

**INTERGOVERNMENTAL AGREEMENT
FOR INTERIM FUNDING OF THE PROPOSED
MULTNOMAH COUNTY COURTHOUSE PROJECT**

This Intergovernmental Agreement for Interim Funding of the Proposed Multnomah County Courthouse Project (this “**Interim IGA**”) is made and entered into this 15th day of July, 2014, by and between the **State of Oregon**, acting by and through its **Department of Administrative Services (“DAS”)** on behalf of the Oregon Judicial Department (“**OJD**”), and **Multnomah County**, a political subdivision of the State of Oregon (the “**County**”). The County and DAS are referred to, individually, as a “**Party**” and, collectively, as the “**Parties**” in this Interim IGA.

RECITALS:

A. The County is undertaking replacement or renovation of the Multnomah County Courthouse (the “**Courthouse**”). The Courthouse is vital infrastructure for providing judicial services to Oregon citizens. The County desires to use best practices to achieve the highest value for public funds as it develops, designs, finances, and constructs the Courthouse.

B. The County has requested state funding in support of the Courthouse. The total amount of state funds available for the Courthouse is undetermined, but the 2013 Oregon Legislative Assembly enacted Senate Bill 5506, enrolled as Oregon Laws 2013, chapter 705 (“**Chapter 705**”) authorizing, in relevant part, the issuance of bonds under Article XI-Q of the Oregon Constitution (“**XI-Q Bonds**”) in an amount not to exceed \$15 million and deposit of the bond proceeds in the Oregon Courthouse Capital Construction and Improvement Fund (the “**OCCCI Fund**”) in support of the Courthouse during the 2013-2015 biennium.

D. The County desires to implement the best practices described in Executive Order 12-17 issued by Oregon Governor Kitzhaber on November 13, 2012, and is preparing the Courthouse application for submittal to the Chief Justice of the Oregon Supreme Court (for approval under Chapter 705, Section 8(2)(a)(A)) and to DAS (for approval under Chapter 705, Section 8(2)(a)(B)). The County has authorized hiring a full-time project manager dedicated to the Courthouse, procuring a business case analysis to determine the project delivery method for the Courthouse that will generate the highest value for money, and retaining an Owner’s Representative to advise the County on the Courthouse.

E. DAS and the County are authorized by ORS 190.110 to enter into an intergovernmental agreement for any lawful purpose, including this Interim IGA. Chapter 705, Section 9(1)(a), as amended by Senate Bill 5703 (“**SB 5703**”) in the 2014 session of the Legislative Assembly authorizes a county and DAS, on behalf of the Oregon Judicial Department, to enter into one or more interim agreements with respect to funding, acquisition, development and construction of a courthouse prior to execution of a long-term lease agreement or an intergovernmental agreement (“**Courthouse Agreement**”) with respect to ownership and operation of a courthouse that the county is required to provide under ORS 1.185, pursuant to

which the state agrees to provide the property and services described in ORS 1.185 (1)(a). The Legislative Assembly expressed its intent in the Committee on Ways and Means budget report that DAS require the County to transfer to the OCCCI Fund, prior to each bond sale, an amount equal to 50 percent of the portion of estimated costs of a courthouse project to be funded with said bond issue, pursuant to Section 8 of Chapter 705. The Parties contemplate that after the sale of the XI-Q Bonds, the Parties will enter into a grant agreement, or include provisions in the Courthouse Agreement, that condition the disbursement of bond proceeds upon certain events, including without limitation, that the County must have transferred amounts that are at least equal to seventy-five percent of the portion of estimated costs of the Courthouse project to be funded with proceeds of the bond sale, unless the project includes co-location in the Courthouse of state offices in addition to the state circuit court facilities.

F. Chapter 705, Section 8(2)(a) does not authorize issuance of bonds for the OCCCI Fund until the Chief Justice and DAS have approved a courthouse project. The County will be required to advance costs in developing and qualifying the Courthouse for OCCCI funding, prior to state approval of the Courthouse and execution of the Courthouse Agreement.

G. This Interim IGA shall govern the parties until the approvals required under Chapter 705 are obtained and the Courthouse Agreement or a grant agreement is entered into between the County and DAS. The parties intend to negotiate in good faith toward the execution of the Courthouse Agreement.

H. DAS and OJD expect to engage the services of a private consultant (“**Project Monitor**”) to monitor the project schedule and budget and the expenditure of match moneys and bond proceeds for the Courthouse project, to ensure that the moneys are spent for allowable costs under Chapter 705, SB 5703 and the laws pertaining to tax-exempt bond financings. The Parties anticipate that the costs of the Project Monitor will be reimbursed from the sale proceeds of the XI-Q Bonds.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DAS and the County do agree as follows:

1. Recitals are Contractual

The Recitals are incorporated into the substantive provisions of this Interim IGA.

