

AGENDA ITEM FOR ADMINISTRATIVE MEETING () Discussion only

(X) Action

FROM (DEPT/ DIVISION): County Counsel

SUBJECT: Courthouse Project

<p>Background:</p> <p>In 2023, the County was awarded funding for the planning of a new courthouse. A study was completed. We have been negotiating with the State on agreements to receive the funding and the reimbursement for the study. Before the Board for review are the agreements for the payment of the funding. The agreements include a master funding agreement, with provisions for funding of the entire project, and a phase 1 agreement, for the planning funding reimbursement. All agreements are contingent on funding being available for both the State and the County. Since the State funding has not been approved, the next phase of the project will be some time in the future, if at all. If funding is made available, and the County obtains funding, then a phase 2 agreement would come back before the Board for approval. Nothing commits the County to the project at this time, other than the Phase 1 agreement, which planning study has been paid for and completed.</p>	<p>Requested Action:</p> <p>Approve agreements and authorize the Chair to sign</p>
---	--

ATTACHMENTS : Proposed agreements

*****For Internal Use Only*****

Checkoffs:

- () Dept. Heard (copy)
 () Human Resources (copy)
 (X) Legal (copy)
 () (Other - List:)

To be notified of Meeting:

Needed at Meeting:

Scheduled for meeting on: June 30, 2025

Action taken:

Follow-up:

**UMATILLA COUNTY COURTHOUSE
PHASE FUNDING AGREEMENT FOR PHASE I**

THIS UMATILLA COUNTY COURTHOUSE PHASE FUNDING AGREEMENT FOR PHASE I (this “Phase I Agreement”) is made by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Umatilla County, Oregon (the “County”).

Project Summary

Project Title:	Umatilla County Courthouse
County:	Umatilla County
Phase:	Phase I
State Funds for Phase I:	\$100,000.00 Oregon Laws 2023, chapter 605, § 28: American Rescue Plan Act Coronavirus State Fiscal Recovery Funds (ARPA CSFRF)
Phase Completion Date:	July 1, 2025
Estimated Project Completion Date:	June 30, 2028

Terms and Conditions

- 1. Master Funding Agreement.** As anticipated in the Umatilla County Courthouse Master Funding Agreement effective **June 30, 2025**, (“Master Agreement”) the parties enter into this Phase I Agreement. This Phase I Agreement incorporates all the terms of the Master Agreement as if fully set forth herein. In the event of a conflict between this Phase I Agreement and the Master Agreement, this Phase I Agreement shall control.
- 2. Effective Date and Term.** This Phase I Agreement is effective on the date all required signatures and approvals are obtained (“Effective Date”). The term of this Phase I Agreement shall be from the Effective Date through the date the parties fulfill their obligations hereunder, unless it is sooner terminated pursuant to the provisions of the Master Agreement.
- 3. Agreement Documents.** This Phase I Agreement consists of the following documents, which are listed in descending order of precedence: this Phase I Agreement, less all Exhibits; **Exhibit A** (Phase Work for Phase I); and **Exhibit B** (Benchmarks for Phase I). The above-referenced Exhibits which are attached to this Phase 1 Agreement are incorporated by this reference.

4. **Phase-Specific Definitions.** The following capitalized terms defined in Section 4 of the Master Agreement shall have the following meanings for the purposes of this Phase I Agreement:

- a. “Benchmarks” means the items set forth in **Exhibit B**.
- b. “County Contribution” means the amount of **\$100,000.00** that, as of the Effective Date, the County has agreed to provide for Authorized State Costs.
- c. “Phase Completion Date” means **July 1, 2025** (or as may be extended by the agreement of the parties).
- d. “Phase Work” means the County’s planning work (including Umatilla County Courthouse Needs Study and Concept Design), as set out in **Exhibit A**.
- e. “State Funds” means the amount of **\$100,000.00** that, as of the Effective Date, the State of Oregon has agreed to provide for Authorized State Costs for Phase I.
- f. “State’s Proportionate Share” means 100%, which is the portion of the Phase 1 Authorized Costs to that are eligible for payment by State Funds as Initial Planning Costs.

5. **Funding.**

- a. As noted in the Master Agreement, a condition precedent to the release of any State Funds under this Phase I Agreement is approval by the Chief Justice and DAS of an updated and amended Project Application to be submitted by the County as part of the Phase Work under this Phase I Agreement.
- b. Subject to the terms of this Phase I Agreement, the State of Oregon has agreed to contribute the State Funds. The State Funds are from the American Rescue Plan Act Coronavirus State Fiscal Recovery Funds (“ARPA CSFRF”).
- c. **ARPA CSFRF Funding.** As noted above, the parties acknowledge that the State Funds consist of federal funds from the ARPA CSFRF. County agrees to comply with all applicable provisions of the ARPA CSFRF, including without limitations those terms of Section 10 and **Exhibit G** of the Master Agreement.
- d. The Oregon Legislative Assembly may authorize additional State Funds for the Project, but the State has no present obligation of any kind to provide additional funding, other than the State Funds.
- e. The parties may enter into a Phase Funding Agreement for Phase II, subject to the provisions of Section 12 below.

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

- a. The State represents, warrants and covenants as follows:
 - i. This Phase I Agreement has been duly authorized by the State and, subject to other terms and provisions contained in this Phase I Agreement, constitutes a valid and binding agreement of the State that is enforceable against the State in accordance with its terms.
 - ii. The State has taken all actions required by the legislature for the State to acquire and use the State Funds during this biennium, and the State Funds are now available, or will be available as needed during this

biennium, to be spent on this Phase I pursuant to this Phase I Agreement and the Master Agreement.

- iii. Subject to the terms of this Phase I Agreement and the Master Agreement including terms regarding retainage, the State may reimburse County up to the full amount of the State Funds for the Project.
- iv. The State understands, acknowledges and agrees that the County has no obligation of any kind to enter into a Phase Funding Agreement for Phase II except as set forth in Section 12 below.
- v. All representations, warranties, and covenants of the State under the Master Agreement are incorporated into this Phase I Agreement and are true and correct as of the Effective Date of this Phase I Agreement.

b. The County represents, warrants and covenants as follows:

- i. This Phase I Agreement has been duly authorized by the County and constitutes a valid and binding agreement of the County that is enforceable against the County in accordance with its terms.
- ii. The County has taken all actions required by law for the County to acquire and use the County Contribution, and the County Contribution was available and has been spent on Authorized State Costs.
- iii. The County has contributed the full amount of the County Contribution to the Project.
- iv. The County understands, acknowledges and agrees that the State has no obligation of any kind to provide additional funding, other than the State Funds.
- v. The County understands, acknowledges and agrees that the State has no obligation of any kind to enter into a Phase Funding Agreement for Phase II except as set forth in Section 12 below.
- vi. As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the Project Parcel or the development, construction or use of the Project. The County shall promptly provide OJD with notice of any litigation or claims (environmental or otherwise) filed during the term of this Phase I Agreement against the County regarding the Project or the Project Parcel.
- vii. All representations, warranties, and covenants of the County under the Master Agreement are incorporated into this Phase I Agreement and are true and correct as of the Effective Date of this Phase I Agreement.

7. **Maximum State Contribution for State Funds.** Unless the amount of State Funds is increased after the Effective Date, the State's maximum monetary obligation with respect to this Phase shall not exceed \$100,000.00. In the event that the costs of this Phase exceed the Project Financing and the parties have not amended this Phase I Agreement or entered into a Phase Funding Agreement for Phase II agreeing to the payment of the excess costs, the County shall be responsible for all additional costs, and the County shall have no claim against the State for any amount that exceeds the amount of the State Funds.

8. **RESERVED.**
9. **Phase Work.** The County shall perform the Phase Work in strict compliance with the requirements of Section 15 of the Master Agreement. The County shall perform all the work necessary for completion of the Phase Work listed in **Exhibit A**. The County will collaborate and cooperate with the State, regarding all matters relating to the Phase Work.
10. **Benchmarks.**
- a. The County shall meet the Benchmarks.
 - b. The County shall use all commercially reasonable efforts to timely meet the Benchmarks by the Phase Completion Date.
 - c. The County shall be deemed to have met the Benchmarks if the State, in its reasonable discretion, approves in writing the receipt and completion of each Benchmark as further described in **Exhibit B**.
11. **Phase Work Authorized Costs: Specific Inclusions.** Authorized Costs are governed by the terms of the Master Agreement including Section 10 of the Master Agreement, as well as this Section.
- a. **Specific Inclusions.** Authorized Costs for the Phase Work include, without limitation, the following capital costs related the Phase Work:
 - i. costs of the State Project Monitor;
 - ii. costs related to DLR Group Architecture & Engineering Inc., Project consultant for the County, and work on Umatilla County Courthouse Needs Study and Concept Design.
 - b. **Specific Exclusions.** In addition to costs excluded from Authorized Costs under the Master Agreement, the parties agree Authorized Costs under this Phase I Agreement also do not include costs that are not directly related to the design and construction of the Project on the Project Parcel and that are not for the direct benefit of OJD. These costs include, but are not limited to, design, planning, construction, and development expenses, and the cost associated with acquiring and developing the land outside of the Project and the Project Parcel.
12. **Phase II Funding Agreement.**
- a. **Generally.** The parties may enter into the Phase Funding Agreement for Phase II, to memorialize their other obligations and understandings regarding Phase II, only if the County meets the Benchmarks by the Phase Completion Date (as it may be extended by the agreement of the parties), and the Phase II State Funds have been allocated by the Oregon Legislative Assembly.
 - b. **County Notice.** The County shall provide 90 days' notice to the State in advance of the estimated date of the County's completion of the Benchmarks. After receiving this notice, the State will have 30 days to provide the County with a draft Phase Funding Agreement for Phase II.
 - c. **Execution.** The parties shall use their good-faith efforts to negotiate and execute a Phase Funding Agreement for Phase II within 30 days after the County meets the Benchmarks.

- d. Excess State Funds.** In the event the parties enter into the Phase Funding Agreement for Phase II and not all of the State Funds have been disbursed to the County pursuant to this Agreement, any such excess funds shall be added to the State Funds for Phase II.
- e. RESERVED.**

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

- a.** 9 – Phase Work;
- b.** Any other provision of this Phase I Agreement that by its terms is intended to survive.

[remainder of page intentionally left blank]

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

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

Print Name: _____
Title: _____
Signature: _____

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

Print Name: _____
Title: _____
Signature: _____

Approved as to Legal Sufficiency for the State:

Print Name: Wendy Johnson
Title: Sr. Assistant Attorney General, Oregon Department of Justice
Signature: Email approval on file with OJD and DAS

Umatilla County, Oregon (County):

Print Name: _____
Title: _____
Signature: _____

Reviewed for the County:

**DOUG OLSEN, COUNTY ATTORNEY
FOR UMATILLA COUNTY, OREGON**

By: _____
Doug Olsen, County Counsel

Exhibit A
Phase Work for Phase I

- Prepare, submit, and receive approval of the amended and updated Project Application from the Chief Justice and DAS.
- OJD Courthouse Needs Study and Concept Design prepared and submitted to OJD in January 2024.

Exhibit B
Benchmarks for Phase I

- Receive approval of the amended and updated Project Application from the Chief Justice and DAS.
- Courthouse Needs Study and Concept Design prepared and submitted to OJD in January 2024.

UMATILLA COUNTY COURTHOUSE MASTER FUNDING AGREEMENT

THIS UMATILLA COUNTY COURTHOUSE MASTER FUNDING AGREEMENT (this “Agreement”) is by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Umatilla County, Oregon (“County”).

Project Summary and Contact Information

Project Title: Umatilla County Courthouse

County: Umatilla County

Estimated Project Completion Date: June 30, 2028

Anticipated State Funds:

Phase I:	\$100,000.00 - American Rescue Plan Act (ARPA) Coronavirus State Fiscal Recovery Funds Spring 2023
----------	--

Phase II:	\$ 94,245,000.00 – Article XI-Q bonds (if approved, Spring 2027)
-----------	---

Phase III:	To Be Determined
------------	------------------

County Contact:

	Dan Dorrان, County Commissioner Umatilla County
Phone:	541-278-6201
Email:	dan.dorrان@umatillacounty.gov
Address:	216 SE 4 th St Pendleton, OR 97801

DAS Contact:

	Rhonda Nelson, Capital Finance Manager
Phone:	(971) 719-1998
Email:	Rhonda.Nelson@das.oregon.gov
Address:	155 Cottage Street NE Salem, OR 97301

OJD Contact: David T. Moon, Director
Business and Fiscal Services Division
Phone: (503) 986-5150
Email: David.T.Moon@ojd.state.or.us
Address: 1133 Chemeketa Street
Salem, OR 97301

Presiding Judge: The Honorable Judge Daniel J. Hill
Phone: 541-667-3035 ext. 3035
Email: daniel.j.hill@ojd.state.or.us
Address: 915 SE Columbia Drive
Hermiston, OR 97838

Trial Court Administrator: Irma Solis
Phone: (541) 278-0341 ext. 3220
Email: irma.solis@ojd.state.or.us
Address: 216 SE Fourth Street
Pendleton, OR 97801

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

Colocation Agency: Oregon Public Defense Commission (“OPDC”)

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

Anticipated Colocation Agency: Oregon Department of Emergency Management

Colocation Contact: [Name TBD]
Oregon Department of Emergency Management
Phone: _____
Email: _____
Address: _____

