6-Person | 2 | Medium |
| 398. | State Offices | Public Defense & CIDC & JACL | Shared Space | Large Conference Room - 30-Person | 1 | Medium |
| 399. | State Offices | Public Defense & CIDC & JACL | Shared Space | Copy/Work/Mail Room | 1 | Medium |
| 400. | State Offices | Public Defense & CIDC & JACL | Shared Space | Secure Storage Lockers | 1 | Medium |
| 401. | State Offices | Public Defense & CIDC & JACL | Shared Space | Toilet, Single Occupancy, Public - Unisex | 1 | Medium |
| 402. | State Offices | Public Defense & CIDC & JACL | Miscellaneous Additional Space | Miscellaneous Additional Space | 1 | Low |

Table 11A-2 – Deductions for Unavailability Events

| Unavailability Event Classification | Functional Unit Priority Classification | Required Response Time (Minutes) | Length of Rectification Period (Hours) | Unavailability Deduction per completed Rectification Period (Index-Linked) |
|--|--|---|---|---|
| Emergency Event | High | 30 | 2 | \$800 |
| | Medium | 30 | 3 | \$600 |
| | Low | 30 | 3 | \$300 |
| Critical Event | High | 30 | 2 | \$800 |
| | Medium | 30 | 3 | \$600 |
| | Low | 30 | 3 | \$300 |
| Routine Event | High | 60 | 24 | \$300 |
| | Medium | 60 | 48 | \$200 |
| | Low | 60 | 60 | \$100 |

Table 11A-3 – Summary of Deductions for Major or Prolonged Unavailability Events

| Major or Prolonged Unavailability Event Summary | Section of Appendix 11 Specifying Special Deduction Amount |
|---|---|
| Total Courthouse Unavailability occurs. | Section 4.1 |
| Unavailability of any Functional Unit lasts beyond three consecutive Rectification Periods. | Section 4.2 |
| Three or more Unavailability Events occurring on the same day have the same root cause, or four or more Unavailability Events occurring in a rolling consecutive seven day period have the same root cause. | Section 4.3 |

ATTACHMENT 11B

PERFORMANCE FAILURE DEDUCTIONS

Performance Failure Deductions shall be determined in accordance with this Attachment 11B and may be imposed by the County in accordance with this Appendix 11.

Table 11B-1 defines the Performance Failures. Each Performance Failure is summarized in the Table. Table 11B-1 also indicates (1) the priority classification of each Performance Failure (low, medium or high), (2) whether or not Rectification of the Performance Failure is allowable before the County may impose a Performance Failure Deduction, (3) the second table to reference in Attachment 11B for calculating Deductions (Tables 11B-2, 11B-3, 11B-4, and 11B-5), and (4) establishes the point at which a Performance Failure is determined (the Recording Frequency): annually (A), quarterly (Q), monthly (M), or per occurrence (PO).

Table 11B-1 – Performance Failures

| # | Performance Failure | Performance Failure Classification Priority | Is Rectification Allowed? | Attachment 11B Table For Calculating Deduction Amount | Recording Frequency |
|----|--|---|---------------------------|---|---------------------|
| 1. | All failures to comply with the plans or the obligations in Appendix 8 (Facilities Management Standards) that are not described elsewhere in this Attachment. | Low | Yes | Table 11B-2 | PO |
| 2. | A failure to ensure that each Project Company Person engaged in the delivery of the Facilities Management Services at all times complies with all Applicable Laws, Contract Standards and other requirements of this Project Agreement, including those related to security clearances; personal identification, licensure and access control; physical and other searches of persons and property; control and detection of contraband; safety; key control; and tool control. | High | Yes | Table 11B-2 | PO |
| 3. | A failure to ensure that each Project Company Person engaged in the delivery of the Facilities Management Services is at all times properly and adequately notified, trained and instructed with regard to all relevant health and safety standards associated with the Facilities Management Services to be performed and the rules, policies and procedures established by the Project Company concerning health and safety at work; all applicable fire precautions, procedures and contingency plans; and handling and usage of chemicals, including pesticides, herbicides and fertilizers, and other Hazardous | High | Yes | Table 11B-2 | PO |

| # | Performance Failure | Performance Failure Classification Priority | Is Rectification Allowed? | Attachment 11B Table For Calculating Deduction Amount | Recording Frequency |
|----|---|---|---------------------------|---|---------------------|
| | Substances applicable to the Facilities Management Services to be performed. | | | | |
| 4. | A failure to ensure that each Project Company Person engaged in the delivery of the Facilities Management Services complies with OR-OSHA. | High | Yes | Table 11B-2 | PO |
| 5. | The Project Company fails to achieve a quarterly average satisfaction rating equal to or greater than 3.0 on the short survey for individual work orders described in Section 4.3.2 (Demand Maintenance Performance Survey) of Appendix 8. | Not Applicable (see Table 11B-5) | No | Table 11B-5 | Q |
| 6. | The Project Company fails to achieve an average satisfaction rating of 3.0 or greater in the quarterly County Satisfaction Report described in Section 4.3.3 (Quarterly Performance Survey) of Appendix 8, after achieving an average satisfaction rating of 3.0 or greater in the prior quarter. | Not Applicable (see Table 11B-5) | No | Table 11B-5 | Q |
| 7. | The Project Company fails to achieve an average satisfaction rating of 3.0 or greater in the quarterly County Satisfaction Report described in Section 4.3.3 (Quarterly Performance Survey) of Appendix 8, after failing to achieve an average satisfaction rating of 3.0 or greater in the prior quarter as well. | Not Applicable (see Table 11B-5) | No | Table 11B-5 | Q |
| 8. | Failure to meet all of the required reporting and performance monitoring requirements as described in Section 3.6 (Performance Monitoring Services) of Appendix 8 and Appendix 14 (Reports and Records). This includes, but is not limited to, maintaining appropriate records in relation to all permits, licenses, test certificates and approvals. | Medium | Yes | Table 11B-2 | PO |
| 9. | Failure to complete a minimum of 95% of Scheduled Maintenance within the planned month and provide associated CMMS records to the County. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |

| # | Performance Failure | Performance Failure Classification Priority | Is Rectification Allowed? | Attachment 11B Table For Calculating Deduction Amount | Recording Frequency |
|-----|--|---|---------------------------|---|---------------------|
| 10. | Failure to complete 100% of deferred Scheduled Maintenance within the month, or any subsequent month, following the originally planned month and provide associated CMMS records to the County. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 11. | Failure to maintain accurate and current CMMS records, equipment histories and reports relative to Scheduled Maintenance and make such records (reflecting the full length of the Term) available for review by the County at all times. | High | Yes | Table 11B-2 | PO |
| 12. | Failure to keep as-built documents available and current, and make such documents available for review by the County at all times. | High | Yes | Table 11B-2 | PO |
| 13. | Failure of any fire alarm or sensor. | High | Yes | Table 11B-2 | PO |
| 14. | Failure of any alarm relating to the MDF, IDF or any server room, including but not limited to any temperature and moisture alarms. | High | Yes | Table 11B-2 | PO |
| 15. | Failure to have the public elevators or escalators be available, in aggregate, during 95% of the Operating Hours. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 16. | Failure to have the staff elevator be available, in aggregate, during 95% of the Operating Hours. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 17. | Failure to have the service elevator be available, in aggregate, during 90% of the Operating Hours. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 18. | Failure to have the in-custody elevators be available, in aggregate, during 97% of the Operating Hours. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 19. | Failure to maintain Superior Cleanliness in all Courtrooms, Jury Deliberation areas, Grand Jury Hearing Rooms, conference rooms to which the general public may have access, Jury Assembly areas, Judicial Chambers (including | Medium | Yes | Table 11B-2 | PO |

| # | Performance Failure | Performance Failure Classification Priority | Is Rectification Allowed? | Attachment 11B Table For Calculating Deduction Amount | Recording Frequency |
|-----|---|---|---------------------------|---|---------------------|
| | administrative assistants' spaces), the Law Library, the Trial Court Administrator's personal office, and the District Attorney's personal office, as further described in Section 3.1.2.9 (Custodial Services Requirements) of Appendix 8. | | | | |
| 20. | Failure to maintain Orderly Cleanliness in any area of the New Courthouse (including exterior walls and windows of the New Courthouse) not described in item 19 of this Table 11B-1, as further described in Section 3.1.2.9 (Custodial Services Requirements) of Appendix 8. | Low | Yes | Table 11B-2 | PO |
| 21. | Failure to have a minimum of one porter at the Project Site during 95% of the Operating Hours. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 22. | Failure to make use of walk-off carpets, as necessary, and minimize the hazards of any installed terrazzo floors to ensure the safety of all Project Users. | High | Yes | Table 11B-2 | PO |
| 23. | Failure to answer 100% of calls to the Help Desk within 10 minutes. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 24. | Failure to answer 100% of emails or CMMS entries to the Help Desk within 30 minutes. | Not Applicable (see Table 11B-4) | No | Table 11B-4 | M |
| 25. | Failure by the Project Company to free any occupant trapped in an elevator within 30 minutes of the Help Desk being informed of such mechanical failure. | High | No | Table 11B-3 | PO |
| 26. | Failure to provide training twice per year to Project Company Persons and County Persons on how to release elevator occupants from the elevator when necessary. | High | Yes | Table 11B-2 | A |
| 27. | Failure by the Project Company to provide notice, within 30 minutes of receiving notice, to the County of any scheduled utility interruptions. | Medium | No | Table 11B-3 | PO |
| 28. | Failure to maintain energy usage below 110% of the annual benchmarked energy usage, as further described in Section 3.4.4 (Energy Consumption and | Not Applicable (see Table 11B-4) | No | Table 11B-4 | A |

| # | Performance Failure | Performance Failure Classification Priority | Is Rectification Allowed? | Attachment 11B Table For Calculating Deduction Amount | Recording Frequency |
|-----|--|---|---------------------------|---|---------------------|
| | Efficiency) of Appendix 8. Such benchmark will be indexed annually in accordance with Section 3.4.4 of Appendix 8. | | | | |
| 29. | Failure by the Project Company to respond to any Unavailability Event or Performance Failure within the times specified in Section 6 (Response Times) of Appendix 11. | Medium | No | Table 11B-3 | PO |
| 30. | Failure by the Project Company to monitor or timely and accurately report an Event, as further described in Section 10.2 (Failure to Monitor or Report) of Appendix 11, for any reason other than one described in Section 10.3 (Misconduct) of Appendix 11. | Medium | No | Table 11B-3 | PO |
| 31. | Failure by the Project Company to monitor or timely and accurately report an Event due to fraudulent action or inaction; deliberate misrepresentation; or gross misconduct or incompetence by the Project Company or a Project Company Person, as further described in Section 10.3 (Misconduct) of Appendix 11. | High | No | Table 11B-3 | PO |
| 32. | Failure to comply with the Facilities Management Plans as such plans may be revised with the County's approval in accordance with Section 9.5(B) (Major Equipment Repair and Replacement Schedule and Schedule Changes) of this Project Agreement. | High | Yes | Table 11B-2 | PO |
| 33. | Failure of the broadband distribution antenna or distributed antenna system, such that there is not adequate cellular coverage in the building or first responder radio coverage in the building. | High | Yes | Table 11B-2 | PO |

Table 11B-2 – Performance Failures for which Rectification is Allowed

| Performance Failure Priority Classification | Required Response Time (Minutes) | Length of Rectification Period (Hours) | Performance Failure Deduction per completed Rectification Period (Index-Linked) |
|---|----------------------------------|--|---|
| High | 30 | 3 | \$650 |
| Medium | 45 | 36 | \$300 |

| Performance Failure Priority Classification | Required Response Time (Minutes) | Length of Rectification Period (Hours) | Performance Failure Deduction per completed Rectification Period (Index-Linked) |
|--|---|---|--|
| Low | 60 | 60 | \$100 |

Table 11B-3 – Performance Failures, with a Priority Classification, for which Rectification is not Allowed

| Performance Failure Priority Classification | Performance Failure Deduction per Performance Failure (Index-Linked) |
|--|---|
| High | \$650 |
| Medium | \$300 |
| Low | \$100 |

Table 11B-4 – Performance Failures Measured with a Percentage Performance Metric

| Performance Failure Recording Frequency | Deduction (Index-Linked) |
|--|--|
| Annually (Item 28 of Table 11B-1 of this Attachment) | 100% of the additional incremental utility cost incurred by the County as a result of energy usage in excess of the benchmarked amount, using a rate of \$0.057 per kWh. |
| Monthly (Items 9, 10, 15, 16, 17, 18, 21, 23 and 24 of Table 11B-1 of this Attachment) | \$550 per percentage point below the percentage required in the Performance Failure |

Table 11B-5 – Performance Failures Measured by a Questionnaire

| Survey Type | Deduction (Index-Linked) |
|--|--------------------------------------|
| Quarterly Average of Work Order Surveys (Item 5 of Table 11B-1 of this Attachment) | \$220 per tenth of a point below 3.0 |
| Quarterly Survey (Item 6 of Table 11B-1 of this Attachment) | \$220 per tenth of a point below 3.0 |
| Quarterly Survey (Item 7 of Table 11B-1 of this Attachment) | \$440 per tenth of a point below 3.0 |

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APPENDIX 12
EXAMPLE CALCULATIONS OF DEDUCTIONS FROM SERVICE FEE

APPENDIX 12

EXAMPLE CALCULATIONS OF DEDUCTIONS FROM SERVICE FEE

1. BACKGROUND

1.1 The Deductions from the Service Fee shall be applied to the calculation of the periodic installment of the Service Fee as applicable depending on the particular Billing Period and shall be comprised of Deductions for Unavailability Events and Performance Failures.

1.2 Attachment 11A (Unavailability Deductions) of Appendix 11 (Deductions) provides a schedule of Rectification Periods, Response Times and Deduction amounts for Unavailability Events.

1.3 Attachment 11B (Performance Failure Deductions) of Appendix 11 (Deductions) defines the Performance Failures that will lead to Deductions and provides a schedule of Rectification Periods (where applicable), Response Times (where applicable) and Deduction amounts for Performance Failures.

1.4 For the purposes of the worked examples that follow, the effect of any applicable indexation or transition periods have been ignored.

1.5 For the purposes of the examples that follow, the effect of any final multiplier to be applied to the Deductions Credit pursuant to Section 2.3 (Deductions Multiplier for Persistent Underperformance) of Appendix 11 (Deductions) has been ignored.

1.6 For the purposes of the examples that follow, the effect of any Functional Unit being Unavailable but used has been ignored.

2. UNAVAILABILITY DEDUCTIONS

2.1 The following table provides 10 examples of Unavailability Deductions.

| | Scenario overview | Type of Event | Functional Unit Priority | Maximum Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying¹ (HH:MM) | Number of Rectification Periods Completed | Deduction per Rectification Period | Total Deduction for Event |
|----|--|---------------------------|---------------------------------|------------------------------|-----------------------------|-------------------------------------|--|---|--|---|----------------------------------|
| 1. | A door is reported broken in an Evidence Storage | Unavailability, Emergency | High | 30 minutes | 30 minutes | 2:00 | 5:31 | 5:01 | 2 | \$800 | \$1,600 |

¹ Hours accrue for Critical Events and Routine Events only during Operating Hours (6:30 am to 6:30 pm) on Business Days but hours accrue for Emergency Events on a 24/7 basis; as further described in Section 7.2 (Calculation of Rectification Periods) of Appendix 11 (Deductions).

| | Scenario overview | Type of Event | Functional Unit Priority | Maximum Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying¹ (HH:MM) | Number of Rectification Periods Completed | Deduction per Rectification Period | Total Deduction for Event |
|----|---|--|---------------------------------|------------------------------|-----------------------------|-------------------------------------|--|---|--|---|----------------------------------|
| | room in the State Attorney’s Office at 8:00 am and room is therefore unable to lock. As a result, evidence is not completely secure. The door is repaired at 1:31 pm on the same day. | | | | | | | | | | |
| 2. | All public passenger elevators are unavailable at 10:00 am. Elevators are repaired and made available at 3:00 pm on the same day. | Total Courthouse Unavailability, Critical ² | High | 30 minutes | 15 minutes | 2:00 | 5:00 | 4:30 | 2 | \$4,000 | \$8,000 |
| 3. | Courtroom audiovisual equipment for which the Project Company is responsible for providing is reported broken at 7:00 am. Equipment is repaired at 9:45 am on the same day. | Unavailability, Critical | High | 30 minutes | 15 minutes | 2:00 | 2:45 | 2:15 | 1 | \$800 | \$800 |
| 4. | Courtroom audiovisual equipment for which the Project Company is responsible for providing is reported broken at 11:00 pm. Equipment is repaired at 1:45 am the following day. | Unavailability, Critical | High | 30 minutes | 15 minutes | 2:00 | 2:45 | 0 | 0 | \$800 | \$0 |
| 5. | One of the large group holding cells (for male prisoners) is unavailable at 1:00 pm, causing the delay of several trials. The large | Total Courthouse Unavailability, Critical ³ | High | 30 minutes | 10 minutes | 2:00 | 6:00 | 5:30 | 2 | \$4,000 | \$8,000 |

² See “Total Courthouse Unavailability” definition and Section 4.1 (Total Courthouse Unavailability) in Appendix 11 (Deductions).

³ See “Total Courthouse Unavailability” definition and Section 4.1 (Total Courthouse Unavailability) in Appendix 11 (Deductions).

| | Scenario overview | Type of Event | Functional Unit Priority | Maximum Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying¹ (HH:MM) | Number of Rectification Periods Completed | Deduction per Rectification Period | Total Deduction for Event |
|----|---|---|---------------------------------|------------------------------|-----------------------------|-------------------------------------|--|---|--|---|----------------------------------|
| | group holding cell is made available at 7:00 pm on the same day. | | | | | | | | | | |
| 6. | There is a Critical Unavailability Event in 15 Medium priority Functional Units at 10:30 pm. The Critical Unavailability Event is over by 6:30 am the following day. | Total Courthouse Unavailability, Critical ⁴ | Medium | 30 minutes | 18 minutes | 2:00 | 8:00 | 0 | 0 | \$4,000 | \$0 |
| 7. | A power outage occurs and the backup generator fails at 12:00 am. Power is on again at 6:00 am on the same day. | Total Courthouse Unavailability, Emergency ⁵ | High | 30 minutes | 30 minutes | 2:00 | 6:00 | 5:30 | 2 | \$4,000 | \$8,000 |
| 8. | Light bulb goes out in the Trial Court Administrator's personal office, as a result lighting level falls below standard required in the Design and Construction Standards. The Event persists for 174 hours (during Operating Hours). | Unavailability, Routine | High | 60 minutes | 2 hours | 24:00 | 174:00 | 172:00 | 7 | \$300 for exceeding required response time \$300 for first six Rectification periods \$600 after each Rectification Period subsequent to the sixth Rectification Period. ⁶ | \$2,700 |

⁴ See "Total Courthouse Unavailability" definition and Section 4.1 (Total Courthouse Unavailability) in Appendix 11 (Deductions).

⁵ See "Total Courthouse Unavailability" definition and Section 4.1 (Total Courthouse Unavailability) in Appendix 11 (Deductions).

⁶ Penalty doubles if an Unavailability Event persists for more than six Rectification Periods. See Section 4.2 (Deductions for Ongoing Unavailability Events) of Appendix 11 (Deductions).

| | Scenario overview | Type of Event | Functional Unit Priority | Maximum Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying¹ (HH:MM) | Number of Rectification Periods Completed | Deduction per Rectification Period | Total Deduction for Event |
|----|---|-------------------------|---------------------------------|------------------------------|-----------------------------|-------------------------------------|--|---|--|--|----------------------------------|
| 9. | A Routine Unavailability Event occurs with the service elevator. The Project Company exceeds the 60-minute Required Response Time and the Event persists for 192 hours. | Unavailability, Routine | Medium | 60 minutes | 3 hours | 48:00 | 192:00 | 191:00 | 3 | \$300 for exceeding required response time \$200 per Rectification period | \$900 ⁷ |
| 10 | Temperature in the Chief Deputy District Attorney's office is reported as 2 degrees above contract standard. The Event is resolved 18 Operating Hours later. | Unavailability, Routine | High | 60 minutes | 60 minutes | 24:00 | 18:00 | 17:00 | 0 | \$300 | \$0 |

3. PERFORMANCE FAILURE DEDUCTIONS

3.1 The following table provides nine examples of Performance Failure Deductions.

| | Scenario overview | Event priority | Required Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying⁸ (HH:MM) | Multiplier⁹ | Deduction per applicable multiplier | Total Deduction for Event |
|----|--|-----------------------|-------------------------------|-----------------------------|-------------------------------------|--|---|-------------------------------|--|----------------------------------|
| 1. | A Project Company staff member who joined the Courthouse Project six months ago is discovered to | High | 30 minutes | 30 minutes | 3:00 | 6:00 | 5:30 | 1 | \$650 | \$650 |

⁷ There is an additional \$300 Performance Failure Deduction per occurrence for an actual response time that exceeds the Required Response Time.

⁸ Hours accrue for "low" and "medium" priority Performance Failures only during Operating Hours (6:30 am to 6:30 pm) on Business Days but hours accrue for "high" priority Performance Failures on a 24/7 basis as further described in Section 7.2 (Calculation of Rectification Periods) of Appendix 11 (Deductions).

⁹ Multiplier varies by type of Performance Failure. It can either refer to a Rectification Period, percentage point, or every tenth of a survey point below 3.0.

| | Scenario overview | Event priority | Required Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying⁸ (HH:MM) | Multiplier⁹ | Deduction per applicable multiplier | Total Deduction for Event |
|----|---|------------------------|-------------------------------|-----------------------------|-------------------------------------|--|---|-------------------------------|--|----------------------------------|
| | not have received safety training. Project Company agrees to remedy with an approved action plan within six hours of this discovery. Employee completes training two weeks later. | | | | | | | | | |
| 2. | Project company is notified of ice on building grounds at 12:00 pm. Project Company does not remove ice until 7:00 pm. | High | 30 minutes | 30 minutes | 3:00 | 7:00 | 6:30 | 2 | \$650 | \$1,300 |
| 3. | Project Company is found not to have complete records of licenses. Project Company remedies this issue 98 hours later. | Medium | 45 minutes | 15 minutes | 36:00 | 98:00 | 97:15 | 2 | \$300 | \$600 |
| 4. | Project Company receives an average score of 3.1 in the quarterly County satisfaction survey (performance target is 3.0), and scored above a 3.0 in its prior quarterly survey. | N/A (Survey-based) | N/A | N/A | N/A | N/A | N/A | 0 | \$220 | \$0 |
| 5. | Project Company receives an average score below the performance target of 3.0 in the County Satisfaction Survey for the second consecutive quarter (1.2 for Q _{t-2} and 2.0 for Q _{t-1}) | N/A (Survey-based) | N/A | N/A | N/A | N/A | N/A | 18 | \$440 | \$7,920 |
| 6. | Public lobby elevators are available for 94% of operating hours for the month of September (performance target is 95%). | N/A (Percentage-based) | N/A | N/A | N/A | N/A | N/A | 1 | \$550 | \$550 |

| | Scenario overview | Event priority | Required Response Time | Actual Response Time | Rectification Period (HH:MM) | Total Time to Resolve Event (HH:MM) | Applicable Time Spent Rectifying⁸ (HH:MM) | Multiplier⁹ | Deduction per applicable multiplier | Total Deduction for Event |
|----|---|------------------------|-------------------------------|-----------------------------|-------------------------------------|--|---|-------------------------------|--|----------------------------------|
| 7. | In-custody elevators are available for 94% of operating hours for the month of September (performance target is 97%). | N/A (Percentage-based) | N/A | N/A | N/A | N/A | N / A | 3 | \$550 | \$1,650 |
| 8. | Help Desk responds to 98% of calls within 10 minutes for the month of September (performance target is 100%) | N/A (Percentage-based) | N/A | N/A | N/A | N/A | N / A | 2 | \$550 | \$1,100 |
| 9. | Server Room humidity alarm fails at 1:00 am. Alarm is fixed at 6:00 am. | High | 30 minutes | 30 minutes | 3:00 | 5:00 | 4:30 | 1 | \$650 | \$650 |

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APPENDIX 13
COMPENSATION ON TERMINATION

APPENDIX 13

COMPENSATION ON TERMINATION

The compensation payable by the County to the Project Company upon Termination of this Project Agreement following the Financial Close Date and prior to the Expiration Date is set forth in this Appendix. Prior to the Financial Close Date the Project Company shall be entitled to compensation upon the Termination of this Project Agreement only to the extent provided in Appendix 3 (Financial Close Procedures and Conditions).

1. DEFINITIONS AND SECTION REFERENCES

1.1. Definitions. In this Appendix, in addition to the definitions set out in this Project Agreement:

“Contingent Funding Liabilities” means direct or indirect liabilities or contingent liabilities, if any, of the Unit Holders in respect of financial obligations owed to the Project Company, to the general partner of the Project Company, to any party under the Junior Debt or the Senior Lenders under the Senior Financing Agreements, such as, for example, the amount a Unit Holder has agreed to contribute to the Project Company, promissory notes, obligations to fund reserve accounts, guarantees, letters of credit in respect of deferred equity, subordinated debt or equity bridge loans.

“Cost to Complete” means in respect of any termination of this Project Agreement that occurs on or prior to the Occupancy Readiness Date, all losses that the County determines it is reasonably likely to incur as a direct result of the termination of this Project Agreement, including (without double-counting):

(1) Those external, out-of-pocket costs that the County reasonably and properly projects that it will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the County to achieve the Occupancy Readiness Conditions, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; plus

(2) Those costs (internal and external) reasonably projected to be incurred by the County in relation to:

(a) Remediation of any defective Design-Build Work; and

(b) Rectification or cure of any breach of this Project Agreement by the Project Company; plus

(3) Costs that the County reasonably and properly projects that it will incur in achieving the Occupancy Readiness Conditions; plus

(4) Any other losses that the County would, but for the termination of this Project Agreement, not have incurred prior to the achievement of the Occupancy Readiness Conditions, which may include costs associated with the termination, and changes in the scope of the Design-Build Work that are approved or have been authorized to proceed in accordance with this Project Agreement; minus

(5) Any Insurance Proceeds available to the County for the purposes of achieving the Occupancy Readiness Date.

“Design-Build Work Value” means an amount equal to the Design-Build Contract Price minus the Cost to Complete.

“Employee Information” means written details related to employees employed by the Project Company or any of the Project Contractors or Subcontractors whose work (or any part of it) is work undertaken for the purposes of the Project, including:

- (1) the staffing plan and total number of such employees;
- (2) the employment costs for such employees;
- (3) the amount or severance payable to such employees used in the calculation of any Employee Payment and all relevant information used in determining such amounts; and
- (4) any other information that the County may reasonably require in relation to the calculation of Employee Payments.

“Project Contractor Breakage Costs” means the amount payable by the Project Company to a Project Contractor under the terms of a Project Contract as a direct result of the termination of this Project Agreement, but reduced (without duplication) to the extent that:

- (1) The Project Company, a Project Contractor or any Subcontractor fails to take all reasonable steps to mitigate such amount;
- (2) Such amount relates to any agreements or arrangements entered into by the Project Company, a Project Contractor or a Subcontractor other than in the ordinary course of business and on commercial arm’s length terms;
- (3) Such amount is a Distribution; and
- (4) Such amount includes any loss of overhead or profit of the Facilities Manager or its Subcontractors relating to any period or costs after the Termination Date (except to the extent such amounts are properly included in any reasonable commercial breakage fee set forth in the applicable Project Contract or Subcontract).

“Termination Deductions Amount” means any accrued monthly Deductions that, as of the Termination Date, have not been taken into account in the calculation of any payment actually made to the Project Company by the County prior to the Termination Date.

1.2. Section References in this Appendix. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections, Articles, or Appendices of this Project Agreement.

2. TERMINATION FOR COUNTY EVENT OF DEFAULT OR UPON TERMINATION FOR CONVENIENCE

2.1. Calculation. If either the County or the Project Company terminates this Project Agreement pursuant to a Termination for Convenience pursuant to Section 22.2(A)(1), a termination for County Event of Default pursuant to Section 21.2, or a Termination by Court Ruling pursuant to Section 22.2(A)(5) or 22.2(B)(3) of this Project Agreement, the County will pay to the Project Company on the Termination Amount Due Date a Termination Amount equal to the aggregate, without duplication, of:

- (a) the Senior Debt as at the Termination Date (with per diem interest on amounts falling within paragraph (1) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until and including the Termination Amount Due Date);
- (b) Employee Payments and Project Contractor Breakage Costs;
- (c) any accrued but unpaid amounts owing and payable by the County to the Project Company under this Project Agreement;
- (d) any Insurance Receivables, if and to the extent the Project Company has assigned them to the County;
- (e) an amount which when taken together with Distributions made on or before the Termination Date, including Distributions paid on or in respect of Units and fees, principal, interest and breakage costs paid or repaid on Junior Debt taking account of the actual timing of all such Distributions, gives a nominal internal rate of return on the equity capital subscribed and contributed in respect of then outstanding Units and principal amounts advanced under then outstanding Junior Debt equal to the Base Case Equity IRR; and
- (f) the greater of: (i) \$0; or (ii) the Handback Retainage Account balance minus an amount equal to the cost of the remaining Handback Work;

Less, to the extent it is a positive amount, the aggregate amount without double counting of the following:

- (g) the aggregate of all credit balances on any bank accounts held by or on behalf of the Project Company on the Termination Date that are secured in favor of the Senior Lenders;
- (h) the value of any amounts due and payable from third parties (but only when received from third parties) but excluding any claims under a Project Contract or claims against other third parties which have not been determined or have been determined but not yet paid, provided that in such case the Project Company will assign any such rights and claims under the Project Contracts or claims against other third parties to the County and give the County reasonable assistance in prosecuting such claims;
- (i) to the extent not taken into account in calculating the amount under (e) above, the amount of any Contingent Funding Liabilities that are triggered as a result of or in relation to a termination of this Project Agreement;
- (j) the market value of any other assets and rights of the Project Company (other than those transferred to the County pursuant to this Project Agreement) less liabilities of the Project Company properly incurred in carrying out its obligations under this Project Agreement as at the Termination Amount Due Date to the extent realized before the Termination Amount Due Date, provided that no account will be taken of any liabilities and obligations of the Project Company arising out of:
 - (1) agreements or arrangements entered into by the Project Company to the extent that such agreements or arrangements were not entered into in

- connection with the Project Company's obligations in relation to the Project; or
- (2) agreements or arrangements entered into by the Project Company to the extent that such agreements or arrangements were not entered into in the ordinary course of business and on commercial arm's length terms.
 - (k) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to the Project Company as a result of a prepayment under the Senior Financing Agreements;
 - (l) any amounts received by the Senior Lenders (or on their behalf) on or after the Termination Date and before the Termination Amount Due Date as a result of enforcing any other rights or security the Senior Lenders may have under the Senior Financing Agreements in respect of Senior Debt (net of the reasonable and proper costs incurred in such enforcement); and
 - (m) any other amounts that the County is entitled to set-off or deduct under this Project Agreement.

