

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

RESOLUTION NO. 2015-130

Authorizing the County Chair to Execute an IGA with Oregon DAS and OJD for Funding the Central Courthouse Project, Phase I.

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. Prior to the sale of the Article XI-Q bonds, the County and State executed an Interim Funding IGA providing for State reimbursement or matching of County expenses incurred prior to the bond sale. Resolution No. 2014-099.
- d. On March 31, 2015, the State of Oregon Treasurer sold Article XI-Q Bonds to provide the State's matching funds for Phase I of the Project, including State-approved Project costs incurred prior to the bond sale. Phase I of the Project is comprised of the reference design, final architectural design, engineering and entitlements phases of the Project.
- e. The State match for the Project pursuant to the 2015 bond sale is \$15,000,000 and the attached funding IGA establishes the terms upon which the State match will be distributed.
- f. Under the funding IGA, the County will submit County-approved invoices to the State Project Monitor for its review and approval of the expenditures as "approved courthouse costs."
- g. Further, under the funding 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. In turn, OJD will reimburse the County's deposits back into the County's account in the LGIP and begin paying the State's matching share of approved courthouse costs from the OCCCI Fund.

- h. In 2017, Article XI-Q bonds are expected to be sold to provide the State's \$17,400,000 in matching funds authorized by the Oregon Legislative Assembly during the 2015 Legislative Session for Phase II of the Project, the initial construction phase. The execution of additional intergovernmental agreement(s) is anticipated for Phase II and for Phase III, the final construction phase.

The Multnomah County Board of Commissioners Resolves:

1. The County Chair is authorized to sign the Multnomah County Courthouse Funding Agreement – Phase I with DAS and OJD, acting on behalf of the State of Oregon, 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 Funding IGA.

ADOPTED this 17th day of December 2015.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury

Deborah Kafoury, Chair

REVIEWED:

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

By

Jed Tompkins
Jed Tompkins, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Director, Department of County Assets.

**MULTNOMAH COUNTY COURTHOUSE
FUNDING AGREEMENT – PHASE I**

THIS MULTNOMAH COUNTY COURTHOUSE FUNDING AGREEMENT – PHASE I (this “Agreement”) is made on this ____ day of December, 2015 (the “Effective Date”), by and among the State of Oregon, acting by and through its Department of Administrative Services (“DAS”) and the Oregon Judicial Department (“OJD”) (together referred to as the “State”), and Multnomah County, Oregon (the “County”).

Project Summary and Contact Information

Project Title: Multnomah County Courthouse

County: Multnomah County

Phase I Completion Date: June 30, 2017

Estimated Project Completion Date: April 30, 2020

Funding Source: Oregon Article XI-Q Bonds, Oregon Courthouse Capital Construction and Improvement Fund (OCCCF)

County Contact: J. D. Deschamps, Project Manager
Phone: (503) 988-4615
Facsimile: (503) 988-5082
Email: jd.deschamps@multco.us
Address: 401 N. Dixon
Portland, OR 97227-1865

DAS Contact: Jean L. Gabriel, Capital Finance and Planning Manager
Phone: (503) 378-3107
Facsimile: (503) 373-7643
Email: jean.l.gabriel@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
Facsimile: (503) 986-5856
Email: David.T.Moon@ojd.state.or.us
Address: Supreme Court Building
1163 State Street

Salem, OR 97301-2563

State Project Monitor: Nicholas C. Larson
Phone: (503) 373-7196
Facsimile: (503) 373-7210
Email: nicholas.c.larson@oregon.gov
Address: 1225 Ferry St. SE
Suite Upper 100
Salem, OR 97301

Terms and Conditions

- 1. Effective Date and Term.** This Agreement is effective as of the Effective Date, such date being the last date all required signatures and approvals were obtained. The term of this Agreement shall be from the Effective Date through the date the parties fulfill their obligations hereunder, unless it is sooner terminated pursuant to Section 18(b) or 19 below.
- 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 A (Phase I Work); Exhibit B (Phase I Benchmarks); Exhibit C (Initial Plans); Exhibit D-1 (Description of Hawthorne Block and Encumbrances); Exhibit D-2 (Description of Jefferson Station Parcel); Exhibit D-3 (Description of Veritable Quandary Property); and Exhibit E (Form of Disbursement Request). The foregoing Exhibits are incorporated herein by this reference.
- 3. Definitions.** 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; Oregon Senate Bill 5506 (2013); Oregon Senate Bill 5703 (2014); Oregon House Bill 5008 (2013); and any subsequent laws enacted by the Oregon Legislative Assembly that provide funding for, or relate to, the Project.
 - (b)** “Chief Justice” means the Chief Justice of the Oregon Supreme Court.
 - (c)** “Code” means the Internal Revenue Code of 1986, as amended.
 - (d)** “Disbursement Request” means a request by the County for credit to the Phase I County Contribution and disbursement of Phase I State Funds, substantially in the form of Exhibit E.
 - (e)** “Existing Courthouse” means the building in which the Multnomah County Circuit Court is located as of the Effective Date.
 - (f)** “Fund” means the Oregon Courthouse Capital Construction and Improvement Fund.
 - (g)** “Hawthorne Block” means that certain real property in Multnomah County,

Oregon, known as Hawthorne Bridgehead Blocks 7 and 8 and located at the intersections of SW First Avenue & SW Madison Street and SW First Avenue & SW Jefferson Street, which the County owns as of the Effective Date, as described on Exhibit D-1.