Terms and Conditions

- 1. Effective Date and Term.** This Agreement is effective as of the last date all required signatures and approvals were obtained (“Effective Date”). The term of this Agreement shall be from the Effective Date through the date the parties fulfill their obligations under the Funding Agreement be it this Agreement or any Phase Funding Agreement, unless it is sooner terminated pursuant to the provisions of this Agreement.
- 2. Agreement Documents.** This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement, less all Exhibits; and attached **Exhibit G** (Federal Terms and Provisions); **Exhibit A** (Project Parcel Identification); **Exhibit F** (Rider to Courthouse Design Criteria); **Exhibit C** (Courthouse Design Criteria); **Exhibit B** (Initial Plans); **Exhibit D** (Form of Disbursement Request); and **Exhibit E** (Form of OJD Space IGA). The foregoing Exhibits are incorporated herein by this reference.
- 3. Definitions: General.** Capitalized terms used in this Agreement shall have the meanings defined for such terms in this Section 3, unless the context clearly requires otherwise.
 - (a)** “Act” means Article XI-Q of the Oregon Constitution; ORS 286A.816 to 286A.826; Or. Laws 2013, ch.705; Or. Laws 2013, ch. 723; Or. Laws 2014, ch. 121; Or. Laws 2015, ch. 685; Or. Laws 2016, ch. 118; Or. Laws 2021, ch. 658; Or. Laws 2021, ch. 669; Or. Laws 2022, ch. 111; Or. Laws 2022, ch. 110; Or. Laws 2023, ch. 596; Or. Laws 2023, ch. 605; Or. Laws 2024, ch. 104; Or. Laws 2024, ch. 114; and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.
 - (b)** “Approved Amount” means the State’s Proportionate Share of any amount set forth in a Disbursement Request that the State Project Monitor determines represent Authorized Costs, pursuant to Section 10 below.
 - (c)** “Authorized Costs” means the County’s actual, reasonable and necessary capital costs directly used for the Phase Work, as set forth more completely in Section 10 below and in any Phase Funding Agreement.
 - (d)** “Authorized State Costs” means, for a specific Phase of the Project, 50% of all Approved Amounts, subject to the not-to-exceed amount of the State Funds.
 - (e)** “Business Days” means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, excluding federal or State of Oregon holidays and business closure days.
 - (f)** “Calendar Days” means contiguous days.
 - (g)** “Chief Justice” means the Chief Justice of the Oregon Supreme Court.
 - (h)** “Code” means the Internal Revenue Code of 1986, as amended.
 - (i)** “Colocation Agency(ies)” means collectively the Oregon Public Defense Commission, an agency of the State of Oregon and Oregon Department of Emergency Management.
 - (j)** “Colocation Contact(s)” means each of the Colocation Agency(ies) employees named in the Project Summary and Contact Information above.
 - (k)** “Colocation Space IGA” means the long-term intergovernmental agreement for the Colocation Premises that the Colocation Agency(ies) and the County anticipate entering into pursuant to a Phase Funding Agreement, if any, during the Phase (Phase II or Phase III) in which construction of the Project is completed.
 - (l)** “Colocation Premises” means that certain portion of the Project, as generally depicted in the Initial Plans and described and shown in the Final Plans, that will be the subject of the Colocation Space IGA(s).
 - (m)** “County Default” means any of the occurrences set forth in Section 23 below.

- (n) “Courthouse Design Criteria” means the criteria adopted by the Oregon Legislative Interim Committee on Court Facilities on December 17, 2007, and attached as **Exhibit C**.
- (o) “Defeasance Costs” means the amount sufficient to defease the then-outstanding State Bonds and any costs necessary for such defeasance, plus any principal and interest payments the State has made or will make before the State Bonds are defeased.
- (p) “Disbursement Request” means a request by the County for credit to the County Contribution and disbursement of State Funds, substantially in the form of **Exhibit D**.
- (q) “Encumbrance” means any and all claims against a property by a party that is not the owner, which may impact the transferability of the property or restrict its free use until the encumbrance is lifted. An encumbrance may include, but is not limited to, mortgages, easements, encroachments, deed restrictions, licenses, and property tax liens.
- (r) “Estimated Project Completion Date” means **June 30, 2028**.
- (s) “Existing Courthouse” means the building located at 216 SE 4th Street, Pendleton, OR 97801, in which the Umatilla County Circuit Court is located as of the Effective Date.
- (t) “Final Plans” means the complete construction documents (final, complete plans and specifications) for the Project anticipated to be developed as part of the Phase Work pursuant to a Phase Funding Agreement, if any, for Phase II. The Final Plans must be consistent with the minimum Courthouse Design Criteria (**Exhibit C**) as modified by the Rider to Courthouse Design Criteria (**Exhibit F**) as well as the approved Initial Plans.
- (u) “Fund” means the Oregon Courthouse Capital Construction and Improvement Fund, commonly referred to as the “OCCCIF”.
- (v) “Funding Agreement” means collectively this Agreement and any Phase Funding Agreements memorializing the parties’ obligations and understandings regarding the Project.
- (w) “General Funds” means any funds appropriated by the Oregon Legislative Assembly excluding State Bonds.
- (x) “Initial Planning Costs” means costs for an architect/engineer’s feasibility study for the Project Parcel site, the evaluation of space needs for the Project, building and land use permits, and the system development charges for the Project Parcel site.
- (y) “Initial Plans” means the Umatilla County Courthouse Needs Study and Concept Design for the Project dated January 2024, attached as **Exhibit B**. The Initial Plans shall be consistent with the minimum Courthouse Design Criteria (**Exhibit C**) as modified by the Rider to Courthouse Design Criteria (**Exhibit F**).
- (z) “Mediator” means the individual chosen by the parties to mediate a dispute between them pursuant to Section 7(e) below.
- (aa) “Misspent Funds” means any Project Financing spent by the County for any purpose other than paying for Authorized Costs, or otherwise in violation of this Agreement.
- (bb) “OJD Premises” means that certain portion of the Project, as generally depicted in the Initial Plans and described and shown in the Final Plans, which will be the subject of the OJD Space IGA.
- (cc) “OJD Space IGA” means the long-term intergovernmental agreement for the OJD Premises that OJD and the County anticipate entering into pursuant to a Phase Funding Agreement, if any, for the Phase (Phase II or Phase III) in which construction of the Project is completed.
- (dd) “Phase” means Phase I, Phase II, or Phase III, as the context so requires.
- (ee) “Phase I” means the planning period for the Project.
- (ff) “Phase II” means the design and construction period for the Project.
- (gg) “Phase III” means the final construction period for the Project.
- (hh) “Phase Funding Agreement” means any agreement the parties may enter into under this Agreement, in order to memorialize their obligations and understandings regarding any specific Phase of the Project.

- (ii) “Phase I Funding Agreement” means the agreement the parties may enter contemporaneously with or after this Agreement for Phase I of the Project. This Agreement details certain obligations and understandings that must be included in the Phase I Funding Agreement and the terms of the Phase I Funding Agreement may not conflict with this Agreement.
- (jj) “Phase II Funding Agreement” means the agreement the parties may enter after this Agreement for Phase II of the Project. This Agreement details certain obligations and understandings that must be included in the Phase II Funding Agreement and the terms of the Phase II Funding Agreement may not conflict with this Agreement.
- (kk) “Presiding Judge” means the Presiding Judge for the Umatilla County Circuit Court. The current Presiding Judge is named in the Project Summary and Contact Information above.
- (ll) “Project” means the Umatilla County Courthouse and the approved related site improvements to be constructed on the Project Parcel, in Umatilla County, Oregon, pursuant to the Funding Agreement, the Act, and as more particularly described in the Project Application and generally depicted in the Initial Plans and described and shown in the Final Plans.
- (mm) “Project Application” means that certain initial application for monies from the Fund to be used for the Project, submitted by the County to the Chief Justice on January 29, 2024, as amended from time to time.
- (nn) “Project Budget” means the budget for the construction of the Project, as developed by the County and approved by the State pursuant to the Funding Agreement.
- (oo) “Project Common Areas” means the areas of the Project, as generally described in the Initial Plans and described and shown in the Final Plans, that will be available for common use by the Project Occupants.
- (pp) “Project Financing” means the total of the State Funds and the County Contribution.
- (qq) “Project Occupants” means the County, OJD and the Colocation Agency(ies) and their respective employees, agents, tenants, contractors, guests and invitees.
- (rr) “Project Parcel” means that certain real property that is a portion of a larger 19.31 acre parcel along NW Pioneer Place, with a current street address of 4700 NW Pioneer Place, Pendleton, OR 97801, as more particularly described and shown on **Exhibit A**, and any improvements constructed thereon pursuant to this Agreement.
- (ss) “Project Plans and Specifications” means design development documents for the Project, as developed by the County and approved by the State pursuant to the Funding Agreement.
- (tt) “Project Schedule” means the schedule for the construction of the Project, as developed by the County and approved by the State pursuant to the Funding Agreement.
- (uu) “Project Work” means all work associated with the Project, for any Phase.
- (vv) “Real Property Termination Interest” means an interest in the Project and the Project Parcel, or in other real property owned by the County and any improvements thereon, that the State may accept from the County in lieu of Defeasance Costs pursuant to Section 27(b) below.
- (ww) “Rider to Courthouse Design Criteria” or “Rider” means **Exhibit F** to this Agreement, which modifies the Courthouse Design Criteria (**Exhibit C**).
- (xx) “State Bonds” means any Oregon Constitution Article XI-Q general obligation bonds issued by the State for the Project; and any bonds or other obligations issued by the State to refinance the State Bonds.
- (yy) “State Default” means any of the occurrences set forth in Section 25(a) below.
- (zz) “State Premises” means the Colocation Premises and the OJD Premises.
- (aaa) “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of OJD who will monitor and review the County’s Project Work and compliance with the Funding Agreement as set forth herein.
- (bbb) “State Space IGAs” means the Colocation Space IGA and the OJD Space IGA.

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

(ddd) “Unspent Funds” means any amounts of the Project Financing that the County fails to spend during a specific Phase.

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

(a) “Benchmarks” means specific deliverables for a specific Phase relating to that Phase Work.

(b) “County Contribution” means the minimum monetary contribution and the credit for the Project Parcel (if applicable) provided or to be provided by the County for Authorized State Costs for the Project as specified or will be specified in any Phase Funding Agreement

(c) “Phase Completion Date” means the date the parties anticipate that a specific Phase will be completed.

(d) “Phase Work” means the Project Work associated with a specific Phase.

(e) “State Funds” means the not-to-exceed monetary contribution provided or to be provided by the State for Authorized State Costs for the Project, as specified or will be specified in any Phase Funding Agreement.

(f) “State’s Proportionate Share” means the portion of the Authorized Costs that are eligible for payment by State Funds, , which is the percentage of the Authorized Costs, determined by dividing the square footage of the State Premises by the total square footage of the Project’s Umatilla County Courthouse. Notwithstanding the prior sentence, the State’s Proportionate Share for the Authorized Costs for the Project Parcel (if applicable) and Initial Planning Costs will be 100%.

5. Background.

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

(b) The Oregon Legislative Assembly, through the Act, has authorized the sale of Article XI-Q bonds to finance costs related to the acquisition of land for and construction of courthouses if:

(i) the Chief Justice determines significant structural defects of a courthouse threaten human health and safety, the construction of a new building is more cost-effective than remodeling or repairing the courthouse, and the replacement of the courthouse creates an opportunity for the colocation of other state offices in the courthouse; and

(ii) DAS approves the courthouse construction project for which the Article XI-Q bonds will be sold.

(c) The Act also established the Fund, to hold monies to be used for courthouse construction projects.

(d) On January 29, 2024, the County submitted the Project Application, which set forth the County’s need for the Project and basic Project information. The parties anticipate the County shall submit an amended and updated Project Application to OJD as part of the Phase Work under the Phase I Funding Agreement.

(e) RESERVED.

(f) The parties anticipate that the Project will be developed, funded, and built in three Phases: Phase I (the Planning Phase); Phase II (the Design and Construction Phase); and Phase III (the Final

Construction Phase).

(g) The State anticipates contributing the State Funds as a portion of the consideration for the long-term interest in the State Premises that the County will grant and convey to OJD and the Colocation Agency(ies) pursuant to the contemplated State Space IGAs.

(h) The parties anticipate that the Project will be constructed on the Project Parcel and will be designed and constructed in accordance with the Initial Plans, the Final Plans, and the Courthouse Design Criteria as modified by the Rider, except as specifically agreed by the parties in writing.

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

	Phase I	Phase II	Phase III
Amount	\$ 100,000.00	\$ 94,245,000.00	\$ TBD
Funding Source	Oregon Laws 2023, chapter 605, § 28; American Rescue Plan Act (ARPA) Coronavirus State Fiscal Recovery Funds (CSFRF)	Article XI-Q Bonds	TBD
Estimated Timeline	Expenditure Deadline: December 31, 2026.	if approved, Spring 2027	TBD

(j) The parties understand that a condition precedent to the State's obligation to contribute any State Funds to the Project and the County's obligation to make a County Contribution to the Project is the execution of a Phase Funding Agreement by the parties and the approval by the Chief Justice and DAS of an updated and amended Project Application.

(k) The parties expect to execute the State Space IGAs pursuant to the Phase Funding Agreement, if any, for the Phase (Phase II or Phase III) in which construction of the Project is completed.

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

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

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

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

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

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

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

(ii) As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the Project Parcel or the development,

construction or use of the Project. The County shall promptly provide OJD with notice of any litigation or claims (environmental or otherwise) filed during the term of this Agreement against the County regarding the Project or the Project Parcel.

(iii) The County's current employees are not eligible for, and the County has not hired, contracted with or made any award to any of its current employees for, any work or materials directly connected to the Project. During the term of this Agreement, the County's then-current employees shall not be eligible for, and the County shall not hire, contract with or make any award to any of its then-current employees for, any work or materials that are directly connected to the Project. Notwithstanding the foregoing, the parties may identify in any Phase Funding Agreement an individual employed by the County who may be eligible for any work or materials directly connected to the Project. The conditions under which the County may claim any work or materials directly connected to the Project by such an employee of the County as an Authorized Cost shall be set forth in the applicable Phase Funding Agreement.

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

(v) The County will not contract with any contractor on the Bureau of Labor & Industries' ("BOLI") current List of Contractors Ineligible to Receive Public Works Contracts.

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

(a) **Generally.** All matters related to the Project will be subject to good-faith collaboration between the parties and, with regard to the Colocation Premises, the Colocation Agency(ies). The parties shall use their best efforts to cooperate with each other and the Colocation Agency(ies) in order to accomplish the timely completion of the Project Work. All matters related to the Project which may affect OJD or the Colocation Agency's(ies') operations or State Premises, including but not limited to the Project Budget, Project Schedule, the Initial Plans, and the Final Plans shall be subject to OJD approval, which shall not be unreasonably withheld.