To the extent that the assets and rights referred to in item (j) of this Section are not realized and applied pursuant to that Section, the Project Company will on payment of the amount due under this assign such assets and rights to the County.

2.2. Notice to the County. As soon as practicable after termination of this Project Agreement pursuant to a Termination for Convenience pursuant to Section 22.2(A)(1), a termination for County Event of Default pursuant to Section 21.2, or a Termination by Court Ruling pursuant to Section 22.2(A)(5) or Section 22.2(B)(3) of this Project Agreement, the Project Company will, acting reasonably, notify the County of the Termination Amount as of an estimated Termination Amount Due Date and include in such notice the details and calculations of each component thereof, including a revised and up to date financial model and certificates from the Senior Lenders as to the amounts owed to them. The Project Company will provide to the County all such documents and information as may be reasonably required by the County to confirm the amount of the Termination Amount including Employee Information.

3. NO-FAULT TERMINATION

3.1. Calculation. If (i) the Project Company or the County terminates this Project Agreement pursuant to a Termination for an Extended Relief Event pursuant to Section 15.4 (Termination for Extended Relief Events) or a Termination for Uninsurable Risk pursuant to Section 14.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third Party Liability), or (ii) in the event of an automatic termination pursuant to Section 22.2(C) (Required Termination Upon Total Constructive Loss), the County will pay to the Project Company on the Termination Amount Due Date a Termination Amount equal to the aggregate of:

- (a) the Senior Debt as at the Termination Date (with per diem interest on amounts falling within paragraph (1) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until (and including) the Termination Amount Due Date);
- (b) any accrued but unpaid amounts owing and payable by the County to the Project Company under this Project Agreement;

- (c) the amount, if any, by which the Junior Debt exceeds the amount of all Distributions made in respect of Junior Debt;
- (d) the amount, if any, by which the amount of capital contributed to the Project Company by the Unit Holders exceeds the amount of Distributions made by the Project Company to its Unit Holders;
- (e) Employee Payments and Project Contractor Breakage Costs; and
- (f) the greater of: (i) \$0; or (ii) the Handback Retainage Account balance minus an amount equal to the cost of the remaining Handback Work;

Less:

- (g) Insurance Receivables payable to the Project Company on or after the Termination Date;
- (h) the aggregate of all credit balances on any bank accounts held by or on behalf of the Project Company on the Termination Date that are secured in favor of the Senior Lenders;
- (i) the amount of any Distributions made other than those referred to in items (c) and (d) of this Section;
- (j) any amounts, including hedging termination amounts and other breakage costs, payable by the Senior Lenders to the Project Company as a result of a prepayment under the Senior Financing Agreements, and
- (k) any other amounts that the County is entitled to set-off or deduct under this Project Agreement.

3.2. Notice to the County. As soon as practicable after termination of this Project Agreement as contemplated by this Section 3, the Project Company will, acting reasonably, notify the County of the Termination Amount as of an estimated Termination Amount Due Date and include in such notice the details and calculations of each component thereof, including a revised and up to date financial model and certificates from the Senior Lenders as to the amounts owed to them and will also provide to the County all such documents and information reasonably required by the County to confirm the amount of the Termination Amount including Employee Information.

4. TERMINATION FOR PROJECT COMPANY EVENT OF DEFAULT – PRIOR TO THE OCCUPANCY READINESS DATE

4.1. Calculation. If the County terminates this Project Agreement prior to the Occupancy Readiness Date pursuant to Article 20 (Project Company Events of Default) of this Project Agreement, the County will pay to the Project Company on the Termination Amount Due Date an amount equal to:

- (a) The lower of
 - (1) The Design-Build Work Value; or
 - (2) 80% of the Senior Debt as at the Termination Date (with per diem interest on amounts falling within paragraph (1) of the definition of Senior Debt

calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until and including the Termination Amount Due Date);

Less:

- (b) Insurance Receivables payable to the Project Company on or after the Termination Date;
- (c) the aggregate of all credit balances on any bank accounts held by or on behalf of the Project Company on the Termination Date that are secured in favor of the Senior Lenders;
- (d) 80% of the Senior Debt Breakage Amounts payable or credited to the Project Company that arise as a result of the early termination of this Project Agreement on the Termination Date; and
- (e) any other amounts due and owing to the County pursuant to this Project Agreement.

4.2. Notice to the County. As soon as practicable after termination of this Project Agreement as contemplated by this Section 4, the Project Company will, acting reasonably, notify the County of the Termination Amount as of an estimated Termination Amount Due Date and include in such notice the details and calculations of each component thereof, including a revised and up to date financial model and certificates from the Senior Lenders as to the amounts owed to them and will also provide to the County all such documents and information reasonably required by the County to confirm the amount of the Termination Amount.

5. TERMINATION FOR PROJECT COMPANY EVENT OF DEFAULT – AFTER OCCUPANCY READINESS DATE

5.1. Termination Amount. If the County terminates this Project Agreement on or after the Occupancy Readiness Date pursuant to Article 20 (Project Company Events of Default) of this Project Agreement, the County will pay to the Project Company on the Termination Amount Due Date a Termination Amount equal to:

- (a) 80% of the Senior Debt, as at the Termination Date (with per diem interest on amounts falling within paragraph (1) of the definition of Senior Debt calculated at the non-default interest rate provided for such amounts in the Senior Financing Agreements for the period from (but excluding) the Termination Date until and including the Termination Amount Due Date);

Less

- (b) 80% of the Senior Debt Breakage Amounts payable or credited to the Project Company that arise as a result of the early termination of this Project Agreement on the Termination Date; and
- (c) any Termination Deductions Amount and any other amounts due and owing to the County pursuant to this Project Agreement.

5.2. Notice to the County. As soon as practicable after termination of this Project Agreement as contemplated by this Section 5, the Project Company will, acting reasonably, notify the County of the Termination Amount as of an estimated Termination Amount Due Date and

include in such notice the details and calculations of each component thereof, including a revised and up to date financial model and certificates from the Senior Lenders as to the amounts owed to them and will also provide to the County all such documents and information reasonably required by the County to confirm the amount of the Termination Amount.

6. ADJUSTMENTS AND DISPUTES

6.1. Tax Gross Up of Termination Amount. If any Termination Amount payable by the County to the Project Company pursuant to this Appendix 13 is subject to any Tax under Applicable Law, then the County shall pay the Project Company such additional amount as the County reasonably determines will put the Project Company in the same after-tax position as it would have been in had the payment not been subject to such Tax, taking into account any relief, allowances, deductions or credits in respect of any such Tax (whether by choice or not) which may be available to the Project Company to reduce such Tax to which the payment is subject.

6.2. Time Related Adjustments. It is understood that the calculations of the Termination Amount pursuant to Section 2 (Termination for County Event of Default or Upon Termination for Convenience), Section 3 (No-Fault Termination), Section 4 (Termination for Project Company Event of Default – Prior to the Occupancy Readiness Date) and Section 5 (Termination for Project Company Event of Default – After Occupancy Readiness Date) of this Appendix are as of an estimated Termination Amount Due Date, and that such estimated date may not be the actual Termination Amount Due Date for reasons including the existence of a Dispute. The parties will act reasonably in adjusting the amount of each such Termination Amount to reflect the actual Termination Amount Due Date.

6.3. Certification of Senior Debt. The County will be entitled to rely on one or more certificates of officers of the Senior Lenders or their agent as conclusive evidence of the amount of the Senior Debt. The receipt of this amount by the Project Company, the Senior Lenders or their agent will discharge the County's obligation to pay any portion of compensation due to the Project Company that is attributable to the Senior Debt.

6.4. Full Settlement. Any and all amounts paid by the County to the Project Company under this Appendix or any agreement or determination that the County has no obligations to make any payment to the Project Company under this Appendix will be in full and final settlement of each party's rights and claims against each other for termination of this Project Agreement and any Project Contract, whether under contract, tort, restitution or otherwise, but without prejudice to:

- (a) any antecedent liability of either party to the other that arose prior to the date of termination of this Project Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Amount; and
- (b) any liability of either party to the other that may arise after the date of termination of this Project Agreement (but not from the termination itself), including, liabilities arising under the provisions of this Project Agreement which are intended by Section 3.2 (Survival) of this Project Agreement to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Amount.

The Project Company agrees that the applicable Termination Amount provided for in this Appendix shall fully and adequately compensate the Project Company for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and

other similar wind-down costs, attributable to the termination of the Project Company's right to perform this Project Agreement.

6.5. Disputes.

If the County does not agree with the Project Company's determination of the Termination Amount under Section 2 (Termination for County Event of Default or Upon Termination for Convenience), Section 3 (No-Fault Termination), Section 4 (Termination for Project Company Event of Default – Prior to the Occupancy Readiness Date) or Section 5 (Termination for Project Company Event of Default – After Occupancy Readiness Date) of this Appendix, the County may, within 20 Business Days of the notice referred to in Section 2.2 (Notice to County), Section 3.2 (Notice to County), Section 4.2 (Notice to County) or Section 5.2 (Notice to County) of this Appendix as the case may be, refer the matter to the Dispute Resolution Procedure. If either party does not refer the matter to the Dispute Resolution Procedure within the periods provided for in this Section, such party will be deemed to have agreed to the amount of the applicable determination of the Termination Amount as of the estimated Termination Amount Due Date.

7. TERMINATION PAYMENT DATE

7.1. Termination Amount Due Date. The Termination Amount Due Date will be the date that is 90 days after the Project Company's satisfaction of its obligations under Section 22.3 (Transfer to the County of Assets, Contracts and Documents) and Section 22.4 (Transitional Arrangements) of this Project Agreement.

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APPENDIX 14
REPORTS AND RECORDS

APPENDIX 14

REPORTS AND RECORDS

1. GENERAL REQUIREMENTS

1.1. Duty to Maintain Records. The Project Company shall retain and maintain all the records (including superseded records) referred to in Section 2 of this Appendix in accordance with this Appendix and other applicable terms of this Project Agreement, in chronological order, in a form that is capable of audit. The Project Company shall make such records (other than books of account) available to the County for inspection during normal business hours upon reasonable notice.

1.2. Maintenance of Records. Wherever practical and unless otherwise agreed, the Project Company shall retain and maintain original records in hard copy form. True copies of the original records may be kept by the Project Company if it is not practicable to retain original records.

- (a) The Project Company shall retain and maintain all records referred to in Section 2 for the duration of this Project Agreement and for a period of at least six years following the Termination Date, all in sufficient detail, in appropriate categories and generally in such a manner to enable each party to comply with its obligations and exercise its rights under this Project Agreement.
- (b) On the expiration of such period or at the earlier request of the County after termination of this Project Agreement, the Project Company shall deliver all those records (or, if those records are required by statute to remain with the Project Company or a Subcontractor, copies thereof to the County in the manner and at the location as the County specifies, acting reasonably.) The County shall make available to the Project Company for inspection during normal business hours all records the Project Company delivers pursuant to this Section upon reasonable notice.

1.3. Disposal of Records. During the Term, the Project Company may dispose of any records referred to in Section 2 of this Appendix if any are more than 15 years old or in respect of which the required period for their retention has expired, provided that the Project Company first notifies the County in writing and provides the County with 60 days to elect to receive delivery of such records.

1.4. Drawing Requirements. Any drawings required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids. Where by prior agreement with the Project Company the County has agreed to accept microfilm, microfiche or other storage media (which must include secure back up facilities), the Project Company shall make or supply, or have made or supplied, drawings and other documents in such agreed upon form.

2. RECORDS TO BE KEPT

2.1. Retention. The Project Company shall retain the following:

- (a) this Project Agreement, the documents referred to in the Transaction Forms and Reference Documents, including all amendments to such agreements;

- (b) the Project records described in Appendix 5 (General Design, Construction and Facilities Management Technical Requirements), Appendix 6 (Design and Construction Standards) and Appendix 8 (Facilities Management Standards);
- (c) records relating to the appointment and supervision of the County Representative, the Project Company Representative and the Independent Building Expert;
- (d) documents relating to Governmental Approvals, including applications, refusals and appeals;
- (e) notices, reports, results and certificates relating to completion of the Design-Build Work, Design Requirement Changes, Commissioning and Capital Modifications;
- (f) all operation and maintenance manuals;
- (g) documents relating to Relief Events;
- (h) all notices made to or received from the County Representative;
- (i) documents relating to a request for the consent of the County to any Change in Control by the Project Company;
- (j) documents relating to a Refinancing of the Project Company (other than an Exempt Refinancing);
- (k) tax invoices and records applicable to the Project (other than any income tax records for the Project Company or records pertaining to other taxes personal to the Project Company);
- (l) records required by Applicable Law (including in relation to health and safety matters) to be maintained by the Project Company with respect to the Design-Build Work and Facilities Management Services;
- (m) documents relating to the Required Insurance;
- (n) documents referred to in Appendix 11 (Deductions); and
- (o) all other records, notices or certificates required to be produced or maintained by the Project Company pursuant to the express terms of this Project Agreement.

APPENDIX 15
PROJECT COMPANY AND
PROJECT CONTRACTORS INFORMATION

APPENDIX 15

PROJECT COMPANY AND PROJECT CONTRACTORS INFORMATION

1. PURPOSE

1.1. Purpose. The purpose of this Appendix is to identify: (1) the Project Company's formation and other relevant entity-related information; (2) those Project Contractors that the County has approved for use by the Project Company in performing the Contract Services; and (3) the key management and supervisory personnel proposed to be used by the Project Company in performing the Contract Services.

2. PROJECT COMPANY INFORMATION

2.1. Project Company Information. Project Company represents and warrants that the following information regarding Project Company is true and complete as of the Effective Date:

| | | |
|----|--|------------------------------------|
| 1. | Name: | [Project Company Name] |
| 2. | Date of Incorporation/ Formation: | [Insert Appropriate Date] |
| 3. | State of Incorporation/ Formation: | [Insert Appropriate State] |
| 4. | Registration Number: | [Insert if applicable] |
| 5. | Directors: | |
| | Name | Address |
| | [Last, First] | [Insert Address] |
| 6. | Officers: | |
| | Name | Address |
| | [Last, First] | [Insert Address] |
| 7. | Subsidiaries at the Effective Date: | [Insert Names of any Subsidiaries] |
| 8. | Authorized and issued share capital at the Effective Date: | |

| | | | |
|-----|---|------------------------|----------------|
| | Name and address of registered holder | Number and class held | Amount paid up |
| | [Insert Name/Entity] | [1,000 Common] | [\$10.00] |
| 9. | Loans at the Effective Date issued as follows: | | |
| | Name and address of holder | Nominal value of loans | |
| | [Insert Name, if any] | [Insert Value, if any] | |
| 10. | Other outstanding securities (including description of type of securities, name and address of holder amount): | | |
| | [List any Securities] | | |
| 11. | Summary of any organizational, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Company: | | |
| | [Insert any Applicable Information] | | |

3. PROJECT CONTRACTORS:

3.1. Project Contractors Generally. As provided in Article 11 of this Project Agreement, the Project Contractors have been proposed and shall be used by the Project Company in connection with the performance of the Contract Services. The Project Company will comply with its C2P2 Implementation Plan as set forth in Attachment 15B (C2P2 Implementation Plan) to this Appendix and its Local Business Plan as set forth in Attachment 15C (Local Business Plan) and its D/M/W/ESB/SDVBE Subcontracting Plan as set forth in Attachment 15D (D/M/W/ESB/SDVBE Subcontracting Plan). At any time during the Design-Build Period or the Facilities Management Period, as applicable, the Project Company may request the County to update the list of approved Project Contractors. The County will review any suggested changes to such list in accordance with the provisions of Article 11 (Contracting and Labor Practices) of this Project Agreement. The County will have the right at any time to review and revise the then current list of approved Project Contractors consistent with Article 11 (Contracting and Labor Practices) of this Project Agreement.

3.2. Approved Project Contractors, Subcontractors and the Architect. The Project Contractors, Subcontractors, and Architect that the County has approved as of the Effective Date, and the Project Company is permitted to engage for the Contract Services, are the following:

| | Project Contractor or Subcontractor | Role |
|----|-------------------------------------|--------------------|
| 1. | [Name] | Design-Builder |
| 2. | [Name] | Facilities Manager |
| 3. | [Name] | Design |

4. KEY INDIVIDUALS:

4.1. Key Individuals Generally. As referenced in Section 4.4 (Key Individuals) of this Project Agreement, certain key management and supervisory personnel were proposed and shall be used by the Project Company in connection with the performance of the Contract Services. Any change in the Key Individuals shall be subject to review and approval of the County in accordance with Section 4.4 (Key Individuals) of this Project Agreement. Resumes for the Key Individuals are included in Attachment 15A (Key Individuals Resumes) and establish the general level of qualifications for the role identified.

4.2. Key Individuals. The Key Individuals are the following:

| | Project Company Party | Position | Name |
|----|---|----------------------------------|------|
| 1. | [Project Company] | Project Manager | |
| 2. | [Design-Builder] | Design Manager | |
| 3. | [Design-Builder] | Design-Build Project Manager | |
| 4. | [Design-Builder] | Quality Control Manager | |
| 5. | [Facilities Manager] | Facilities Management Supervisor | |
| 6. | [Finance Manager] | Finance Manager | |
| 7. | [NOTE TO PROPOSERS: Key Personnel listed in the SOQ/Proposal may be included, including key personal of key subcontractors.] | | |

ATTACHMENT 15A
KEY INDIVIDUALS RESUMES

[NOTE TO PROPOSERS: To be provided by the Project Company.]

ATTACHMENT 15B

C2P2 IMPLEMENTATION PLAN

[NOTE TO PROPOSERS: To be inserted from Section 1-3-7 of the Selected Proposers Proposal.]

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ATTACHMENT 15C

LOCAL BUSINESS PLAN

[NOTE TO PROPOSERS: To be inserted from Section 1-3-9 of the Selected Proposers Proposal.]

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ATTACHMENT 15D

D/M/W/ESB/SDVBE SUBCONTRACTING PLAN

[NOTE TO PROPOSERS: To be inserted from Section 1-3-8 of the Selected Proposers Proposal.]

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APPENDIX 16
PUBLIC COMMUNICATIONS

APPENDIX 16

PUBLIC COMMUNICATIONS

1. COUNTY RESPONSIBILITIES

1.1. Lead Communications Role. The County shall assume the lead communications role for the Project. The County shall take primary responsibility for all communications matters and shall be responsible for performing the following functions:

- (a) Provide identified, dedicated lead communications contacts with applicable skills and experience with 24 hours per day, seven days per week, availability on applicable aspects of communications;
- (b) Provide identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel as required with 24 hours per day, seven days per week, availability on applicable aspects of communications;
- (c) Primary media contact for the Project;
- (d) Provide final review and approval of all public communications materials;
- (e) Communicate promptly with all relevant parties on crisis issues and communicate within 24 hours of general issues;
- (f) Maintain and update the Project web site, as required; and
- (g) Provide updates to internal and external stakeholders, as required.

1.2. Design-Build Period Responsibilities. In the period up to the Occupancy Readiness Date, the County shall take the lead role in providing:

- (a) Communications (including web site): a comprehensive program including print, web-based, audio-visual and other elements describing and providing information about the Project as it proceeds;
- (b) Community relations: a community relations program to ensure two-way communication and problem-solving between the parties and external stakeholder groups, neighborhoods, cities, and others regarding design and construction issues, public reporting and communications. Such actions may include community events and presentations to community groups;
- (c) Media relations: a media relations policy and protocol to be developed in cooperation with the parties and internal stakeholders;
- (d) Public reporting and consultation: for day to day, and more broadly, for each year, of construction to highlight and provide progress updates and information and how community issues have been considered and addressed throughout the year;
- (e) Crisis communications: required planning for potential crisis issues;
- (f) Government relations: communications between the parties involved in the project and Governmental Bodies;

- (g) Public-related communications: all communications related to Contract Services and County policies; and
- (h) Performance review: periodically review the Project Company's performance in providing communications as outlined in Section 2 of this Appendix.

1.3. Marketing Materials.

- (a) The County shall have the right, acting reasonably, to approve all Project-related marketing or advertising in any form; and
- (b) The County shall have the right to approve the use of the name of the County for any commercial purpose.

2. PROJECT COMPANY RESPONSIBILITIES

2.1. Support Communications Role. The Project Company shall assume the support communications role. The Project Company shall be responsible for performing the following functions:

- (a) Provide identified, dedicated communications contacts with applicable communications skills and experience with 24 hours per day, seven days per week, availability;
- (b) Provide identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel as required with 24 hours per day, seven days per week, availability on applicable aspects of communications;
- (c) Respond to communications issues in accordance with agreed timeframes;
- (d) Review and provide communications and technical materials including reasonable requests by the County for web site content;
- (e) Update internal/external stakeholders as required, including involvement and participation in community events as required;
- (f) Direct all media inquiries and interview requests to the County's lead communications contact;
- (g) Maintain a written record of all material public inquiries, complaints and communications and provide copies to the County's lead communications contact on a weekly basis (or immediate if urgent); and
- (h) During a crisis situation, the parties acknowledge that a ramping up of communications efforts shall be required. The Project Company shall ensure and make available sufficient resources to effectively and proactively manage and perform its communications responsibilities during a crisis, including 24 hours per day, seven days per week, availability.

2.2. Design-Build Period Responsibilities. In the period up to the Occupancy Readiness Date, the Project Company shall perform the following:

- (a) Develop and implement a communications plan. The plan shall be updated annually, and reviewed and approved by the County. The plan will provide:

- (i) A description of the Project Company's approach to all communications aspects of the Project;
 - (ii) A description of the Project Company's communications team, including the roles and responsibilities for each team member and any subcontractors who shall provide any aspect of the communications program; and
 - (iii) Identification of proposed communication tools (e.g., types of information materials, web site, audio-visual, presentations, events) to be used to keep the community informed, and a schedule for implementation as the Project progresses;
- (b) Coordinate with the County in the implementation of the communications plan. This shall include regular meetings with the County to discuss communication issues and developments, and monthly progress reports, which shall include information on activities, public and media inquiries, any emerging issues, and actions taken in response to issues. The County is to approve media releases and public communications information to provide a fair and accurate release of information in a coordinated fashion;
 - (c) Regular communications with the immediately affected property owners and neighborhoods on design and construction related issues with particular attention to communicating the scope, schedule and status of the construction program. This shall include processes to proactively address any work-related inquiries and issues (e.g., public inquiries, complaints regarding noise, hours of work, dust etc.);
 - (d) Provide management information for the management of local and regional traffic during the construction process;
 - (e) Establishing and maintaining a construction project information line, with voicemail capability, and construction-related information posted to agreed-to websites; and
 - (f) Development of a plan outlining roles and responsibilities for a list of potential crisis issues that could develop during this period. This plan shall be developed jointly with the County.

APPENDIX 17
FINANCIAL MODEL SUMMARY

[NOTE TO PROPOSERS: Financial Model summary to be included here.]

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APPENDIX 18
CALCULATION AND PAYMENT OF REFINANCING GAINS

APPENDIX 18

CALCULATION AND PAYMENT OF REFINANCING GAINS

1. DEFINITIONS AND SECTION REFERENCES

1.1. Definitions. In this Appendix, in addition to the definitions set out in this Project Agreement:

“Post-Refinancing Model” has the meaning set forth in Section 3.1(b) of this Appendix.

“Pre-Refinancing Model” has the meaning set forth in Section 3.1(a) of this Appendix.

“Refinancing Gain” has the meaning set forth in Section 3.2 of this Appendix.

1.2. Section References. All Section references in this Appendix are to Sections of this Appendix, except Section references explicitly made to Sections or Articles of this Project Agreement.

2. DATA AND PROJECTIONS REQUIRED FOR THE CALCULATION OF REFINANCING GAIN

2.1. Notification by Project Company of Refinancing. The Project Company must notify the County as soon as practicable of its interest in proceeding with a Refinancing and the proposed schedule for documenting and closing the proposed Refinancing.

2.2. Information for the Project Company to Provide. The Project Company shall provide the following information at least 60 days in advance of the estimated Refinancing date:

- (a) The Financial Model;
- (b) Details of the actual timing and amounts of equity investment by Unit Holders from the Effective Date to the estimated Refinancing date;
- (c) Details of the actual timing and amounts of Distributions to Unit Holders or any of their Affiliates from the Effective Date to the estimated Refinancing date;
- (d) Information on the actual cash flow of the Project Company from the Effective Date to the estimated Refinancing date, set out under the same headings as the Financial Model;
- (e) Macroeconomic, revenue and cost projections from the estimated Refinancing date to the end of the Term, assuming the planned Refinancing does not occur;
- (f) Macroeconomic, revenue and cost projections from the estimated Refinancing date to the end of the Term, assuming the planned Refinancing occurs; and
- (g) Term sheet, draft Senior Financing Agreements and other relevant information on the terms of Refinancing.

2.3. Veracity of Information. The Project Company shall demonstrate to the County's satisfaction (not to be unreasonably withheld) that all Project information is, with the respect to items (a) through (d) of Section 2.2 of this Appendix true and correct, and with respect to items (e) and (f) of Section 2.2 of this Appendix, reasonable and the basis upon which new Senior Lenders will agree to participate in the planned Refinancing. When the County and the Project

Company are unable to agree on actual amounts and timing related to information provided under items (a) through (f) of Section 2.2 of this Appendix, relevant projections from the current Financial Model shall be used.

3. CALCULATION OF THE REFINANCING GAIN

3.1. Refinancing Financial Models. The Project Company shall provide the following information at least 60 days in advance of the estimated Refinancing date:

- (a) A pre-Refinancing Financial Model, which does not take into account the effects of the Refinancing (“**Pre-Refinancing Financial Model**”), as updated by the Project Company for the data provided under Section 2 of this Appendix, and which projects the cash flow of the Project Company from the estimated Refinancing date to the end of the Term, including projected Distributions; and
- (b) A post-Refinancing Financial Model, which fully takes into account the effects of the Refinancing including all costs incurred in connection with the Refinancing (including County transaction expenses payable by the Project Company pursuant to Section 6.5(F) (Transaction Expenses) of this Project Agreement), but excluding the payment to the County of its portion of the Refinancing Gain (“**Post-Refinancing Financial Model**”), as updated by the Project Company for the data provided under Section 2 of this Appendix 18, and which projects the cash flow of the Project Company from the estimated Refinancing date to the end of the Term, including projected Distributions.

3.2. Refinancing Gain Calculation. With respect to any Refinancing other than an Exempt Refinancing (in respect of which the Refinancing Gain shall be deemed to be zero), the “**Refinancing Gain**” shall be an amount equal to the greater of zero and $[(A - B) - C]$ where:

A = the net present value of Distributions to be made from the estimated Refinancing Date to the end of the Term as projected in the Post-Refinancing Financial Model, discounted using the Base Case Equity IRR to the estimated date of the Refinancing;

B = the net present value of Distributions to be made from the estimated Refinancing date to the end of the Term as projected in the Pre-Refinancing Financial Model, discounted using the Base Case Equity IRR to the estimated date of the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR.

4. ADJUSTMENT TO RAISE THE PRE-REFINANCING EQUITY IRR TO THE BASE CASE EQUITY IRR

If the Pre-Refinancing Equity IRR is lower than the Base Case Equity IRR, a calculation will be done to determine the Distribution amount which, if received by Unit Holders at the estimated Refinancing date, would increase the Pre-Refinancing Equity IRR to the Base Case Equity IRR. This Distribution amount will be deducted as factor C in Section 3.2 of this Appendix.

5. PAYMENT OF THE COUNTY’S PORTION OF REFINANCING GAIN

The County will receive payment of its portion of the Refinancing Gain as a reduction in the Service Fee over all or a portion of the Term (such future Service Fee reductions after the estimated Refinancing date shall be compounded annually using the Pre-Refinancing Equity IRR), on a schedule chosen by the County, subject to the following provisions:

(a) The County will not receive its portion of the Refinancing Gain faster than the Unit Holders or the Project Company;

(b) The minimum prevailing debt covenants established in the Senior Financing Agreements would not be violated; and

(c) If the Refinancing involves raising new debt or otherwise increasing the amount of outstanding Senior Debt anticipated in any Contract Year of the Financial Model, the County may elect to receive its portion as a lump sum payment concurrently with the close of the Refinancing, but only to the extent that Unit Holders or the Project Company also receive a lump sum payment.

6. FINAL CALCULATION AND PAYMENT

The Project Company shall perform a final calculation of the Refinancing Gain and deliver the results to the County at the close of the Refinancing.

APPENDIX 19
FACILITIES MANAGEMENT CHARGE – RENEWAL COMPONENT PAYMENT SCHEDULE

APPENDIX 19

FACILITIES MANAGEMENT CHARGE – RENEWAL COMPONENT PAYMENT SCHEDULE

[NOTE TO PROPOSERS: To be inserted from Proposal Form 19 of the Selected Proposer’s Proposal.]