2. Responsibilities of the County

2.1 The County shall review and approve all invoices for professional services, reports, applications, permits, surveys, studies, and site or building acquisitions pertaining to the Courthouse (each or collectively a “**Courthouse Cost**”) and deliver copies of the approved invoices to OJD. The County shall transfer, or cause to be transferred, from its account in the

Local Government Investment Pool an amount equal to the sum of the invoices for crediting to the OCCCI Fund.

2.2 Upon receipt of moneys from the OCCCI Fund as provided in Section 3.1 below, the County shall promptly issue and deliver to each payee the County's checks in payment of each invoice delivered to OJD as provided in Section 2.1.

2.3. If requested by DAS, County shall execute a reimbursement resolution or similar declaration for the purpose of identifying and tracking Courthouse Costs that may be financed with XI-Q bonds with federally tax-exempt interest payments.

2.4 If requested by DAS, County shall send a copy of any invoices for which County seeks match credit and a transfer of funds under this Agreement to a Project Monitor. The Project Monitor will be charged with reviewing invoices to determine whether they are for allowable Courthouse Costs that may qualify as match under Chapter 705 and SB 5703.

3. Responsibilities of the State of Oregon

3.1 Upon receipt of the County-approved invoices and the crediting of moneys to the OCCCI Fund, DAS or OJD shall cause an amount equal to the sum of the County-approved invoices to be transferred to the County's account in the Local Government Investment Pool.

3.3 Upon receipt of the approvals of the Courthouse project required by Chapter 705, DAS shall, or cause OJD to, credit all of the amounts transferred to the OCCCI Fund toward the County's match of Courthouse project costs referenced in Chapter 705, Section 9(1)(b)(A), as amended by SB 5703.

3.4 The transfer of amounts under this Interim IGA is contingent on OJD receiving appropriations, limitations, allotments or other expenditure authority from the Legislative Assembly sufficient to allow OJD to transfer amounts from the OCCCI Fund under this Interim IGA. DAS and/or OJD shall request the Legislative Emergency Board, at its September 2014 meeting, to authorize expenditure from the OCCCI Fund of up to \$18 million, pursuant to SB 5703, for the 2013-15 biennium to permit DAS to transfer moneys from the OCCCI Fund back into the County's account in the LGIP. DAS shall have no obligation to disburse moneys from the OCCCI Fund based upon a credit for the purchase of land for the Courthouse as provided in SB 5703; rather, such a DAS disbursement shall be conditioned upon the County's prior transfer of the land purchase money into the OCCCI Fund for OJD approval of the land purchase as a Courthouse Cost. DAS shall be obligated to remit moneys to the County's account in the Local Government Investment Pool once there are moneys deposited to the OCCCI in an amount sufficient to pay the remittance.

3.5 If the Project Monitor or DAS determines that an invoiced amount does not qualify as match, DAS will notify the County as soon as practicable of that determination and the disapproved amount will not be credited to the OCCCI Fund toward the County's match of Courthouse Costs as provided in subsection 3.3 above. If County has already transferred moneys

applicable to the disapproved invoice to the OCCCI Fund, DAS shall cause an amount equal to the disapproved amount to be retransferred to the County's account in the Local Government Investment Pool, but, as provided in the preceding sentence, the retransferred amount will not be credited as match. If requested, County will provide periodic information related to the schedule and budget of the Courthouse project sufficient to enable the Project Monitor to determine whether the project remains on schedule and within its budget.

4. Previously Paid Invoices

If the County seeks reimbursement for Courthouse Costs that have been invoiced to and paid by the County prior to the transfer of a corresponding amount to the OCCCI Fund, the County shall submit the invoices received and paid by the County to OJD. If OJD determines that the invoices represent Courthouse Costs that are eligible for reimbursement from the OCCCI Fund, it shall request and the County shall transfer an amount equal to or greater than the total amount of the submitted invoices to the OCCCI Fund. Upon receipt of the transferred moneys, OJD or DAS shall cause an amount equal to the invoices to be credited to the County's account in the Local Government Investment Pool and shall credit the amount toward the County's match of Courthouse project costs referenced in Chapter 705, Section 9(1)(b)(A), as amended by SB 5703.

5. Term and Termination of this Interim IGA

5.1 Unless terminated early as provided in Section 4.2 below, the term of this Interim IGA will commence upon the date of full execution by the Parties (July __, 2014) and will terminate upon full execution by the Parties of a successor interim agreement, grant agreement or the Courthouse Agreement.

5.2 Early Termination:

5.2.1 For Mutual Benefit. If the Parties find that it is mutually beneficial to terminate this Interim IGA prior to the expiration of the term, they may terminate it at any time by mutual agreement.

5.2.2 Either DAS or the County may terminate this Interim IGA, for any cause or no cause, by providing the other Party no fewer than 30 (thirty) days advance written notice of termination under this subsection.