(b) **Meetings and Documents.** The County shall give OJD and the Colocation Agency(ies) advance notice of, and opportunity to participate in, any and all meetings (including telephone conferences) that will involve material decisions related to the Project. If such material decision is related to the Project Budget or other Project financing matters, County shall give DAS advance notice of, and opportunity to participate in, any and all such meetings (including telephone conferences). For the purposes of this Section 7(b), such notice to OJD shall be delivered to the Trial Court Administrator, such notice to the Colocation Agency(ies) shall be delivered to the Colocation Contact(s), and such notice to DAS shall be delivered to the DAS Contact, in accordance with the notice provisions of Section 34 below.

(c) **Resolutions of Disputes by the Parties.** In the event of a dispute under this Section 7, the parties shall attempt in good faith to resolve the dispute within 15 Business Days after one party gives notice to the other party of such dispute.

(d) **Resolution of Disputes by Chair of County Commissioners and Chief Justice.** If the parties do not timely resolve a dispute pursuant to Section 7(c) above, then the dispute shall be submitted to the Chair of the Umatilla County Board of Commissioners and the Chief Justice, or their respective designee, to be resolved within 30 Calendar Days after submission.

(e) **Resolution by Mediator.**

(i) If a dispute is not timely resolved pursuant to Section 7(d) above, if both parties agree to non-binding mediation, it may be heard by the Mediator, who will be chosen by the parties as

follows: within 10 Business Days after the expiration of the 30-day period set forth in Section 7(d) above, the County shall deliver to the State a list of at least three independent and experienced mediators, and within 10 Business Days after such delivery, the State shall notify the County of its choice of the Mediator from said list. Notwithstanding the foregoing, if the County fails to timely deliver the list to the State, then the State's choice of a mediator shall be deemed the Mediator; and if the County does timely deliver the list to the State, and the State fails to timely respond, then the County's choice of a mediator will be deemed the Mediator.

(ii) Within 10 Calendar Days after the selection of the Mediator pursuant to Section 7(e)(i) above, both parties shall submit position statements regarding the dispute to the Mediator; and within 30 Calendar Days after submission of the position statements, the Mediator shall issue a decision regarding the dispute.

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

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

8. Overview of Application of State Funds. As set forth in Sections 12 and 13 below, the State's monetary contribution for a specific Phase (i.e., the State Funds) will be calculated by taking the costs approved by the State Project Monitor (i.e., the Authorized Costs) and multiplying such amount by the State's Proportionate Share to establish the Approved Amount. Then take 50% of the Approved Amount to determine the amount of Authorized State Costs, such amount not to exceed the amount of the State Funds. Notwithstanding the prior sentence, the parties agree if the State Funds provided under a Phase I Funding Agreement consist solely of ARPA CSFRF funds, the amount of Authorized State Costs shall be 100% of the Approved Amount, up to the amount of available State Funds consisting of ARPA CSFRF funds.

9. Overview of Application of County Contribution. As set forth more fully in Sections 11 – 13 below, for any specific Phase:

(a) The County shall "deposit" the full amount of the County Contribution through the direct transfer of funds to OJD into the Fund. .

(b) OJD shall "credit" to the County the full amount of the County Contribution "deposited" by County under Section 9(a) above.

(c) For every Disbursement Request approved by the State Project Monitor, 50% of the Approved Amount shall be paid for from the County Contribution credit, and 50% of the Approved Amount shall be disbursed to the County from the State Funds, up to the not-to-exceed amount.

(d) Notwithstanding the amount of the County Contribution, the County shall pay for any and all costs of the Phase Work that exceed any amounts applied from the State Funds. Without limiting the prior sentence, the parties agree the County shall have no claim against the State for any amount that exceeds the State Funds.

(e) Notwithstanding the above provisions of this Section 9, if the State Funds provided under a Phase I Funding Agreement consist solely of ARPA CSFRF funding, County shall not be required to deposit the County Contribution with OJD and as noted in Section 8 above, and 100% of the Approved Amount, up to the amount of available State Funds consisting of ARPA CSFRF funds, shall be disbursed to the County.

10. Authorized Costs.

(a) **Generally.** Authorized Costs are the County's actual, reasonable and necessary capital costs directly used for the Phase Work, which are:

- (i) eligible or permitted under the Act and the laws pertaining to tax-exempt bond financings under the Code;
- (ii) permitted by generally accepted accounting principles, consistently applied, as established by the Governmental Accounting Standards Board, as reasonably interpreted by DAS, to be capitalized to an asset that is part of the Project;
- (iii) are capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code; and
- (iv) eligible for financing with obligations bearing interest that is excludable from gross income under the Code.

Only those portions of the Project that are or will be owned or operated by the State, as required by Article XI-Q of the Oregon Constitution, will qualify for payment with State Bonds.

(b) Reimbursement of Costs Incurred Prior to Issuance of the State Bonds.

- (i) The following terms have the following definitions for this Section 10:
 - 1. “Date of Issuance” means the date the State Treasurer, at the request of DAS, issued the State Bonds.
 - 2. “Official Declaration of Intent” means the DAS executed declaration of intent to reimburse an Original Expenditure with proceeds of the State Bonds, if such Declaration is requested by OJD.
 - 3. “Original Expenditure” means an expenditure by the County for Authorized Costs that is originally paid from a source other than proceeds of the State Bonds and before the Date of Issuance.
- (ii) **Authorized Reimbursement.** State Funds using State Bonds cannot be used for costs of the Project that were paid more than 60 days before the earlier of the following two dates:
 - 1. The Date of Issuance of the State Bonds; or
 - 2. The date on which an Official Declaration of Intent was executed by DAS.
- (iii) **Reimbursement Period Restriction.** Disbursement of State Funds using State Bonds for costs of the Project must be made no later than 18 months after the later of:
 - 1. The date the Original Expenditure (defined below) is paid; or
 - 2. The date the Project is placed into service.

Also, in NO event may the reimbursement be made more than three years after the date the Original Expenditure was paid.

(c) State Bonds Expenditure Deadline. Disbursement of State Funds from State Bonds used for Authorized Costs of the Project must be made not later than 36 months after the Date of Issuance.

(d) ARPA CSFRF Funding. The parties acknowledge that a portion of State Funds consist of federal funds from the American Rescue Plan Act’s direction of funds to the Coronavirus State Fiscal Recovery Fund (codified as 42 U.S.C. 802) (“ARPA CSFRF”). County agrees to comply with all applicable provisions of that ARPA CSFRF funding including, without limitation, those terms listed in **Exhibit G**.

(e) **General and ARPA CSFRF Funds Exception.** If the State Funds for a specific Phase come from General Funds or from ARPA CSFRF Funds, the limitations in Section 10(a), (b) and (c) above related to tax-exempt bond financings and financings with obligations bearing interest shall not apply to that portion of Authorized Costs paid for with such General Funds or ARPA CSFRF Funds.

(f) **Specific Inclusions.** Authorized Costs include, without limitation, the following costs incurred by the parties:

- (i) capital costs, including without limitation capital costs for security equipment, related to the Phase Work;
- (ii) costs of the OJD attorneys, technical advisors, and legal professionals including but not limited to attorneys employed by the Oregon Department of Justice and the State's bond counsel, and the State Project Monitor;
- (iii) costs related to the Phase Work by project consultants for the County; and
- (iv) time spent working on the Project by any employees of the County who may be identified in a Phase Funding Agreement, provided that such time is charged to the Project on a time-spent basis, rather than as a percentage of such employee's total work for the County; that such charges do not include the County's indirect costs (but may include fringe benefits of the specified employee(s)); and that such charges may be capitalized to a Project asset as required by Section 10(a) above.

(g) **Specific Exclusions.** Authorized Costs do not include the following costs incurred by the parties:

- (i) internal costs charged to the Project by the County, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties.
- (ii) working capital expenditures. Working capital expenditures include current operating expenses and other expenditures which would not be treated as capital expenditures for federal income tax purposes within the meaning of Section 1.150-1(b) of the Code, but do not include the costs of issuance of the Bonds.
- (iii) any indirect costs.
- (iv) any County financing costs not expressly allowed under Section 10(f) above.
- (v) payment of principal or interest due on interim financing for the Project.
- (vi) any costs related to moving OJD into the Project. For the avoidance of doubt, County is solely responsible for all moving costs.

11. County Contribution: Deposits.

(a) **Generally.** Except as provided in Section 9(e) above, in order to receive credits toward the County Contribution pursuant to Section 12 below, and disbursements from the State Funds pursuant to Section 13 below, the County shall deposit with OJD the full amount of the County Contribution for the specific Phase, pursuant to the applicable Phase Funding Agreement. The County shall deposit the County Contribution as a direct transfer of funds, pursuant to Section 11(b) below. The County may deposit the full amount of the County Contribution in one or more installments and using any combination of deposits allowed under Section 11(b) below.

(b) Direct Transfer of Funds.

- (i)** The County may transfer to OJD for deposit into the Fund any amount of the County Contribution, in one or more installments.
- (ii)** Within two Business Days after OJD's receipt of any amount of the County Contribution transferred by the County into the Fund, OJD shall transfer such amount into the County's account in the Local Government Investment Pool.
- (iii)** Any and all funds that the County transfers to OJD for deposit in the Fund pursuant to this Section 11(b) shall be "original" funds—in other words, the County shall not transfer the same funds to the Fund more than once.

12. County Contribution: Credits.

(a) Generally. In order to receive credits toward the County Contribution, the County shall submit Disbursement Requests pursuant to this Section 12. The amounts that the County requests pursuant to Disbursements Requests shall be either:

- (i)** to reimburse the County for payments that the County has previously made for Authorized State Costs of the Project; or
- (ii)** used by the County to pay contractors, subcontractors, and suppliers no later than five Business Days after OJD makes the disbursement, as set forth in Section 12(e) below for Authorized State Costs of the Project that the County has incurred.

(b) Credits Not to Exceed Deposits. Except as provided in Section 9(e) above, the total credits to the County for the County Contribution may not at any time exceed the total amount that the County has deposited with OJD into the Fund pursuant to Section 11 above.

(c) Form and Frequency of Disbursement Requests. The County shall submit Disbursement Requests to the State Project Monitor, in the form shown in **Exhibit D**. Disbursement Requests shall include clear reference to the Project and itemize and explain all expenses in sufficient detail to allow the State Project Monitor to determine whether such expenses represent Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every 14 Calendar Days, and no less frequently than every 90 Calendar Days.

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

- (i)** the Disbursement Request is in the form shown in **Exhibit D** and otherwise complies with Sections 12(a) – (c) above; and
- (ii)** the expenses set forth in the Disbursement Request represent Authorized Costs.

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

- (i)** 50% of the Approved Amount shall be credited toward the County Contribution; and
- (ii)** 50% of the Approved Amount shall be disbursed to the County from the State Funds, pursuant to Section 13 below, and such amount shall be credited toward the State Funds.

(f) Tracking Credits and Disbursements. OJD shall keep current and accurate calculations of the credits to the County Contribution, County Contribution deposits into the Fund, and the disbursements from the State Funds, pursuant to Section 12(e) above.

(g) **Disapproved Amounts.** If the State Project Monitor determines that any cost shown on a Disbursement Request is not an Authorized Cost, including whether it represented Misspent Funds, the State Project Monitor shall promptly notify the County of such determination, and none of the disapproved amount shall be credited toward the County Contribution or disbursed to the County from the State Funds. In the event the County objects to exclusion of any cost shown on a Disbursement Request, the parties will cooperate to resolve the objection as provided in Section 7 above.

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

(i) **Retainage: Phase I.** There is no retainage for this Phase I.

(j) **Retainage: Phases II and III.** OJD shall retain 5% of the Approved Amounts from the Phase II State Funds and the Phase III State Funds. This retainage may be released to the County as follows:

(i) **Interim releases.** If the County represents in writing that all work on the Project paid as an Approved Amount in the respective Phase II or Phase III Funding Agreement has been satisfactorily completed and that no contractors, subcontractors, or suppliers on the Project have any valid, unpaid claims or liens against the County, the State or the Project for such Phase Work, and the County provides the State with reasonable documentation substantiating the foregoing, then the State may release 4% retainage for the applicable Phase Work. Regardless of whether retainage is released as provided in the prior sentence, at least 1% of the State Funds associated with the Phase II Work and the Phase III Work, as the case may be, shall be held in retainage until the final release conditions set forth in Section 12(j)(ii) below are met.

(ii) **Final release.** The retainage not released pursuant to Section 12(j)(i) above shall not be disbursed to the County until the County has met the Benchmarks set forth in the applicable Phase Funding Agreement, has contributed the full amount of the applicable County Contribution, any mechanics' and materialmen's liens filed against the Project or the Project Parcel have been discharged of record or bonded off, and the County has provided OJD a copy of the Project's as-built plans.

13. Disbursement of State Funds.

(a) **Generally.** The disbursement of State Funds to the County pursuant to Section 12(e) above is subject to the provisions of this Section 13.

(b) **Maximum State Contribution.** Unless the amount of the State Funds under any Phase Funding Agreement is increased after the effective date of that Phase Funding Agreement, the State's maximum monetary obligation for that Phase of the Project shall not exceed the State Funds. If the costs of a specific Phase of the Project exceed the Project Financing for that Phase, the County shall be responsible for all additional costs, and the County shall have no claim against the State for any amount that exceeds the amount of the State Funds for that Phase.

(c) **Conditions Precedent.** OJD's obligation to disburse the State Funds under Section 12(e) above to the County (calculated at 50% for any Approved Amount, or 100% of the Approved Amount if State Funds consist solely of ARPA CSFRF Funds, is subject to satisfaction of each of the following conditions precedent, with respect to each disbursement:

(i) OJD has sufficient legislative appropriations, expenditure limitations, allotments, and other sufficient authorizations to allow OJD, in the exercise of its reasonable administrative

discretion, to make the disbursement.

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

(iii) The County's representations and warranties set forth in Section 6 above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

14. Payment of State Professional Expenses.

(a) The OJD's attorneys and legal professionals, technical advisors, and the State Project Monitor shall charge their time to the Project on a time-spent basis, rather than as a percentage of the individual's total work for OJD, and such charges do not include OJD's overhead (but may include fringe benefits). OJD shall deliver invoices to the County for the State professional expenses, and the County shall pay the amount due to OJD within 30 Calendar Days after delivery thereof.