The Renewal Component of the Facilities Management Charge, which shall be adjusted for inflation as provided for in subsection 16.4(B) (Renewal Component) of this Project Agreement, shall be as follows in each respective Billing Period:

| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
|----------------|---|
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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| Billing Period | Renewal Component of the Facilities Management Charge (in \$) |
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Draft

PROJECT AGREEMENT TRANSACTION FORMS

FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

BETWEEN

CLACKAMAS COUNTY, OREGON

AND

[PROJECT COMPANY]

DATED

[_____], 2022

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TRANSACTION FORM C – PROJECT CONTRACTOR COLLATERAL AGREEMENT

TRANSACTION FORM D – INDEPENDENT BUILDING EXPERT AGREEMENT

TRANSACTION FORM E – INSURANCE TRUST AGREEMENT

Draft

TRANSACTION FORM A
FINANCIAL CLOSE SECURITY

FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT

[Date]

Clackamas County, Oregon
[Office]
[Address]
Attention: [_____]

Ladies and Gentlemen:

At the request and for the account of [[_____], who is acting as a member of] [_____] (the "Project Company"), we hereby establish in your favor, our irrevocable Letter of Credit No. [_____] (the "Letter of Credit") in the amount of U.S. \$10,000,000 (Ten Million and 00/100 United States Dollars) (as such amount may be reduced as stated herein, the "Stated Amount"), effective immediately and expiring at the close of business ([Insert Name of Location of Bank] time) on [_____, ____] (the "Stated Termination Date"). All drawings under this Letter of Credit shall be paid with our own funds. **[NOTE TO PROPOSERS: Multiple letters of credit totaling \$10 million in the aggregate are acceptable. In such case, insert name of member.]**

We hereby irrevocably authorize you to draw on us, in an aggregate amount not to exceed the Stated Amount and in accordance with the terms and conditions set forth herein, in one or more drawings in substantially the form of Annex A attached hereto, completed and signed by one purporting to be your duly authorized representative (any such certificate being your "Drawing Certificate"), an aggregate amount not exceeding the Stated Amount, representing amounts payable to you by the Project Company under the Project Agreement for the Design, Construction, Financing, Operation, and Maintenance of the Clackamas County Circuit Courthouse, dated [_____, ____], 2022, between the Project Company and Clackamas County, Oregon (the "Project Agreement").

Each Drawing Certificate drawn under this Letter of Credit must be dated the date of presentation presented on a Business Day and bear on its face the clause "Drawn under [Insert Name of Bank] Irrevocable Letter of Credit No. [_____]". As used herein, the term "Business Day" means any day, other than a Saturday or Sunday or other day on which we at our designated office are authorized or required by law or executive order to close.

Funds under this Letter of Credit shall be available to you against receipt by us of your Drawing Certificate. Presentation of any such Drawing Certificate by one purporting to be your duly authorized representative shall be made via mail or courier delivery to our office located at:

[Bank Name and Address]

Attention: Letter of Credit Department
Telephone no. _____
Facsimile no. _____

Demand for payment hereunder may also be made by facsimile transmission of the Drawing Certificate, at the facsimile number stated above, to [_____], Attention: Letter of Credit Department. If presentation is made by facsimile transmission, original documents are not required, and the facsimile transmission will constitute the operative Drawing Certificate. You may contact us at the number shown above to confirm receipt of the

transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder by 11:00 a.m. ([Insert Name of Location of Bank] time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 3:00 p.m. ([Insert Name of Location of Bank] time) on the second Business Day thereafter or such later Business Day as you may specify. A Drawing Certificate strictly conforming to the terms and conditions hereof presented as permitted hereunder after 11:00 a.m. ([Insert Name of Location of Bank] time), on a Business Day, will be honored by our payment to you of the amount specified in such Drawing Certificate, in immediately available funds, not later than 1:00 p.m. ([Insert Name of Location of Bank] time) on the third Business Day thereafter or on such later Business Day as you may specify. If requested by you, payment under this Letter of Credit may be made by wire transfer of Federal Reserve Bank funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into an account that you maintain with us.

Upon honoring a Drawing Certificate presented by you hereunder, the Stated Amount shall be automatically and permanently decreased by the amount stated in such Drawing Certificate.

Only you may make a drawing under this Letter of Credit. Upon any payment to you of the amount demanded hereunder, we shall be fully discharged of our obligation under this Letter of Credit with respect to such demand for payment, and we shall not thereafter be obligated to make further payments under this Letter of Credit with respect to that payment to you.

Except as set forth in the next paragraph and the certificate referred to herein, this Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Project Agreement); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement, except as set forth in the next paragraph and for the certificate referred to herein.

To the extent not inconsistent with the express terms hereof, this Letter of Credit is governed by and is to be construed in accordance with the International Standby Practices 1998, International Chamber of Commerce Publication 590 ("ISP98"), as interpreted by the laws of the State of New York. As to matters not governed by ISP98, this Letter of Credit is governed by and construed in accordance with the law of the State of New York, including without limitation Article 5 of the Uniform Commercial Code as in effect on the date hereof in the State of New York.

[Signature page follows]

Very truly yours,

[Name of Bank]

Signature: _____

Printed Name: _____

Title: _____

(Authorized Officer)

Draft

ANNEX A TO LETTER OF CREDIT

DRAWING CERTIFICATE

Drawn under [Insert Name of Bank] Irrevocable Letter of Credit No. [__]

[Name of Bank]
[Bank Address]

The undersigned, a duly authorized representative of Clackamas County, Oregon (the "Beneficiary"), hereby certifies to [Name of Bank] (the "Bank"), with reference to the above-referenced Irrevocable Letter of Credit (the "Letter of Credit"; terms defined therein and not otherwise defined herein being used herein as therein defined) issued by the Bank in favor of the Beneficiary, as follows:

The Beneficiary is a party to the Project Agreement for the Design, Construction, Financing, Operation and Maintenance of the Clackamas County Circuit Courthouse, dated [_____] , 2022 (the "Project Agreement") by and between the Beneficiary and [_____] (the "Project Company").

By presentment of this Drawing Certificate the Beneficiary hereby makes demand for payment under the Letter of Credit in the amount of [_____] United States Dollars (US\$[_____]) and such amount represents an amount owed to the Beneficiary with respect to an obligation of the Project Company under Section [__] of the Project Agreement and does not exceed the Stated Amount.

Payment of the amount described hereby shall be made by wire transfer to the following account:

SEND TO: [Name, Address]

CREDIT TO: [Name]
Account #[_____]
ABA #[_____]

PLEASE NOTIFY: [Name], [Title]
[Office]
[Phone Number]

The undersigned is a duly authorized representative of Clackamas County, Oregon and authorized to bind Clackamas County, Oregon.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Beneficiary has caused this certificate to be executed and delivered by its representative as of this ___ day of _____, ____.

CLACKAMAS COUNTY, OREGON

Signature: _____

Printed Name: _____

Title: _____

Approved as to Form:

Signature: _____

Printed Name: _____

Title: County Counsel

Draft

TRANSACTION FORM B
LENDERS' REMEDIES AGREEMENT

LENDERS' REMEDIES AGREEMENT

for the

CLACKAMAS COUNTY CIRCUIT COURTHOUSE

between

CLACKAMAS COUNTY, OREGON

and

[COLLATERAL AGENT]

and

[PROJECT COMPANY]

Dated [_____], 2022

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"Bankruptcy Law" means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. "Bankruptcy Law" shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

"Bankruptcy Officer" means any trustee, receiver, liquidator, sequestrator, administrator or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

"Bankruptcy Proceedings" means:

- (1) any:
 - (a) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (b) appointment of a Bankruptcy Officer in connection with;
 - (c) order or resolution passed in connection with; or
 - (d) formal agreement reached regarding,

a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or

- (2) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company's assets in any other jurisdiction.

"Collateral Agent's Cure Notice" has the meaning set forth in Section 3.9.

"Collateral Agent's Cure Period" has the meaning set forth in Section 3.9.

"Collateral Agent's Indicative Notice" means either a Collateral Agent's Indicative Step-In Notice or a Collateral Agent's Indicative Transfer Notice given in accordance with Section 3.4.

"Collateral Agent's Indicative Step-In Notice" has the meaning set forth in Section 3.4.

"Collateral Agent's Indicative Transfer Notice" has the meaning set forth in Section 3.4.

"Collateral Agent's Step-In Notice" means a notice given by the Collateral Agent to the County pursuant to Section 4.1.

"Collateral Agent's Step-Out Notice" has the meaning set forth in Section 5.1.

"Collateral Agent's Withdrawal Notice" has the meaning set forth in Section 3.5.

"County's Event Notice" means a notice given by the County to the Collateral Agent under Section 3.1.

"County's Termination Notice" means a notice given by the County to the Collateral Agent under Section 3.2.

"Credit Agreement" means the credit agreement dated [_____], 2022 between the Project Company, the Senior Lenders and the Collateral Agent in respect of the Senior Debt. **[NOTE TO PROPOSERS: To be updated, along with the defined terms that cross-reference the Credit Agreement, based on Selected Proposer's financing arrangement and documents.]**

"Credit Agreement Event of Default" means an event of default as defined in the Credit Agreement.

"Discharged Obligations" has the meaning set forth in Section 6.4.

"Discharged Rights" has the meaning set forth in Section 6.4.

"Indicative Notice Period" means the period commencing on the date of delivery of an Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of a Collateral Agent's Withdrawal Notice; or
- (3) 180 days following the date of delivery of the Collateral Agent's Indicative Notice.

"Liability Report" has the meaning set forth in Section 3.6.

"Material Antecedent Liabilities" means Antecedent Liabilities that are:

- (1) financial liabilities; or
- (2) non-financial liabilities, the breach of which shall trigger any remedy of the County under Article 20 (Project Company Events of Default) of the Project Agreement or Section 24.1 (Project Company's Obligation to Indemnify) of the Project Agreement.

"Notice Period" means:

- (1) any Collateral Agent's Cure Notice Period;
- (2) any County's Termination Notice Period; and
- (3) any Collateral Agent's Indicative Notice Period.

"Project Documents" means, collectively, the Project Agreement and any other agreement (other than this Agreement) entered into from time to time by the County and the Project Company (with or without other parties) in connection with the Project; and "Project Document" means any one of the foregoing.

"Reported Antecedent Liabilities" means the Antecedent Liabilities identified in the Liability Report.

“Restricted Action” means the exercise of any right to:

- (1) cancel, terminate, step in, novate, expropriate, condemn, or take any other action that may result in the County having a right to take any such action;
- (2) cancel, step in, novate or otherwise assume (whether directly or through a substitute entity) the benefit or burden of the Project Company's rights against, or obligations to, the Design-Builder or any Facilities Management Service Provider, as the case may be;
- (3) make any claim or take any action or enforce any rights under or in connection with any collateral agreement or security agreement entered into by the County, the Design-Builder, any Facilities Management Service Provider or the Project Company, but does not include the exercise of any of the County's rights under Section 19.3 (County's Temporary Step-in Rights During the Facilities Management Period) of the Project Agreement and the related exercise of its rights under Section 19.4 (County's Rectification Rights) of the Project Agreement, or any rights of the County as beneficiary under any letter of credit provided by the Project Company under Section 5.3 (Financial Close Security) of the Project Agreement; or
- (4) issue any notice to the Project Company regarding any of the actions in (1) to (3) above.

“Revocation of Termination Notice” means a written notice from the County to the Collateral Agent revoking a Termination Notice.

“Security Documents” means those documents set forth in Section [___] of the Credit Agreement, including the Insurance Trust Agreement.

“Security Trustee” has the meaning set forth in the Credit Agreement.

“Senior Debt Discharge Date” means the date on which all amounts due and owing to the Senior Lenders under the Senior Financing Agreements have been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders are under no further obligation to advance under the relevant Senior Financing Agreement.

“Senior Financing Agreements” means the Credit Agreement and any security agreements and other agreements entered into with respect to or in connection with the Credit Agreement, as set forth in Schedule 1 hereto.

“Senior Lenders' Representative” means:

- (1) the Collateral Agent or Senior Lender;
- (2) a receiver of the Project Company appointed under or in connection with the Security Documents; or
- (3) any other person approved by the County (such approval not to be unreasonably withheld, conditioned or delayed).

“Step-In Date” means five Business Days after delivery of a Step-In Notice.

“Step-In Period” means, subject to Section 4.3, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;

- (2) the date of any transfer under Article 4;
- (3) the date of any termination under Section 4.5;
- (4) the Expiration Date; and
- (5) if the Termination Notice was given before Occupancy Readiness, the date that is six months after the Longstop Date.

“Step-Out Date” means the date that is 20 Business Days after the date of a Step-Out Notice.

“Step-Out Notice” means a notice from the Collateral Agent or Appointed Representative to the County pursuant to Section 5.1.

“Suitable Substitute Project Company” means a person that is not a Restricted Person and that is approved by the County (such approval not to be unreasonably withheld, conditioned or delayed) as:

- (1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under the Project Agreement; and
- (2) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including applicable committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Project Company under the Project Agreement.

“Termination Notice Period” means the period beginning on the date of giving of a County’s Termination Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of service of a revocation of a County’s Termination Notice; and
- (3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.2(1)) set forth in the County’s Termination Notice.

SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

- (1) Plurality. Words importing the singular number mean and include the plural number and vice versa.
- (2) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.
- (3) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(5) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard Time or Pacific Daylight Saving Time, as the case may be.

(6) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(7) References to Including. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(8) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(9) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(10) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Senior Lenders, the Collateral Agent, the Security Trustee, the Appointed Representative or any other Senior Lenders' Representative, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person's own benefit.

(12) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(13) Counterparts and Delivery by Electronic Mail. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement. Any party may deliver an executed copy of this Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that party

will promptly deliver via mail or courier to the other parties an originally executed copy of this Agreement.

(14) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State and the County.

(15) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(16) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(17) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(18) Consents. Any consent required to be given under this Agreement must be in writing.

ARTICLE 2

CONSENT TO SECURITY

SECTION 2.1. CONSENT. The County acknowledges notice of, and (notwithstanding anything to the contrary in the Project Agreement) consents to, the assignment of and first priority lien and security interest granted by the Project Company in favor of the Senior Lenders under the Senior Financing Agreements over:

- (1) the Project Company's rights under the Project Agreement and all other Project Documents;
- (2) the Project Company's rights under the Material Contracts;
- (3) the Project Company's interest in any warranties, guarantees, letters of credit or other performance or payment security granted under any Project Contracts or Subcontracts;
- (4) the Project Company's assets, including any cash, securities, investments or balances in any Project Company bank accounts;
- (5) the Project Company's rights to Insurance Proceeds and Insurance Receivables;
- (6) any equity interests in the Project Company, and
- (7) any other Project Company Collateral (as defined in the Senior Financing Agreements).

SECTION 2.2. NO NOTICE OF OTHER SECURITY. The County confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over the Project Company's rights described in Section 2.1(1) other than pursuant to the Senior Financing Agreements.

SECTION 2.3. COUNTY OBLIGATIONS. Except as specifically provided for in this Agreement, the County has no obligations (whether express, implied, collateral or otherwise) to the Collateral Agent or the Senior Lenders in connection with this Agreement, the Project Agreement or the Project. All of the obligations and liabilities given, undertaken or arising on the part of the County under this Agreement are given solely to the Collateral Agent on behalf of the Senior Lenders and do not confer any rights on or in favor of the Project Company or any Affiliate of the Project Company or any other person.

SECTION 2.4. COUNTY'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in the Senior Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Collateral Agent of a notice hereunder) will, except as between the Senior Lenders, the Collateral Agent and the County as expressly set forth in this Agreement, affect the rights of the County under the Project Agreement (but an exercise by the County of those rights will not preclude a proper exercise by the Collateral Agent of its rights under this Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Agreement will limit, and the County will be entitled at all times in accordance with the provisions thereof to exercise, the County's rights under Section 19.3 (County's Temporary Step-in Rights During the Facilities Management Period) of the Project Agreement and the related exercise of its rights under Section 19.4 (County's Rectification Rights) of the Project Agreement.

ARTICLE 3

NOTICES

SECTION 3.1. COUNTY'S EVENT NOTICES.

The County shall provide the Collateral Agent written notice (a "**County's Event Notice**") promptly upon issuing to the Project Company any notice regarding:

- (1) the occurrence of a Project Company Event of Default;
- (2) the occurrence of a Project Company Remediable Breach, or acceptance or non-acceptance of the Project Company's remedial program with respect thereto; or
- (3) any event giving rise to a no-fault termination of the Project Agreement as referred to in Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination) of the Project Agreement.

A County's Event Notice shall contain a summary of the facts relating to the relevant event in order to assist the Collateral Agent in determining an appropriate course of action. No failure of the County to give a County's Event Notice shall create any County liability, or impair any right of the County under this Agreement, the Project Agreement or any related agreement.

SECTION 3.2. COUNTY'S TERMINATION NOTICE. The County shall not terminate or deliver any notice terminating the Project Agreement or take any Restricted Action, in respect of a Project Company Event of Default pursuant to Section 20.4 (County Termination Right) of the Project Agreement without giving to the Collateral Agent written notice (a "**County's Termination Notice**") stating:

(1) that a Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than 180 days after the Termination Notice; and

(2) the grounds for termination in reasonable detail, including:

(a) the nature of any Project Company Event of Default and related unperformed obligations and uncured breaches by the Project Company forming the basis of such notice and the resulting grounds for termination of the Project Agreement so as to enable the Project Company and the Collateral Agent to assess the scope and amount of any liability of the Project Company resulting therefrom;

(b) the nature and amount of all sums due and payable by the Project Company to the County under the Project Agreement, if any, on or before the date of the County's Termination Notice and which remain unpaid at such date; and

(c) a reasonably estimated amount of any payments the County reasonably foresees shall become due and payable from the Project Company to the County under the Project Agreement.

SECTION 3.3. COLLATERAL AGENT'S NOTICE OF CREDIT AGREEMENT EVENT OF DEFAULT. Concurrently with delivery by it to the Project Company of any notice of a Credit Agreement Event of Default, the Collateral Agent shall provide a copy of such notice to the County.

SECTION 3.4. COLLATERAL AGENT'S INDICATIVE NOTICE. Without prejudice to the Security Trustee's rights under the Security Documents, at any time upon the occurrence of a Project Company Event of Default or the receipt of a County's Termination Notice, and where relevant to a Project Company Event of Default the continuance of such a Project Company Event of Default, the Collateral Agent or the Security Trustee may give notice to the County of its intention to nominate a Senior Lenders' Representative to step-in in accordance with Section 4.1 (a "**Collateral Agent's Indicative Step-In Notice**") or to effect a transfer in accordance with Section 6.1 (a "**Collateral Agent's Indicative Transfer Notice**").

SECTION 3.5. COLLATERAL AGENT'S WITHDRAWAL NOTICE. If at any time after the giving of a Collateral Agent's Indicative Notice or a County's Termination Notice, the Collateral Agent has determined that it is not, or is no longer, considering appointing a Senior Lenders' Representative or effecting a transfer of the Project Company's rights and liabilities under the Project Agreement to a Suitable Substitute Project Company in accordance with this Agreement, the Collateral Agent or the Security Trustee shall give notice (a "**Collateral Agent's Withdrawal Notice**") to the County, and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Collateral Agent's Indicative Notice or County's Termination Notice and the County shall be at liberty to take any and all action available to it under the Project Agreement and other Project Documents.

SECTION 3.6. NOTICE OF ANTECEDENT LIABILITIES.

Unless a Collateral Agent's Withdrawal Notice has been given, not later than 30 days after the date of delivery by the County of a County's Termination Notice or the date of delivery by the Collateral Agent or the Security Trustee of a Collateral Agent's Indicative Notice, as the case may be, the County shall give the Collateral Agent a notice (the "**Liability Report**") containing details of:

(1) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the County's Termination Notice or Collateral Agent's Indicative Notice, as the case may be; and

(2) any financial liabilities of which the County is aware (after reasonable inquiry) that will fall due under the Project Agreement on or after the date of delivery of the County's Termination Notice or Collateral Agent's Indicative Notice, as the case may be, and on or prior to:

(a) in the case of a County's Termination Notice, the proposed Termination Date set forth in that notice; and

(b) in the case of a Collateral Agent's Indicative Notice, 180 days after the date of delivery of the Collateral Agent's Indicative Notice.

SECTION 3.7. SUBSEQUENT COUNTY NOTICE OF LIABILITIES. After the delivery of the Liability Report, unless a Collateral Agent's Withdrawal Notice has been given, the County shall, promptly upon becoming aware of them, notify the Collateral Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the County's Termination Notice or Collateral Agent's Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

SECTION 3.8. NO RIGHT TO TERMINATE OR TAKE RESTRICTED ACTION. The County shall not terminate or deliver any notice terminating the Project Agreement, or take any Restricted Action, during any Notice Period that would have the effect of terminating the Project Agreement prior to the expiration of the 180 day period referred to in Section 3.2; provided, however, that until the expiration of such period the County shall be entitled to require the Project Company to remedy any Project Company Event of Default and shall be entitled to exercise all rights under the Project Agreement other than termination of such agreement.

SECTION 3.9. COLLATERAL AGENT'S RIGHT TO CURE A PROJECT COMPANY BREACH OR DEFAULT WITHOUT STEP-IN OR TRANSFER. The Collateral Agent or the Security Trustee shall have the right to take such actions as may be necessary, in the Collateral Agent or Security Trustee's sole discretion, to cure or remedy a Project Company Remediable Breach or Project Company Event of Default prior to any Step-In Period and without the necessity of issuing a Collateral Agent's Indicative Step-In Notice or Collateral Agent's Indicative Transfer Notice. Prior to exercising any such right, the Collateral Agent or the Security Trustee shall deliver a written notice thereof to the County (a "**Collateral Agent's Cure Notice**"). The County shall have no duty to deal with the Collateral Agent or the Security Trustee in any such circumstances, but the County will accept performance by the Collateral Agent or the Trustee as performance by the Project Company. Any acts by the Collateral Agent or the Security Trustee in the exercise of such right shall be deemed to be acts of the Project Company for the purposes of the Project Agreement, including the indemnity provisions thereof. The Collateral Agent or the Security Trustee may exercise such rights for a period (the "**Collateral Agent's Cure Period**") commencing on the date of delivery of a Collateral Agent's Cure Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of a Collateral Agent's Withdrawal Notice; or
- (3) 120 days following the delivery of a County's Event Notice.

ARTICLE 4

STEP-IN

SECTION 4.1. COLLATERAL AGENT'S STEP-IN NOTICE. Subject to Section 4.3, and without prejudice to the Security Trustee's rights under the Security Documents, the Collateral Agent may give the County a notice (a "**Collateral Agent's Step-In Notice**") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2. CONTENTS OF STEP-IN NOTICE. In the Collateral Agent's Step-In Notice, the Collateral Agent shall:

- and
- (1) state that it intends to exercise its step-in rights under this Agreement;
 - (2) identify the Appointed Representative.

SECTION 4.3. ONE STEP-IN PERIOD. There will be not more than one Step-In Period following any one Collateral Agent's Indicative Notice or County's Termination Notice.

SECTION 4.4. APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the Project Agreement, including any rights to cure a Project Company breach, subject to the performance by or on behalf of the Project Company's obligations under the Project Agreement. During the Step-In Period, the County shall deal with the Appointed Representative and not the Project Company.

SECTION 4.5. COUNTY RIGHT TO TERMINATE. The County shall not terminate the Project Agreement, in whole or in part, or take any Restricted Action during the Step-In Period except as set forth in this Section. The County shall be entitled to terminate the Project Agreement or take any Restricted Action during the Step-In Period by written notice to the Project Company, the Collateral Agent and the Appointed Representative:

- (1) if the Reported Antecedent Liabilities that are financial liabilities owed to the County have not been paid to the County or guaranteed to the County's reasonable satisfaction on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid or guaranteed to the County's reasonable satisfaction by the due date;
- (2) if amounts owed to the County, of which the County was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged or sufficiently guaranteed to the County's reasonable satisfaction by:
 - (a) if notice of the liability is given to the Collateral Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date;
 - (b) if notice of the liability is given to the Collateral Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the County, acting reasonably, when it gives such notice or by the Collateral Agent, acting reasonably, by notice to the County within five Business Days of receipt of the notice from the County), 20 Business Days after the Step-In Date; or
 - (c) otherwise, 20 Business Days after delivery of the notice;

(3) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that for the purposes of termination under the Project Agreement, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;

(4) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Reported Antecedent Liabilities which are non-financial liabilities (including, if necessary to effect any such remedy, diligent efforts to obtain possession or control of the Project); or

(5) on grounds arising prior to the Occupancy Readiness Date if the Occupancy Readiness Date does not occur on or before the date that is six months after the Longstop Date.

ARTICLE 5

STEP-OUT

SECTION 5.1. COLLATERAL AGENT'S STEP-OUT NOTICE. The Collateral Agent or the Appointed Representative may at any time during the Step-In Period deliver to the County a notice (a "**Collateral Agent's Step-Out Notice**") which specifies the Step-Out Date.

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

(1) the rights of the County against the Appointed Representative and the rights of the Appointed Representative against the County shall be cancelled; and

(2) the County shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the Project Agreement.

SECTION 5.3. PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4, the Project Company shall continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of a Collateral Agent's Cure Notice, a Collateral Agent's Indicative Notice, a Collateral Agent's Step-In Notice, a Step-In Period, a Collateral Agent's Step-Out Notice, a Step-Out Date, any action by the Collateral Agent, Appointed Representative, Security Trustee or the Senior Lenders or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the Project Agreement prior to the expiration of the Step-in Period from actions or inactions of the Collateral Agent, the Appointed Representative, Security Trustee or Senior Lenders. The Project Company shall remain liable for any unpaid amounts due and payable to the County by the Project Company under the Project Agreement.

ARTICLE 6

SENIOR LENDER REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1. PROJECT COMPANY TRANSFER NOTICE. Subject to Section 6.2, at any time:

(1) upon the occurrence of a Project Company Event of Default, and where relevant to such a Project Company Event of Default during the continuance of a Project Company Event of Default; or

- (2) during the Step-In Period,

the Collateral Agent may, on 30 Business Days' notice to the County and any Appointed Representative, take any action available to it to cause the transfer of the Project Company's rights and liabilities under the Project Agreement, and all of the Project Company's right, title and interest in any Material Contract to a Suitable Substitute Project Company in accordance with the provisions of Section 6.4.

SECTION 6.2. COUNTY CONSENT. The County shall notify the Collateral Agent as to whether any person to whom the Collateral Agent proposes to transfer the Project Company's rights and liabilities under the Project Agreement is a Suitable Substitute Project Company, not later than 20 Business Days after the date of receipt from the Collateral Agent of all information reasonably required by the County to decide whether the proposed transferee is a Suitable Substitute Project Company. In the event the County does not approve such person, such notice shall set forth in reasonable detail the reasons for withholding approval.

SECTION 6.3. WITHHOLDING OF CONSENT. The County shall not unreasonably withhold, condition or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company and it shall, without limitation, be reasonable for the County to withhold its consent:

- (1) if there are unremedied breaches under the Project Agreement and there is no remedial program reasonably acceptable to the County in respect of the breaches; or
- (2) based on any of the factors set forth in Section 23.3 (Factors the County May Consider) of the Project Agreement with respect to any transfer, including any assignment, to such person or Change in Control resulting from the transfer.

SECTION 6.4. TERMS OF TRANSFER. Upon the transfer referred to in Section 6.1 becoming effective:

- (1) the Project Company and the County shall be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the "**Discharged Obligations**");
- (2) the Suitable Substitute Project Company and the County shall assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Company instead of the Project Company;
- (3) the rights of the Project Company against the County under the Project Agreement and vice versa (the "**Discharged Rights**") will be cancelled;
- (4) the Suitable Substitute Project Company and the County shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Company instead of the Project Company; provided, however, that the Suitable Substitute Project Company shall not assume any material new obligations and the County shall not assume any material new rights without the prior written consent of the Collateral Agent, acting reasonably;
- (5) any subsisting ground for termination of the Project Agreement by the County shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;

(6) the County shall enter into a lenders' remedies agreement with the Suitable Substitute Project Company and a representative of Senior Lenders lending to the Suitable Substitute Project Company on substantially the same terms as this Agreement; and

(7) any Deduction that arose prior to that time will not be taken into account after the transfer for the purposes of Section 20.1(A)(9) (Project Company Events of Default Defined) of the Project Agreement.

ARTICLE 7

INSURANCE

SECTION 7.1. DEPOSIT OF PROCEEDS AND CALCULATION OF COVER RATIO. In the event a Total Constructive Loss occurs, the property Insurance Proceeds available for the restoration of the Project shall be deposited in the Insurance Trust Account as provided in subsection 14.1(F) (Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration) of the Project Agreement and applied as provided in this Article. Promptly following the occurrence of such an event the Project Company shall calculate the Average Projected Senior Debt Service Coverage Ratio. The Collateral Agent and the Project Company shall notify the County in writing as to the applicable calculations together with all relevant facts in order for the County to verify the accuracy of the calculation.

SECTION 7.2. APPLICATION OF INSURANCE PROCEEDS IF COVER RATIO TEST IS SATISFIED. If the calculation required by Section 7.1 shows that the Average Projected Senior Debt Service Coverage Ratio is greater than [_____] [**NOTE TO PROPOSERS: Debt service coverage ratio required to avoid an event of default under the financing documents to be inserted here.**], then the Insurance Proceeds available in the Insurance Trust Account shall be applied to the restoration of the Project in accordance with the terms of the Project Agreement. Any funds remaining in the Insurance Trust Account in excess of the amounts required to meet all restoration obligations under the Project Agreement shall be paid to the Collateral Agent for payment of the Senior Debt and other purposes in accordance with the terms of the Senior Financing Agreements.

SECTION 7.3. APPLICATION OF INSURANCE PROCEEDS IF COVER RATIO TEST IS NOT SATISFIED. If the calculation required by Section 7.1 shows that the Average Projected Senior Debt Service Coverage Ratio is less than [_____] [**NOTE TO PROPOSERS: Debt service coverage ratio required to avoid an event of default under the financing documents to be inserted here.**], then an amount equal to the lesser of:

- (1) the Insurance Proceeds available in the Insurance Trust Account; and
- (2) all amounts owed and outstanding under the Senior Financing Agreements

shall be released from the Insurance Trust Account to the Collateral Agent, on a timely basis, but not earlier than 10 Business Days following the delivery to the County of the calculations and relevant facts so as to permit verification of their accuracy by the County.

