

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**RESOLUTION NO. 2014-099**

Authorizing the County Chair to Execute an Interim IGA with Oregon DAS for Funding the Central Courthouse Project.

**The Multnomah County Board of Commissioners Finds:**

- a. Oregon Revised Statute § 1.185 requires Multnomah County to "provide suitable and sufficient courtrooms, office 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."
- b. Chapter 705, Oregon Laws 2013, authorized creation of the Oregon Courthouse Capital Construction & Improvement (OCCCI) Fund and provided for the sale of Article XI-Q bonds to finance the State's matching share of costs for new or renovated courthouses, or portions thereof, owned or operated by the State under a long-term lease or IGA with each county.
- c. The Oregon Department of Administrative Services (DAS), the Oregon Judicial Department (OJD) and the County agreed in early 2014 that the 2013 statute did not provide for state reimbursement or matching of county expenses incurred prior to execution of a long-term lease or IGA for "ownership and operation" of the completed courthouse. The parties agreed an interim funding IGA is needed to grant DAS, acting on behalf of OJD, such authority until the parties finalize grant agreements detailing use of the proceeds from each bond sale.
- d. DAS and Multnomah County have negotiated an intergovernmental agreement, as authorized by ORS Chapter 190, substantially in the form attached hereto as Exhibit A (the "Interim IGA").
- e. The County has submitted its 2015 bond funding request to OJD, and the Oregon Chief Justice has recommended approval of the County's request for the state's matching share of Courthouse costs, with the first bond sale projected for April 2015. At least two, and perhaps three, bond sales are anticipated to fund the state's entire matching share through the end of the 2017-19 biennium.
- f. Under the Interim IGA, the County will submit County-approved invoices to DAS for its review and approval of the expenditures as "approved courthouse costs." The Interim IGA also provides for DAS' retroactive approval of county invoices paid on the courthouse starting last fall and prior to execution of the Interim IGA.

- g. Under the Interim IGA, the County will authorize transfer of funds to pay courthouse invoices from its account in the Local Government Investment Pool (LGIP) into the OCCCI Fund. At its December 2014 meeting, the Emergency Board will be asked by DAS and OJD to authorize expenditure of the state's up to \$15 million match for the remainder of the 2013-15 biennium. This expenditure authority will empower DAS to reimburse the County's deposits (made between now and the April 2015 bond sale) back into the County's account in the LGIP and to begin paying DAS's matching share of approved courthouse costs from the OCCCI Fund.

**The Multnomah County Board of Commissioners Resolves:**

1. The County Chair is authorized to sign the Interim IGA with DAS, acting on behalf of OJD, in substantially the form attached hereto as Exhibit A. Board approval is needed for any modification or amendment that results in a material increase in the obligations of Multnomah County or a material decrease in the benefits for Multnomah County under the Interim IGA.

**ADOPTED this 4th day of September 2014.**



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

*Deborah Kafoury*

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Deborah Kafoury, Chair

REVIEWED:

JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By *Kenneth M. Elliott*  
Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Michael Bowers, Director of Facilities & Property Management.

**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 \_\_\_\_ day of September, 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.

C. 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.

D. 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

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 or OJD, 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, 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.

3.2 Upon receipt of the approvals of the Courthouse project required by Chapter 705, OJD shall credit all of the approved 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.

3.3 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. OJD shall request the Legislative Emergency Board, at its December 2014 meeting, to authorize expenditure from the OCCCI Fund of up to \$15 million, pursuant to SB 5703, for the 2013-15 biennium to permit OJD to transfer moneys from the OCCCI Fund back into the County's account in the LGIP. OJD 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 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. OJD 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.

3.4 If the Project Monitor, OJD or DAS determines that an invoiced amount does not qualify as match, OJD 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

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

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, unless expressly named herein. 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; except, the Parties agree that the Oregon Judicial Department is an intended third party beneficiary of this Agreement, and is entitled to enforce its terms.

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.