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

(i) 50% thereof shall be paid for from the County Contribution; and

(ii) 50% thereof shall be disbursed to the County from the State Funds, pursuant to Section 13 above.

15. Project Work.

(a) The County shall undertake the Project Work in compliance with all applicable federal, state, and local laws and ordinances and for the purposes described in the Act and this Agreement, including but not limited to the following:

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

(ii) all statutes and administrative rules relating to Public Works, if the Project is a Public Works as defined in ORS 279C.800(6). This includes but is not limited to the prevailing wage rate requirements that may apply to the Project set forth in ORS 279C.800 through 279C.870 and the administrative rules promulgated thereunder ("PWR"), or, if applicable, 40 U.S.C. 3141 et seq. ("Davis-Bacon Act"). If applicable, County shall:

1. be the public agency responsible for compliance with PWR, require its contractors and subcontractors to pay the applicable PWR or Davis-Bacon Act rates, as applicable, and to comply with all other BOLI requirements pursuant to the PWR, including on all contracts and subcontracts and in filing separate public works bonds with the Construction Contractors Board; and
2. pay to BOLI, within the required timeframe and in the appropriate amount, the project fee required by OAR 839-025-0200 to 839-025-0230, including any additional fee that may be owed upon completion of the Project.
3. pay all subject workers the higher of applicable state or federal prevailing wage rate if the Project is or becomes subject to both PWR and the Davis-Bacon Act. Generally, the applicable rates are those in effect on the Effective Date of this Agreement. PWR and Davis-Bacon Act prevailing wage rates may be accessed

via: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx and
<http://www.wdol.gov>.

- (b)** The County shall contract with competent professionals for all Project Work, and shall require all such professionals to possess and maintain all licenses, registrations, insurance, and bonds required by Oregon law.
- (c)** The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the Project Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, 279C, and other applicable law and local contracting procedures. The County shall document all solicitations, selection and award processes used for contracting the Project Work.
- (d)** The County shall use its best good faith efforts to conduct the respective procurement processes in compliance with all applicable public contracting requirements.
- (e)** The County shall be responsible for awarding and managing all contracts and property acquisitions necessary to complete the Project Work in accordance with the Project Application, the Initial Plans, and the Final Plans.
- (f)** All subagreements that the County may enter into which are funded wholly or in part with Project Financing shall be subcontractual in nature, with the other party engaged in the role of a contractor. The County shall actively administer all subcontracts with contractors to ensure that the terms of the subcontract are consistent with the terms of this Agreement to ensure compliance with the terms of the subcontract, and to ensure the contractor's support for the intended purposes of this Agreement and the Act.
- (g)** Neither execution of this Agreement nor approval of the Project Plans and Specifications by OJD or DAS shall be construed as a representation or warranty by the State that the Project Plans and Specifications are in compliance with any building or other code or other applicable governmental requirements.
- (h)** The State and the Colocation Agency(ies) and their employees, agents and representatives (including, without limitation, the State Project Monitor, the Presiding Judge, the Trial Court Administrator and the Colocation Contacts) shall have access to the Project, the Project Parcel and Project documentation and records at all times throughout the term of this Agreement, and as otherwise required under this Agreement, to inspect the Project Work, operation and accounting records related to the Project.
- (i)** The County shall promptly provide notice to OJD of any credible evidence that a principal, employee, agent, contractor, subcontractor, supplier or other person has submitted a false claim under the False Claims Act, ORS 180.750 to 180.785, or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving the Project Financing.
- (j)** During the term of this Agreement, the County shall, promptly upon request, deliver to the State Project Monitor any requested information relating to the Project Work, in sufficient detail to enable the State Project Monitor to determine whether the Project Work is proceeding in a timely fashion.
- (k)** The County shall pay when due all claims for work performed on the Project Work by or through County for services rendered or materials furnished to the Project, and shall keep the Project and the Project Parcel free from any liens arising by or through the County. If any such lien shall at any time be filed against the Project or the Project Parcel, or any portion thereof, the County shall cause the same to be discharged of record or bonded off, as permitted by statute, within 30 Calendar Days after the County's receipt of notice of same.

(l) The Project will not be enrolled in the State Energy Efficiency Design (“SEED”) program administered by the Oregon Department of Energy.

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

17. Terms and Conditions of State Space IGAs.

(a) **Generally.** In the event the parties enter into the Phase Funding Agreement for the Phase of the Project in which construction will be completed, then during that Phase the parties shall finalize and enter into an OJD Space IGA (substantially in the form attached to this Agreement in **Exhibit E – Form of OJD Space IGA**), and the County shall enter into a Colocation Space IGA with each of the Colocation Agencies, in accordance with the provisions of this section and substantially on the same terms as the OJD Space IGA with the exception of the right to expansion space and rent-free term extensions. The OJD Space IGA and the Colocation Space IGA(s) shall be for a term which is the greater of 25 years from the date of OJD begins court operations in the Project, or the final maturity date for the State Bonds (“Initial Term”).

(b) **Colocation Space IGAs.**

(i) As a condition of the State Bonds, OJD has, during the Initial Term of the Colocation Space IGA(s), the appurtenant, exclusive right to control and use all portions of the Umatilla County Courthouse constructed with State Bonds, including the Colocation Premises. Notwithstanding the prior sentence, OJD grants County the right to grant Colocation Agency(ies), the right to use its Colocation Premises without interruption or disturbance from OJD, including the right to have OJD access the Colocation Premises only with the respective Agency’s prior consent subject to the requirements of this Section 17. OJD may, in its reasonable discretion, revoke the rights granted under this Section, subject to the terms of this Section 17.

(ii) During the Initial Term of the State Space IGAs, County shall not grant Colocation Agency(ies) any rights in or to any portions of the Project that were constructed with State Bonds other than as allowed under Section 17.b(i) above or in connection with the non-exclusive right to use Project Common Areas.

(iii) Any proposed changes, including, without limitation, changes in use or physical layout, in the Colocation Premises must be approved by OJD.

(iv) County shall inform OJD of any plans to materially adjust or modify any portion of the Colocation Premises at least 30 days prior to filing a permit application for the adjustment or modification work. County, OJD, and the applicable Colocation Agency(ies) must consent in writing to any alterations to the Colocation Premises that will have an adverse impact to OJD or Colocation Agency operations in the Umatilla County Courthouse.

(v) Each Colocation Space IGA shall contain the following additional terms:

1. Oregon Judicial Department (OJD) is a third-party beneficiary to the Colocation Space IGA and is entitled to enforce its terms.
2. The Colocation Space IGA shall not be terminated, cancelled, amended, modified, supplemented or changed, or any provision, default, breach or performance waived, or any assignment or novation made in a manner without written consent of OJD.

3. Parties acknowledge the Umatilla County Courthouse was constructed in-part with tax-exempt, Article XI-Q bonds (“Bond Funding”). Agency and County, therefore, will covenant and agree that they shall not take any actions that are contrary to the requirements related to the issuance of the Bond Funding or the terms of the OJD’s agreement(s) with DAS for such Bond Funding (copy(ies) of such agreement(s) to be provided upon request).

4. Colocation Agency’s right to control and use their Colocation Premises is subordinate to OJD’s rights of control of all portions of the Umatilla County Courthouse that were constructed with Bond Funding. Notwithstanding the prior sentence, Colocation Agency shall have the right to use its Colocation Premises without interruption or disturbance from OJD, including the right to have OJD access the Colocation Premises only with Agency’s prior consent. The rights granted to a Colocation Agency pursuant to this section are contingent upon Colocation Agency not defaulting on the terms of its Colocation Space IGA, including the covenant under Section 3 above.

5. OJD may, in its reasonable discretion, revoke the rights granted under the second sentence of Section 4 above, subject to the following:

A. OJD will not revoke such rights of use solely for the purpose of OJD acquiring any portion of the Colocation Premises for its own use.

B. Any such revocation must be approved by the Oregon State Court Administrator.

C. If OJD revokes such rights, OJD will provide County and Colocation Agency at least 60 days’ prior notice of any such revocation unless such revocation is due to a violation of the covenant under Section 3 above.

D. If revocation is due to a violation of the covenant under Section 3 above, OJD will provide Agency and County 60 days’ prior notice of any such revocation, unless a shorter period is required under the terms of the issuance of the State Bonds or the terms of the agreement(s) between OJD and DAS regarding the State Bonds.

E. Colocation Agency may within 30 days of receiving notice of revocation under Section 5.C. above, submit a written request to the Chief Justice of the Oregon Supreme Court and the Oregon State Court Administrator for reconsideration of the revocation.

F. If the revocation under Section 5.C. above entails Colocation Agency’s relocation or vacation from the Colocation Premises or a portion thereof, Colocation Agency shall have 45-days from the end of the 60 day notice period to affect such a relocation or vacation.

(vi) County shall provide OJD with a copy of each Colocation Space IGA for review prior to execution of such Colocation Space IGA.

(c) OJD may require full execution of the OJD Space IGA and Colocation Space IGAs as a pre-condition to the release of the retainage held by OJD. Notwithstanding the prior sentence, OJD will not unreasonably withhold, condition, or delay its approval and execution of the OJD Space IGA.

18. Misspent Funds and Unspent Funds.

(a) **Notice.** If the State Project Monitor determines that there are Misspent Funds or Unspent Funds by the County, including pursuant to Section 12(g) or 12(h) above, the State Project Monitor shall

provide notice to the County describing the amount and nature of such Misspent Funds or Unspent Funds.

(b) Cure. Within 30 Calendar Days after receipt of the notice described in Section 18(a) above, or such longer period as the State Project Monitor may (but is not obligated to) approve at the County's request:

- (i)** with regard to Misspent Funds: the County shall pay OJD the amount of the Misspent Funds, and OJD shall reverse the credits to the County Contribution and the State Funds for such amounts.
- (ii)** with regard to Unspent Funds, the County shall provide evidence satisfactory to the State Project Monitor that the County has spent the Unspent Funds for Authorized Costs.

A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 18(b) shall constitute a County Default.

(c) Resolution. If the County disputes a determination made by the State Project Monitor under this Section 18, the County may utilize the dispute resolution procedures in Section 7 above to assist in resolving the dispute. Notwithstanding Section 18(b) above, during the period in which the State and the County are pursuing resolution of the dispute pursuant to Section 7 above, failure by the County to cure the Misspent Funds or the Unspent Funds shall not constitute a County Default.

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

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

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

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

- (i)** The County shall not take any action or omit any action that would cause the State Bonds to become "arbitrage bonds" under Section 148 of the Code or "private activity bonds" under Section 141 of the Code.
- (ii)** The County shall, at the request of DAS, cooperate with DAS to provide information DAS may need to compute any arbitrage rebate payments which may be due from DAS in connection with the State Bonds.

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

22. Insurance. Upon the commencement of Project Work upon the Project Parcel, and through the remainder of the term of this Agreement, the County shall maintain in full force and effect throughout the entire term of this Agreement, property insurance for the perils of all risks of direct physical loss or

damage including earthquake and flood covering the Project and the Project Parcel in an amount at least equal to the amount of the Project Financing. Insurance proceeds from an insured loss affecting the Project or the Project Parcel shall be exclusively used by the County to rebuild, repair and restore the Project and the Project Parcel in a manner consistent with the terms of this Agreement. The County shall consult with OJD regarding the plans for rebuilding, repairing and restoring the Project and the Project Parcel and such plans shall be subject to OJD's approval, which shall not be unreasonably withheld. OJD shall be provided notice of any cancellation or material modification to the policy at least 30 Calendar Days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to OJD on or before the effective date, and thereafter at least 30 Calendar Days prior to the effective date of any renewal or replacement policy. The policy shall be issued by companies licensed or authorized to provide insurance in the State of Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. Notwithstanding the foregoing, the County may satisfy its commercial general liability insurance obligations through its existing self-insurance program, provided that such self-insurance program is at the same level, and under the same conditions, as if the above commercial general liability insurance had been procured. The County's self-insured deductible for such commercial general liability insurance shall not exceed \$100,000 for each loss. Self-insurance is not allowed for other insurance coverages.

23. County Default. Any of the following shall constitute a County Default of the Funding Agreement:

- (a) The County fails to meet the Benchmarks by the Phase Completion Date.
- (b) The County fails to perform, observe or discharge any of its other duties or obligations under the Funding Agreement (except for curing Misspent Funds or Unspent Funds as set forth in Section 23(c) below) within 30 Calendar Days after notice from the State specifying the nature of the failure with reasonable particularity; or, if such failure cannot reasonably be completely remedied within such 30-day period, then within such longer times as the failure can reasonably be remedied, in the State's reasonable discretion and as set forth in the notice to the County.
- (c) The County fails to cure any Misspent Funds or Unspent Funds as required by Section 18(b) above.
- (d) Any representation or statement made by the County in the Funding Agreement or in any document or report relied upon by the State or the State Project Monitor, as the case may be, to approve a Disbursement Request, monitor the Project as provided herein or disburse Project Financing, is untrue in any material respect when made.
- (e) The County declares itself or is adjudicated insolvent or bankrupt, applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all or any substantial part of its assets, or a proceeding or case is commenced, without the application or consent of the County, in any court of competent jurisdiction, seeking: (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of the County; or (2) the appointment of a trustee, receiver, custodian, liquidator or the like for the County or of all or any substantial part of its assets.

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

- (a) ceasing disbursement of State Funds;

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

25. State Default and County's Remedies for State Default.

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

- (i) The State fails to pay the County any undisputed amount as required by any applicable Phase Funding Agreement, and OJD fails to cure such failure within 30 Calendar Days after the County's notice or such longer period as the County may specify in such notice; or
- (ii) The State commits any material breach or default of any covenant, warranty or obligation under the Funding Agreement other than one described in Section 25(a)(i) above, and such breach or default is not cured within 30 Calendar Days after the County's notice specifying the nature of the material breach or default with reasonable particularity; or, if such material breach or default cannot reasonably be completely remedied within such 30-day period, then within such longer times as the material breach or default can reasonably be remedied, in the County's reasonable discretion and as set forth in the notice to the State.