ARTICLE 8

COVENANTS

SECTION 8.1. COUNTY COVENANTS. The County agrees with the Collateral Agent that the County shall:

(1) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the Collateral Agent, an Appointed Representative or a Suitable Substitute Project Company taking a transfer in accordance with Article 6 may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Collateral Agent or Appointed Representative or Suitable Substitute Project Company reasonably requires;

(2) not, prior to the Senior Debt Discharge Date, unless the Collateral Agent has (acting reasonably) consented in writing:

(a) appoint a Bankruptcy Officer;

(b) commence any Bankruptcy Proceedings;

(c) sanction, by voting or failing to vote on, any Bankruptcy Proceedings and shall, if requested to do so by the Collateral Agent, vote against any Bankruptcy Proceedings;

(d) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by the Project Company into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by the Project Company for or on account of the Project Company's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or

(e) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in items (a), (b), (c) or (d) above;

(3) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the County and a third party, the effect of which would be reasonably likely to render the County unable to satisfy its obligations under the Project Agreement or to cause the occurrence of a County Event of Default; and

(4) not issue any notice under Section 2.3 or 2.5 of the Project Contractor Collateral Agreement at any time that the Senior Lenders are validly exercising under any Senior Lender Financing Agreement any step-in rights with respect to the relevant Material Contract.

SECTION 8.2. COLLATERAL AGENT COVENANTS. The Collateral Agent shall promptly:

(1) notify the County when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event shall so notify no later than 20 Business Days after its occurrence;

(2) notify the County of any Credit Agreement Event of Default;

(3) notify the County of any decision by the Senior Lenders to take action under Section [] of the Credit Agreement;

(4) unless notice is already provided under the above provisions, notify the County of any decision by the Senior Lenders to:

- (a) appoint a Bankruptcy Officer;
- (b) commence any Bankruptcy Proceedings;
- (c) sanction, by voting or failing to vote on, any Bankruptcy Proceedings; or
- (d) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (a), (b) or (c) above; and

(5) upon request by the County, and provided the Senior Debt Discharge Date has occurred, cause all security on any real or personal property constituting part of the Project to be promptly discharged and released on the date requested by the County (which will be on or after the Senior Debt Discharge Date).

SECTION 8.3. PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 9

ASSIGNMENT

SECTION 9.1. RESTRICTION ON ASSIGNMENT. No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Article.

SECTION 9.2. ASSIGNMENT BY COLLATERAL AGENT. The Collateral Agent may assign or transfer its rights and obligations under this Agreement to a successor Collateral Agent in accordance with the Senior Financing Agreements without the consent of the County, provided that the Collateral Agent delivers to the County not less than 10 Business Days prior to such assignment a notice setting out such contact information regarding the assignee as the County may reasonably require, and further provided that the assignee or transferee is not a Restricted Person.

SECTION 9.3. ASSIGNMENT BY SENIOR LENDER. Any Senior Lender may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the County provided the assignee or transferee is not a Restricted Person.

SECTION 9.4. ASSIGNMENT BY COUNTY. The County shall assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee, and the Collateral Agent and the Senior Lenders shall co-operate with the County in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the County.

SECTION 9.5. NEW AGREEMENT. If Section 9.2 applies in relation to the Collateral Agent, the County and the Project Company shall, upon request by the new Collateral

Agent, enter into a new lenders' remedies agreement with the new Collateral Agent on substantially the same terms as this Agreement.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

SECTION 10.1. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT. The Collateral Agent represents and warrants, as of the date of this Agreement, that:

- (1) it has the full power and authority to execute, deliver and perform its obligations under this Agreement;
- (2) it has duly authorized the execution and delivery of this Agreement by its signatories hereto and the performance of its obligations hereunder; and
- (3) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of the rights of creditors generally and by general principles of equity.

SECTION 10.2. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY. The Project Company represents and warrants, as of the date of this Agreement, that:

- (1) it has the full power and authority to execute, deliver and perform its obligations under this Agreement;
- (2) it has duly authorized the execution and delivery of this Agreement by its signatories hereto and the performance of its obligations hereunder;
- (3) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of the rights of creditors generally and by general principles of equity; and
- (4) no Project Company Event of Default, or to its knowledge, any County Event of Default, has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute such a Project Company Event of Default, or to its knowledge, a County Event of Default.

SECTION 10.3. REPRESENTATIONS AND WARRANTIES OF COUNTY. The County represents and warrants, as of the date of this Agreement, that:

- (1) it has the full power and authority to execute, deliver and perform its obligations under this Agreement;
- (2) it has duly authorized the execution and delivery of this Agreement by its signatories hereto and the performance of its obligations hereunder;
- (3) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforceability of the rights of creditors generally and by general principles of equity; and

(4) no County Event of Default, or to its knowledge, any Project Company Event of Default, has occurred and is continuing, and no fact or event exists that with the passage of time or giving of notice would constitute such a County Event of Default, or to its knowledge, a Project Company Event of Default.

ARTICLE 11

GENERAL

SECTION 11.1. TERM. This Agreement shall remain in effect until the earlier of:

- (1) the Senior Debt Discharge Date;
- (2) the date upon which a new lenders' remedies agreement is entered into pursuant to Section 9.5 following an assignment or transfer by the Collateral Agent of its rights and obligations under this Agreement to a successor Collateral Agent; or
- (3) subject to compliance with Section 6.4(6) above, the date of transfer of the Project Company's rights and liabilities under the Project Agreement to a Suitable Substitute Project Company pursuant to Section 6.1.

SECTION 11.2. NO COUNTY RESPONSIBILITY FOR SENIOR DEBT.

None of the County, or any other agency, instrumentality or political subdivision of the County, and no board member, director, officer, employee, agent or representative of any of them, shall have any liability whatsoever for payment of the principal sum of any Senior Debt, any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, or any interest accrued thereon or any other sum secured by or accruing under the Financing Agreements. Except for a violation by the County of its express obligations to Senior Lenders set forth in this Agreement, no Senior Lender shall be entitled to seek any damages or other amounts from the County, whether for Senior Debt or any other obligation amount. The County's review of the Senior Financing Agreements or other Project financing documents is not a guarantee or endorsement of the Senior Debt, any other obligations issued or incurred by the Project Company in connection with this Project Agreement or the Project, and is not a representation, warranty or other assurance as to the ability of the Project Company to perform its obligations with respect to the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, or as to the adequacy of the Service Fee to provide for payment of the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, except that the foregoing does not affect any of County's liability to the Project Company under Article 22 (Termination) of the Project Agreement and any Termination Payment that is measured in whole or in part by outstanding Senior Debt.

SECTION 11.3. CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.

SECTION 11.4. VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of Oregon and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 11.5. WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 11.6. CONFIDENTIALITY. The Collateral Agent shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

SECTION 11.7. NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by email (with confirmation of receipt by the recipient), by hand or by registered mail to the address of each party set forth below:

if to the County:

[Address]
Attention: [_____]
Telephone No.: [_____]
Email: [_____]

with a copy to:

[Address]
Attention: [_____]
Telephone No.: [_____]
Email: [_____]

if to the Collateral Agent:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

with a copy to:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

if to the Project Company:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

with a copy to:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

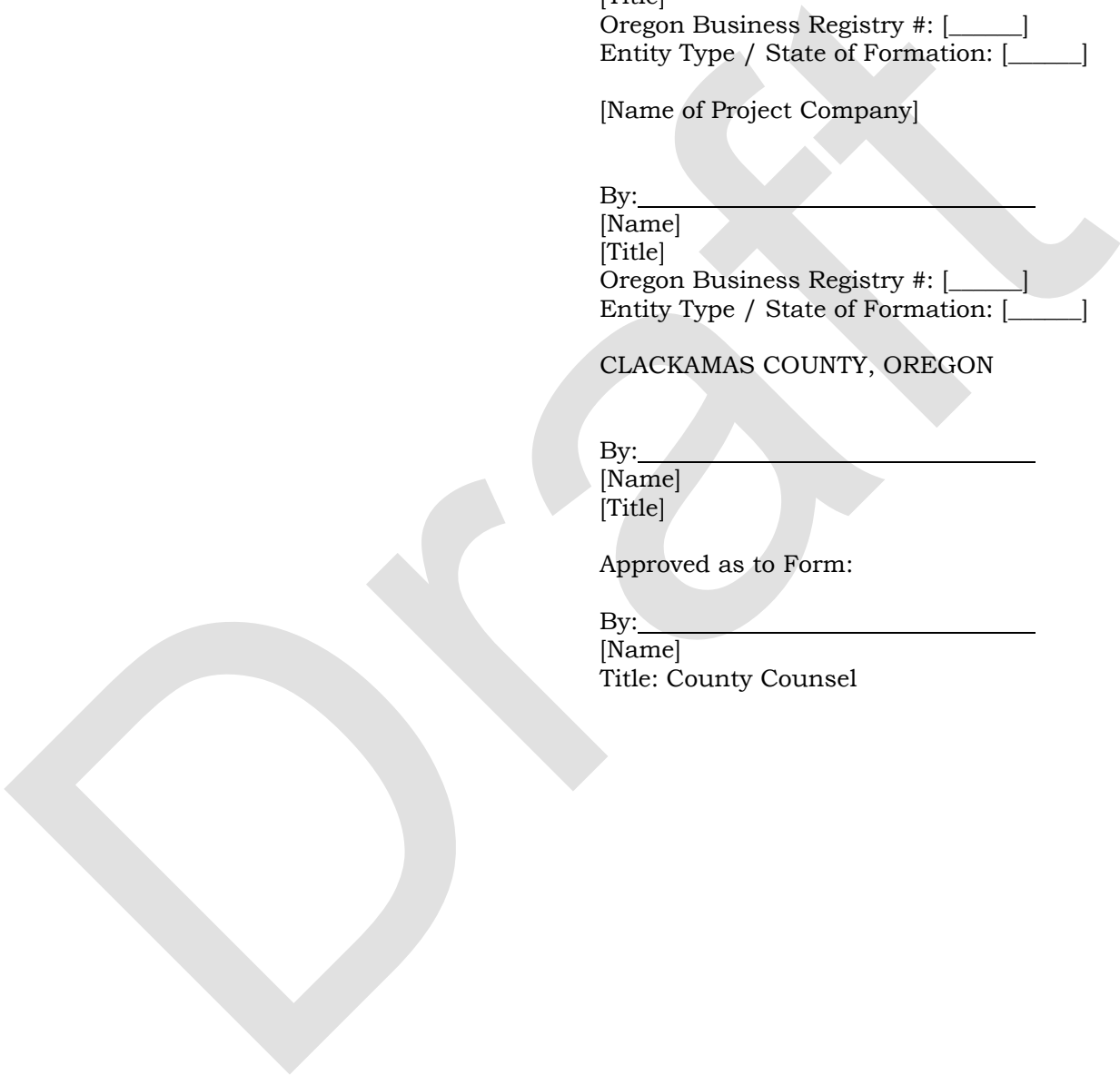
or to such other address as any party may, from time to time, designate in the manner set forth above.

[SIGNATURE PAGE FOLLOWS]

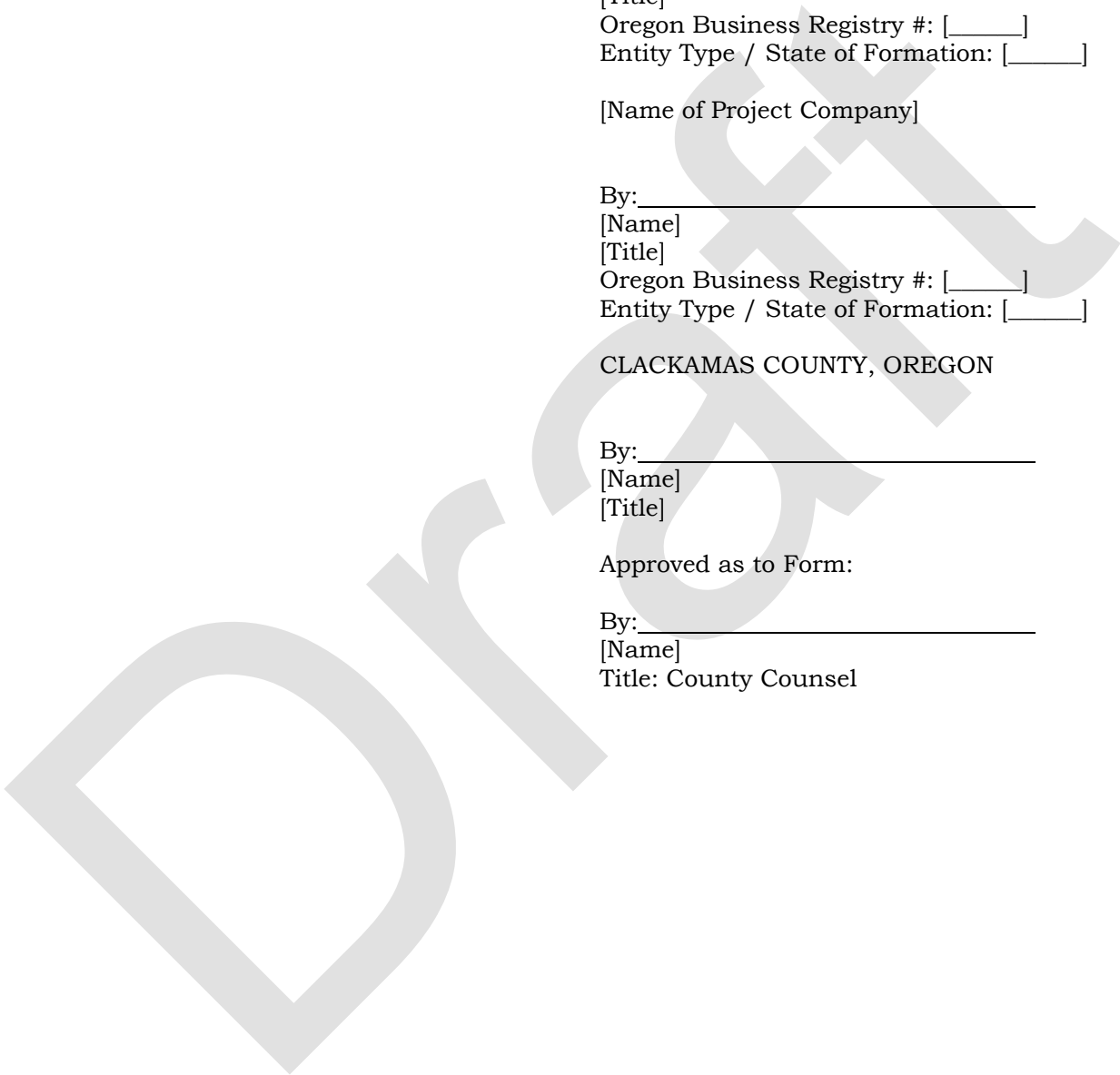
Draft

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

[Name of Collateral Agent]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____] 
Entity Type / State of Formation: [_____]

[Name of Project Company]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____] 
Entity Type / State of Formation: [_____]

CLACKAMAS COUNTY, OREGON

By: _____
[Name]
[Title]

Approved as to Form:

By: _____
[Name]
Title: County Counsel

SCHEDULE 1

SENIOR FINANCING AGREEMENTS

[NOTE TO PROPOSERS: To be completed following selection.]

Draft

TRANSACTION FORM C
PROJECT CONTRACTOR COLLATERAL AGREEMENT

PROJECT CONTRACTOR COLLATERAL AGREEMENT

for the

CLACKAMAS COUNTY CIRCUIT COURTHOUSE

between

CLACKAMAS COUNTY, OREGON

and

[PROJECT COMPANY]

and

[PROJECT CONTRACTOR]

Dated [_____], 2022

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PROJECT CONTRACTOR COLLATERAL AGREEMENT

THIS PROJECT CONTRACTOR COLLATERAL AGREEMENT (this “**Agreement**”) is made and entered into [_____] , 2022, between Clackamas County, Oregon (the “**County**”), [_____] , a [_____] organized and existing under the laws of the State of [_____] and authorized to do business in the State of Oregon (the “**Project Company**”), and [_____] , a [_____] organized and existing under the laws of the State of [_____] and authorized to do business in the State of Oregon (the “**Contractor**”).

RECITALS

The County and the Project Company have entered into an agreement dated [_____] , 2022 (the “**Project Agreement**”) whereby the Project Company has agreed to design, construct, finance, operate and maintain the new Circuit Courthouse in Clackamas County, Oregon (the “**Project**”), all as more particularly described in the Project Agreement;

The Project Company and the Contractor have entered into an agreement dated [_____] , 2022 (the “**Material Contract**”) whereby the Contractor has agreed to carry out and complete that part of the Project Company’s obligations under the Project Agreement consisting of [the Design-Build Work/Facilities Management Services (as defined in the Project Agreement)], all as more particularly described in the Material Contract; and

It is a condition of the Material Contract that the Contractor enter into this Agreement with the County and the Project Company.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meaning given to such terms in the Project Agreement or as set forth in the preamble and recitals of this Agreement.

SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

(1) **Plurality.** Words importing the singular number mean and include the plural number and vice versa.

(2) **Persons.** Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(3) **Headings.** The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(4) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(5) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(6) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(7) References to Including. The words “include”, “includes” and including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(8) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(9) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(10) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Project Company or the Contractor, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(12) Entire Agreement. This Agreement contains the entire agreement between the County and the other parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements between the County and the other parties with respect to such transactions.

(13) Counterparts and Delivery by Electronic Mail. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement. Any party may deliver an executed copy of this Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that party will promptly deliver via mail or courier to the other parties an originally executed copy of this Agreement.

(14) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State and the County.

(15) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(16) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(17) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(18) Consents. Any consent required to be given under this Agreement must be in writing.

ARTICLE 2

SUBSTITUTION PROVISIONS

SECTION 2.1. NOTICE TO COUNTY OF INTENT TO TERMINATE. Except as a result of a termination by the Project Company pursuant to the terms of the Material Contract, the Contractor shall not terminate or treat as terminated its engagement under the Material Contract or discontinue its services with respect to the Project, without first giving to the County and the Senior Lenders not less than 10 Business Days' prior notice of the Contractor's intention to do so, specifying the grounds for so doing.

SECTION 2.2. SUSPENSION OF TERMINATION. If the County serves on the Contractor a notice in accordance with Section 2.3, the Contractor shall not terminate or treat as terminated its engagement, or discontinue the performance of any of its obligations, under the Material Contract but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Material Contract.

SECTION 2.3. SUBSTITUTION NOTICE. Unless the engagement of the Contractor under the Material Contract has been terminated previously (and whether or not the Contractor has served notice on the County pursuant to Section 2.1), and if the Project Agreement has been properly terminated in accordance with its terms, the County will be entitled at any time to serve upon the Contractor a notice requiring the Contractor to thereafter accept the instructions of the County or its appointee to the exclusion of the Project Company under and in connection with the Material Contract and the Contractor shall comply with such notice.

SECTION 2.4. SUBSTITUTION OF THE COUNTY. From and after the date of service of the notice under and in compliance with Section 2.3, provided that the Contractor has received notice from either the County or the Project Company that the Project Agreement has been terminated, the Project Company shall be deemed to have assigned all the rights, and the County or its appointee shall be deemed to have accepted the assignment and assumed and agreed to perform all the obligations, of the Project Company under the Material Contract outstanding as

of the date of service of such notice by the County under Section 2.3, whether incurred prior to or after the date of service of such notice by the County under Section 2.3, provided that such deemed assignment and assumption shall not affect or derogate from any right of action the Project Company may have against the Contractor in respect of any breach by the Contractor of its obligations under the Material Contract happening prior to the date of service of notice by the County under Section 2.3. As a condition precedent to the Contractor's obligation to perform on behalf of the County, the County shall provide reasonable assurances in writing to the Contractor that the funds necessary to pay the outstanding obligations under the Material Contract will be available for such purposes in a timely manner.

SECTION 2.5. REPLACEMENT MATERIAL CONTRACT. If the engagement of the Contractor under the Material Contract is terminated before service of any notice under Section 2.3, the Contractor shall, if required to do so by notice served by the County not later than 20 Business Days after the date the Contractor serves notice pursuant to Section 2.1, enter into a new Material Contract with the County or its appointee on the same terms as the Material Contract but with such revisions as the County or the Contractor reasonably requires to reflect altered circumstances. In such event, references in this Agreement to "Material Contract" shall be deemed to include such a new Material Contract. The rights of the County under this Section 2.5 will be applicable only after the Project Agreement has been properly terminated in accordance with its terms. As a condition precedent to the Material Contractor's obligation to enter into the new Material Contract, the County shall provide reasonable assurances in writing to the Project Contractor that the funds necessary to pay the obligations of the County under the new Material Contract will be available for such purposes in a timely manner.

SECTION 2.6. NOTICE TO PREVAIL. As against the Project Company and the County, the Contractor shall be entitled to rely upon and obligated to comply with any notice served by the County under Section 2.3 or Section 2.5, and shall not make, nor be required to make, any inquiry into the entitlement of the County as against the Project Company to serve such notice.

SECTION 2.7. SENIOR LENDERS' RIGHTS PARAMOUNT. Notwithstanding the above, the County shall only be entitled to issue a notice under Section 2.3 or Section 2.5 where the Senior Lenders have not, within 20 Business Days of receiving the Contractor's notice pursuant to Section 2.1, exercised any similar rights of substitution they may have pursuant to the Lenders' Remedies Agreement.

SECTION 2.8. PROJECT COMPANY BOUND. The Project Company shall be bound to the provisions of this Article 2.

ARTICLE 3

INSURANCE

SECTION 3.1. POLICY IN FORCE. The Contractor shall keep in force at all times until the termination of its engagement under the Material Contract all of the policies of insurance that it is required to obtain and maintain under the Material Contract, except, however, the Contractor shall maintain completed operations liability insurance until two years after the termination of its engagement under the Material Contract.

SECTION 3.2. EVIDENCE OF INSURANCE. Upon the issue of and upon every renewal of a policy of insurance, and otherwise upon request by the County, the Contractor shall deliver to the County a copy of the policy of insurance or other evidence of insurance required under the Material Contract. Upon request by the County, the Contractor shall deliver proof of payment of premiums for insurance required to be obtained and maintained under the Material Contract.

ARTICLE 4

CONFIDENTIALITY

SECTION 4.1. CONFIDENTIAL INFORMATION. The Contractor represents and warrants that it has and shall hold in confidence any Confidential Information, provided that the provisions of this Section shall not restrict the Contractor from passing such information to its professional advisors, to the extent necessary, to enable the Contractor to perform (or cause to be performed) or to enforce its rights or obligations under the Material Contract or to such other persons as may be expressly required by the Material Contract.

SECTION 4.2. EXCEPTIONS. The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(A) which the County confirms in writing is not required to be treated as Confidential Information;

(B) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;

(C) to the extent the Contractor is required to disclose such Confidential Information by Applicable Law or any Governmental Body (but only to that extent); or

(D) to the extent consistent with any County policy the details of which have been provided to the Contractor in writing prior to the disclosure.

SECTION 4.3. ANNOUNCEMENTS. Unless otherwise required by any Applicable Law, by any Governmental Body or by the rules, orders or regulations of any stock exchange (but only to that extent), the Contractor shall not make or permit to be made any public announcement or disclosure (whether for publication in the press, radio, television or any other medium) of any Confidential Information or the Contractor's interest in the Project or any matters relating thereto, without the prior written consent of the County, which will not be unreasonably withheld or delayed.

ARTICLE 5

GENERAL

SECTION 5.1. ASSIGNMENT. Other than in conjunction with a permitted assignment of the Material Contract in accordance with its terms, the Contractor may assign this Agreement only with the prior written consent of the County, which consent may be given in the County's sole discretion.

SECTION 5.2. INUREMENT. This Agreement inures to the benefit of and binds the parties and their respective successors and permitted assigns.

SECTION 5.3. NOTICE. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by email (with confirmation of receipt by the recipient), by hand or by registered mail to the address of each party set forth below:

if to the County:

[Address]
Attention: [_____]
Telephone No.: [_____]
Email: [_____]

with a copy to:

[Address]
Attention: [_____]
Telephone No.: [_____]
Email: [_____]

if to the Project Company:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

with a copy to:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

if to the Contractor:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

with a copy to:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 5.4. WAIVERS. No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement except that any provision which does not give rights or benefits to particular parties may be waived in writing, signed only by those parties who have rights under, or hold the benefit of, the provision being waived if those parties promptly send a copy of the executed waiver to all other parties. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

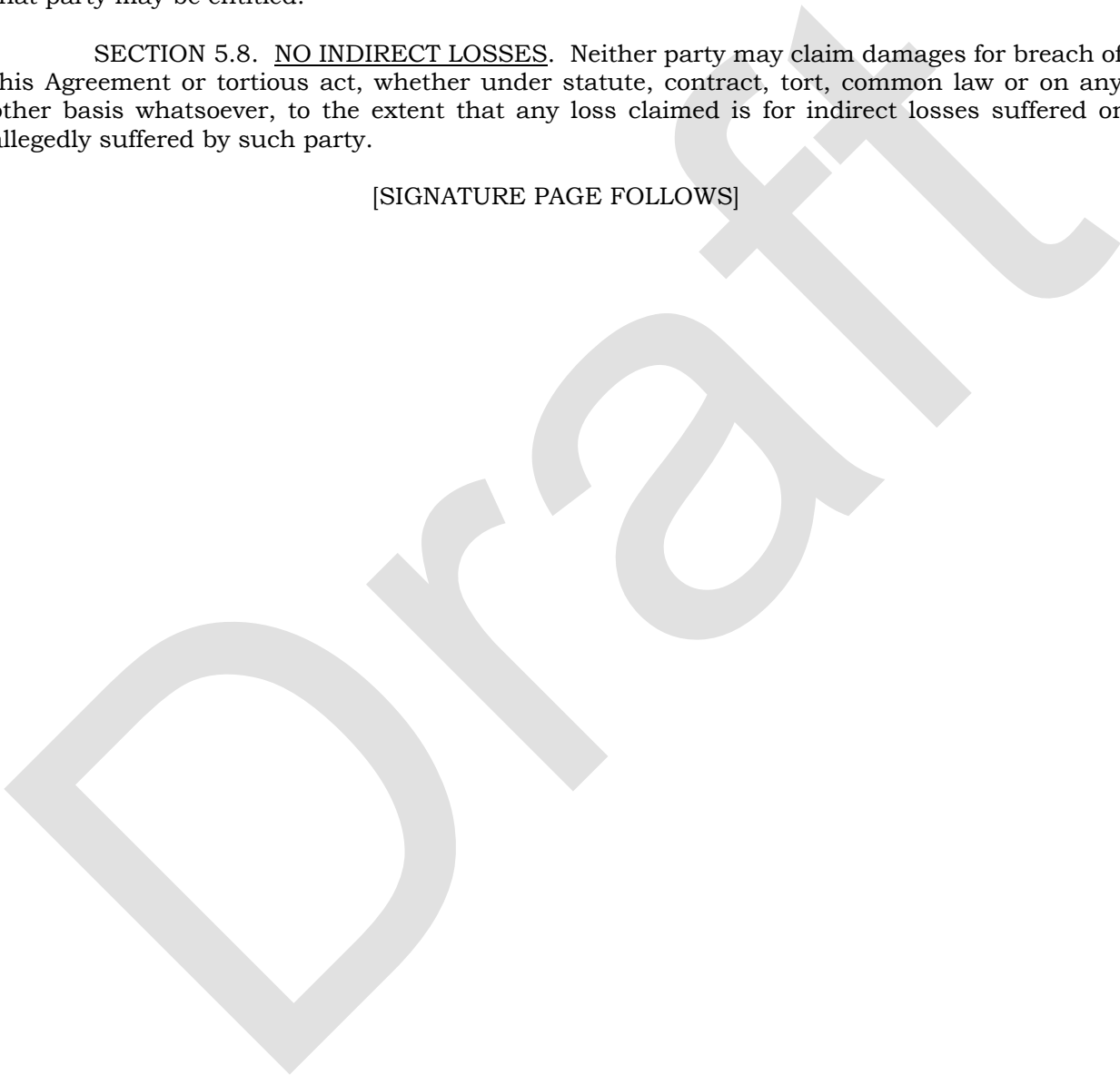
SECTION 5.5. NO PARTNERSHIP OR AGENCY. Nothing in this Agreement will be construed as creating a partnership or as constituting the Contractor as an agent of the County. The Contractor shall not hold itself out as having any power to bind the County in any way.