5.2.3 Adverse Change in Law. Either Party may terminate this Interim IGA by providing the other Party no fewer than ten days advance written notice of termination under this subsection 5.2.3 if United States, Oregon or local laws, regulations, or guidelines are modified or interpreted in such a way that either Party's continued performance or making of payments under this Interim IGA is prohibited.

5.2.4 Termination for Cause. Either Party may terminate this Interim IGA, in whole or in part, by providing the other Party no fewer than ten days advance written notice of termination under this subsection 5.2.4, if either Party commits any material breach or default of any covenant, warranty, obligation or agreement under this Interim IGA and the

defaulting Party fails to correct such material breach, default or failure to perform within 14 calendar days after receipt of notice of the breach or default, or such longer period as the notifying Party may specify in such notice.

6. Assignment

6.1 Neither Party shall assign or transfer any interest in this Interim IGA or assign any claims for money due or to become due under this Interim IGA, without the prior written approval of the other Party. This Interim IGA shall bind and inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and permitted assigns.

7. Governing Law

7.1 This Interim IGA shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Oregon.

8. Amendments

8.1 No amendment or modification to this Interim IGA shall become effective unless and until the same shall have been reduced to writing and duly executed by the Parties, and acknowledged and approved by OJD.

9. Notices

9.1 Any notice, payment, or any or all of the material that either party may be required or may desire to give or deliver to the other will be conclusively deemed validly given or delivered to and received by the addressee, if delivered personally on the date of such delivery or, if mailed, on the third business day after the mailing of the same by prepaid post addressed,

If to the County:

Multnomah County
Facilities & Property Management Division
401 N. Dixon St.
Portland, OR 97227
ATTN.: Michael Bowers, Director

With a copy to:

Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
ATTN: Ken Elliott, Asst. County Attorney

If to DAS:

Department of Administrative Services
155 Cottage St NE
Salem, OR 97301
Attention: Jean L. Gabriel, Capital Finance & Planning Manager

With a copy to:

Oregon Department of Justice
General Counsel – Tax & Finance
1162 Court St NE
Salem, OR 97301
ATTN: Cynthia Byrnes, Asst. Attorney General

And with another copy to:

Oregon Judicial Department

Salem, Or 97301

9.2 Either party may, from time to time, advise the other by notice in writing of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will, for the purposes of Section 9, be conclusively deemed to be the address of the party giving such notice.

10. No Representations About Another Party's Authority

Nothing in this Interim IGA shall constitute or shall be construed as constituting a warranty or representation of any nature by either Party concerning the character or extent of the legal authority the other Party may exercise under any constitutional, statutory or charter provision.

11. Merger

This Interim IGA constitutes the entire agreement between the Parties with respect to its subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Interim IGA. No amendment, consent, or waiver of terms of this Interim IGA shall bind either Party unless in writing and signed by both Parties. Any such amendment, consent, or waiver shall be signed by both Parties and shall be effective only in the specific instance and for the specific purpose given. The Parties, by the signature below of their authorized representatives, acknowledge having read and understood the Interim IGA, and the Parties agree to be bound by its terms and conditions and neither Party shall be accorded any

advantage over the other by reason of being the drafter of any of the language of this Interim IGA.

12. No Third Party Beneficiaries

This Interim IGA is between the Parties and creates no third-party beneficiaries. No person not a party to this Interim IGA is an intended beneficiary of this Interim IGA, and no person not a party shall have any right to enforce any term of this Interim IGA.

13. Relationship of Parties

The Parties intend that the relationship created by this Interim IGA is that of independent contracting parties. Neither Party hereto shall be deemed an agent, partner, joint venturer, or related entity of the other by reason of this Interim IGA.

14. Time is of the Essence

Time is of the essence of this Interim IGA.

15. Counterparts; Electronic Signatures

This Interim IGA may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on both Parties, notwithstanding that both Parties are not signatories to the same counterpart. The Parties agree that they may conduct this transaction, including any amendments or extension, by electronic means including the use of electronic signatures.

16. Severability.

The parties agree that if any term or provision of this Interim IGA 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, and the rights and obligations of the parties shall be construed and enforced as if the Interim IGA did not contain the particular term or provision held to be invalid.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives hereby execute this Interim IGA as of the date first written above.

MULTNOMAH COUNTY,
a political subdivision of the State of Oregon

By: _____

Its: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY:
JENNY M. MADKOUR, COUNTY ATTORNEY

By: _____
Assistant County Attorney

Date: _____

STATE OF OREGON
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: _____

Its: _____

Date: _____

ACKNOWLEDGED AND APPROVED BY
OREGON JUDICIAL DEPARTMENT

By: _____

Its: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY:

By: _____

Assistant Attorney General (If Over \$150,000)

Date: _____