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

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

26. Termination by State or County.

- (a) In the event OJD fails to receive sufficient appropriations, expenditure limitations, allotments, and other authorizations to permit OJD in the reasonable exercise of its administrative discretion to continue making payments under the Funding Agreement, OJD may immediately terminate the Funding Agreement without penalty or liability, effective upon the delivery of notice to the County.
- (b) In the event the County fails to receive sufficient appropriations, expenditure limitations and other authorizations to permit the County in the reasonable exercise of its administrative discretion to continue making payments under the Funding Agreement, the County may immediately terminate this Agreement without penalty or liability, effective upon the delivery of notice to the State, except that in such event the Defeasance Costs shall be due pursuant to Section 27 below.

(c) In the event the Funding Agreement is terminated for any reason other than the State's Default, County shall repay to the State the Defeasance Costs within 60 Calendar Days after the termination of the Funding Agreement.

27. Defeasance Costs.

(a) Generally.

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

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

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

(b) **Real Property Termination Interest.** If the County, in its reasonable discretion, is not able to directly pay the State the Defeasance Costs or any portion thereof as maybe required herein, the County may convey to the State a Real Property Termination Interest in accordance with this Section 27(b). The proposed Real Property Termination Interest that the County proposes to convey shall be equal to or greater than the unpaid Defeasance Costs, and must be acceptable to the State, in the State's sole discretion. If acceptable to the State, the County shall convey the Real Property Termination Interest to the State pursuant to a Statutory Warranty Deed under ORS 93.850. Such Real Property Termination Interest shall be conveyed free of any and all Encumbrances. County shall be responsible for all costs related to conveying the Real Property Termination Interest to the State including, without limitation, all closing costs and title insurance. Further, the County shall provide to the State any documentation requested by the State to substantiate the value of the Real Property Termination Interest or to otherwise affirm the condition of the Real Property Termination Interest.

28. Parties' Contribution for Third-Party Claims; Indemnification.

(a) **Generally.** If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a "**Third-Party Claim**") against a party (the "**Notified Party**") with respect to which the other party (the "**Other Party**") may have liability, the Notified Party shall promptly notify the Other Party of the Third-Party Claim and deliver to the Other Party, along with the notice, a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim that have been received by the Notified Party. Each party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section 28(a), and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third-Party Claim with counsel of its own choosing, are conditions precedent to the Other Party's contribution obligation under this Section 28(a) with respect to the Third-Party Claim.

(b) **State Contribution.** With respect to a Third-Party Claim for which State is jointly liable with County (or would be if joined in the Third-Party Claim), State shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of State on the one hand and of County on the other hand in connection with the events that resulted in such expenses,

judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of County on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

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

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

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

30. Parties; No Third-Party Beneficiaries. DAS, OJD and the County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement. Colocation Agencies are not parties or third-party beneficiaries to this Agreement. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Agreement.

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

32. Compliance with Applicable Law.

(a) The County shall comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to the Funding Agreement and the Project. Without

limiting the generality of the foregoing, the County expressly agrees to comply with the following, and all regulations and administrative rules established pursuant thereto:

- (i) Workers' Compensation Laws (ORS Chapter 656);
 - (ii) Wages, Hours and Records Laws (ORS Chapter 652);
 - (iii) Conditions of Employment Laws (ORS Chapter 653);
 - (iv) Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657);
 - (v) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color or national origin;
 - (vi) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
 - (vii) the Americans with Disabilities Act of 1990, as amended;
 - (viii) the Health Insurance Portability and Accountability Act of 1996;
 - (ix) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
 - (x) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
 - (xi) discrimination against disabled persons (ORS 659A.142);
 - (xii) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
 - (xiii) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (xiv) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-2), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - (xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
 - (xvii) the requirements of any other nondiscrimination statute(s) which may apply; and
 - (xviii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this Section 32(a).
- (b) The County shall ensure that any architectural or engineering services contract, construction or construction manager/general contractor (CM/GC) contract and all of the first-tier subcontracts for Project Work or materials resulting from the Funding Agreement shall include the terms of this Section 32 within 30 Calendar Days of the Effective Date of this Agreement. The County shall make reasonable efforts to ensure that all contractors performing Project Work or providing materials under contracts resulting from the Funding Agreement shall comply with the terms of this Section 32.

33. Records Maintenance; Review and Audit.

- (a) The County shall maintain all financial records relating to the Funding Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall

maintain any other records pertinent to the Funding Agreement in such a manner as to clearly document the County's performance. The County acknowledges and agrees that DAS, OJD, the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County that are pertinent to the Funding Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts, for the period of time set forth in Section 33(c) below.

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

(c) The County shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings until the later of three years after maturity of the State Bonds, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

34. Notice.

(a) **Generally.** Any notices, demands, deliveries or other communications required under the Funding Agreement shall be made in writing and delivered by one of the methods set forth in Section 34(b) below to the address of the parties or the State Project Monitor, as set forth in the Project Summary and Contact Information above, unless a party or the State Project Monitor modifies its address by notice to the other parties and the State Project Monitor, as applicable. The phone numbers listed in the Project Summary and Contact Information are for convenience only, and any information delivered by phone to a party or the State Project Monitor shall not constitute notice under this Agreement.

(b) Delivery.

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

If the deadline under this Agreement for delivery of a notice is not a Business Day, such deadline shall be deemed extended to the next Business Day.

35. Severability; Waiver.

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

enforced as if the applicable Funding Agreement did not contain the particular term or provisions held to be invalid.

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

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

37. Attachments. All attachments, addenda, schedules and exhibits which are referred to in this Agreement or in any Phase Funding Agreement are incorporated into the Funding Agreement.

38. Ambiguities. Each party has participated fully in the review and revision of the Funding Agreement and neither party shall be considered the “drafter” for the purposes of any rule of construction that might cause any provision to be construed against the drafter of the Funding Agreement.

39. Time is of the Essence. Time is of the essence in the performance of the terms of the Funding Agreement.

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

- (a)** 15 – Project Work;
- (b)** 20 – Tax Covenants;
- (c)** 23 – County Default;
- (d)** 24 – State’s Remedies for County Default;
- (e)** 25 – State Default and County’s Remedies for State Default;
- (f)** 27 – Defeasance Costs
- (g)** 28 – Parties’ Contribution for Third-Party Claims; Indemnification;
- (h)** 30 – Parties; No Third-Party Beneficiaries;
- (i)** 31 – Subcontracts, Successors and Assignments;
- (j)** 33 – Records Maintenance; Review and Audit;
- (k)** 35 – Severability; Waiver;
- (l)** 36 – Governing Law; Venue; Consent to Jurisdiction; and
- (m)** Any other provision of this Agreement that by its terms is intended to survive.

41. Entire Agreement; Amendments.

(a) Entire Agreement. This Agreement constitutes the entire agreement between the parties on the subject matter hereof, except that this Agreement is intended to be interpreted consistent with any

separate Phase Funding Agreements entered into between the parties regarding the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

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

[remainder of page intentionally left blank]

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

The State of Oregon,

acting by and through its Department of Administrative Services (DAS):

Print Name: _____

Title: _____

Signature: _____

The State of Oregon,

acting by and through its Judicial Department (OJD):

Print Name: _____

Title: _____

Signature: _____

Approved as to Legal Sufficiency for the State:

By: Wendy Johnson

Sr. Assistant Attorney General

Email approval date ____ on file with DAS and OJD

Umatilla County (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

DOUG OLSEN, COUNTY ATTORNEY
FOR UMATILLA COUNTY, OREGON

By: _____

Doug Olsen, County Counsel

Exhibit A
Project Parcel Identification

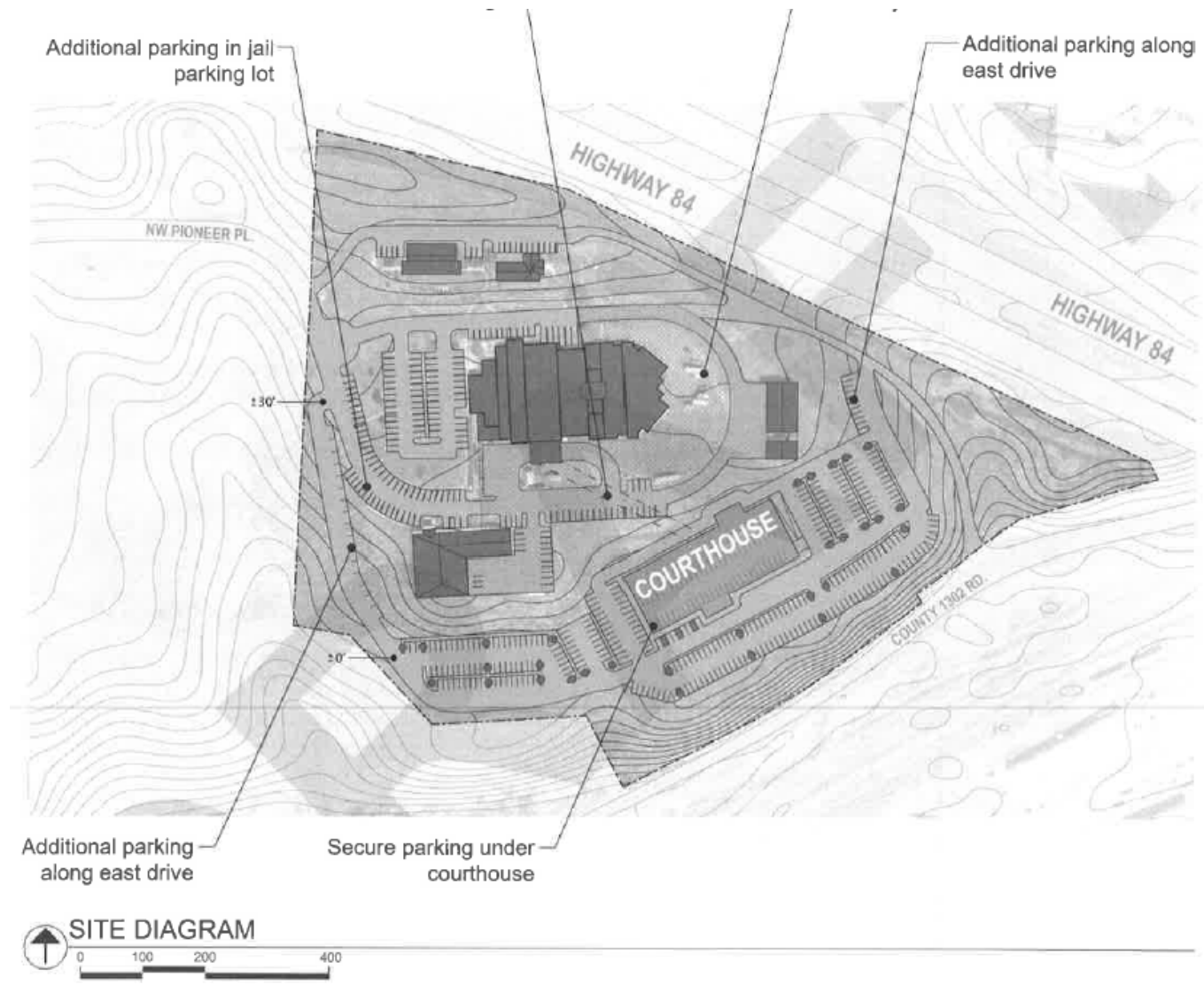
The Project Parcel will consist of the real property which is approximately 1/3 of the larger 19.31 acre parcel described below and all improvements thereon located in the City of Pendleton, County of Umatilla, State of Oregon. The exact acreage of the Project Parcel is to be determined by the parties and will be set forth when and if the parties enter into the Phase II Funding Agreement. The Project Parcel is depicted below showing it as part of the larger 19.31 acre parcel along NW Pioneer Place, with a current street address of 4700 NW Pioneer Place, Pendleton, OR 97801, tax lot # 2N3208-B-200, which larger parcel is legally described as follows:

Legal Description of the larger parcel of which Project Parcel is a portion:

A parcel of land located in the Southwest Quarter of Section 5 and the Northwest Quarter of Section 8, Township 2 North, Range 32 East, W.M., Umatilla County, Oregon, described as follows:

Commencing at the one-quarter Section corner common to Section 5 and 8; thence South 30°09'44" West a distance of 450.96 feet Engineer's centerline Station 1261+00 on the Southerly right-of-way line of Interstate 84, the true point of beginning for this description; thence South 29° 58' 54" East along the Southerly right-of-way line of Interstate Highway No. 84 a distance of 31.21 feet to a point on the Northerly line of that parcel of land described in Umatilla County Circuit Court Law File L-9454 (Parcel No. 3); thence South 73°33'51" West along the Northerly line of said Parcel No. 3 a distance of 236.02 feet; thence South 54°20'31" West along the Northerly line of said Parcel No. 3 a distance of 203.48 feet; thence South 38°13'55" East along the Westerly line of said Parcel No. 3 a distance of 14.53 feet to a point on the Northerly right-of-way line of County Road No. 1302, as it existed on September 4, 1996; thence South 51°36'28" West along the Northerly right-of-way line of County Road Number 1302 a distance of 118.43 feet to the point of curvature of a circular curve to the right; thence along the arc of a 1470.00 foot radius curve to the right a distance of 279.56 feet, (long chord bears South 57°03'21" West a distance of 279.14 feet), to the point of tangency; thence South 62°30'14" West, continuing along the Northerly right-of-way line of County Road Number 1302 a distance of 173.02 feet to the Southeast corner of that tract of land conveyed to Carol Lee Thayer in Deed Reserving Life Estate, recorded in Reel 220, Page 354, Deed Records; thence North 26°32'08" West along the East line of said Thayer Tract a distance of 132.12 feet to the Northeast corner of said Thayer Tract; thence South 86°17'52" West along the North line of said Thayer Tract a distance of 251.14 feet; thence North 43°01'47" West a distance of 197.14 feet; thence North 79°15'34" West a distance of 94.17 feet; thence North 02°27'34" East a distance of 802.27 feet to Engineer's centerline Station 1246+50 on the Southerly right-of-way line of Interstate Highway No. 84; thence South 76°40'38" East along the Southerly right-of-way line of Interstate 84 a distance of 418.70 feet to a Engineer's centerline Station 1250+60 on the Southerly right-of-way line; thence South 65°01'36" East along the Southerly right-of-way line of Interstate 84 a distance of 390.02 feet to Engineer's centerline Station 1254+50 on the Southerly right-of-way line; thence South 64°58'25" East along the Southerly right-of-way line of Interstate 84 a distance of 649.96 feet to the true point of beginning.