SECTION 5.6. CONFLICTING AGREEMENT. If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

SECTION 5.7. REMEDIES CUMULATIVE. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

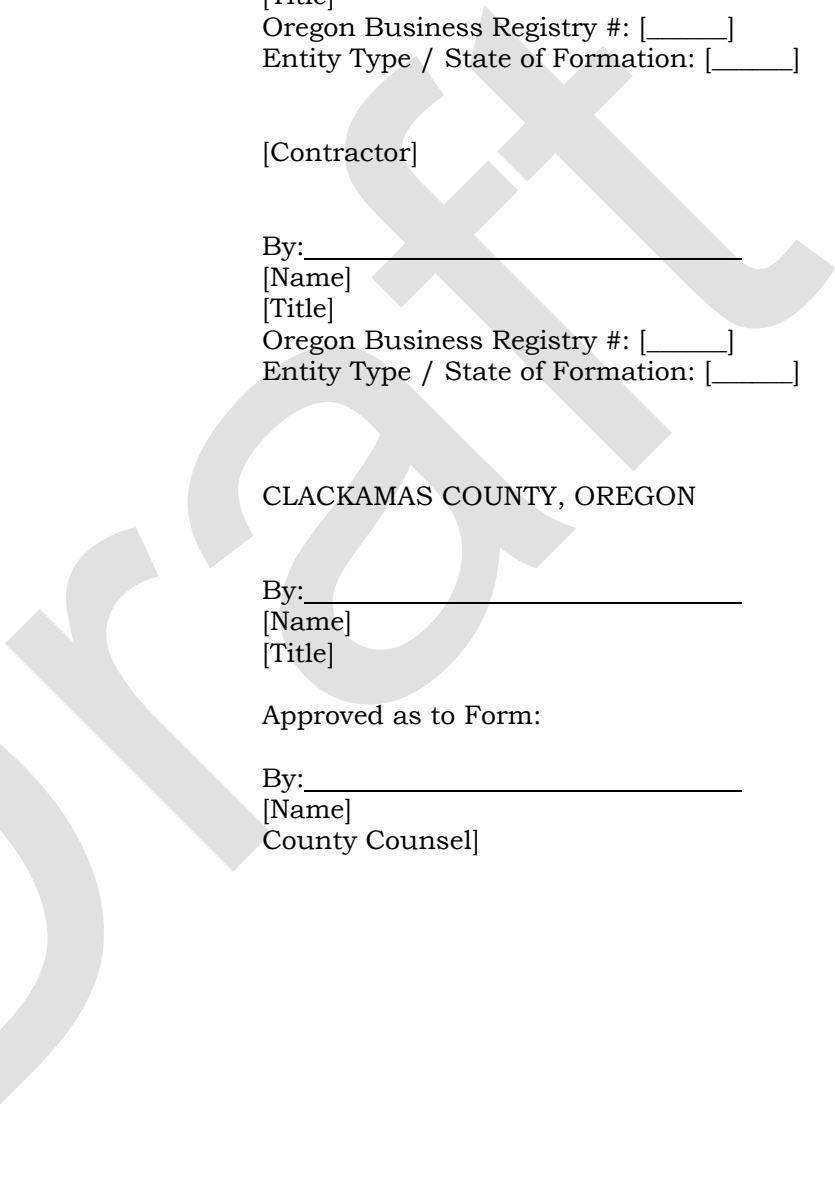
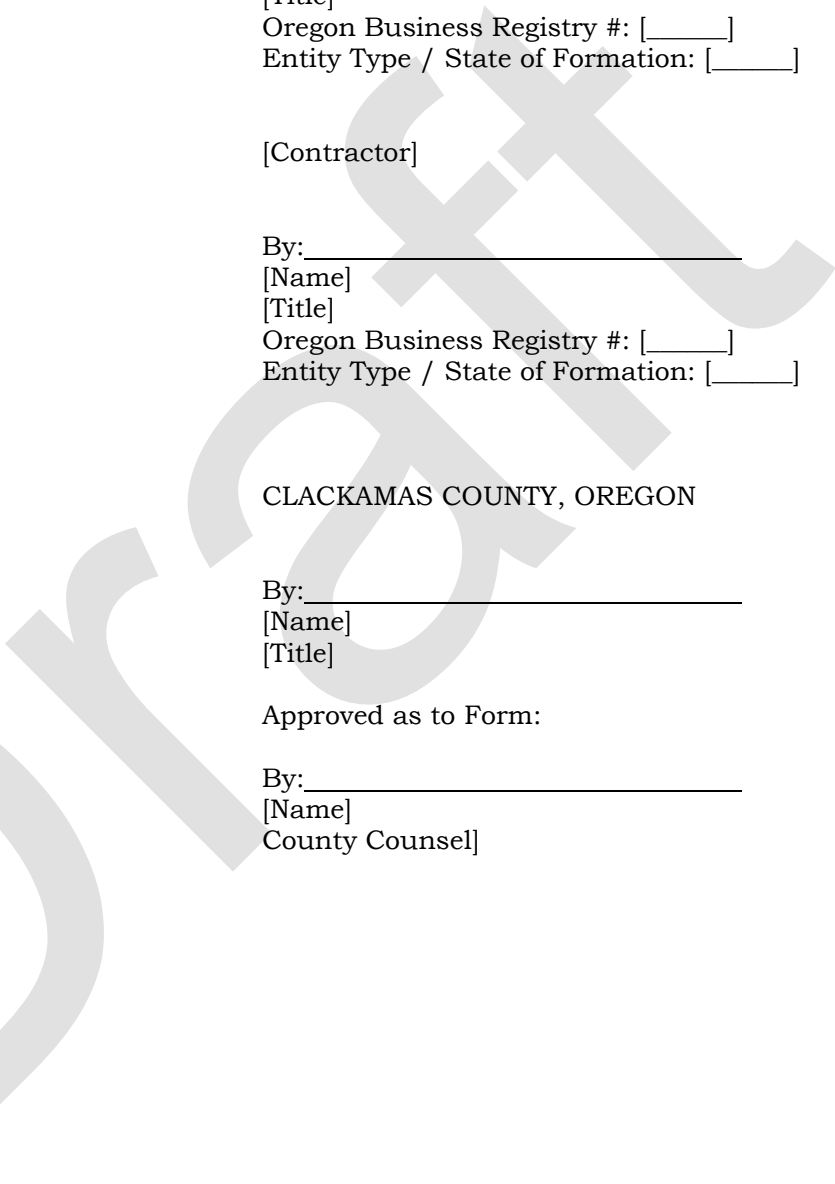
SECTION 5.8. NO INDIRECT LOSSES. Neither party may claim damages for breach of this Agreement or tortious act, whether under statute, contract, tort, common law or on any other basis whatsoever, to the extent that any loss claimed is for indirect losses suffered or allegedly suffered by such party.

[SIGNATURE PAGE FOLLOWS]

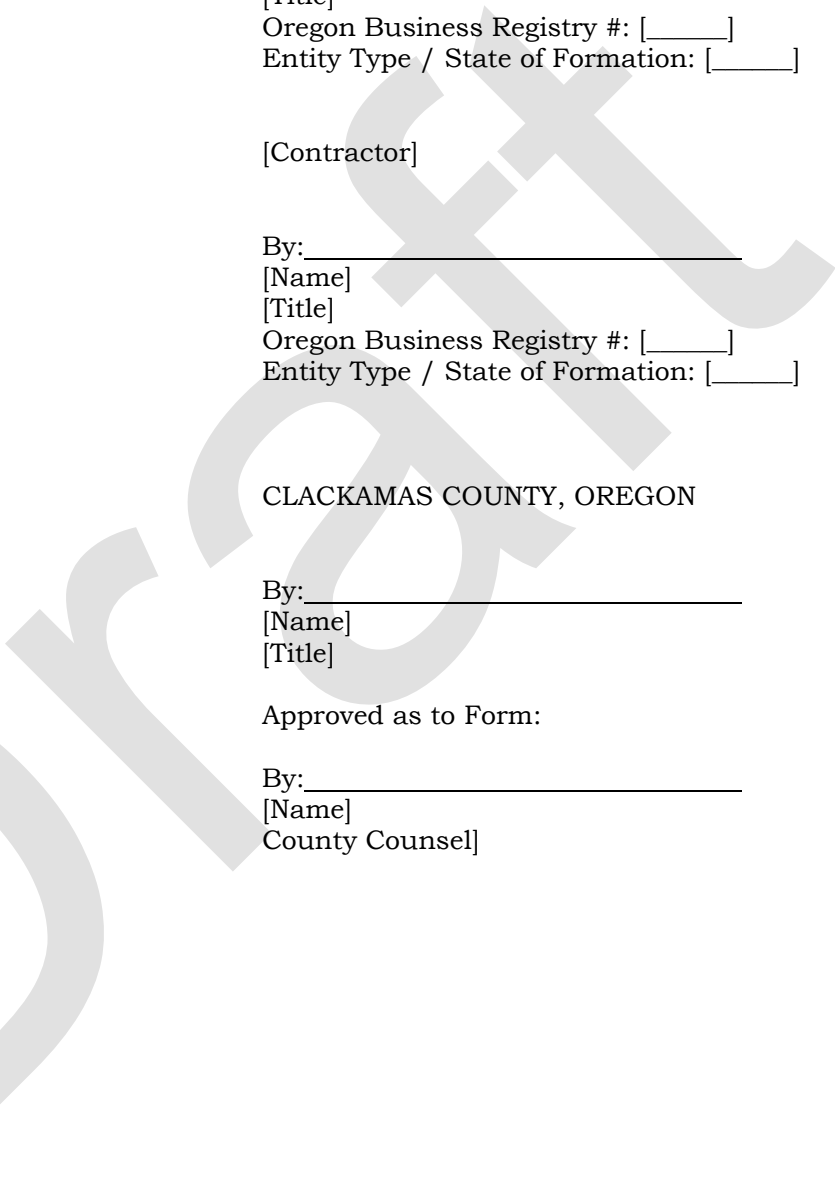
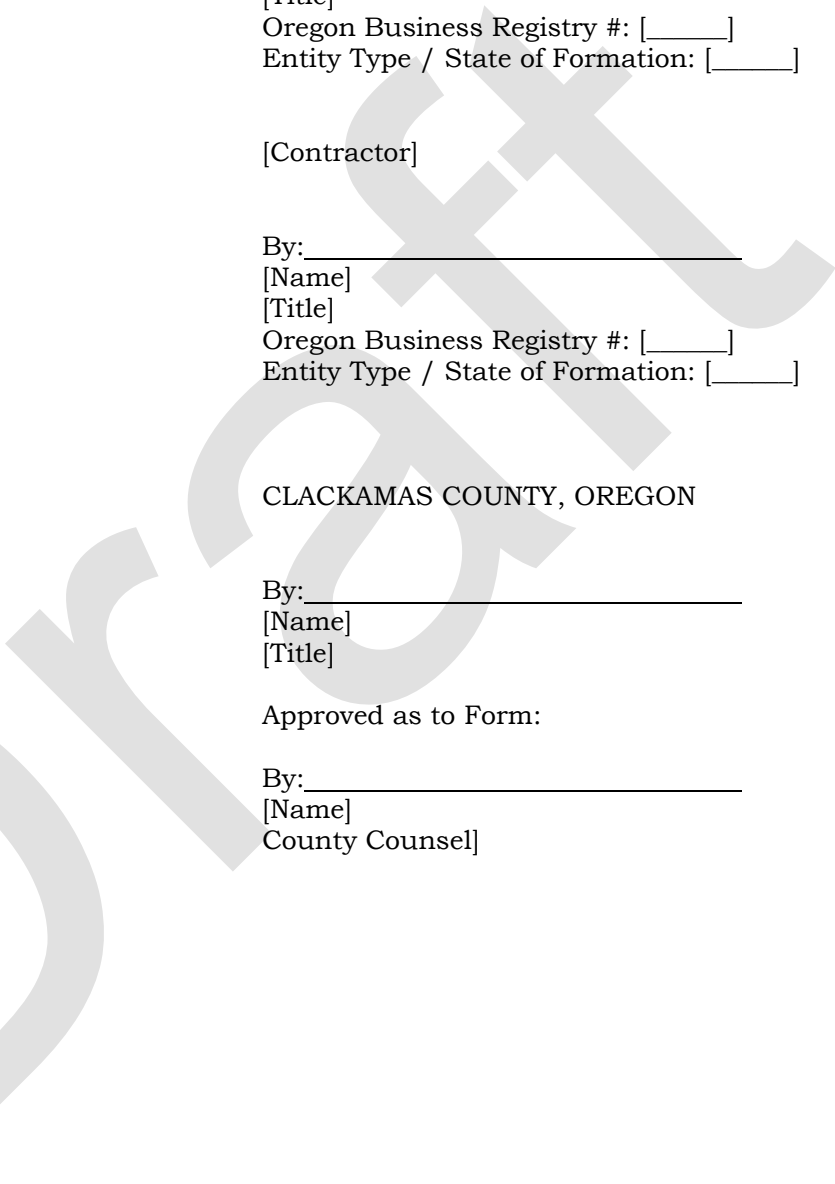


IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

[Project Company]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____] 
Entity Type / State of Formation: [_____] 

[Contractor]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____] 
Entity Type / State of Formation: [_____] 

CLACKAMAS COUNTY, OREGON

By: _____
[Name]
[Title]

Approved as to Form:

By: _____
[Name]
County Counsel]

TRANSACTION FORM D
INDEPENDENT BUILDING EXPERT AGREEMENT

INDEPENDENT BUILDING EXPERT AGREEMENT

for the

CLACKAMAS COUNTY CIRCUIT COURTHOUSE

between

CLACKAMAS COUNTY, OREGON

and

[INDEPENDENT BUILDING EXPERT]

and

[PROJECT COMPANY]

Dated [_____], 2022

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Draft

INDEPENDENT BUILDING EXPERT AGREEMENT

THIS INDEPENDENT BUILDING EXPERT AGREEMENT is made and entered into [_____] , 2022, by and among Clackamas County, Oregon (the “**County**”), [_____] , a [_____] organized and existing under the laws of the State of [_____] and authorized to do business in the State of Oregon (the “**Independent Building Expert**”), and [_____] , a [_____] organized and existing under the laws of the State of [_____] and authorized to do business in the State of Oregon (the “**Project Company**”).

RECITALS

The County and the Project Company have entered into the Project Agreement (defined below);

The County and the Project Company wish to appoint the Independent Building Expert, and the Independent Building Expert wishes to accept such appointment, to perform certain services in connection with the Project Agreement; and

The County, the Project Company and the Independent Building Expert wish to enter into this Agreement in order to record the terms by which the Independent Building Expert will perform such services.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

SECTION 1.1. DEFINITIONS.

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meanings given to such terms in the Project Agreement, and the following terms will have the following meanings:

“**Additional Insured Parties**” shall have the meaning set forth in Section 6.1(A)(6).

“**Additional Services**” means any additions or changes to the Services.

“**Additional Services Fee Notice**” shall have the meaning set forth in Section 8.2(A).

“**Additional Services Order**” shall have the meaning set forth in Section 8.2(B).

“**Agreement**” means this Agreement including any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time.

“**Anticipated Occupancy Readiness**” shall have the meaning set forth in Section 4.1(F).

“**Client Additional Service Price Request**” shall have the meaning set forth in Section 8.1(B).

“Fee” means the fees and disbursements payable to the Independent Building Expert for the Services, as such fees are specified and made payable in Appendix 2 to this Agreement.

“IBE Additional Services Claim” shall have the meaning set forth in Section 8.1(A).

“Liability Payment” shall have the meaning set forth in Section 10.3.

“Occupancy Readiness Certificate” shall have the meaning set forth in Section 4.3(B).

“Occupancy Readiness Deficiency Report” shall have the meaning set forth in Section 4.3(A)(3)(b).

“Occupancy Readiness Notice” shall have the meaning set forth in Section 4.3(A)(2).

“Project Agreement” means the Project Agreement for the Design, Construction, Financing, Operation and Maintenance of the Clackamas County Circuit Courthouse, dated [_____] , 2022 between the County and the Project Company.

“Project Company Indemnitee” means:

- (1) the Project Company;
- (2) any Senior Lender to, and any contractor or subcontractor (of any tier) of the Project Company;
- (3) any representative, agent or advisor (including legal and financial advisors) of the Project Company or any person referred to in item (2) above, in each case acting in such capacity; and
- (4) any manager, official, director or employee of the Project Company or any person referred to in items (2) or (3) above, in each case acting in such capacity.

“Project Material” means all material:

- (1) provided to the Independent Building Expert or created by or required to be created by either the County or the Project Company; and
 - (2) provided by or created by or required to be created by the Independent Building Expert as part of, or for the purpose of, performing the Services,
- including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

“Services” means:

- (1) all of the services performed by and obligations conferred on the Independent Building Expert under the Project Agreement;

(2) all of the services performed by and obligations conferred on the Independent Building Expert under this Agreement, including the services described in Appendix 1 to this Agreement; and

(3) all other obligations or tasks which the Independent Building Expert is required to do to comply with its obligations under this Agreement;

SECTION 1.2. INTERPRETATION.

This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(G) References to Including. The words “include”, “includes” and “including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(H) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant statute.

(I) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document,

standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the County, the Independent Building Expert, the Project Company, or any other Project Company’s representatives, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(M) Counterparts and Delivery by Electronic Mail. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement. Any party may deliver an executed copy of this Agreement by electronic mail and such counterpart shall be deemed effective upon receipt, but that party will promptly deliver via mail or courier to the other parties an originally executed copy of this Agreement.

(N) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State and the County.

(O) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(P) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(Q) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(R) Consents. Any consent required to be given under this Agreement must be in writing.

ARTICLE 2

ROLE OF THE INDEPENDENT BUILDING EXPERT

SECTION 2.1. ENGAGEMENT.

The County and the Project Company hereby appoint the Independent Building Expert, and the Independent Building Expert hereby accepts such appointment, to carry out the Services in accordance with this Agreement. The Independent Building Expert will perform the Services in accordance with this Agreement and unless stated otherwise, where there is an inconsistency between this Agreement and the Project Agreement, the terms of the Project Agreement shall prevail.

SECTION 2.2. ACKNOWLEDGEMENT BY INDEPENDENT BUILDING EXPERT.

The Independent Building Expert hereby acknowledges in favor of the County and the Project Company that it has received a copy of the Project Agreement. The Independent Building Expert acknowledges that the County and the Project Company shall each rely upon the performance of the Services by the Independent Building Expert, including all determinations and findings of fact, the expression of all opinions and conclusions, the issuance of all certificates, and accordingly, the Independent Building Expert shall use its best skills and judgment in providing the Services. The Independent Building Expert acknowledges that, in carrying out the Services, it owes a duty of care to the County, the Project Company and the Senior Lenders.

SECTION 2.3. STANDARD OF CARE.

The Independent Building Expert shall in all respects act as an independent professional. The Independent Building Expert represents and warrants that it does and shall at all times during the term of this Agreement possess and exercise the standard of skill, care and diligence in the performance of the Services that would be expected of an expert professional experienced in providing each of the services falling within the definition of the Services as set forth in Section 1.1 of this Agreement.

SECTION 2.4. DUTY OF INDEPENDENT JUDGMENT.

In exercising the Services, the Independent Building Expert will act:

- (1) impartially and independently of the County and the Project Company, giving fair consideration to the interests and views of each in accordance with the terms of this Agreement and the Project Agreement;
- (2) reasonably, honestly and professionally in all respects, and in accordance with the highest standards of commercial integrity; and
- (3) in a timely manner in its performance of the Services:
 - (a) in accordance with the times prescribed in this Agreement or the Project Agreement, as applicable; or
 - (b) where no times are prescribed, within five Business Days or such earlier time so as to enable the County and the Project Company to perform their respective obligations under the Project Agreement.

SECTION 2.5. DETERMINATIONS AND CONCLUSIONS.

(A) Independent Professional Judgment. All determinations of fact and the drawing of conclusion based upon any facts so determined shall be made in the exercise of the Independent Building Expert's independent professional judgment. Although the Independent Building Expert should take account of any opinions or representations made by the County and

the Project Company, and their respective professional advisors and consultants, the Independent Building Expert shall not be bound to comply with any opinions, representations, requests or directions made by either the County, the Project Company, or their respective professional advisors and consultants in connection with any matter on which the Independent Building Expert is required to exercise its professional judgment. Notwithstanding the foregoing, the Independent Building Expert shall accept all agreed statements of fact made jointly by the County and the Project Company.

(B) Best Skill and Judgment. The Independent Building Expert will use its best skill and judgment in providing the Services and making any certifications.

SECTION 2.6. AUTHORITY TO ACT.

The Independent Building Expert:

(1) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of either the County or the Project Company;

(2) has no direct or indirect material interest in or connection with, and will not at any time have any direct or indirect material interest in or connection with, any person, trust, partnership, joint venture or other entity that is not at arm's length to the County or the Project Company;

(3) has no direct or indirect material interest in, and will not at any time have a direct or indirect interest in, the certification of Occupancy Readiness with respect to the Project except with respect to the performance of the Services under this Agreement and the payment of its Fee;

(4) other than as may be expressly set out in this Agreement or the Project Agreement, has no authority to give any directions to the County or the Project Company, or either of their officers, employees, contractors, consultants or agents;

(5) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release either the County or the Project Company from any of its obligations under the Project Agreement unless jointly agreed in writing by the County and the Project Company;

(6) shall act in accordance with the joint direction of the County and the Project Company provided that the directions are not inconsistent with the other terms of this Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Building Expert's authority or responsibility or the exercise by the Independent Building Expert of its professional judgment under this Agreement; and

(7) is not aware of any other circumstances or relationships, having made due inquiries with respect thereto, that could reasonably be perceived to constitute a conflict of interest with respect to the performance of the Services, or its role as Independent Building Expert.

SECTION 2.7. KNOWLEDGE OF THE COUNTY'S AND PROJECT COMPANY'S REQUIREMENTS.

The Independent Building Expert warrants that:

(1) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;

(2) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Services;

(3) without limiting items (1) or (2) of this Section, it has and will be deemed to have informed itself fully of all time limits and other requirements for any Services which the Independent Building Expert carries out under the Project Agreement and this Agreement;

(4) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Services and the means of access to and facilities at the Project and Project Site including restrictions on any such access or protocols that are required; and

(5) it has satisfied itself as to the correctness and sufficiency of its proposal for the Services and that the Fee covers the cost of complying with all of the obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Services.

SECTION 2.8. COORDINATION BY INDEPENDENT BUILDING EXPERT.

The Independent Building Expert shall:

(1) fully cooperate with the County, the Project Company and State and County agencies and other Governmental Bodies having jurisdiction;

(2) carefully coordinate the Services with the work and services performed by the County and the Project Company;

(3) perform the Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the County and the Project Company; and

(4) provide copies to the County and the Project Company of all reports, communications, certificates and other documentation that it provides to either the County or the Project Company.

SECTION 2.9. CONFLICT OF INTEREST.

The Independent Building Expert warrants that:

(1) in addition to the warranties set out in subsections 2.6(2) and 2.6(7) of this Agreement, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement; and

(2) if, during the term of this Agreement, any such conflict or risk of conflict of interest arises, or there is reasonable apprehension that a conflict of interest has arisen or may arise, the Independent Building Expert shall immediately notify the County and the Project Company in writing of that conflict or risk of conflict and shall take such steps as may be required by the County and the Project Company to avoid, or (where it is not possible to avoid that conflict) mitigate that conflict or risk to the greatest extent possible, or (where it is not possible to avoid that conflict, and the County and the Project Company jointly request) resign.

SECTION 2.10. INDEPENDENT BUILDING EXPERT PERSONNEL.

(A) Personnel to be Used. Subject to subsection (B) of this Section, the Independent Building Expert will use the partners, directors or employees described in Appendix 3 to this Agreement in connection with the performance of the Services and such persons' services will be available for so long as may be necessary to ensure the proper performance by the Independent Building Expert of the Services. Such persons will have full authority to act on behalf of the Independent Building Expert for all purposes in connection with this Agreement.

(B) Removal and Replacement. None of the persons listed in Appendix 3 to this Agreement will be removed or replaced unless such person ceases to work as a partner in or a director or employee of the Independent Building Expert or such person is unable to work because of death or illness. The Independent Building Expert shall notify the County and the Project Company of any such circumstances and shall be responsible for finding a replacement who will previously have been approved in writing by the County and the Project Company.

SECTION 2.11. ENGAGEMENT OF SUBCONTRACTORS FOR PLAN CHECK, TESTING AND INSPECTIONS.

(A) Subcontracts. The Independent Building Expert may engage, if so instructed by the Project Company and the County, for any of the following responsibilities, a separate, qualified, licensed and independent firm to:

- (1) Perform a "plan check" review of the Design Documents to confirm that the Design Documents for the Project comply with the County building codes;
- (2) Perform structural peer review in accordance with the County building code;
- (3) Test the construction materials incorporated in the Project to confirm that the construction materials incorporated in the Project comply with the Contract Standards; and
- (4) Conduct additional inspections of the progress of construction of the Project to confirm that the Project complies with the construction requirements of the Contract Standards.

The firms selected to perform such services, the scope of work, and the terms of the service agreements shall be subject to the prior approval of the County and the Project Company and shall not itself have any conflict of interest as set out in Section 2.9 of this Agreement.

(B) Costs. The costs and expenses of such selected firms, if and to the extent approved by the Project Company and the County, shall constitute disbursements of the Independent Building Expert, which shall be reimbursable to the Independent Building Expert as part of the Fee as provided in Article 7 of this Agreement.

(C) Use of Work Product. The work product of the subconsultants engaged pursuant to this Section shall be made available to the County, the Project Company and the Independent Building Expert for their information and consideration in exercising their rights and carrying out their responsibilities with respect to the Project, but shall not be binding upon any of the County, the Project Company or the Independent Building Expert for any purpose.

SECTION 2.12. OBLIGATIONS OF OTHERS.

Nothing in this Agreement or the Project Agreement shall be interpreted or construed to render the Independent Building Expert responsible for the performance of the design or construction of the Project, or for the performance of any obligation of the Project Company, or the professional responsibility of any of the other professionals of record, with respect to the Project.

ARTICLE 3

ROLE OF THE COUNTY AND THE PROJECT COMPANY

SECTION 3.1. ASSISTANCE.

The County and the Project Company agree to cooperate with and provide reasonable assistance to the Independent Building Expert to familiarize the Independent Building Expert with all necessary aspects of the Project and to enable the Independent Building Expert to carry out its obligations, including the determination of Occupancy Readiness, under this Agreement. Neither the County nor the Project Company shall in any way obstruct or otherwise impede or interfere with the performance of the Services by the Independent Building Expert.

SECTION 3.2. INSTRUCTIONS IN WRITING.

All instructions given to the Independent Building Expert by the County and the Project Company shall be in writing.

SECTION 3.3. OBLIGATIONS AND EXERCISE OF RIGHTS.

Except as otherwise expressly provided in this Agreement:

- (1) Where a power, authority or discretion may be exercised by the County and the Project Company, it shall be exercised by them jointly; and
- (2) Any obligation of the County and Project Company shall be deemed to be a several obligation of the County and the Project Company, acting individually.

SECTION 3.4. INFORMATION AND SERVICES.

The County and the Project Company will each make available to the Independent Building Expert, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Building Expert to carry out the Services, including such information, documents and particulars required in order for the Independent Building Expert to determine whether Occupancy Readiness Conditions have been achieved, and will provide copies of all such information, documents and particulars to the other party.

SECTION 3.5. ADDITIONAL INFORMATION.

(A) Requests by the Independent Building Expert. If any information, documents or particulars are reasonably required to enable the Independent Building Expert to perform the Services and have not been provided by the Project Company or the County, as the case may be, then:

- (1) the Independent Building Expert will give notice in writing to the County or the Project Company, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and

(2) the County or the Project Company, as the case may be, will arrange the provision of the required information, documents or particulars.

(B) Failure to Provide Requested Information. Where any information is requested pursuant to subsection (A) of this Section, and is not provided within 10 Business Days of the date on which it was requested, then the Independent Building Expert shall notify the other party of the details of the information required, and explain the need for that information to be provided by the other party. Any failure or refusal to provide such information may be submitted for Non-Binding Mediation.

SECTION 3.6. RIGHT TO ENTER AND INSPECT.

Upon giving reasonable notice to the Project Company, the Independent Building Expert (and any person authorized by it) may enter and inspect the Project Site, Project and work in progress at any reasonable time when a Project Company Person is present in connection with the exercise or proposed exercise of rights under this Agreement, subject to:

- (1) observance of the reasonable rules of the Project Company as to safety and security for the Project Site, Project and work in progress;
- (2) not causing unreasonable delay to the carrying out of the construction by reason of its presence at the Project; and
- (3) not causing any damage to the Project Site, Project or work in progress.

SECTION 3.7. PERFORMANCE OF OBLIGATIONS UNDER THE PROJECT AGREEMENT NOT RELIEVED.

Neither the County nor the Project Company shall be relieved from its obligations to perform their respective obligations, or from any other liabilities, under the Project Agreement at the time and in the manner contemplated in the Project Agreement by reason of the appointment of or the performance or non-performance of the Services by the Independent Building Expert.

SECTION 3.8. LIABILITY FOR ACTIONS OF INDEPENDENT BUILDING EXPERT.

In no event will the County or the Project Company be liable to one another for any act or omission by the Independent Building Expert whether under, or purportedly under, a provision of the Project Agreement, this Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either the County or the Project Company against or any obligation or liability of either the County or the Project Company which would have existed regardless of such act or omission.

ARTICLE 4

DUTIES OF INDEPENDENT BUILDING EXPERT

SECTION 4.1. REVIEWS AND INSPECTION OF THE PROJECT.

(A) General Duties. The Independent Building Expert shall review comments received during the County building code plan reviews.

(B) Design Development Phase. During the design development phase, the Independent Building Expert shall (1) meet with the Project Company and the County to verify

plan submittal requirements and (2) review the Design Documents, at the 35% and 65% complete stages, for compliance with the Design and Construction Requirements. Final interpretations made by the Independent Building Expert shall be binding on the Project Company and the County.

(C) Design Requirements Verification Phase. During the design requirements verification phase, the Independent Building Expert shall:

(1) Review multiple construction document packages with the Project Company and the County for compliance with the Design and Construction Requirements in order to expedite construction;

(2) Conduct document presubmittal meetings with the Design-Builder, and review documents, issue comments, and back check documents; and

(3) Certify acceptance of individual construction document packages for construction, such certification to include (i) verification that the 95% Complete Documents comply with the Design and Construction Requirements and (ii) confirmation that the 95% Complete Documents are the final documents the Project Company shall construct in accordance with, as provided in Section 3.3 of Appendix 6 (Design-Build Work Review Procedures) of the Project Agreement.

(D) Construction Phase. During the construction phase, the Independent Building Expert shall:

(1) Cooperate with the County's construction inspector of record;

(2) Inspect the Project for conformance with the Final Documents;

(3) Review the results of tests performed by the Project Company;

(4) Review independent laboratory tests of materials;

(5) Review special inspections reports;

(6) Confirm that the Project Company is in compliance with the Design-Build Quality Management Plan; and

(7) Review the Commissioning Plan and the Commissioning of the Project.

(E) Inspection for Occupancy Readiness and Punch List Items. In addition to any obligations imposed under the Project Agreement, the Independent Building Expert shall inspect the Project (including any re-inspections thereof) to determine whether the Occupancy Readiness Conditions have been satisfied in accordance with the procedures for certification set forth in this Agreement and shall prepare a Punch List, if applicable, and otherwise comply with the procedures for certification set forth in this Article.

(F) Notice of Anticipated Occupancy Readiness. The Project Company shall give the Independent Building Expert and the County each not less than 60 days' written notice ("**Anticipated Occupancy Readiness Notice**") of the date on which it anticipates the Project will be in a condition necessary to satisfy the Occupancy Readiness Conditions and the dates on which it is intended that the Independent Building Expert carry out the inspection of the Project with a view toward issuing the Occupancy Readiness Certificate.

SECTION 4.2. PROJECT DEFICIENCIES AND RE-INSPECTION.

If any deficiencies in the Project with respect to Occupancy Readiness or any part thereof are identified by the Independent Building Expert during the course of the inspection referred to in Section 4.1(E) that require attention so as to enable Occupancy Readiness to be achieved, the Project Company shall attend to the matters contained in the Independent Building Expert's report delivered pursuant to subsection (A)(3)(b) of Section 4.3 in accordance with Section 4.3(F).

SECTION 4.3. PROCEDURE FOR CERTIFICATION OF OCCUPANCY READINESS.