Site Diagram and Plan:



SITE
SITE PLAN:



Exhibit B

Initial Plans

Initial Plans consists of the Umatilla County Courthouse Needs Study and Concept Design for the Project dated January 2024, attached.

Exhibit C
Courthouse Design Criteria

I. General Facilities Design Assessment Criteria

1. Building Configuration

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

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

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

3. General Office and Workstation

- General Office Guideline (in square feet)

Per staff member; includes work space, files, 250 - 280
office equipment, conference; training and
reception areas.

- Workstation Sizes (in square feet)

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

4. Provisions for Persons with Disabilities

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

5. Security and Public Safety

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

6. Seismic Safety

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

7. Heating, Ventilating and Air Conditioning (“HVAC”)

- HVAC system meets all code requirements.
- Systems are able to maintain temperatures between 66 and 78 degrees Fahrenheit.
- Each courtroom has an individual thermostatic control for its heating and

cooling provided by the buildings central HVAC control system.

- Adequate fresh air and exhaust ventilation in areas subject to dense occupation (i.e., courtrooms).
- HVAC system sound transmissions have been minimized.
- HVAC system ductwork incorporates sound deadening technology between rooms that require private conversations (jury rooms, judges' chambers, and attorney client conference rooms).

8. Plumbing and Electrical

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

9. Information Systems and Communications

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

10. Lighting

- Sufficient lighting in all building areas to conduct business.

11. Acoustics

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

12. Parking; Vehicular and Pedestrian Access

- Provides secured parking for judges and supervisory court staff.
- Passenger loading and short term parking areas are provided near to but at a safe distance from courthouse entrances.

- Loading zone area provided for delivery vehicles that do not need to use the loading dock, if allowed by City.
- All deliveries to courts required to go through x-ray screening.
- Access to the courthouse meets ADA requirements.
- Building provides a single primary public entrance to the courts area.
- Lobby is large enough to accommodate all visitors during peak periods.
- Metal detectors and x-ray equipment are placed in the circulation path from the entrance.

13. Building Support Services

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

II. Courtroom Assessment Criteria

1. General criteria

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

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

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

Type	Litigation area			Seating	spectator area			Total Square Feet
	NSF	Width	Length		NSF	Width	Length	

Non-jury civil/juvenile/ family	840	30	28	20-40	260- 360	30	varies	1,100- 1,200
12-person jury	1,152	36	32	30-60	348- 648	36	varies	1,500- 1,800
High volume/multi- litigant	1,360	40	34	100- 150	840- 1040	40	varies	2,200- 2,400

3. Courtroom areas

- Judicial officers bench:
 - Has an unobstructed view of the entire courtroom.
 - Is elevated so that the occupant's seated eye level is higher than anyone standing.
 - Accommodates computer (including sufficient space for multiple monitors), telephone, data transmission equipment, and writing desk.
- Courtroom clerk's station:
 - Is adjacent to the bench and accessible to counsel.
 - Has adequate space for placement of in-process forms, exhibits and other essential materials.
 - Is cable-ready for computer terminals, has telephone, electrical outlets and audio controls.
- Witness stand:
 - Witness has clear facial view of the judge, jury, parties, court reporter and counsel
 - The chair is height adjustable and easily removable to accommodate wheelchair access.
 - The stand is on a level between the floor of the litigation area and the judge's bench.
 - The stand is large enough to accommodate an interpreter.
- Jury box:
 - Each juror has clear sight lines to the witness, counsel, judge and evidence display areas.
 - Has physical separation from the spectator and counsel areas.
 - Is large enough to comfortably seat the full number of jurors needed for trial.
- Counsel area:
 - Has at least two tables positioned so attorneys can be seen and heard by other attorneys, the judge, the witness and the jury.
 - Tables placed far enough apart to allow private conversations between attorneys and clients.
 - Tables provide electrical outlets and connections to accommodate computers and internet.
 - Tables and table areas are large enough to accommodate interpreters.

- Spectator area:
 - Provides seating for witnesses, family and the public.
 - The area is separated from the litigation area in a manner that controls movement.
 - The area is sized to accommodate the jury panel during jury selection.
 - Space is reserved for wheelchairs.
- Other Areas and Features:
 - Court reporter area is situated so that anything said by participants can be heard; reporter has access to electrical outlets.
 - Bailiff's station is situated to enable the occupant to see all persons in the courtroom.
 - Exhibit display and equipment is located to be clearly visible for all court participants.
 - Silent duress alarms are located in the judges' bench, courtroom clerk and bailiff areas.
 - Assisted listening devices are available.

III. Judicial Offices and Support Space

1. Judicial offices

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

2. Support Space

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

IV. Jury Assembly and Deliberation

1. Jury Assembly

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

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

2. Jury deliberation room

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

V. Court Administration

1. General Considerations

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

2. Court Administration Area

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

- Records storage
 - Sufficient space is provided for records storage and retrieval.
- Exhibit/evidence storage
 - Secure areas are provided for storage of exhibits.
 - Separate secure area is provided for storage of evidence.

VI. Court Support

1. Children waiting area.

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

2. Court facilitator services area

- Court program areas (i.e. for prose litigants) are located in areas convenient to the public.
- Areas have space adequate to fulfill functions.

3. Attorney client conference rooms

- One conference room per two courtrooms is provided for attorney use.
- The rooms accommodate a table and four chairs.

4. Waiting areas for adverse parties

- Areas are divided so that adverse parties are separate from one another.

VII. Alternative Dispute Resolution

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

1. Mediation Services

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

- and an equipment storage area.
- Mediation area includes some kind of duress alarm system.

VIII. Court Security

1. Building perimeter, site and parking assessments:

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

2. Building entrances assessments:

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

3. Public waiting areas assessments:

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

IX. In-Custody Defendant Areas

1. Remote Video Communication.

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

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

- Vehicle sallyport

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

X. Facilities Technology Recommendations

1. Power

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

2. Voice/Data

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

- video streaming and video conferencing with voice.
- Ceiling oriented network data-ports and power capable of supporting wireless network access components

Exhibit D
Form of Disbursement Request

Disbursement Request Number: **[INSERT NO.]**

[number Requests sequentially for ease of tracking]

Dated: **[INSERT DATE]**

Project Title: Umatilla County Courthouse

Phase: Phase I

Funding Source: **[INSERT SOURCE OF FUNDS]**

Funding Agreement: Umatilla County Courthouse Phase Funding Agreement for Phase I between OJD, DAS and Umatilla County dated **[INSERT DATE]** (the "Phase I Agreement")

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

On behalf of Umatilla County (the "County"), I hereby request a total disbursement of \$**[INSERT AMOUNT]** pursuant to the Phase **[INSERT NO.]** Agreement, 50% of such amount to be credited to the County Contribution for the Phase set forth above, and the other 50% of such amount to be disbursed to the County from the State Funds.

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

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

By: _____

Authorized Signature

EXHIBIT E

FORM OF OJD SPACE INTERGOVERNMENTAL AGREEMENT (IGA)

THIS OJD SPACE INTERGOVERNMENTAL AGREEMENT (this “**Agreement**”) is made as of MONTH XX, XXXX (the “**Effective Date**”), by and between Umatilla County, an Oregon political subdivision (“**County**”) and the State of Oregon, acting by and through the Oregon Judicial Department (“**OJD**”). County and OJD are each a “**Party**” and together the “**Parties.**” All capitalized terms not otherwise defined in Agreement shall have the meaning ascribed to them in the Funding Agreement (defined below).

RECITALS

- A. County is the owner of the BUILDING NAME, located at STREET ADDRESS in CITY, Oregon, NAME County (the “**Courthouse**”).
- B. Pursuant to ORS 1.185 and 1.187, the counties in the State of Oregon (the “**State**”) provide courthouse facilities for the circuit courts, including suitable and sufficient courtrooms, offices, and jury rooms for the court, the judges, other officers and employees of the court and juries in attendance upon the court, and provide maintenance and utilities for those courtrooms, offices and jury rooms.
- C. Pursuant to ORS 1.185 and 1.187, OJD operates the State’s circuit courts and provides all supplies, materials, equipment and other property necessary for the operation of the circuit courts.
- D. Sections 8 and 9, chapter 705, Oregon Laws 2013 and Section 64, chapter 723, Oregon Laws 2013, as amended from time to time (the “**Courthouse Act**”), authorize the State’s sale of Article XI-Q bonds to finance certain capital costs related to counties’ acquisition of land for and construction of county courthouses.
- E. Nothing in this agreement shall mean or be construed to mean that the Parties’ obligations and State’s rights under ORS 1.185, 1.187, the Courthouse Act, or any other laws have been modified or waived.
- F. Pursuant to the Courthouse Act, the State of Oregon contributed funds from the sale of Article XI-Q bonds (the “**State Bond Funds**”) for certain capital costs related to County’s acquisition of land for and construction of the Courthouse as consideration for OJD’s long-term interest in premises in the Courthouse for the operation of the Circuit Court.
- G. The Parties’ agreements regarding the use of the State Bond Funds for the planning and construction of the Courthouse and OJD’s long-term interest in a premises in the Courthouse were memorialized in the following funding agreements between County, and OJD and the Oregon Department of Administrative Services (together as the “**State**”) (the “**Funding Agreement**”):
 - a. Master Funding Agreement dated MONTH XX, YEAR
 - b. Phase I Funding Agreement dated MONTH XX, YEAR
 - c. Phase II Funding Agreement dated MONTH XX, YEAR.
 - d. Phase III Funding Agreement dated MONTH XX, YEAR

TERMS AND CONDITIONS

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

1. **Defined Terms.** Terms used but not otherwise defined in this Agreement shall have the meaning assigned to such terms in the Funding Agreement.
2. **Description.**
 - 2.1. **Premises.** County hereby conveys and grants to OJD, and OJD hereby accepts from County, those portions of the building identified as OJD space (the “**Premises**”) on **Exhibit A, Floor Plans**, located in the Courthouse as shown and legally described on **Exhibit B, Legal Description and Property Map**. As of the Effective Date of this Agreement, the Premises are approximately *[insert number]* square feet. If OJD exercises its right to expand into any Expansion Space (as defined in and pursuant to Section 1.3 below), then that Expansion Space shall become part of the Premises.
 - 2.2. **Grant of Rights.** County conveyance and grant to OJD of the Premises includes the exclusive rights to control and use the Premises for the Term of this Agreement. This grant includes the right of control over any portions of the Courthouse that were constructed with State funds including without limitation Courthouse Common Areas (defined in Section 4.1 below).
 - 2.3. **Right of Expansion.** During the Initial Term (defined below), in the event any portion of the Courthouse outside of the Premises becomes available for use (the “Expansion Space”), OJD shall have the option(s) (each an “Expansion Option”), to expand the Premises to include the Expansion Space. OJD’s use and occupancy of the Expansion Space shall be on the same terms and conditions of OJD’s use and occupancy of the existing Premises under this Agreement.
3. **Term.**
 - 3.1. **Initial Term.** The “**Initial Term**” of this Agreement shall begin on **MONTH DAY YEAR** (the “**Commencement Date**”) and continue until the later of: (a) 25 years; or (b) the final maturity date for the State Bonds. The word “**Term**” is used in this Agreement to describe the Initial Term and any Extension Term (as defined in Section 3.2 below).
 - 3.2. **Extension of Term.** After the Initial Term, OJD and County may agree to extend the Term of this Agreement for consecutive terms (each an “**Extension Term**”). If the Parties agree to extend the Term, all terms and conditions of this Agreement shall apply to any extension except for the Term dates.
4. **Courthouse Common Areas.**
 - 4.1. **Generally.** As set forth in the Funding Agreement, OJD has, during the Initial Term of this Agreement, the appurtenant, exclusive right to control and use all portions of the Courthouse constructed with State Bonds, including the Courthouse Common Areas (defined below,) Colocation Premises, and County Match Space (defined below.)
 - 4.2. **Courthouse Common Areas.** In addition to the Premises, the Courthouse contains portions of the building identified as common areas on **Exhibit A, Floor Plans** such as the loading zones, lobby, public restrooms, *[insert other applicable space]*, that are provided by County for the appurtenant, nonexclusive use of County, OJD, Colocation Agency(ies), other tenants of the Courthouse and their respective agents, employees and invitees, or the general public (the “**Courthouse Common Areas**”). OJD has the appurtenant, exclusive right to control and use the Courthouse Common Areas. Notwithstanding the prior sentence, OJD grants County,

Colocation Agency(ies), other tenants of the Courthouse and their respective agents, employees and invitees, and the general public the nonexclusive right to use the Courthouse Common Areas, in common with other authorized users. Subject to the terms of this provision, OJD hereby delegates the day-to-day operational control of the Courthouse Common Areas to County provided such areas are maintained for appurtenant, nonexclusive common use. Any proposed changes, including, without limitation, changes in use or physical layout, in the Courthouse Common Areas must be approved by OJD. OJD may, in its reasonable discretion, revoke the delegations granted under this Section.

4.3. Colocation Premises. In addition to the Premises and Courthouse Common Areas, the Courthouse contains certain portions of the building identified as Colocation Premises on **Exhibit A, Floor Plans**. The County shall enter into a Colocation Space IGA(s) with the Colocation Agency(ies) on such terms as outlined in the Funding Agreement.

4.4. County Match Space. In addition to the Premises, the Courthouse Common Areas, and the Colocation Premises areas, the Courthouse contains certain portions of the building identified for use by County on **Exhibit A, Floor Plans** such as the sally port, that are provided for the use of County in carrying out functions directly supporting court operations in the Courthouse including, without limitation court security, (the “**Courthouse Supporting Areas**”). OJD has the appurtenant, exclusive right to control and use the Courthouse Supporting Areas. Notwithstanding the prior sentence, OJD grants County and its respective agents and employees, the right to use the Courthouse Supporting Areas. Subject to the terms of this provision, OJD hereby delegates the day-to-day operational control of the Courthouse Supporting Areas to County provided such areas are maintained for carrying out functions directly supporting court operations in the Courthouse including court security. OJD may, in its reasonable discretion, revoke the delegations granted under this Section.

4.5. Alterations.

4.5.1. Premises. County shall provide OJD with prior written notice of any plans to adjust or modify any portion of the Premises at least 60 days prior to the earlier of: (1) filing a permit application for the adjustment or modification work; or (2) starting work. OJD must consent in writing to any alterations including, without limitation, changes in use or physical layout to the Premises prior to County making or allowing to be made any alterations or changes.

4.5.2. Common Areas and Colocation Premises. County shall inform OJD of any plans to materially adjust or modify any portion of the Courthouse Common Areas or the Colocation Premises at least 30 days prior to the earlier of: (1) filing a permit application for the adjustment or modification work; or (2) starting work. OJD must consent in writing to any alterations including, without limitation, changes in use or physical layout to those areas prior to County making or allowing to be made any alterations or changes.

4.5.3. County Match Space. County shall inform OJD of any plans to materially adjust or modify any portion of the County Match Space at least 30 days prior to the earlier of: (1) filing a permit application for the adjustment or modification work; or (2) starting work if such changes will affect OJD’s ability to occupy, enjoy, operate, or control the Premises. OJD must consent in writing to any such alterations or changes to County Match Space prior to County making or allowing to be made any such alterations or changes

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

6. Use of Premises.

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

6.2. County Use.

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

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

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

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

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

6.2.2. County agrees that until the State Bonds mature or full payment of the Defeasance Costs of the State Bonds, whichever occurs first, the Courthouse shall not be sold, leased, subleased, or otherwise transferred without prior written approval of OJD and the State to confirm that the proposed changes do not adversely impact the tax-exempt status of the Article XI-Q bonds.

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

8. Security and Safety.

8.1. Generally. Pursuant to Oregon laws including but not limited to ORS 1.178, 1.180, 1.182, 1.185 and 1.187, the County is responsible for providing suitable and sufficient court facilities for the State, including suitable and sufficient security for the Courthouse.

8.2. Minimum Physical Security Standards. Without limiting the generality of Section 8.1 above, County shall comply with the OJD Minimum Physical Security Standards Version 1.0 dated November 2, 2010, as updated from time to time.

8.3. Access Control Systems. If the access control systems (aka keycard systems) are managed or co-managed by the County, the County shall not provide anyone with access to the Premises without the prior written approval of the OJD. Further, County shall provide to OJD, at no cost, copies of door logs requested by OJD. For door log requests from OJD arising from an

emergency, a public records request or any other time sensitive obligations, as determined by OJD, County shall provide the requested door log within 24 hours of OJD's request. For any other requests from OJD, County shall provide the door log within 10 business days.

8.4. Security Cameras.

- 8.4.1.** If security cameras or other similar equipment installed in the Project have audio capability, County shall ensure such ability is disabled/turned off at all times for any cameras or other similar equipment located in the Premises, unless otherwise specifically directed by OJD in writing.
- 8.4.2.** County shall not install security cameras located in courtrooms in a manner that shows the work surface of the judges or clerks' bench/workstation.
- 8.4.3.** OJD shall be the custodian or a co-custodian of all security camera footage of any areas within the Premises.
- 8.4.4.** County shall ensure any security camera located in courtrooms are installed in a manner to ensure jury members remain anonymous (i.e., not identifiable.)
- 8.4.5.** If County receives a public records request for security footage of any part of the Premises, County shall forward all such public records requests to OJD. County agrees OJD will be responsible for responding to such public records requests. Further, County shall provide to OJD, at no cost, copies of all video footage requested by OJD. For video coverage requests from OJD arising from an emergency, a public records request, or any other time sensitive obligations, as determined by OJD, County shall provide the requested footage within 24 hours of OJD's request. For any other requests from OJD, County shall provide the footage within 10 business days.

8.5. Conflicts. In the event of any conflicts between the terms of any of the above requirements including but not limited to court security plans adopted under ORS 1.180, the requirement that provides the greater rights, security, and protection for OJD shall control.

9. Maintenance, Repair and Utilities.

- 9.1. County's Obligations.** As part of its obligations under ORS 1.185 and 1.187, County shall perform all maintenance, repair and replacement suitable and sufficient to provide and maintain the Courthouse and necessary for the operation of the Courthouse (including the Premises and the Courthouse Common Areas). Further, County shall provide, at its own expense, all utilities and services, including, without limitation, maintenance and janitorial services, to the Courthouse including, without limitation, the Premises and Courthouse Common Areas.
- 9.2. OJD's Obligations.** Except as provided in ORS 1.185(1), OJD shall provide the supplies, materials, equipment and other personal property necessary for the operation of the Court as required by ORS 1.187.

10. Quiet Enjoyment. Subject to the terms and conditions of this Agreement, OJD shall peaceably and quietly have, hold, and enjoy the Premises during the Term, without any interruption or disturbance from County or any party claiming by, through or under County. Without limiting the prior sentence and except in cases of emergency, neither County nor its employees, agents, contractors, guests, and invitees shall have access to the Premises without OJD's prior consent. Such consent may be conditioned on requiring escorted access. In the case of emergency access, County shall inform OJD of the access as soon as practicable.

11. Force Majeure. If the performance by either Party of any provision of this Agreement is prevented or delayed by any strikes, lockouts, labor disputes, other public emergency, acts of God, fire or other

casualty, or other cause beyond the reasonable control of the Party from whom performance is required (each an “**Event of Force Majeure**”), the Party will be excused from such performance for the period of time equal to the time of that prevention or delay. The Party so excused shall, upon cessation of the Event of Force Majeure, diligently pursue performance of its obligations under this Agreement.

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

- 12.1. Generally.** If any third party makes any tort claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “**Third-Party Claim**”) against a party (the “**Notified Party**”) with respect to which the other party (the “**Other Party**”) may have liability, the Notified Party shall promptly notify the Other Party of the Third-Party Claim and deliver to the Other Party, along with the notice, a copy of the claim, process and all legal pleadings with respect to the Third-Party Claim that have been received by the Notified Party. Each party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third-Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section, and a meaningful opportunity for the Other Party to participate in the investigation, defense, and settlement of the Third-Party Claim with counsel of its own choosing, are conditions precedent to the Other Party’s contribution obligation under this Section with respect to the Third-Party Claim.
- 12.2. OJD Contribution.** With respect to a Third-Party Claim for which OJD is jointly liable with County (or would be if joined in the Third-Party Claim), OJD shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of OJD on the one hand and of County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OJD on the one hand and of County on the other hand shall be determined by reference to, among other things, the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. OJD’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if OJD had sole liability in the proceeding.
- 12.3. County Contribution.** With respect to a Third-Party Claim for which County is jointly liable with OJD (or would be if joined in the Third-Party Claim), County shall contribute to the amount of expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OJD in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OJD on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of OJD on the other hand shall be determined by reference to, among other things, the parties’ relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, or settlement amounts. County’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if County had sole liability in the proceeding.
- 12.4. Other Claims.** The parties shall take all reasonable steps to cause their contractor(s) that are not units of County or OJD as defined in ORS 190.003, if any, to indemnify, defend and hold harmless the other party and their officers, employees and agents (the “**Indemnitee**”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) to the extent

caused, or alleged to be caused, by the negligent or willful acts or omissions of that contractor or any of the officers, agents, employees or subcontractors of the contractor. The parties specifically intend that the Indemnitee shall, subject to ORS 30.140, in all instances, except for claims arising from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all claims to the extent the damages are caused by the contractor's fault.

13. Indemnity; Release – Claims Other than Torts.

13.1. Except for Third-Party Claims and contractor tort claims as provided in Section 12 above, to the extent authorized by law, the County shall defend, indemnify, save and hold harmless and release the State, Treasury, DAS, OJD and their respective officers, employees and agents from and against any and all claims, demands, suits, actions, proceedings, losses, damages, liability and court awards including but not limited to costs, expenses, federal arbitration and rebate penalties, and reasonable attorneys' fees incurred (collectively, "Non-Tort Claims), related to any actual or alleged act or omission by the County or its officers, employees, contractors, or agents in connection with the Funding Agreement, the Project, prevailing wage requirements, or the tax-exempt status of State Bonds funding the Project, including without limitation any expenses incurred or amounts paid in connection with an inquiry, investigation, audit or similar proceeding by the Oregon Bureau of Labor and Industry, the U.S. Department of Labor, the Internal Revenue Service, Treasury and any other federal, state, governmental or quasi-governmental body with regulatory jurisdiction arising from the Project or the actions or omissions of County, or its officers, employees, contractors, or agents.

13.2. Notwithstanding the foregoing, neither the County nor any attorney engaged by the County may defend any Non-Tort Claim in the name of the State of Oregon, nor purport to act as legal representative for the State of Oregon, without first receiving from the Oregon Attorney General in a form and manner determined appropriate by the Oregon Attorney General, authority to act as legal counsel for the State of Oregon, nor may the Grantee settle any Non-Tort Claim on behalf of the State of Oregon without the approval of the Oregon Attorney General. If the State of Oregon assumes its own defense, the County will be liable for the attorney fees of the State of Oregon, including but not limited to any fees charged by the Oregon Department of Justice. The provisions of this Section are not to be construed as a waiver by the State of Oregon, DAS, County or OJD of any immunity, defense or limitation on damages provided for under Chapter 30 of the Oregon Revised Statutes or under the laws of the of the United States or other laws of the State of Oregon. If attorney fees are awarded to the County such attorney fees shall not exceed the rate charged to DAS by its attorneys.

14. Notice.

14.1. Generally. Any notices, demands, deliveries or other communications required under this Agreement shall be made in writing and delivered by one of the methods set forth in Section 14.2 below to the address of the Parties set forth in Section 14.3 below, unless a Party modifies its address by notice to the other Parties. The phone numbers listed in Section 14.3 below are for convenience only, and any information delivered by phone to a Party shall not constitute notice under this Agreement.

14.2. Delivery.

Method of delivery	When notice deemed delivered
In person (including by messenger service)	the day delivered, as evidenced by signed receipt

Email	the day sent (unless sent after 5:00 p.m., P.T., in which case the email shall be deemed sent the following business day)
US Mail (postage prepaid, registered or certified, return receipt requested)	the day received, as evidenced by signed return receipt, or five days after the mailing date if delivery is refused
Courier delivery (by reputable commercial courier)	the day received, as evidenced by signed receipt

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

14.3. Addresses:

County	OJD
NAME County	Oregon Judicial Department
ATTN: Douglas R. Olsen	ATTN: Irma Solis, Trial Court Administrator
MAILING ADDRESS	MAILING ADDRESS
CITY STATE ZIP CODE	CITY STATE ZIP CODE
Email: doug.olsen@umatillacounty.gov	Email:
Phone: 541-278-6208	Phone:
<i>With copy to:</i>	<i>With copy to:</i>
TITLE Chair, Board of Commissioners	Oregon Judicial Department
ATTN: FIRST NAME LAST NAME	ATTN: Nick Larson, Construction Project Manager
MAILING ADDRESS 216 SE 4 th Street	1133 Chemeketa
CITY STATE ZIP CODE Pendleton, OR, 97801	Salem, OR 97301
Email:	Email: Nicholas.C.Larson@ojd.state.or.us
Phone:	Phone: (503) 986-5429

15. Miscellaneous.

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

- 15.2. Calculation of Days. Any reference in this Agreement to “days” shall mean calendar days, unless specified as “business days.” A business day is any day that is not a Saturday, Sunday or a federal or State of Oregon holiday.
- 15.3. No Third-Party Beneficiaries. County and OJD are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons, unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- 15.4. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected. The rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provisions held to be invalid.
- 15.5. Waiver. The failure by a Party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision.
- 15.6. Consent. Unless otherwise specifically stated herein, any consent by a Party shall not be unreasonably withheld, conditioned or delayed.
- 15.7. Governing Law; Consent to Jurisdiction. This Agreement is governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any Claim between OJD (or any other agency or department of the State of Oregon) and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County in the State of Oregon; provided, however, if a Claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Each Party hereby consents to the exclusive jurisdiction of the foregoing courts, waives any objection to venue and waives any claim that such forums are an inconvenient forum. In no event shall this Section or any other provision of this Agreement be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise.
- 15.8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 15.9. Amendments. No amendment, waiver, consent, modification or change of terms of this Agreement shall bind a Party unless in writing and signed by all Parties. Such amendment, waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
- 15.10. Electronic Signatures and Counterparts. This Agreement and any amendments hereto may be executed via electronic signature and in two or more counterparts, each of which is an original, and all of which together are deemed one and the same document, notwithstanding that both Parties are not signatories to the same counterpart.
- 15.11. Exhibits. All attachments, addenda, schedules and exhibits which are referred to in this Agreement are incorporated into this Agreement
- 15.12. Survival. All provisions of this Agreement that would reasonably be expected to survive the expiration or earlier termination of this Agreement shall do so.

15.13. Insurance: Upon the commencement of this Agreement and through the remainder of the Term of this Agreement, the County shall maintain in full force and effect throughout the entire term of this Agreement, property insurance for the perils of all risks of direct physical loss or damage including earthquake and flood covering the Courthouse in an amount at least equal to the amount of the Project Financing (as defined in the Master Funding Agreement and subsequent Phase Agreement to it). Insurance proceeds from an insured loss affecting the Courthouse shall be exclusively used by the County to rebuild, repair and restore the Courthouse in a manner consistent with the terms of this Agreement. The County shall consult with OJD regarding the plans for rebuilding, repairing and restoring the Courthouse and such plans shall be subject to OJD's approval, which shall not be unreasonably withheld. OJD shall be provided notice of any cancellation or material modification to the policy at least 30 Calendar Days prior to the effective date of such cancellation or change. A properly executed certificate of insurance shall be provided to OJD on or before the effective date, and thereafter at least 30 Calendar Days prior to the effective date of any renewal or replacement policy. The policy shall be issued by companies licensed or authorized to provide insurance in the State of Oregon. The policy shall be written by an insurance company that meets or exceeds an A VII rating of A.M. Best Company or for those qualified companies that are not rated by A.M. Best Company a rating equivalent or better than an A.M. Best A VII. Notwithstanding the foregoing, the County may satisfy its insurance obligations through its existing self-insurance program, provided that such self-insurance program is at the same level, and under the same conditions, as if the above commercial general liability insurance had been procured. The County's self-insured deductible for such commercial general liability insurance shall not exceed \$100,000 for each loss. Self-insurance is not allowed for other insurance coverages.