(A) Procedure. The Independent Building Expert shall make its determination of Occupancy Readiness and certify that the Project has achieved Occupancy Readiness in accordance with the following rules and procedures:

(1) the Project Company shall provide the Independent Building Expert and the County the Anticipated Occupancy Readiness Notice;

(2) after the Project Company provides the Anticipated Occupancy Readiness Notice, and in any event at least 30 days prior to the inspection of the Project by the Independent Building Expert, the Project Company shall give the Independent Building Expert and the County an application for an Occupancy Readiness Certificate (the "**Occupancy Readiness Notice**") in the form set forth in Appendix 4 to this Agreement, together with the Project Company's opinion and the County's opinion as to whether the conditions for issuance of the Occupancy Readiness Certificate have been satisfied (which Occupancy Readiness Notice may be given concurrently with the giving of the Anticipated Occupancy Readiness Notice); and

(3) provided that the Project Company has complied with clauses (1) and (2) of this subsection, upon the written request of the Project Company, the parties shall cause the Independent Building Expert to, as soon as possible but no later than two Business Days following such request, determine whether the Occupancy Readiness Conditions have been satisfied, having regard to the opinions of the Project Company and the County, and to issue to the County and the Project Company either:

(a) the Occupancy Readiness Certificate in accordance with subsection (B) of this Section within two Business Days from the inspection, stating the date upon which the Independent Building Expert certifies that the Project has satisfied the Occupancy Readiness Conditions; or

(b) a report ("**Occupancy Readiness Deficiency Report**") detailing the matters that the Independent Building Expert considers are required to be performed by the Project Company in order for the Occupancy Readiness Conditions to be satisfied as soon as possible but no later than three Business Days following the inspection.

(B) Occupancy Readiness Certificate. In the event the Independent Building Expert determines that the Occupancy Readiness Conditions have been satisfied, the Independent Building Expert shall certify that fact by execution of a certification of Occupancy Readiness (the "**Occupancy Readiness Certificate**") in the form set forth in Appendix 5 to this Agreement. The Independent Building Expert shall deliver a duplicate signed original of the Occupancy Readiness Certificate to the County and the Project Company on the date in which the Independent Building Expert has determined that the Project meets the criteria for Occupancy Readiness.

(C) Independent Building Expert Determination. In determining whether there is an entitlement for the issuance of an Occupancy Readiness Certificate, the Independent Building Expert shall:

(1) witness such tests and investigations and make such inquiries as seem to the Independent Building Expert to be reasonably necessary or advisable to the question of whether the Occupancy Readiness Conditions have been satisfied; and

(2) in connection therewith, consult and consider the views of the Project Company and the County.

The obligation to carry out tests and investigations and consult and consider the views under this subsection shall not apply where, in the circumstances, a reasonable competent professional expert in the position of the Independent Building Expert would consider it clear that Occupancy Readiness Conditions have not been satisfied.

(D) Occupancy Readiness Date. The Occupancy Readiness Date shall be deemed to have occurred on the date on which the Independent Building Expert delivers the Occupancy Readiness Certificate to the County and the Project Company.

(E) Independent Assessment. In carrying out its responsibilities under this Section, the Independent Building Expert shall act as an independent professional and in particular shall make an independent assessment of such facts as are relevant to its determination. Where, for any reason, the Independent Building Expert is not available for the purposes of this Section, the County and Project Company shall jointly appoint a person of equivalent training, experience and competence to perform the role of the Independent Building Expert in accordance with Section 8.2 of the Project Agreement.

(F) Rectification Actions. Where the Independent Building Expert has issued the Occupancy Readiness Deficiency Report, the Project Company shall, within seven Business Days of the receipt thereof, provide the Independent Building Expert and the County with details of all additional rectification actions and Commissioning that need to be performed by the Project Company to address all matters raised by the Independent Building Expert in the Occupancy Readiness Deficiency Report, and the Project Company shall perform all such additional rectification actions. As soon as the Project Company has completed such rectification actions, the Project Company may give a new Occupancy Readiness Notice, and the Independent Building Expert shall review such rectification actions and, within three Business Days from receipt of such new Occupancy Readiness Notice, (i) issue an Occupancy Readiness Certificate, or (ii) issue a revised Occupancy Readiness Deficiency Report. The procedures set out in this Section shall be repeated until the Occupancy Readiness Certificate has been issued, except that the parties shall use reasonable efforts to perform their respective obligations within time periods shorter than provided herein.

(G) Punch List Items. In the event that Punch List Items exist when the Project Company applies for the Occupancy Readiness Certificate, the Independent Building Expert, in consultation with the County and the Project Company, shall prepare a Punch List.

SECTION 4.4. OCCUPANCY READINESS CONDITIONS RELATING TO THE DESIGN-BUILDER.

In the event that the Occupancy Readiness Conditions specified in items (1) through (7) of subsection 8.4(A) of the Project Agreement are satisfied prior to the satisfaction of all of the Occupancy Readiness Conditions, the Company may request, and the Independent Building Expert shall consider and may issue, a certificate to that effect, following the same procedures and applying the same standards to be followed and applied under this Independent

Building Expert Agreement generally for the issuance of the Occupancy Readiness Certificate. The issuance of any such certificate shall be for the convenience of the Project Company only in its relationship with the Design-Builder under the Design-Build Agreement, and shall have no bearing or effect on the determination, as between the County and the Project Company, as to whether the entirety of the Occupancy Readiness Conditions have been achieved or whether the Occupancy Readiness Date has occurred, which shall be made and shall have the effect provided under this Independent Building Expert Agreement and the Project Agreement.

ARTICLE 5

SUSPENSION OF SERVICES

SECTION 5.1. NOTICE.

The Services (or any part) may be suspended at any time by the County and the Project Company:

(1) if the Independent Building Expert fails to comply with its obligations under this Agreement, immediately by the County and the Project Company giving joint notice in writing to the Independent Building Expert; or

(2) in any other case, by the County and the Project Company giving seven Business Days joint notice in writing to the Independent Building Expert.

SECTION 5.2. COSTS OF SUSPENSION.

The Independent Building Expert shall:

(1) subject to the Independent Building Expert complying with Article 8, be entitled to recover the extra costs incurred by the Independent Building Expert by reason of a suspension directed under Section 5.1(2) of this Agreement valued as Additional Services under Article 7 of this Agreement; and

(2) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(1) of this Agreement.

SECTION 5.3. RECOMMENCEMENT.

The Independent Building Expert shall immediately recommence the carrying out of the Services (or any part) upon receipt of a joint written notice from the County and the Project Company requiring it to do so.

ARTICLE 6

INSURANCE AND LIABILITY

SECTION 6.1. INDEPENDENT BUILDING EXPERT'S PROFESSIONAL INDEMNITY INSURANCE.

(A) Required Insurance. The Project Company shall include the Independent Building Expert in its project specific professional liability insurance. The Independent Building Expert shall have in place at all times during the term of this Agreement the following additional insurance: **[NOTE TO PROPOSERS: Insurance limits to be finalized prior to Financial Close, working with the County.]**

(1) professional liability insurance covering the Independent Building Expert's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Independent Building Expert shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Services which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Services commence pursuant to this Agreement.

(2) commercial general liability insurance in the amount of \$2,000,000 per occurrence and in the annual aggregate designated solely for the obligations resulting from this Agreement, no deductible for claims arising out of the performance of the Services, including independent contractors, products and completed operations, personal and advertising injury or, and liability assumed under an insured contract. Such policy shall be provided under terms and conditions than are in no case less than or more restrictive than the ISO Form CG 00 01 10 01 or its equivalent. Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with any other insurance, self-insurance, or other risk management program maintained by, or for the benefit of the Additional Insured Parties; (c) waive any and all right of recovery or subrogation the insurer may have against any or all of the Additional Insured Parties; and (d) apply separately to each insured against whom a claim is made or a lawsuit is brought, subject only to the policy limit of liability.

(3) business automobile liability insurance including hired and non-owned liability with a limit of no less than \$1,000,000 per accident or loss. Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with, any other insurance self-insurance, or other risk management program maintained by, or for the benefit of the Additional Insured Parties; and (c) waive any and all right of recovery or subrogation the insurer may have against any or all of the Additional Insured Parties.

(4) statutory workers' compensation and employer's liability with limits of no less than \$1,000,000 for each accident, \$1,000,000 for each disease, and \$1,000,000 for disease (policy limit). Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds under the employer's liability coverage; and (b) waive any and all right of recovery or subrogation the insured may have against any or all of the Additional Insured Parties.

(5) umbrella or excess liability with limits of no less than \$2,000,000 per occurrence providing following form excess over the general liability, automobile liability and employer's liability policies described above. This insurance shall be endorsed to (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with, any other insurance, self-insurance, or other risk management program maintained by, or for the benefit of the additional insured parties; and (c) waive any and all right of subrogation or recovery against any or all of the Additional Insured Parties.

(6) the "**Additional Insured Parties**" are (a) the Project Company Indemniteses and (b) the County Indemniteses. In addition, the County or the Project Company may notify the Independent Building Expert in writing of other entities it wishes to include as Additional Insured Parties. Upon such notification, the Independent Building Expert shall use commercially reasonable efforts to name such entities as additional insureds and provide evidence of coverage to the County and the Project Company within five working days of such request.

(B) Copies of Policies. The Independent Building Expert shall provide copies of its insurance policies to the County and the Project Company upon request.

ARTICLE 7

PAYMENT FOR SERVICES

SECTION 7.1. FEE.

(A) County and Project Company Responsibilities. In consideration of the Independent Building Expert performing the Services in accordance with this Agreement, the County and the Project Company shall pay the Independent Building Expert the Fee, including all reasonable out-of-pocket costs and fees associated with re-inspection and re-testing, in accordance with subsection 8.2(B) (Cooperation and Costs) of the Project Agreement.

(B) Sole Compensation to Independent Building Expert. The Fee, as it may be adjusted pursuant to Section 8.3 of this Agreement, includes all taxes, disbursements and expenses (including accommodation, car hire, equipment and travel expenses), overhead and profit to perform the Services.

SECTION 7.2. PAYMENT OF FEE.

(A) Generally. The County and the Project Company shall pay their respective share of the Fee, as and to the extent provided under subsection 8.2(B) (Cooperation and Costs) of the Project Agreement, to the Independent Building Expert in accordance with the payment schedule specified in Appendix 2 to this Agreement.

(B) Certification by Independent Building Expert. The County and the Project Company acknowledge and agree that if any amount due and payable by the Project Company to the Independent Building Expert is outstanding, the Independent Building Expert will not have any obligation to make any certification hereunder.

ARTICLE 8

ADDITIONAL SERVICES

SECTION 8.1. NOTICE OF ADDITIONAL SERVICES.

(A) Independent Building Expert Additional Services Claim. If the Independent Building Expert believes, other than an Additional Services Order under Section 8.2, that any direction by the County and the Project Company constitutes or involves Additional Services, it shall, within seven Business Days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the County and the Project Company that it considers that the direction constitutes or involves Additional Services (“**IBE Additional Services Claim**”). Regardless of whether the Independent Building Expert considers that a direction given by the County and the Project Company constitutes or involves Additional Services, the Independent Building Expert shall continue to perform the Services in accordance with this Agreement and all directions, including any direction in respect of which the IBE Additional Services Claim has been given.

(B) Client Additional Services Price Request. The County and the Project Company may at any time and from time to time jointly issue a document titled “**Client Additional Services Price Request**” to the Independent Building Expert which shall set out

details of proposed Additional Services which the County and the Project Company are considering.

SECTION 8.2. ADDITIONAL SERVICES PROCEDURE.

(A) Notice of Effects of IBE Additional Services Claim and Client Additional Services Price Request. Within seven Business Days after the delivery of an IBE Additional Services Claim or receipt of a Client Additional Services Price Request, the Independent Building Expert shall provide the County and the Project Company with a written notice in which the Independent Building Expert sets forth the effect which the proposed Additional Services will have on the Fee (“**Additional Services Fee Notice**”).

(B) Additional Services Order. Following the receipt of the Additional Services Fee Notice, the County and the Project Company may jointly direct the Independent Building Expert to carry out the applicable Additional Services by written document titled “**Additional Services Order**” which shall state either that:

- (1) the Fee shall be adjusted as set out in the Additional Services Fee Notice;
- or
- (2) the adjustment (if any) to the Fee will be determined under Section 8.3 of this Agreement.

SECTION 8.3. COST OF ADDITIONAL SERVICES.

(A) Adjustment of Fee. Subject to Section 8.2, the Fee shall be adjusted for all Additional Services or suspensions under Section 5.1(2) of this Agreement carried out by the Independent Building Expert by:

- (1) the amount (if any) stated in the Additional Services Order in accordance with Section 8.3(C) of this Agreement;
- (2) if subsection (A)(1) of this Section is not applicable, an amount determined pursuant to the fee schedule for Additional Services set forth in Appendix 2 to this Agreement;
- or
- (3) where such rates or prices are not applicable, a reasonable amount to be agreed between the County, the Project Company and the Independent Building Expert or, failing agreement, an amount determined pursuant to Non-Binding Mediation.

(B) Fee Reductions. Any reductions in the Fee due to Additional Services or suspensions under Section 5.1(2) of this Agreement shall be calculated on the same basis as any increases as set forth in subsection (A) of this Section.

(C) No Adjustment for Failure to Comply. If the Independent Building Expert fails to comply with Section 8.1 of this Agreement, the Fee shall not be adjusted as a result of the relevant direction.

ARTICLE 9

TERM AND TERMINATION

SECTION 9.1. TERM.

Subject to earlier termination pursuant to this Article 9, this Agreement shall commence on the Financial Close Date and continue in full force until:

- (1) 60 days after the completion of the Commissioning Fine Tuning Period; or
- (2) such later date as may be mutually agreed in writing between the County, the Project Company and the Independent Building Expert.

SECTION 9.2. NOTICE OF BREACH.

If the Independent Building Expert commits a breach of this Agreement, the County and the Project Company may give written notice to the Independent Building Expert:

- (1) specifying the breach; and
- (2) directing the Independent Building Expert to rectify the breach in the period specified in the notice, such period being not less than seven Business Days from the date of receipt of such notice by the Independent Building Expert.

SECTION 9.3. TERMINATION FOR BREACH.

In the event the Independent Building Expert fails to rectify a breach within the period specified in the notice issued under Section 9.2 of this Agreement, the County and the Project Company may, without prejudice to any other rights of the County and the Project Company, or either of them, immediately terminate this Agreement.

SECTION 9.4. TERMINATION FOR FINANCIAL DIFFICULTY.

The County and the Project Company may, without prejudice to any other rights which the County and the Project Company, or either of them may have, terminate this Agreement immediately if:

- (1) events have occurred or circumstances exist which, in the opinion of the County and the Project Company, may result in or have resulted in insolvency or the control of the Independent Building Expert passing to another body or corporation; or
- (2) the Independent Building Expert has communications with its creditors with a view toward entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

SECTION 9.5. TERMINATION FOR CONVENIENCE.

(A) Generally. Notwithstanding anything to the contrary in this Agreement and subject to subsection (B) of this Section, the County and the Project Company may at any time jointly terminate this Agreement upon 30 days written notice to the Independent Building Expert stating that termination is for convenience pursuant to this Section.

(B) Independent Building Expert's Rights. Upon a termination under subsection (A) of this Section, the Independent Building Expert shall:

(1) be entitled to be reimbursed by the County and the Project Company, as and to the extent provided under subsection 8.2(B) (Cooperation and Costs) of the Project Agreement, for the value of the Services performed by the Independent Building Expert through the date of termination; and

(2) not be entitled to any damages or other compensation with respect to the termination and (without limitation) any amount with respect to:

(a) the lost opportunity to earn a profit with respect to the Services not performed at the date of termination; and

(b) any lost opportunity to recover overhead from the revenues which would have been generated under this Agreement but for it being terminated.

SECTION 9.6. PROCEDURE UPON TERMINATION.

Upon completion of the Independent Building Expert's engagement under this Agreement or earlier termination of this Agreement (whether under Sections 9.3, 9.4 or 9.5 or otherwise) the Independent Building Expert shall:

(1) cooperate with the County and the Project Company;

(2) hand to the County and the Project Company all Project Material and all other information concerning the Project held or prepared by the Independent Building Expert; and

(3) as and when required by the County and the Project Company, meet with the County and the Project Company and such other persons nominated by them with a view to providing them with sufficient information to enable the County and the Project Company to execute the Project or the persons nominated to provide the Services.

SECTION 9.7. EFFECT OF TERMINATION.

Except as otherwise expressly provided in this Agreement, the termination of this Agreement by the County and the Project Company shall be without prejudice to any accrued rights and obligations under this Agreement as of the date of termination (including the right of the County and the Project Company to recover damages from the Independent Building Expert).

SECTION 9.8. SURVIVAL.

Termination of this Agreement shall not affect the continuing rights and obligations of the County or the Project Company and the Independent Building Expert under Sections 9.5, 9.6, 9.7, 11.7, 11.8 and this Section or Articles 5, 6, and 10 or under any other Section of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

ARTICLE 10

INDEMNITY

SECTION 10.1. INDEPENDENT BUILDING EXPERT'S OBLIGATION TO INDEMNIFY.

(A) Generally. The Independent Building Expert shall indemnify and keep each County Indemnitee and Project Company Indemnitee indemnified at all times from and against any Loss-and-Expense that any County Indemnitee or Project Company Indemnitee may sustain by reason of, resulting from, in connection with, or arising out of:

(1) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Building Expert set forth in, or arising under, this Agreement or the Project Agreement;

(2) any act or omission of the Independent Building Expert in connection with the subject matters of this Agreement or the Project Agreement;

(3) willful misconduct of the Independent Building Expert;

(4) non-compliance by the Independent Building Expert with any of the provisions of this Agreement, the Project Agreement or any document, instrument or agreement delivered to the County and the Project Company as required under this Agreement or the Project Agreement;

(5) breach by the Independent Building Expert of, or non-compliance by the Independent Building Expert with, any Governmental Approval or Applicable Law.

(B) Rights of County Indemnitees and Project Company Indemnitees. This Section may be relied upon by the County Indemnitees and the Project Company Indemnitees and may be enforced directly by any of them against the Independent Building Expert in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Independent Building Expert.

SECTION 10.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a County Indemnitee or a Project Company Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the County Indemnitee or Project Company Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the County Indemnitee or the Project Company Indemnitee will give notice in writing to the Independent Building Expert as soon as reasonably practicable and in any event within 15 Business Days of receipt thereof.

(B) Independent Building Expert Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Independent Building Expert shall be entitled to dispute the claim in the name of the County Indemnitee or the Project Company Indemnitee, as applicable, at the Independent Building Expert's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The County Indemnitee or the Project Company Indemnitee, as applicable, will give the Independent Building Expert all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection (B) of this Section in which there is a conflict of interest between the Independent Building Expert

and a County Indemnatee or a Project Company Indemnatee, the County Indemnatee or the Project Company Indemnatee, as applicable, may appoint independent legal counsel in respect of such claim and, if it is determined that such County Indemnatee or such Project Company Indemnatee is entitled to indemnification by or compensation from the Independent Building Expert, all reasonable costs and expenses incurred by the County Indemnatee or the Project Company Indemnatee, as applicable, in so doing will be included in the indemnity or compensation from the Independent Building Expert.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Independent Building Expert pursuant to subsection (B) of this Section:

(1) The Independent Building Expert shall keep the County Indemnatee or Project Company Indemnatee, as applicable, fully informed and consult with it about material elements of the conduct of the claim;

(2) The Independent Building Expert shall demonstrate to the County Indemnatee or the Project Company Indemnatee, as applicable, at the reasonable request of such County Indemnatee or such Project Company Indemnatee, that the Independent Building Expert has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) The Independent Building Expert shall not pay or settle such claims without the consent of the County Indemnatee or the Project Company Indemnatee, as applicable, such consent not to be unreasonably withheld or delayed;

(E) County Indemnatee and Project Company Indemnatee Rights to Conduct Defense. The County Indemnatee or the Project Company Indemnatee, as applicable, may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) the Independent Building Expert is not entitled to take conduct of the claim in accordance with subsection (B) of this Section; or

(2) the Independent Building Expert fails to notify the County Indemnatee or the Project Company Indemnatee, as applicable, of its intention to take conduct of the relevant claim within 15 Business Days of the notice from the County Indemnatee or the Project Company Indemnatee under subsection (B) of this Section or notifies such County Indemnatee or such Project Company Indemnatee that it does not intend to take conduct of the claim; or

(3) the Independent Building Expert fails to comply in any material respect with subsection (D) of this Section.

(F) Independent Building Expert Right to Settle Claims. In the case of clause (3) of subsection (D) of this Section, the County Indemnatee or the Project Company Indemnatee, as applicable, may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the County Indemnatee or the Project Company Indemnatee, as applicable, shall not pay or settle such claims without the consent of the Independent Building Expert, such consent not to be unreasonably withheld or delayed.

(G) Transfer of Conduct of Claim to County Indemnatee or Project Company Indemnatee. The County Indemnatee or the Project Company Indemnatee, as applicable, may at any time give notice to the Independent Building Expert that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim,

or of any incidental negotiations, to which subsection (B) of this Section applies. On receipt of such notice the Independent Building Expert will promptly take all steps necessary to transfer the conduct of such claim to the County Indemnatee or the Project Company Indemnatee, as applicable, and will provide to such County Indemnatee or such Project Company Indemnatee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If a County Indemnatee or a Project Company Indemnatee gives any notice pursuant to this subsection, then the Independent Building Expert will be released from any liability under its indemnity obligations under Section 10.1.

SECTION 10.3. GENERAL OBLIGATION TO PURSUE THIRD PERSON RECOVERY.

If the Independent Building Expert has paid to a County Indemnatee or a Project Company Indemnatee an amount in respect of any indemnity hereunder (a "**Liability Payment**"), and such County Indemnatee or such Project Company Indemnatee has a bona fide claim for recovery of any such Liability Payment from a third person or under any insurance required pursuant to this Agreement, the County Indemnatee or the Project Company Indemnatee, as applicable, shall:

(1) as directed by the Independent Building Expert either:

(a) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Independent Building Expert; or

(b) assign to the Independent Building Expert the right to pursue and recover such claim and, at the Independent Building Expert's cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

(2) if it subsequently recovers, or the Independent Building Expert makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Independent Building Expert an amount equal to the lesser of:

(a) an amount equal to the sum recovered (or of the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the County Indemnatee or the Project Company Indemnatee, as applicable, in recovering such sum; and

(b) the Liability Payment,

provided that the Independent Building Expert will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the County Indemnatee or the Project Company Indemnatee, as applicable, in respect of the fact, matter or circumstance giving rise to the Liability Payment.

ARTICLE 11

MISCELLANEOUS PROVISIONS

SECTION 11.1. RELATIONSHIP OF THE PARTIES.

(A) Generally. The Independent Building Expert is an independent contractor of the County and the Project Company and the relationship between the parties shall be limited

to performance of this Agreement in accordance with its terms. No party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by any other party.

(B) No Partnership or Employment Relationship. The Independent Building Expert, its officers, employees, representatives and agents and any other persons engaged by the Independent Building Expert in the performance of the Services will not by virtue of this Agreement or the performance of the Services become a partner, agent, legal representative or employee of either the County and the Project Company for any purpose.

(C) Independent Building Expert Employees. The Independent Building Expert will be responsible for all matters requisite as employer or otherwise in relation to such officers, employees, servants and agents and other persons who are engaged by the Independent Building Expert. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to the County or the Project Company as a result of this Agreement or the performance thereof.

SECTION 11.2. INDEPENDENT BUILDING EXPERT PERSONS.

The Independent Building Expert shall, as between itself and the County and the Project Company, be responsible for, and not relieved of its Independent Building Expert obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and willful misconduct of any of its directors, officers, employees, agents, Subcontractors, representatives, or advisors, and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of the Independent Building Expert shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or willful misconduct committed by any person described in this Section.

SECTION 11.3. GENERAL INDEPENDENT BUILDING EXPERT ASSUMPTION OF RISK.

Except to the extent expressly allocated to the County or the Project Company or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by the Independent Building Expert of its obligations under this Agreement are allocated to, and accepted by, the Independent Building Expert as its entire and exclusive responsibility.

SECTION 11.4. WAIVER.

Failure by the County, the Project Company or the Independent Building Expert to enforce a provision of this Agreement shall not be construed as a waiver by that party of any right with respect to that provision, or any other provisions of this Agreement.

SECTION 11.5. NOTICES.

Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by email (with confirmation of receipt by the recipient), by hand or by registered mail to the address of each party set forth below:

if to the County:

[Address]
Attention: [_____]

Telephone No.: [_____]
Email: [_____]
with a copy to:

[Address]
Attention: [_____]
Telephone No.: [_____]
Email: [_____]
if to the Independent Building Expert:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]
with a copy to:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]
if to the Project Company:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]
with a copy to:

[SUPPLY ADDRESS]
Telephone No.: [_____]
Email: [_____]
or to such other address as any party may, from time to time, designate in the manner set forth in subsection (A) of this Section.

SECTION 11.6. TRANSFER AND ASSIGNMENT.

(A) Independent Building Expert Actions. The Independent Building Expert:

(1) shall not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the County and the Project Company, which either the County or the Project Company may give or withhold in their absolute discretion; and

(2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Building Expert from any obligation or liability under this Agreement.

(B) Change in Control of Independent Building Expert. For the purposes of this Section, an assignment will be deemed to have occurred where there is a Change In Control of the Independent Building Expert after the date of this Agreement.

(C) County and Project Company Actions. The County and the Project Company may assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.

SECTION 11.7. CONFIDENTIALITY.

(A) Independent Building Expert Responsibilities. The Independent Building Expert will ensure that:

(1) neither it nor any of its officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Services without prior written approval of the County and the Project Company; and

(2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Services under this Agreement.

(B) Confidentiality Agreements. The County and the Project Company may at any time require the Independent Building Expert to give and to arrange for its officers, employees, servants and agents engaged in the performance of the Services to give written undertakings, in the form of confidentiality agreements on terms required by the County and the Project Company, relating to the non-disclosure of confidential information, in which case the Independent Building Expert will promptly arrange for such agreements to be executed and delivered.

SECTION 11.8. PROJECT MATERIAL.

(A) Rights. The County, the Project Company and the Independent Building Expert agree that the Independent Building Expert does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Building Expert or created or required to be created by either the County or the Project Company.

(B) Title. All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Building Expert as part of, or for the purposes of performing the Services, is hereby assigned jointly to the County and the Project Company on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the County and the Project Company on creation. In addition, to the extent that there may be any copyright rights in such Project Material so created by the Independent Building Expert, the Independent Building Expert hereby waives all past, present and future moral rights therein and the Independent Building Expert will ensure that any agent or employee of Independent Building Expert will have waived all such moral rights. The Independent Building Expert shall do all such things and execute all such documents as reasonably requested by either of the County and the Project Company in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in this subsection.

SECTION 11.9. TIME OF THE ESSENCE.

Time will be of the essence of this Agreement and of the transactions contemplated by this Agreement.

SECTION 11.10. AMENDMENT.

No change or modification of this Agreement will be valid unless it is in writing and signed by each party to this Agreement.

SECTION 11.11. BINDING EFFECT.

Subject to the restrictions on transfer contained in this Agreement, this Agreement shall inure to the benefit of and shall be binding on the County, the Project Company and the Independent Building Expert and their respective heirs, executors, administrators, successors and assigns.

SECTION 11.12. REPRESENTATIONS AND WARRANTIES OF THE INDEPENDENT BUILDING EXPERT.

(A) Representations and Warranties. The Independent Building Expert warrants that:

(1) No Conflict of Interest. As further specified in subsections 2.6(2) and 2.6(7) and Section 2.9 of this Agreement, the Independent Building Expert has no interest that would constitute a conflict of interest.

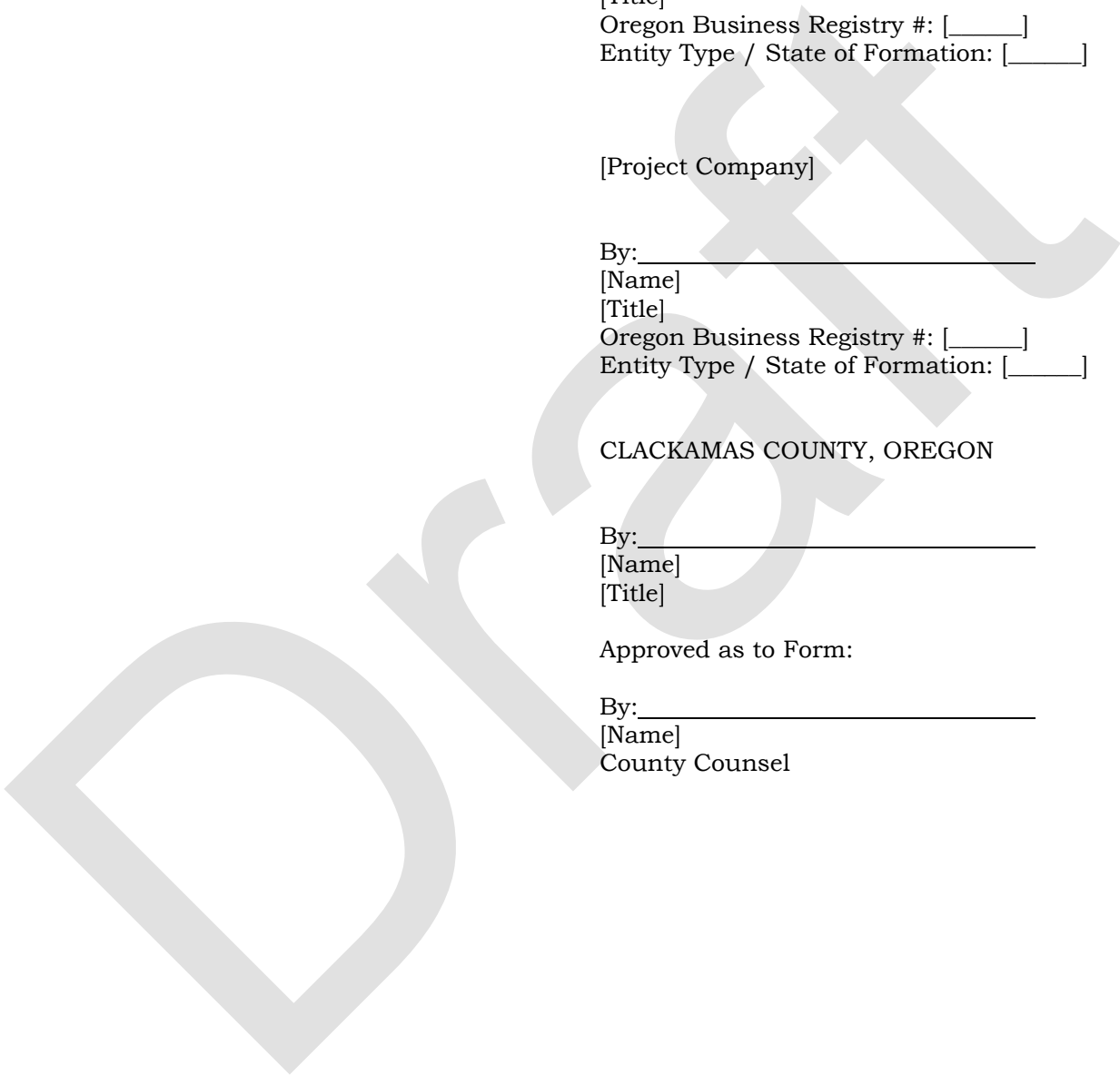
(2) Compliance with Applicable Law Generally. The Independent Building Expert is in compliance in all material respects with Applicable Law and possesses the required License(s) pertaining to the Independent Building Expert's business and services and the performance of its obligations hereunder.

(3) Existence, Powers and Due Authorization. The Independent Building Expert is a [_____] validly organized and existing under the laws of the State of [_____] and has the necessary power and authority and has been duly authorized to execute, deliver and perform its obligations under this Agreement.

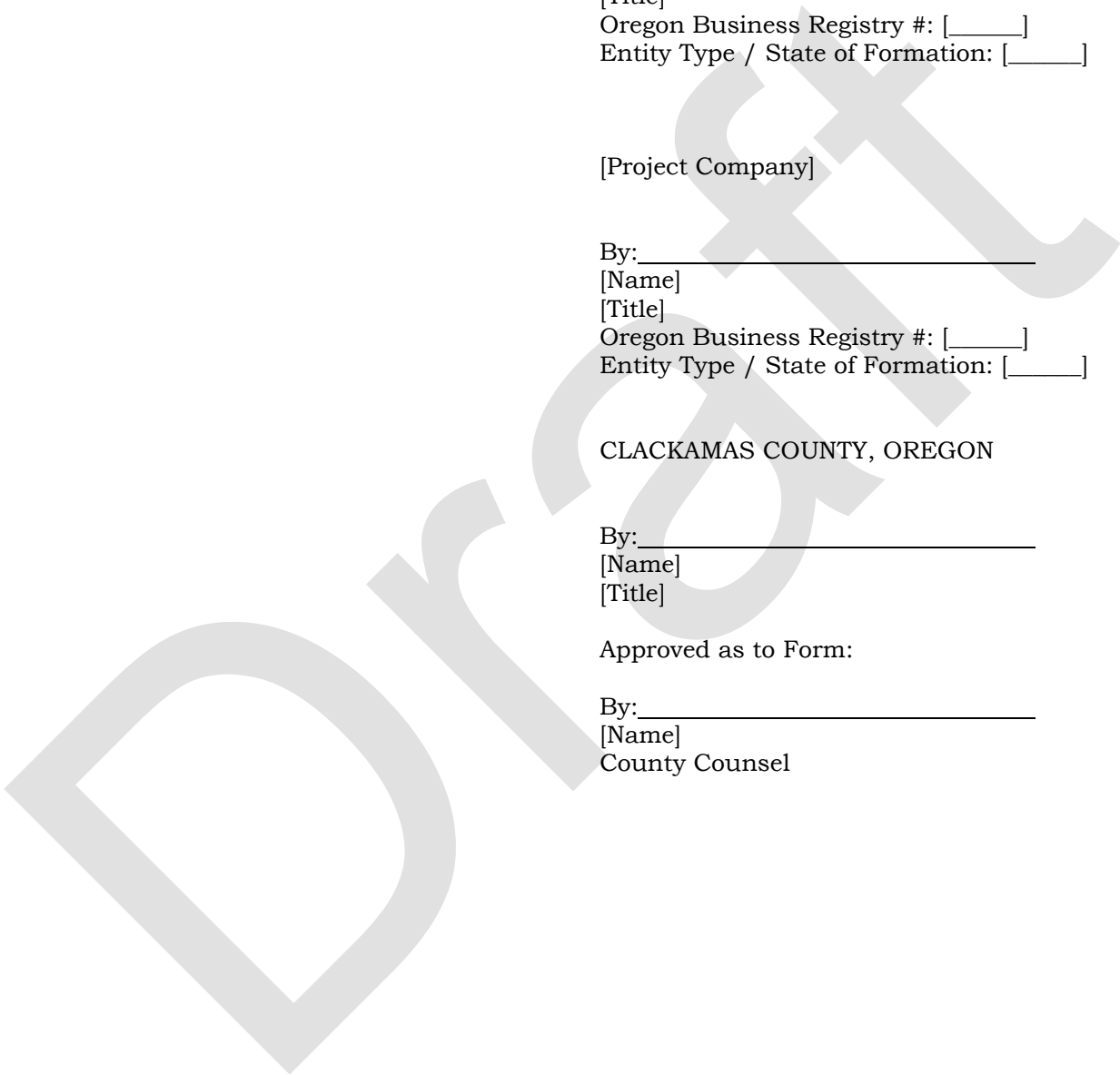
(B) Continuing Effect. During the term of this Agreement, the Independent Building Expert shall not take any action, or omit to perform any act, that results in a representation and warranty made in this Section becoming untrue. The Independent Building Expert shall promptly notify the County if any such representation and warranty becomes untrue. From time to time, the Independent Building Expert shall provide the County, upon the County's request, with proof of the continuing accuracy of these representations and warranties

IN WITNESS WHEREOF the parties have executed this Agreement on the day and year first above written.

[Independent Building Expert]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____] 
Entity Type / State of Formation: [_____]

[Project Company]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____] 
Entity Type / State of Formation: [_____]

CLACKAMAS COUNTY, OREGON

By: _____
[Name]
[Title]

Approved as to Form:

By: _____
[Name]
County Counsel

APPENDIX 1

SERVICES

The Independent Building Expert shall, subject to and without limiting the other provisions of this Agreement and the Project Agreement, provide the services as set out below.

Part 1 – Pre-Occupancy Readiness Date Services

1.1 The Independent Building Expert shall carry out the responsibilities assigned to the Independent Building Expert under this Agreement and the Project Agreement.

1.2 Without limitation to the obligations set forth in Section 1.1, prior to the Occupancy Readiness Date, the Independent Building Expert shall:

(i) receive and monitor all components of the schematic design and other Project data related to Project design as are necessary for the Independent Building Expert to be informed of in all schematic design issues and the performance of the Project Company's obligations under the Project Agreement;

(ii) receive and monitor Design Documents and Drawings (including 35%, 65% and 95% complete stages of each, as well as issued for construction drawings) as are necessary for the Independent Building Expert to be informed in all design issues, the progress of the Design-Build Work and the performance of the Project Company's obligations under the Project Agreement;

(iii) consult with the County and the Project Company and make determinations, if requested by the County or the Project Company or if otherwise provided for under the Project Agreement, that verify planned design and construction milestones have been achieved;

(iv) conduct inspections of the Project as necessary for the Independent Building Expert to be satisfied that the Project is proceeding in accordance with the requirements of the Project Agreement;

(v) attend meetings relating to the Project, review minutes and participate as necessary to remain informed of Project issues, or as requested by either the County or the Project Company in connection with the Project Agreement;

(vi) review the draft Commissioning Plan and the detailed tests, test methodology and expected test results proposed by the Project Company and provide to the parties comments, including a report on the effectiveness of the proposed Commissioning Plan, to identify any errors or omissions, and with respect to any risks inherent in the draft Commissioning Plan;

(vii) receive and review Commissioning Test report to confirm that the Project Company has completed Commissioning the Project in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied;

(viii) prior to any certification, consider the views and comments of both the County and the Project Company in relation to the satisfaction that the

Design-Build Work is proceeding in accordance with the requirements of the Project Agreement;

(ix) review and monitor reports of the Architect or of the Project Company and of any inspection agency retained by the County and the Project Company with respect to the Design-Build Work;

(x) manage and supervise the material testing and inspection firm described in Section 7.2(B) of this Agreement;

(xi) make any determinations set forth in the Project Agreement to be determined or reviewed by the Independent Building Expert;

(xii) carry out inspections (including re-inspections if necessary) in order to determine whether the Occupancy Readiness Conditions have been satisfied and comply with the rules and procedures set forth in this Agreement and the Project Agreement in order to make such determination necessary to determine Occupancy Readiness and issue the Occupancy Readiness Certificate contemplated by Section 4.3 of this Agreement and Section 8.5 (Occupancy Readiness Certificate) of the Project Agreement;

(xiii) Make the determination required by Section 20.1(B)(1) (Project Company Remediable Breach Defined) of the Project Agreement; and

(xiv) prepare, in consultation with the County and the Project Company, as soon as reasonably practicable and, in any event, within the time period specified in the Project Agreement, the Punch List, which shall include an estimate of the time for rectifying the Punch List Items and a schedule for the completion and rectification of the Punch List Items.

1.3 Prior to the Occupancy Readiness Date, the parties may request the Independent Building Expert to provide the following Additional Services, among others:

(i) provide any determination contemplated by this Agreement and the Project Agreement (to the extent such determinations relate to aspects of the Project which are not specifically identified in Part 2 of this Appendix), which determinations may, except as otherwise expressly provided in the Project Agreement, be subject to resolution between the County and the Project Company pursuant to Non-Binding Mediation;

(ii) provide advice on other matters that may arise that both the County and the Project Company may jointly require to the extent such matters relate to the Project and which are not specifically identified in Part 2 of this Appendix;

(iii) at the request of the County and the Project Company, review information relating to Relief Events as they relate to the Project that occur prior to the Occupancy Readiness Date; and

(iv) participate in and give the County, the Project Company and their respective counsel, reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings

between the County and the Project Company that relate to the Services identified in this Part 1 of this Appendix.

Part 2 – Post-Occupancy Readiness Date Services

2.1 The Independent Building Expert shall perform any duties and responsibilities and make such determinations as may be specifically provided for in the Project Agreement after the Occupancy Readiness Date (including the requirements of Commissioning during the Commissioning Fine Tuning Period set forth in Appendix 7 (Project Commissioning) of the Project Agreement) of the Project and the determinations as may be specifically provided for in the Commissioning Plan, once accepted, in accordance with the terms of the Project Agreement (where applicable or as the County and the Project Company may jointly request from time to time).

2.2 The Independent Building Expert shall review record drawings received from the Project Company after the Occupancy Readiness Date to ensure completeness before the Project Company prepares final Drawings.

2.3 The Independent Building Expert shall monitor the conduct of Commissioning Tests during the Commissioning Fine Tuning Period, including, without limitation, any re-tests, review of Commissioning Test reports and results, copies of any Governmental Approvals received by the Project Company in connection with any Commissioning Test conducted during the Commissioning Fine Tuning Period, review and accepting interim and the final Seasonal Fine Tuning Reports required to be delivered pursuant to Appendix 7 (Project Commissioning) of the Project Agreement and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to Commissioning after the Occupancy Readiness Date as either party may request and to report to each of the parties thereon, including review of acoustical performance test reports, vibration test reports and air balancing reports provided to the Independent Building Expert pursuant to Appendix 7 (Project Commissioning) of the Project Agreement.

2.4 The Independent Building Expert shall make all determinations set forth in the Project Agreement to be determined or reviewed by the Independent Building Expert as it relates to post-Occupancy Readiness Date Commissioning.

2.5 The Independent Building Expert shall provide any determination contemplated by this Agreement and the Project Agreement (to the extent such determinations relate to aspects of the Project to be performed after the Occupancy Readiness Date), which determinations may, except as expressly provided in the Project Agreement, be subject to resolution pursuant to Non-Binding Mediation.

2.6 Subsequent to the Occupancy Readiness Date, the parties may request the Independent Building Expert to provide the following Additional Services, among others:

(i) provide advice on other matters that may arise that both the County and the Project Company may jointly require to the extent such matters relate to aspects of the Project to be completed after the Occupancy Readiness Date (including Commissioning activities to be conducted during the Commissioning Fine Tuning Period);

(ii) assist with the resolution of disputes between the County and the Project Company relating to the Commissioning Plan (as it relates to Commissioning to be conducted during the Commissioning to be conducted during the Commissioning Fine Tuning Period) and serve as mediator pursuant to Section 8.3 of the Project Agreement;

(iii) participate in and give the County, the Project Company and their respective counsel, reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the County and the Project Company that relates to the Services identified in this Part 2 of this Appendix.

Draft

APPENDIX 2

FEE

[NOTE: APPENDIX 2 WILL BE COMPLETED FOLLOWING THE PARTIES' IDENTIFICATION OF THE INDEPENDENT BUILDING EXPERT.]

1. Pre-Occupancy Readiness Date

The Independent Building Expert shall be paid the following fee relating to the Services identified in Part 1 of Appendix 1 of this Agreement (the "Pre-Occupancy Readiness Date Services Fee"):

Pre-Occupancy
Readiness Date
Services Fee: \$[_____]

2. Occupancy Readiness Certificate

The Independent Building Expert shall be paid the following fee relating to the delivery of the Occupancy Readiness Certificate (the "Occupancy Readiness Certificate Fee"):

Occupancy Readiness
Certificate Fee: \$[_____]

3. Post-Occupancy Readiness Date

The Independent Building Expert shall be paid the following fee relating to the Services identified in Part 2 of Appendix 1 of this Agreement (the "Post-Occupancy Readiness Date Services Fee"):

Post-Occupancy
Readiness Date
Services Fee: \$[_____]

4. Additional Services

[INCLUDE FEE SCHEDULE]

5. Disbursements

The Disbursements (as defined below) reasonably incurred by the Independent Building Expert directly on account of and specifically related to the Services and which would not otherwise be incurred but for the Services shall be paid within 30 days of receipt of invoices for such Disbursements from the Independent Building Expert. "Disbursements" shall mean:

- (a) reasonable costs and expenses of the subcontractors engaged pursuant to Section 2.11 of this Agreement to perform plan check, materials testing and construction inspection duties;
- (b) reasonable travel and subsistence expenses; and
- (c) reasonable charges for long distance telephone and facsimile communications, courier services, express mail services, drawing production and photocopying incurred in relation to the performance of the Services.

Draft

APPENDIX 3

INDEPENDENT BUILDING EXPERT PERSONNEL

The following personnel shall be involved in the performance of the Services:

[INSERT NAMES, TITLES AND PERCENT OF PROFESSIONALY TIME TO BE DEDICATED TO THIS PROJET FOR RELEVANT INDIVIDUALS]

Draft

APPENDIX 4

OCCUPANCY READINESS NOTICE

To: [Name and address of Independent Building Expert, with a copy to the County]

From: [Name and Address of the Project Company, with a copy to the Architect]

Re: Project Agreement entered into [_____] , 2022, between Clackamas County, Oregon (the "County") and [_____] , a [_____] organized and existing under the laws of the State of [_____] and authorized to do business in the State of Oregon (the "Project Company").

Note: This Notice of Occupancy Readiness is subject to the terms and conditions of the Independent Building Expert Agreement and the Project Agreement and any revision required by such either should be made to this Notice of Occupancy Readiness, if applicable.

Under and subject to the terms and conditions of the Project Agreement, the undersigned hereby applies for the certification of Occupancy Readiness of the Project. In support of that application, I hereby certify that:

- (a) Substantial Completion has occurred;
- (b) the Project in its entirety is ready for use or is being used for the purposes of normal courtroom and court office operations except for Punch List Items;
- (c) the Architect has issued a letter of confirmation to the County and the Independent Building Expert indicating that all buildings and systems at the Project are ready for use, except for Punch List Items, and to the best of its knowledge have been designed and built in accordance with the Project Agreement;
- (d) there are no encumbrances registered or recorded on the Project Site or any part of the Project other than Permitted Encumbrances;
- (e) the Project Company has completed Commissioning of the Project in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the Occupancy Readiness Date);
- (f) a temporary or final certificate of occupancy has been issued for the Project by the City of Oregon City;
- (g) all other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Government Approvals or other documents in respect thereof) that all buildings and structures on the Project Site are ready for occupancy;
- (h) the Project Company has obtained and submitted to the County certificates of insurance for all Required Facilities Management Period Insurance specified in Appendix 10 (Insurance Requirements);
- (i) the Project Company has delivered to the County a reasonable Master Maintenance Plan as required by Appendix 8 (Facilities Management Standards));

(j) the Project Company has delivered to the County a reasonable Work Renewal Plan as required by Appendix 8 (Facilities Management Standards)); and

(k) the Project Company has installed all Moveable Furniture, Fixtures and Equipment which it is required to procure under this Project Agreement.

Without limiting the generality of the foregoing, it is further certified that:

(i) All work to be done with respect to the design and construction of the Project has been completed in accordance with the terms of the Project Agreement (other than Punch List Items), and in so doing has been carried out in a competent and professional manner.

(ii) There are no latent structural defects with regards to the Project, known to the undersigned, that have not been reported to the County and the Independent Building Expert having made reasonable inquiries and conducted (either directly or by the Architect on the Project Company's behalf) appropriate observations, inspections, investigations and testing of the Project in accordance with good Design-Build Practice to confirm the absence thereof.

(iii) Attached to this certificate is evidence confirming the delivery of:

(A) the applications programming and related documentation for all microprocessor based controllers for the Project;

(B) copies of all operating instructions, maintenance manuals, spare parts and materials relating to the Project and operation thereof as well record drawings relating to security systems at the Project (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems); and

(iv) The estimated cost of completion of Punch List Items described in subsection (c) hereto is \$[_____].

It is hereby acknowledged that the issuance of an Occupancy Readiness Certificate does not constitute, and shall not be construed, as a waiver of any defect in the work or in the materials supplied in connection therewith (whether latent or otherwise), or any other breach by the Project Company of any of its obligations under the Project Agreement, whether known or not known to the County at the time of the issue of an Occupancy Readiness Certificate in respect of this Notice of Occupancy Readiness.

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

[PROJECT COMPANY]

By: _____
(Name and Signature of Authorized Signatory)

APPENDIX 5

OCCUPANCY READINESS CERTIFICATE

This certificate is delivered pursuant to Section 4.3(B) of the Independent Building Expert Agreement dated [____], 20[___], between the undersigned, Clackamas County, Oregon (the "County") and [____], a [____] organized and existing under the laws of the State of [____] and authorized to do business in the State of Oregon (the "Project Company") in connection with the Project Agreement between the County and the Project Company dated [____], 2022, with respect to the Clackamas County Circuit Courthouse (the "Project Agreement").

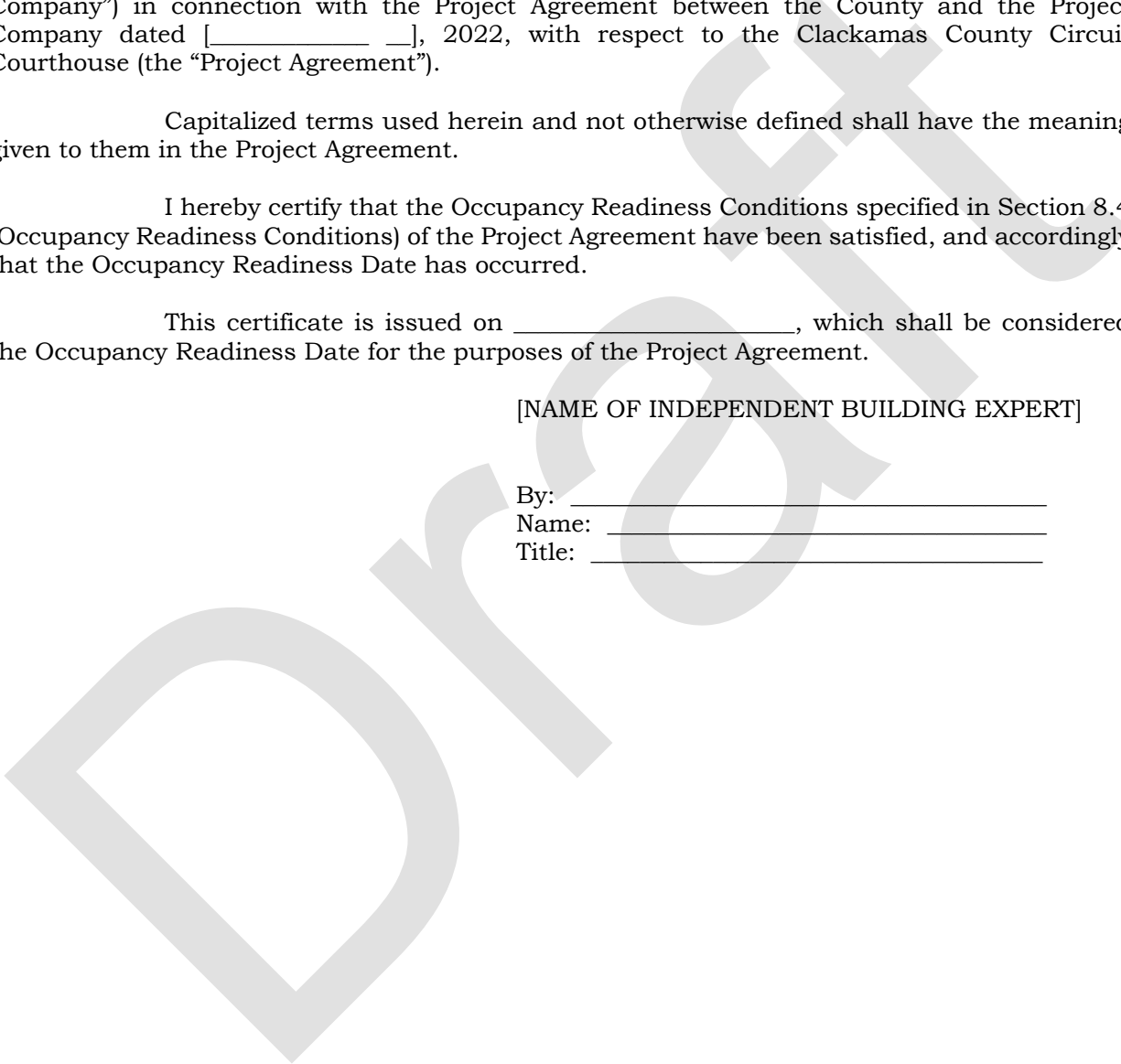
Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

I hereby certify that the Occupancy Readiness Conditions specified in Section 8.4 (Occupancy Readiness Conditions) of the Project Agreement have been satisfied, and accordingly that the Occupancy Readiness Date has occurred.

This certificate is issued on _____, which shall be considered the Occupancy Readiness Date for the purposes of the Project Agreement.

[NAME OF INDEPENDENT BUILDING EXPERT]

By: _____
Name: _____
Title: _____



TRANSACTION FORM E
INSURANCE TRUST AGREEMENT

INSURANCE TRUST AGREEMENT

for the
CLACKAMAS COUNTY CIRCUIT COURTHOUSE

between
CLACKAMAS COUNTY, OREGON

and

[PROJECT COMPANY]

and

[_____],

as COLLATERAL AGENT

and

[_____],

as INSURANCE TRUSTEE

Dated [_____], 2022

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INSURANCE TRUST AGREEMENT

This INSURANCE TRUST AGREEMENT (“**Insurance Trust Agreement**”) is made and entered into on and as of [____], 2022, by and among Clackamas County, Oregon (the “**County**”), [____], a [____] (the “**Project Company**”), [____] (“[____]”), in its capacity as collateral agent on behalf of the Senior Lenders referred to below (in such capacity, together with any successors and permitted assigns, the “**Collateral Agent**”) and [____] in its capacity as insurance trustee hereunder (in such capacity, together with any successors and permitted assigns, the “**Insurance Trustee**”).

RECITALS

WHEREAS, pursuant to that certain Project Agreement for the Design, Construction, Financing, Operation, and Maintenance of the Clackamas County Circuit Courthouse, dated the date hereof (the “**Project Agreement**”), between the County and the Project Company, the Project Company will design, construct, finance, commission, operate, and maintain a new courthouse in Clackamas County, Oregon on a site located at the Red Soils Campus in Oregon City, Oregon (the “**Project Site**”), all as more particularly described in the Project Agreement;

WHEREAS, pursuant to that certain Credit Agreement, dated the date hereof (the “**Credit Agreement**”), by and among the Project Company, the administrative agent thereunder, and the several banks and other financial institutions from time to time party thereto as lenders (the “**Senior Lenders**”), the Senior Lenders have agreed to make certain loans to the Project Company on the terms and subject to the conditions set forth in the Credit Agreement; [**NOTE TO PROPOSERS: To be expanded upon based on financing structure.**]

WHEREAS, the County, the Project Company, and the Collateral Agent have entered into that certain Lenders’ Remedies Agreement, dated the date hereof (the “**Lenders’ Remedies Agreement**”), setting forth certain rights and remedies of the Senior Lenders;

WHEREAS, this Insurance Trust Agreement is entered into pursuant to and in accordance with Section 14.1(E) of the Project Agreement and Section 7 of the Lenders’ Remedies Agreement; and

WHEREAS, the Project Company, the Collateral Agent, and the County desire to appoint Insurance Trustee as the Insurance Trustee under this Insurance Trust Agreement and Insurance Trustee desires to accept such appointment, in each case on the terms as provided herein,

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1. CERTAIN DEFINED TERMS. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to such terms in the Project Agreement. In addition, the following terms shall have the following meanings:

“**Business Day**” means a day other than a Saturday, Sunday, or holiday in the States of New York and Oregon.

“Credit Agreement” means the credit agreement dated [_____], 2022 between the Project Company, the Senior Lenders and the Collateral Agent in respect of the Senior Debt. **[NOTE TO PROPOSERS: To be updated, along with other terminology, based on Selected Proposer’s financing arrangement and documents.]**

“Deposited Sums” has the meaning given to such term in Section 2.3 hereof.

“Improvements” shall mean all structures, improvements, fixtures, equipment and other appurtenances now located or hereafter situated on or under the surface of the Project Site, including alterations and replacements thereof and additions thereto.

“Income Tax” has the meaning given to such term in Section 5.17 hereof.

“Insurance Proceeds” means (a) all payments and proceeds of Insurance (other than proceeds of business interruption insurance and delay in start-up insurance) payable to or received by Project Company (whether by way of claims, return of premiums, ex gratia settlements or otherwise) and (b) all payments and proceeds received by Project Company as a result for the Taking of any assets or property of Project Company by any person pursuant to such Taking or pursuant to sale of any such assets or property to a purchase with such power under threat of such a Taking received by any person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under the Project Agreement, provided that in no event shall any third party liability insurance proceeds constitute “Insurance Proceeds”.

“Insurance Trust Account” means the account established and created pursuant to Section 2.2 hereof.

“Insurance Trustee” means the person named as the “insurance trustee” in the first paragraph of this Insurance Trust Agreement until a successor Insurance Trustee shall have become such, in accordance with Section 5.18 hereof, and thereafter “Insurance Trustee” shall mean the person who is then the Insurance Trustee hereunder.

“Qualifying Institution” means:

(a) a United States trust company, insurance company, investment company, pension fund or institution which has at least \$500 million in assets, including entities wholly, owned by any of the foregoing;

(b) a United States bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that manages at least \$500 million in securities and would be a “qualified institutional buyer” under United States securities laws or regulations, including entities wholly owned by any of the foregoing;

(c) an institution which is recognized or permitted under the law of any member state of the European Economic Area (“**EEA**”) or the Organization for Economic Cooperation and Development (“**OECD**”) to carry on the business of a credit institution within OECD member states or, in the case of the EEA, to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state; or

(d) any other institution the County designates in writing as a “Qualifying Institution.”

“**State**” means the State of Oregon.

“**Termination Certificate**” has the meaning given to such term in Section 3.3 hereof.

“**U.S. Dollars**” or “**\$**” means United States dollars or other lawful currency of the United States of America.

“**Work**” has the meaning given to such term in Section 3.1 hereof.

SECTION 1.2. RULES OF INTERPRETATION.

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Insurance Trust Agreement.

(C) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(D) References to Including. The words “include”, “includes” and including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(E) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(F) References to Documents. Each reference to an agreement, document or other instrument includes a reference to that agreement, document or instrument as amended, supplemented, modified, substituted, novated or assigned.

(G) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

ARTICLE 2

APPOINTMENT; ESTABLISHMENT OF THE INSURANCE TRUST ACCOUNT; DEPOSITED SUMS

SECTION 2.1. APPOINTMENT OF THE INSURANCE TRUSTEE. The County, the Project Company, and the Collateral Agent hereby appoint [____] as Insurance Trustee in accordance with the terms and conditions set forth herein, and [____] hereby accepts such appointment.

SECTION 2.2. ESTABLISHMENT OF THE INSURANCE TRUST ACCOUNT. The Insurance Trustee has established and shall maintain the Insurance Trust Account in the name of the Project Company, to be held in trust by the Insurance Trustee for the benefit of the Project Company and the County, in accordance with the terms of this Insurance Trust Agreement as follows:

Account Name: _____

Account Number: _____
[Wire Instructions]

SECTION 2.3. DEPOSITED SUMS. In accordance with Section 14.1(E) of the Project Agreement and Section 7 of the Lenders' Remedies Agreement, any and all of the following amounts (collectively, the "**Deposited Sums**") shall be deposited into and held by the Insurance Trustee in the Insurance Trust Account:

- (i) property Insurance Proceeds received in respect of the Project Site;
- (ii) disaster relief funds received in respect of the Project Site;
- (iii) other amounts required to be deposited into the Insurance Trust Account pursuant to the Project Agreement; and
- (iv) other amounts required under the Lenders' Remedies Agreement to be deposited in the Insurance Trust Account.

The Insurance Trustee shall not be required, or have any duty, to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder or to exercise any right or privilege which may be afforded to the holder of any such security. The Insurance Trustee shall have no duty to solicit delivery of the Deposited Sums.

SECTION 2.4. GENERAL RESTRICTION ON INSURANCE TRUST ACCOUNT FUNDS. The Insurance Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account, other than in accordance with the terms of this Insurance Trust Agreement.