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

COUNTY:

Umatilla County, an Oregon political subdivision:

Print Name: _____

Title: _____

Signature: _____

Reviewed for Umatilla County

DOUG OLSEN - COUNTY ATTORNEY

FOR UMATILLA COUNTY, OREGON:

By: _____

Doug Olsen, County Attorney

OJD:

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

Print Name: _____

Title: _____

Signature: _____

OJD Legal Approval:

By: _____

Date: _____

Exhibit F
Rider to Courthouse Design Criteria

This Exhibit F amends Exhibit C, Courthouse Design Criteria, as follows:

Revise Section I. General Facilities Design Assessment Criteria as follows:

1. Revise Section I - #1. Building Configuration as follows:

1.1 Delete the 1st bullet under this #1 in its entirety and replace with the following:

“• High public contact functions (e.g., jury assembly room, transactions counters, etc.) are located on the ground floor or the primary public entrance level”

1.2 Deleted the 2nd Bullet under this #1 in its entirety.

1.3 Delete the 3rd Bullet under this #1 in its entirety and replace with the following:

“• Functions requiring higher security levels (e.g., in-custody transport and movement) are located on below ground floors with secure circulation pathways, including vertically, through building.”

1.4 Delete the 4th Bullet under this #1 in its entirety and replace with the following:

“• Internal circulation patterns are set apart into three separate and distinct zones: public; private (for court staff); and secured circulation for in-custody persons. (See Section IX).”

2. Revise Section I - #2. Public Service Requirements (including Fire, Life, Safety) as follows:

2.1 Under the bullet point for Public waiting areas under this #2:

2.1.1 Delete the first sub-bullet point under the bullet point for Public waiting areas in its entirety and replace it with the following:

“• Include sufficient, durable and floor-anchored seating”

2.1.2 Delete the third sub-bullet point under the bullet point for Public waiting areas in its entirety and replace it with the following:

“• Have easy access to restrooms and water fountains.”

2.1.3 Delete the fifth sub-bullet point under the bullet point for Public waiting areas in its entirety and replace it with the following:

“• Located to minimize noise transmission to courtrooms.”

3. Revise Section I - #9. Information Systems and Communications as follows:

3.1 Delete the 2nd bullet point under this #9 in its entirety and replace it with the following:

“• Designated computer or telecommunications rooms or closets (e.g., Main Distribution Frame (MDF), Intermediate Distribution Frame (IDF), server rooms) require increased

cooling capacity to maintain temperatures between 66 and 78 degrees Fahrenheit, redundant (i.e., backup) power, located to reduce the risk of flooding, and with an individual thermostatic control.”

3.2 Delete the 3rd bullet point under this #9 in its entirety.

3.3 Add the following additional bullet points at the end of #9:

“• Building shall have distributed antenna systems for cell service and data accessibility (e.g., WiFi) for court staff.

• Designated computer or telecommunications rooms or closets (e.g., MDF, IDF, server rooms) containing OJD equipment (e.g., servers, audio-visual equipment) shall be accessible only by OJD staff.

° All OJD equipment must be able to be maintained within secure areas only accessible by OJD.”

• Designated computer or telecommunications rooms or closets (e.g., MDF, IDF, server rooms) shall be monitored by cameras.”

4. Revise Section I - #10. Lighting:

4.1 Add the following additional bullet at the end of #10:

“• Lighting controls incorporating sensors shall be utilized for courtrooms to manage lighting levels during trials.”

5. Revise Section I - #11. Acoustics:

5.1 Add the following additional bullet at the end of #11:

“• Sound transmission shall be minimized at attorney-client conference rooms, judge’s chambers, jury rooms, and courtrooms”

6. Revise Section I - #12. Parking; Vehicular and Pedestrian Access:

6.1 Add the following additional bullet at the end of #12 of Section I:

“° Provides adequate parking for jurors and perspective jurors.”

B. Revise Section II. Courtroom Assessment Criteria as follows:

1. Revise Section II - #3. Courtroom Areas as follows:

1.1 Add the following additional sub-bullet at the end of each of the first three bullet points (Judicial officers bench, Courtroom clerk’s station, and Witness stand) under #3 of Section II:

“° Ballistic panels are installed in all judges' benches, court clerk workstations, and witness stands”

1.2 Under the bullet point for Other Areas and Features this #3:

1.2.1 Delete the 2nd sub-bullet in its entirety.

1.2.2 Delete 4th sub-bullet in its entirety and replace with the following:

“o Silent duress alarms are located in the judges’ bench and courtroom clerk’s area.”

C. Revise IV. Jury Assembly and Deliberation as follows:

1. Revise Section IV - #1. Jury Assembly as follows:

1.1 Under Section 1. Jury Assembly, under the 1st main bullet for Jury assembly room/information presentation area:

1.1.1 Delete the 3rd sub-bullet point in its entirety and replace it with the following:
“o Working areas are provided with data connections WiFi connectivity and electrical power for computers.”

1.1.2 Delete the 4th bullet point in its entirety and replace it with the following:
“o Restroom facilities and coatrooms are adjacent to the jury assembly room.”

D. Revise VII. Alternative Dispute Resolution as follows:

1. Delete the Note at the beginning of this this Section in its entirety and replace with the following:
“Note: Dedicated space for provision of alternative dispute resolution services including for mediation for small claims, domestic relations and FED is part of the courthouse facilities.”

E. Revise VIII. Court Security as follows:

1. Add the following new #4 to the end of Section VII Court Security:

“4. Without limiting the generality of the requirements under other Sections of the Courthouse Design Criteria, the following additional security standards and requirements must be met:

- **Access Control Systems:** These systems are often referred to as "keycard" systems because they use a special card to open electronically controlled locks on building or office doors.
 - o The access control system must be established to limit access to court spaces and improve the security of judges and court staff.
 - o The access control system must be capable of tracking and retaining records of all entry through the use of such “keycard” systems for not less than one year.
 - o The access control system will protect all perimeter doors entering court spaces and other selected doors as appropriate.
 - o The Circuit Court will manage its own access control system with support from the Marshal's Office or co-manage the system with other governmental agencies owning or sharing the court facility.

- If co-managing the system with other governmental agencies owning or sharing the court facility, the other governmental agencies owning or sharing the court facility shall not provide anyone with access to non-public court areas of the court facility without the prior written approval of the court.
 - Access control databases must be reviewed annually.
- **Security Camera Systems.** Security camera systems must provide the Circuit Court with the ability to visually monitor critical areas of the court facility, review incidents captured on video, and retain a record of events for a minimum of 30 days. Security camera systems must be monitored by court staff or other public safety personnel.
 - If security camera systems have audio capability, such ability must be able to be disabled/turned off.
 - Security camera systems installed within courtrooms or judges chambers must be located in court approved locations.
- **Duress Alarm Systems.** These electronic systems must provide emergency signaling to local law enforcement by means of a transmitter located in areas where judges and staff come in contact with in-custody defendants and the public. Duress systems, at a minimum, must be tested every six months. Tests should include the end users where buttons are located at least once a year.
- **Court Security Screening Station.** A staffed screening station, including x-ray and magnetometer will be established at the single public entrance to the court facility and operated during the hours in which the court is conducting business.
- **Transparent Barriers.** Transparent barriers with ballistic protection will be installed at all counters where cash is handled.
- **Emergency Equipment.** All court facilities must have emergency lighting, fire alarm systems, first-aid kits, and fire extinguishers in accordance with building code and fire service requirements.
- **Automated External Defibrillators (AED).** Each court facility must have an AED and court staff will be trained to operate the defibrillators. Under ORS 431A.455, the AED(s) will be furnished and maintained by the county in county-owned facilities.
- **Mail Handling.** Each court facility must have x-ray and magnetometer screening equipment accessible by court staff to allow court staff to screen or have screened suspicious mail and packages.”

G. Revise Section X. Facilities Technology Recommendations as follows:

1. Revise #1. Power as follows:

1.1 Delete the 2nd bullet point in its entirety and replace with the following:

“• Redundant (backup) power supplies (UPS) sufficient to provide not less than 15 minutes of battery power in the event of power interruption to computer or telecommunications rooms or closets (e.g., MDF, IDF, server rooms) and other critical technology components.”

1.2 Add the following additional bullet at the end of #1 of Section X:

“• Minimum of four (4) plug-ins for each workstation”

2. Revise #2. Voice/Data as follows:

2.1 Delete the bullet point in its entirety and replace it with the following:

“• Minimum of four (4) recessed data-ports on separate circuits, for each workstation or laptop computer.”

2.2 Add the following additional bullet point at the end of #2 of Section X:

“• Desktop phones to be voice over internet protocol (“VOIP”).”

H. The following new Section XI is added to Exhibit C, Courthouse Design Criteria:

XI. Colocation Agency Space Design Criteria

- 1. Oregon Public Defense Commission (OPDC) Space Requirements:** The public defender system is well established as a part of the justice system. Most of the work undertaken by the public defender is related to pretrial, trial, and pre-sentencing. In general, space needs for the public defender's offices are similar to those of the prosecutor's office.

Ideally, the public defense office should be located in the courthouse, but in an area distinctly separate from the prosecutor's office. This is necessary to establish a clear separation between the competing interests represented by each office. The public defender will have defendants visiting the office, and they should not come into close contact with witnesses that may be visiting the prosecutor's offices.

OPDC Criteria:

- Design and finish level should be similar to District Attorney's offices
- Space needs may include the following:
 - Reception area (secure reception with waiting area)
 - Private offices for attorneys
 - Each office approx. 120 sq ft
 - Hotel space for paralegals or staff to use on a drop in basis
 - Small conference room / interview room
 - Small storage space

- Space needs to be quiet and secure with appropriate lighting (natural light if possible) and HVAC
- Space needs to have sufficient distance from District Attorney's space to avoid witness interaction between parties
- Clients need to be able to enter the space from public circulation zones
- Space needs to be secure between reception lobby and office area. Duress alarm and security camera should be located at reception
- Standard power and voice/data throughout for working office conditions.
 - Dedicated power for copier / scanners
 - Power in reception area at each wall and in conference / interview spaces
- Each workstation, or office, must accommodate a computer workstation with dual video display monitors, a printer, document scanner, and phone. Each workstation or office, therefore, shall have a minimum of two quadriplex electrical outlets and one dedicated computer power receptacle, two data jacks and one phone jack (3 CAT6 lines).

Exhibit G
Federal Terms and Provisions

- A. Employee Whistleblower Protection.** County shall comply, and ensure the compliance by subcontractors or subrecipients, with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Protection. County shall inform subrecipients, contractors and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.
- B. Compliance with 2 CFR Part 200.** County shall comply with all applicable provision of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, including the Cost Principles and Single Audit Act requirements.
- C. Federal Funds.** OJD's payments to County under this Agreement will be paid by funds received by OJD from the United States Federal Government through the State of Oregon. By signing this Agreement, County certifies neither it nor its employees, contractors, subcontractors or subrecipients who will administer the Funding Agreement are currently employed by an agency or department of the federal government.
- D. Financial Records and Reporting.** County shall cooperate with OJD to provide all necessary financial information and records to comply with ARPA CSFRF reporting requirements, as well as provide OJD quarterly, annual, and final reporting as outlined in paragraphs G, H, and I of this Exhibit G, respectively. County shall keep proper books of account and records on all activities associated with ARPA CSFRF funds, including, but not limited to, invoices, cancelled checks, payroll records, instruments, agreements and other supporting financial records documenting the use of the ARPA CSFRF funds. County shall maintain these books of account and records in accordance with generally accepted accounting principles and shall retain these books of account and records until December 31, 2031 or the date that all disputes, if any, arising under the Funding Agreement have been resolved, whichever is later.
- E. Monitoring Policy.** County shall follow and agrees to be bound to OJD Grant Subrecipient Monitoring Policy No. 020.10.07, which is incorporated into the Funding Agreement by this reference.
- F. Costs Expenditure Deadlines.** County shall use the ARPA CSFRF funds to pay for planning and the costs associated with the replacement of the Umatilla County Courthouse. County shall expend the entire ARPA CSFRF funds on Authorized Costs no later than December 31, 2026.
- G. Quarterly Reports.** County shall submit Quarterly Reports to OJD which must include such information as is necessary for OJD to comply with the reporting requirements established by 42 U.S.C. 802, guidance issued by the U.S. Treasury, and 2 CFR Part 200 (known as the "Super Circular"). The reports must be submitted using a template provided by OJD that includes, but may not be limited to, the following information:

1. Expenditure Report

- a) Quarterly Obligation Amount
- b) Quarterly Expenditure Amount

- c) Projects
- d) Primary Location of Project Performance
- e) Detailed Expenditures (categories to be provided by OJD)
- f) Program Income Earned and Expended

2. Project Status Update

- a) Status of project: not started, completed less than 50 percent, completed 50 percent or more, completed.
- b) Progress since last update including project outputs and achieved outcomes.
- c) Identify barriers/risks to outcomes and describe actions taken to mitigate delays/risks to the overall project goal.
- d) Optional: Share with OJD community outreach/engagement or other positive local news stories.

H. Annual Reports.

County shall submit to OJD a report annually on the following, as applicable, using a template provided by OJD:

- 1. How the Project is Promoting Equitable Outcomes, if applicable
- 2. How the Project is Engaging with the Community, if applicable

I. Final Report.

County shall also deliver to OJD a final report with an accounting of all of its direct administrative costs paid by the ARPA CSFRF funds accompanied by a certification statement that all such costs comply with ARPA CSFRF.

J. ARPA CSFRF Compliance.

County shall comply with the terms, conditions and requirements of the federal Coronavirus State Fiscal Recovery Fund (codified at 42 U.S.C. 802) which is funded by the ARPA CSFRF, including all implementing regulations (31 CFR 35.1 *et seq.*) and other guidance promulgated by the U.S. Department of the Treasury.

K. ARPA CSFRF Reporting Requirements Due Dates:

Report Name	Frequency	Due Dates
Quarterly Reports	Quarterly	April 10 th , July 10 th , October 10 th , January 10 th
Annual Reports	Annually	July 10 th
Final Report	Once	No later than September 31, 2025