SECTION 2.5. RECEIPT OF DEPOSITED SUMS. The parties acknowledge and agree that if any of them receive deposited sums or as the right to direct Deposited Sums, other than pursuant to Article 3 (Disbursements) hereof, then such Deposited Sums shall be directed, used or advanced only for the purposes of depositing such Deposited Sums into the Insurance Trust Account.

SECTION 2.6. SECURITY INTEREST IN THE INSURANCE TRUST ACCOUNT. Except for the lien of the Collateral Agent in the Insurance Trust Account, no other person has (i) any security interest or other lien in the Insurance Trust Account, or (ii) except in connection with Article 3 (Disbursements) hereof, any right to withdraw funds from, or take or direct the taking of any other action in connection with the Deposited Sums. Without prejudice to any of the foregoing, the Insurance Trustee agrees that during any Step-In Period (as defined in the Lenders' Remedies Agreement) it shall not act upon the instructions of the Project Company, but it shall act on the instructions of the Collateral Agent or other appointed representative acting in accordance with Section 4 of the Lenders' Remedies Agreement; provided that in issuing such instructions, the Collateral Agent agrees to administer the Deposited Sums strictly in accordance with Article 3 (Disbursements) hereof, and to the extent of the County's interest therein, in trust for the County.

SECTION 2.7. WAIVER OF SET-OFF. The Deposited Sums will not be subject to deduction, set-off, banker's lien, or any other right in favor of the Insurance Trustee or any other person, except in accordance with judicial or arbitral order.

ARTICLE 3

DISBURSEMENTS

SECTION 3.1. DISBURSEMENT TO PROJECT COMPANY FOR WORK. Except as provided in Section 3.2 for cases where Total Constructive Loss occurs, from time to time during the progress of any restoration, repair, replacement, or rebuilding of damage or destruction to a portion of the Project resulting from any fire, casualty, or other insurable force majeure event as set forth in the Project Agreement (collectively, the “**Work**”), Deposited Sums shall be disbursed to the Project Company or to any other person specified by the Project Company (subject to the provisions of this Article 3) or to the appointed representative under the step-in rights in accordance with Section 4 of the Lenders’ Remedies Agreement, no later than fifteen (15) days following receipt by the Insurance Trustee and the County, with a copy to the Collateral Agent, of a certificate signed by the Project Company and an architect or engineer selected by the Project Company, dated not more than thirty (30) days prior to the application for such disbursement, substantially in the form attached hereto as Attachment A, together with (a) an official search or a certificate of a recognized title company doing business in the area, showing that there has not been filed with respect to the County’s interest in the applicable portions of the Project, any vendor’s, mechanic’s, laborer’s or materialman’s statutory or similar lien that has not been discharged of record, except with respect to such liens that will be discharged or released in connection with the payment of the requested amount; and (b) waivers of all mechanic’s and materialman’s liens executed by each contractor, construction manager, architect, engineer, materialman and first tier subcontractor involved in carrying out the Work. Following receipt by the Insurance Trustee of a certificate signed by the County, the Project Company, and an architect or engineer selected by the Project Company certifying that the Work is complete, any funds remaining in the Insurance Trust Account in excess of the amounts required to meet all restoration obligations under the Project Agreement shall be transferred to the Collateral Agent for application in accordance with the terms of the Credit Agreement.

SECTION 3.2. DETERMINATION OF AVERAGE PROJECTED SENIOR DEBT SERVICE COVERAGE RATIO. In the event a Total Constructive Loss occurs, resulting in the requirement to determine the Average Projected Senior Debt Service Coverage Ratio (as defined in the Credit Agreement) under Section 7 of the Lenders’ Remedies Agreement, the Collateral Agent and the Project Company shall jointly provide the County a notice certifying the Average Projected Senior Debt Service Coverage Ratio (as defined in the Credit Agreement), and the following shall apply:

(e) If such notice confirms that the Average Projected Senior Debt Service Coverage Ratio is greater than [_____] **[NOTE TO PROPOSERS: Debt service coverage ratio required to avoid an event of default under the financing documents to be inserted here.]**, then the Insurance Trust Account shall be applied to the restoration of the Project in accordance with the Project Agreement and Section 3.1 hereof.

(f) If such notice confirms that the Average Projected Senior Debt Service Coverage Ratio is equal to or lower than [_____] **[NOTE TO PROPOSERS: Debt service coverage ratio required to avoid an event of default under the financing documents to be inserted here.]**, then (i) in accordance with Section 7 of the Lenders’ Remedies Agreement the Insurance Trustee shall not release Deposited Sums pursuant to Section 3.1 but instead shall release to the Collateral Agent an amount equal to the lesser of (x) the Deposited Sums and (y) all amounts owed and outstanding under the Credit Agreement (as certified by the Collateral Agent); (ii) the balance, if any, of the Deposited Sums shall be distributed (1) first, to the Insurance Trustee, any amounts then owed to it hereunder, (2) second, to the Project Company up to the amount equal to the amount payable by the County upon a no-fault termination described in Section 3 of Appendix 13 of the Project Agreement minus all amounts owed and outstanding under

the Credit Agreement (as certified by the Collateral Agent), and (3) third, any remaining Deposited Sums shall be transferred to the County; and (iii) the Project Agreement and this Insurance Trust Agreement shall be terminated.

SECTION 3.3. PAYMENT OF DEPOSITED SUMS UPON TERMINATION OF THE PROJECT AGREEMENT. Following the receipt by the Insurance Trustee of a certificate from the Project Company and the County (or just the County in the event of a termination due to a Project Company Event of Default) (the “**Termination Certificate**”) certifying that the Project Agreement has been terminated for any reason (other than in accordance with Section 3.2 hereof and Section 7 of the Lenders’ Remedies Agreement) and stating the amount, if any, of any outstanding Termination Payment, all Deposited Sums held by the Insurance Trustee shall be transferred as follows: (i) first, to the Insurance Trustee, any amounts then owed to it hereunder, (ii) second, to the Project Company, in an amount up to the amount of any outstanding Termination Amount remaining unpaid as stated in the Termination Certificate; and (iii) third, any remaining funds will be transferred to the County. Thereupon this Insurance Trust Agreement shall be terminated.

ARTICLE 4

INVESTMENTS

SECTION 4.1. PERMITTED INVESTMENTS. Absent receipt of joint investment direction by the Project Company and the County, Deposited Sums will be invested and reinvested money market instruments pursuant to subsection [] of the definition of Permitted Investments in the Credit Agreement. The Insurance Trustee shall not be required to take any other action with respect to investing the Deposited Sums in the absence of joint written instructions by the Project Company and the County. The Insurance Trustee shall not be liable for any loss resulting from any Permitted Investments or the sale, liquidation or redemption thereof. If and when cash is required for disbursement in accordance with Article 3 hereof. The Insurance Trustee is authorized, upon joint written direction from the Project Company and County, to the extent necessary to make payments required pursuant to Article 3 hereof to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) pursuant to such written direction. If the parties elect to not invest Deposited Sums, they shall be held as cash which will not earn or accrue interest.

SECTION 4.2. REINVESTMENTS. The Insurance Trustee shall have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with the Insurance Trustee after 11:00 a.m. on the day of deposit. Instructions to invest or reinvest that are received after 11:00 a.m. will be treated as if received on the following Business Day.

ARTICLE 5

INSURANCE TRUSTEE RIGHTS AND DUTIES

Acceptance by the Insurance Trustee of its duties under this Insurance Trust Agreement is subject to the following terms and conditions, which all parties to this Insurance Trust Agreement hereby agree shall govern and control the rights, duties, and immunities of the Insurance Trustee.

SECTION 5.1. NO IMPLIED OR INFERRED DUTIES; STANDARD OF CARE. The duties and obligations of the Insurance Trustee shall be determined solely by the express provisions of this Insurance Trust Agreement, and no duties, responsibilities, or obligations shall be inferred or implied; provided, however, the Insurance Trustee shall exercise reasonable care in carrying out its powers and obligations hereunder. The Insurance Trustee shall be deemed to have

exercised reasonable care if it acts with a degree of care, diligence and skill substantially equal to that which the Insurance Trustee accords its own property.

SECTION 5.2. NO INSURANCE TRUSTEE FUNDS AT RISK. The Insurance Trustee shall not be required to expend or risk any of its own funds or otherwise incur any personal liability, financial or otherwise, in the performance of any of its duties hereunder.

SECTION 5.3. NO DUTY TO INQUIRE ON PERFORMANCE OF CERTAIN AGREEMENTS. The Insurance Trustee shall not be required to inquire as to the performance or observation of any obligation, term or condition under any other agreements or arrangements among the County, the Project Company, and the Collateral Agent.

SECTION 5.4. DETERMINATION OF AUTHENTICITY OR VALIDITY OF DOCUMENTS. Other than as required by Section 6.16 hereof, the Insurance Trustee shall not have any responsibility, beyond acting in good faith, to determine the authenticity or validity of any notice, direction, instruction, instrument, document or other items delivered to it by any party, or for the identity, authority or rights of persons executing or delivering any such notice, direction, instruction, instrument, document, or other items delivered to it by such party or parties.

SECTION 5.5. RELATIONSHIP TO OTHER AGREEMENTS. The Insurance Trustee is not bound by, or required to comply with any agreement or other document out of which this Insurance Trust Agreement may arise, including the Project Agreement, unless it is a party to such other agreement or document. The Insurance Trustee shall be under no liability to any party hereto by reason of any failure on the part of the Project Company or other signatory of any document or any other third party to perform such party's obligations under any such document.

SECTION 5.6. EVIDENCE OF WRITING REQUIRED. The Insurance Trustee shall not be bound by any waiver, modification, termination or rescission of this Insurance Trust Agreement or any of the terms hereof, unless evidenced in writing and delivered to the Insurance Trustee signed by the proper party's authorized representative and, if the duties or rights of the Insurance Trustee are affected, unless it shall give its prior written consent thereto. No person will be recognized by the Insurance Trustee as a successor or assignee of the County, the Project Company, or the Collateral Agent until there shall be presented to the Insurance Trustee evidence satisfactory to it of such succession or assignment.

SECTION 5.7. COMPLIANCE WITH JUDICIAL OR ADMINISTRATIVE ORDERS. If at any time the Insurance Trustee is served with any judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process which in any way affects the Deposited Sums (including but not limited to orders of attachment or any other forms of levies or injunctions or stays relating to the transfer of the Deposited Sums), the Insurance Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Insurance Trustee complies with any such judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process, the Insurance Trustee shall not be liable to any of the parties hereto or to any other person even though such order, judgment, decree, writ, or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

SECTION 5.8. WAIVER OF LIABILITY; NO CONSEQUENTIAL DAMAGES. The Insurance Trustee shall not be liable for any action taken or omitted or for any loss or damage resulting from its actions or its performance of its duties hereunder in the absence of its own breach of duty, bad faith, sole negligence, gross negligence, or willful misconduct on its part. In no event shall the Insurance Trustee be liable (i) for acting in accordance with or relying upon any instruction, notice, demand, certificate, or document from the County, the Project Company,

or the Collateral Agent in accordance with the provisions of this Insurance Trust Agreement, (ii) for any consequential, punitive, indirect, incidental or special damages or (iii) for an amount in excess of the value of the Deposited Sums, valued as of the date of loss.

SECTION 5.9. TREATMENT OF AMBIGUITY, UNCERTAINTY, DISPUTES OR CONFLICTS. In the event of any ambiguity, uncertainty, dispute or Conflicts hereunder or in any notice or other communication received by the Insurance Trustee hereunder, the Insurance Trustee is hereby authorized by the County, the Project Company, and the Collateral Agent to refrain from taking any action other than to retain possession of the Deposited Sums, unless the Insurance Trustee receives (A) written instructions, signed by an authorized representative of each of the County, the Project Company, and the Collateral Agent which eliminates such ambiguity or uncertainty; or (B) a final order decree or judgment of a court or other tribunal of competent jurisdiction in the United States of America eliminating such ambiguity, uncertainty, dispute or conflict.

SECTION 5.10. LEGAL COUNSEL. The Insurance Trustee may consult with legal counsel of its own choosing, at the expense of the Project Company, as to any matter relating to this Insurance Trust Agreement, and the Insurance Trustee shall incur no liability and shall be fully protected in respect of any action taken, omitted, or suffered by it in good faith in accordance with the advice or opinion of such counsel; it being understood and agreed that outside counsel services to Insurance Trustee shall be subject to agreed-upon budgets and in any event no such legal cost or expense in excess of \$[____] shall be incurred without the prior approval of the Project Company. **[NOTE TO PROPOSERS: If Collateral Agent will be serving as Insurance Trustee, the legal budget for this agreement shall be included in the overall legal fee budget for the collateral agency fee arrangement as a whole.]**

SECTION 5.11. FORCE MAJEURE. The Insurance Trustee shall incur no liability for not performing any act or not fulfilling any duty, obligation, or responsibility hereunder by reason of any occurrence beyond the control of the Insurance Trustee (including any act or provision of any present or future law or regulation or governmental authority, any act of God or war, terrorism, loss or malfunctions of utilities or computer (software or hardware) services, or the unavailability of the Federal Reserve Bank or other wire or communication facility); it being understood that the Insurance Trustee shall (i) use reasonable efforts which are consistent with accepted practices in the banking industry to avoid or minimize the effect of such occurrence and to resume performance as soon as practicable under the circumstances, and (ii) not have any relief under this Section for any occurrence described above caused by the Insurance Trustee's own gross negligence, bad faith or willful misconduct.

SECTION 5.12. RELIANCE ON CERTAIN COMMUNICATIONS. When the Insurance Trustee acts on any communication (including communication with respect to the wire transfer of funds as described in Section 5.14 hereof) sent by electronic transmission in accordance with this Insurance Trust Agreement, the Insurance Trustee, absent its own bad faith, gross negligence, or willful misconduct, shall not be responsible or liable in the event such communication is not an authorized or authentic communication of the party involved or is not in the form the party involved sent or intended to send (whether due to fraud, distortion or otherwise). The Insurance Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Insurance Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The County, the Project Company, and the Collateral Agent, as the case may be, agree to assume all risks arising out of the use of such electronic transmission to submit instructions and directions to the Insurance Trustee, including the risk of the Insurance Trustee's acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 5.13. FUND TRANSFER SECURITY PROCEDURES. In the event funds transfer instructions are given, whether in writing, by telecopier or otherwise, the Insurance Trustee is authorized to and shall seek confirmation of such instructions by telephone call-back to the person designated on Attachment B attached hereto, and the Insurance Trustee may rely upon the confirmation of anyone purporting to be the person so designated. The Insurance Trustee and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Project Company to identify (i) the beneficiary, (ii) the beneficiary's bank or (iii) an intermediary bank. The Insurance Trustee may apply any of the Deposited Sums for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The parties to this Insurance Trust Agreement acknowledge that such security procedure is commercially reasonable.

SECTION 5.14. MONTHLY STATEMENTS. The Insurance Trustee will provide to the County, the Project Company, and the Collateral Agent monthly statements identifying transactions, transfers or holdings of the Deposited Sums, and each such statement will be deemed to be correct and final upon receipt thereof by the County, the Project Company, and the Collateral Agent unless the County, the Project Company, or the Collateral Agent notifies the Insurance Trustee in writing to the contrary within thirty (30) Business Days of the date of such statement.

SECTION 5.15. DEGREE OF CARE FOR DEPOSITED SUMS. The Insurance Trustee will not be under any duty to give the Deposited Sums held by it hereunder any greater degree of care than it gives its own similar property and will not be required to invest any funds held hereunder except as directed in this Insurance Trust Agreement.

SECTION 5.16. INCOME TAX CONSIDERATIONS. The Insurance Trustee does not have any interest in the Deposited Sums hereunder but is serving as escrow holder only and having only possession thereof. The Project Company shall pay or reimburse the Insurance Trustee upon request for any transfer taxes or other taxes relating to the Deposited Sums incurred in connection herewith and shall indemnify and hold harmless the Insurance Trustee from any amounts that it is obligated to pay in the way of such taxes. Upon execution of this Insurance Trust Agreement, the Project Company shall provide the Insurance Trustee with a fully executed W-9 IRS form. The parties hereto agree that (i) for tax reporting purposes, and for any tax year, all interest or other income earned under the Insurance Trust Agreement shall be allocable to the Project Company and (ii) to the extent permitted by applicable law, the Project Company will include all amounts earned under the Insurance Trust Agreement in its gross income for federal, state, and local income tax (collectively, "**Income Tax**") purposes and pay any income tax resulting therefrom, and the Insurance Trustee shall allocate all such earnings for tax reporting purposes to the Project Company. Any payments of income from the account established hereunder may be subject to withholding regulations then in force with respect to United States taxes, and if required, the parties hereto will promptly provide the Insurance Trustee with completed and executed W-9, W-8BEN or other appropriate forms. It is understood that the Insurance Trustee shall be responsible for income reporting only with respect to any income which may be earned on investment of funds which are a part of the Deposited Sums and is not responsible for any other reporting.

SECTION 5.17. RESIGNATION, REMOVAL AND REPLACEMENT. The Insurance Trustee may resign and be discharged from its duties hereunder at any time by giving written notice thirty (30) calendar days prior to such resignation to the County, the Project Company, and the Collateral Agent as provided in this Section 5.18. The Project Company, with the consent of the County and the Collateral Agent, may remove the Insurance Trustee at any time by giving written notice signed by the authorized representative of each of the Project Company, the County, and the Collateral Agent at least thirty (30) calendar days prior to such removal to

Insurance Trustee. Following such resignation or removal, a Qualifying Institution shall be appointed as the successor Insurance Trustee by the Project Company, with the consent of the County and the Collateral Agent, which, in each case, may not be unreasonably withheld, delayed, or conditioned, and written notice thereof shall be provided to the resigning or removed Insurance Trustee. Such successor Insurance Trustee shall become Insurance Trustee hereunder, and all Deposited Sums shall be transferred to it upon the resignation or removal date specified in such notice; provided, that such successor Insurance Trustee has executed and delivered an assignment and assumption agreement, or a similar instrument or agreement, in form and substance satisfactory to the Project Company, the County, and the Collateral Agent and which provides an undertaking of such successor Insurance Trustee to become a party to and be bound by the terms and conditions of this Insurance Trust Agreement. If the Project Company fails to appoint a successor Insurance Trustee within thirty (30) calendar days after any such notice, the Insurance Trustee may petition any court of competent jurisdiction for the appointment of a successor Insurance Trustee or for other appropriate relief. The reasonable costs and expenses (including its reasonable attorney fees and expenses) incurred by the Insurance Trustee in connection with such proceeding shall be paid by the Project Company. On the resignation/removal date and after receipt of the identity of the successor Insurance Trustee and the execution and delivery of the aforementioned assignment and assumption agreement, the Insurance Trustee shall either deliver or disburse the Deposited Sums then held hereunder to the successor Insurance Trustee, less the Insurance Trustee's reasonable fees, costs, and expenses or other obligations owed to the Insurance Trustee. Upon its resignation or removal and delivery or disbursement of the Deposited Sums in its entirety as set forth in this Section 5.18, the Insurance Trustee shall be discharged of and from any and all further obligations arising in connection with the Deposited Sums or this Insurance Trust Agreement.

SECTION 5.18. INDEMNITY. The Project Company shall indemnify, hold harmless, and defend the Insurance Trustee and its directors, officers, agents, and employees, from and against any and all claims, actions, obligations, liabilities, damages, costs and expenses, including reasonable attorneys' fees and expenses directly or indirectly arising out of, relating to or in connection with its acceptance of its appointment hereunder or its performance as Insurance Trustee, provided that such losses do not arise from the Insurance Trustee's breach of duty, gross negligence, willful misconduct, or sole negligence. The Project Company's indemnification obligations will survive the Insurance Trustee's resignation, removal or replacement.

SECTION 5.19. FEES, COSTS AND EXPENSES. The Insurance Trustee shall be entitled to receive payment from the Project Company for reasonable fees, costs, and expenses for all services rendered by it hereunder, as separately agreed between the Project Company and the Insurance Trustee. The Project Company shall reimburse the Insurance Trustee on demand for all reasonable costs and expenses paid or incurred by it in the administration of its duties hereunder, including all reasonable counsel, advisor, and agent fees, and disbursements.

ARTICLE 6

MISCELLANEOUS PROVISIONS

SECTION 6.1. NOTICES. Any notices, requests, instructions, or other communications provided for in this Insurance Trust Agreement shall be sufficiently given if in writing, signed by a party's authorized representative and delivered in person or by (a) personal delivery, overnight delivery by a recognized courier or delivery service, (b) registered or certified mail, return receipt requested, postage prepaid, or (c) electronic transmission, which includes facsimile, email with an attachment in portable download format (pdf) or other similar electronic transmission, with confirmation of receipt of such transmission; and shall become effective when delivered to the addresses noted below or such other address as may be substituted therefor by written

notification by the party's authorized representative. Notices to the Insurance Trustee shall be deemed to be effective when actually received by the Insurance Trustee.

If to the County:

[Office]
[Address]
Attention: [Name], [Title]
Telephone No.: [____]
Email: [____]

with a copy to:

[Office]
[Address]
Attention: [Name], [Title]
Telephone No.: [____]
Email: [____]

If to the Project Company:

[Office]
[Address]
Attention: [Name], [Title]
Telephone No.: [____]
Email: [____]

with a copy to:

[Office]
[Address]
Attention: [Name], [Title]
Telephone No.: [____]
Email: [____]

If to the Insurance Trustee:

[Office]
[Address]
Attention: [Name], [Title]
Telephone No.: [____]
Email: [____]

If to the Collateral Agent:

[Office]
[Address]
Attention: [Name], [Title]
Telephone No.: [____]
Email: [____]

SECTION 6.2. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS. This Insurance Trust Agreement may not be used to interpret another pledge, security, debt or other agreement of the Project Company. No such pledge, security, debt or other agreement (other than

the Project Agreement and the Lenders' Remedies Agreements) may be used to interpret this Insurance Trust Agreement.

SECTION 6.3. SEVERABILITY. The provisions of this Insurance Trust Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Insurance Trust Agreement in any jurisdiction.

SECTION 6.4. HEADINGS. The headings in this Insurance Trust Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 6.5. COUNTERPARTS. This Insurance Trust Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page shall be effective as delivery of an original executed counterpart.

SECTION 6.6. BENEFITS OF INSURANCE TRUST AGREEMENT. Nothing in this Insurance Trust Agreement, express or implied, shall give to any person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy, or claim under this Insurance Trust Agreement.

SECTION 6.7. AMENDMENTS, WAIVERS, MODIFICATIONS, RESCISSIONS AND CONSENTS. Any amendment, waiver, modification, or rescission of any provision of this Insurance Trust Agreement and any consent to any departure from any provision of this Insurance Trust Agreement shall be effective only if made pursuant to a written instrument signed by each of the County, the Project Company, the Insurance Trustee, and the Collateral Agent, and none of the County, the Project Company, the Insurance Trustee, or the Collateral Agent shall be deemed, by any act, delay, indulgence, omission, or otherwise to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof.

SECTION 6.8. TERMINATION. This Insurance Trust Agreement shall terminate as provided herein on the expiration or earlier termination of the Project Agreement and the release of all Deposited Sums in accordance with the terms of this Insurance Trust Agreement.

SECTION 6.9. ASSIGNMENT AND SUCCESSORS. Except for a successor Insurance Trustee, as provided in Section 5.18, no party may assign any of its rights or obligations under this Insurance Trust Agreement, except as otherwise permitted by the Credit Agreement or the Project Agreement, without the written consent of the other parties, and any such assignment without such consent shall not be effective. No person will be recognized by the Insurance Trustee as a successor or assignee of the County, the Project Company, or the Collateral Agent until there shall be presented to the Insurance Trustee evidence satisfactory to it, acting reasonably of such succession or assignment.

SECTION 6.10. SURVIVAL PROVISIONS. The obligations of the Project Company under Section 5.19 and Section 5.20 hereof shall survive the termination of this Insurance Trust Agreement and the resignation or removal of the Insurance Trustee.

SECTION 6.11. USA PATRIOT ACT. The Insurance Trustee hereby notifies the Project Company that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub.L.107-56 (signed into law October 26, 2001)), it is required to obtain, verify, and record information that identifies the Project Company, which information includes the name and address of the Project Company and other information that will allow the Insurance Trustee to identify the Project Company in accordance with such law.

SECTION 6.12. ENTIRE AGREEMENT. Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

SECTION 6.13. MERGER; CONSOLIDATION OF INSURANCE TRUSTEE. Any corporation into which the Insurance Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Insurance Trustee will be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Insurance Trustee will be the successor of the Insurance Trustee hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

SECTION 6.14. GOVERNING LAW. This Insurance Trust Agreement shall be governed by and construed in accordance with the applicable laws of the State of New York.

SECTION 6.15. SUBMISSION TO JURISDICTION. It is the express intention of the parties that all Legal Proceedings related to this Insurance Trust Agreement or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the State or federal courts located in New York County, New York; and that the State of New York shall be deemed to be the Insurance Trustee's jurisdiction for purposes of the UCC (including Section 9-304 thereof).

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Insurance Trust Agreement to be executed and delivered by their duly authorized representatives on the day and year first above written.

CLACKAMAS COUNTY, OREGON

By: _____
[Name]
[Title]

Approved as to Form:

By: _____
[Name]
County Counsel

[PROJECT COMPANY]

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____]
Entity Type / State of Formation: [_____]

[_____] , as Insurance Trustee

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____]
Entity Type / State of Formation: [_____]

[_____] , as Collateral Agent

By: _____
[Name]
[Title]
Oregon Business Registry #: [_____]
Entity Type / State of Formation: [_____]

ATTACHMENT A

FORM OF DISBURSEMENT CERTIFICATE

[____], as Insurance Trustee

[Address]

Re: Clackamas County Courthouse Project Insurance Proceeds Disbursement Certificate

Ladies and Gentlemen:

This certificate is delivered pursuant to that certain Insurance Trust Agreement, dated [____], 2022 (the "Insurance Trust Agreement"), by and among Clackamas County, Oregon (the "County"), [____], a [____] (the "Project Company"), [____], in its capacity as collateral agent on behalf of the Senior Creditors (in such capacity, together with any successors and permitted assigns, the "Collateral Agent") and [____], in its capacity as insurance trustee thereunder (in such capacity, together with any successors and permitted assigns, the "Insurance Trustee"). All capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Insurance Trust Agreement.

In accordance with Section 3.1 of the Insurance Trust Agreement, the Project Company hereby directs and instructs the Insurance Trustee to make the following transfers or payments on or before _____, 20[] in the aggregate amount of [\$ _____] (the "Disbursement Amount") from the Insurance Trust Account:

[Name, address and amount to be provided with respect to each person to be paid for the Work.]

The Project Company certifies that:

(i) the Disbursement Amount either has been paid by the Project Company or is justly due for payment to persons that have rendered and furnished certain labor and materials for the Work;

(ii) the Disbursement Amount, plus all sums previously disbursed, does not exceed the cost of the Work accomplished up to the date of this certificate and that the balance of the Deposited Sums will be sufficient to pay in full the cost of completing the Work;

(iii) except for the Disbursement Amount relating to services or materials, and amounts, if any, referred to in clause (iv) below, either (a) there is no outstanding sum known to the person signing the certificate, after due inquiry, that is then due and payable for work, labor, services and materials in connection with the Work, less reasonable retainages, or (b) with respect to any sum of the type referred to in (a) that may be outstanding, the Project Company is engaged in a bona fide dispute as to the amount due and payable in respect thereof and the Insurance Trustee holds sufficient funds to cover both the disputed amount and the cost of completing the Work; and

(iv) there has not been served or filed with respect to the portion of the Project to which the Work applies or any part thereof or interest therein any stop notice, preliminary 20-day notice, vendor's, mechanic's, laborer's or materialman's statutory or similar lien that has not been discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed, unless a bond has been provided in the full amount of such lien,

The Project Company further certifies that, as of the date hereof, no event of default under the Project Agreement by the Project Company has occurred and is continuing.

Sincerely,

[]

By: _____

Name:

Title:

Oregon Business Registry #:

Entity Type / State of Formation:

Draft

ATTACHMENT B

TELEPHONE NUMBERS FOR CALL-BACKS AND
PERSONS DESIGNATED TO CONFIRM FUNDS TRANSFER INSTRUCTIONS

If to Project Company:

Name:

- 1.
- 2.

Telephone Number:

If to Insurance Trustee:

Name:

- 1.
- 2.

Telephone Number:

Draft

MARTHA L. WALTERS
Chief Justice



1163 STATE STREET
SALEM, OREGON 97301-2563
Telephone: (503) 986-5668
FAX: (503) 986-5730
Martha.L.Walters@ojd.state.or.us

June 23, 2022

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

Dear Chair Smith:

On February 23, 2022, I provided conditional approval of Clackamas County's courthouse replacement application for state funding based on the information available at that time. Since then, the county has received final proposals in response to its procurement solicitation. The results indicate the preferred proposal exceeds the amount that was anticipated at the time of my February letter and the county will wish to request an additional \$61 million in state bond funds, for a total state contribution of approximately \$156 million.

This information does not change my prior determinations that there exist significant structural defects that present actual threats to human health and safety, and that replacing the courthouse provides an opportunity for co-location of the court with other state offices. It does however require a review of whether replacing the courthouse is still more cost-effective than remodeling or repairing the existing courthouse.

In my February letter I made the following observations and concluded at that time that the not-to-exceed amount of \$95,700,000 was supported by the conclusion that replacement was the most cost-effective option. 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. The current site offers limited, potentially dangerous, and cost-prohibitive opportunities for expansion. Multiple reports describe the inadequacies of the existing site.

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. Further, the site already houses other court-related public services, including the juvenile department and county jail.

These factors have not changed since my earlier determination. Costs, however, have been affected as a result of inflation and by the scarcity of labor and materials. These elements would equally impact and increase the costs related to repairing the existing courthouse and therefore render the same conclusion of a cost preference for the replacement project over a remodel.

I hereby reaffirm the determinations set forth in my February letter, as required by Oregon Laws 2013, Ch. 705, section 8(2)(a)(A) and if the Clackamas County Board of Commissioners approves the continuance of the project, I intend to include in my 2023-2025 recommend budget a request for Article XI-Q state bonds for the Clackamas County Courthouse project to meet the new amount of Authorized State Costs under the Master Funding Agreement.

Sincerely,



Martha L. Walters
Chief Justice

cc: 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