(h) “Initial Plans” means the plans for the Project as of the Effective Date, as described on Exhibit C.

(i) “Jefferson Station Parcel” means that certain real property in Multnomah County, Oregon, located at the intersection of SW First Avenue and SW Jefferson, platted as the Jefferson Station Condominium and as described on Exhibit D-2, or such condominium units thereof to be acquired and used by the County for the Project and which the County anticipates acquiring during Phase I as part of the Project Parcel.

(j) “Veritable Quandary Property” means that certain real property in Multnomah County, Oregon, located at 1220 & 1228 SW First Avenue and as described on Exhibit D-3, the purchase of which the County is negotiating with the owner and, if such an agreement is executed, the County would anticipate acquiring during Phase I as part of the Project Parcel.

(k) “Lease” means the long-term lease agreement that the parties anticipate entering into during Phase II, in order to convey to OJD a leasehold interest in the OJD Premises.

(l) “Misspent Funds” means any Phase I Project Financing spent by the County for any purpose other than paying for Phase I Authorized Costs, or otherwise in violation of this Agreement.

(m) “OJD Premises” means those portions of the Project financed with Phase I State Funds and with any additional funds that may be contributed by the State pursuant to the Phase II Funding Agreement, as the OJD Premises will be defined in the Lease.

(n) “Phase I” means the reference design, final architectural design, engineering phase and entitlements phase of the Project.

(o) “Phase I Authorized Costs” means the County’s actual, reasonable and necessary capital costs relating to the Phase I Work, as such costs are:

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

Phase I Authorized Costs include, without limitation, costs related to Project reference design, final architectural design, engineering and entitlements, acquisition of the Jefferson Station Parcel, and, if applicable, acquisition of the Veritable Quandary Property; and costs of the State Project Monitor. For the avoidance of doubt, Phase I Authorized Costs do not include internal costs charged to the Project by the County, except to the extent that those costs represent out-of-pocket payments to or for the benefit of unrelated parties. Phase I Authorized Costs includes time spent working on the Project by employees of the County, provided that such time is charged to the Project on a time-

spent basis, rather than as a percentage of their total work for the County.

(p) “Phase I Benchmarks” means the items set forth in Exhibit B.

(q) “Phase I Completion Date” means June 30, 2017.

(r) “Phase I County Contribution” means the amount of \$15,000,000 that, as of the Effective Date, the County has agreed to provide for Phase I Authorized Costs of the Project.

(s) “Phase I Project Financing” means the total of the Phase I State Funds and the Phase I County Contribution.

(t) “Phase I State Funds” means the amount of \$15,000,000 that, as of the Effective Date, the State of Oregon has agreed to provide for Phase I Authorized Costs for the Project, such Phase I State Funds being contributed to the Project as a portion of the consideration for the leasehold interest in the OJD Premises that the County shall convey to OJD pursuant to the Lease.

(u) “Phase I Work” means the County’s design and engineering work, land use entitlements and other governmental approvals required for the Project, its acquisition of the Jefferson Station Parcel, and, if applicable, its acquisition of the Veritable Quandary Property, all as set forth in Exhibit A.

(v) “Phase II” means the construction phase of the Project.

(w) “Phase II Funding Agreement” means the agreement the parties may enter into pursuant to Section 12 below, in order to memorialize their obligations and understandings regarding Phase II.

(x) “Phase II State Funds” means any amount of the Phase I State Funds that is unspent from Phase I and the amount of \$17,400,000 that the Oregon Legislative Assembly authorized for the Project during the 2015 Legislative Session, with such funds to be realized from the sale of Article XI-Q bonds in 2017.

(y) “Phase III State Funds” means any amount of State funding approved in future Legislative Sessions for the Project, as such funds may be realized from the sale of Article XI-Q bonds in 2018 or subsequent years.

(z) “Project” means the Multnomah County Courthouse to be constructed on the Project Parcel, in the City of Portland, Multnomah County, Oregon, pursuant to the Act and this Agreement, as such Project is described in the Project Application and shown on the Initial Plans.

(aa) “Project Application” means that certain application for monies from the Fund to be used for the Project, submitted by the County to the Chief Justice on February 12, 2015, and approved by the Chief Justice and DAS on March 16, 2015.

(bb) “Project Budget” means the budget for the construction of the Project, to be developed by the County as part of the Phase I Work.

(cc) “Project Parcel” means the Hawthorne Block, the Jefferson Station Parcel, and, if applicable, the Veritable Quandary Property, upon which the Project will be constructed, and any improvements thereon.

(dd) “Project Plans and Specifications” means the plans and specifications for the

construction of the Project, to be developed by the County as part of the Phase I Work.

(ee) “Project Schedule” means the schedule for the construction of the Project, to be developed by the County as part of the Phase I Work.

(ff) “State Bonds” means the Oregon Constitution Article XI-Q general obligation bonds, issued by the State on March 31, 2015, to provide Phase I State Funds for the Project; any Article XI-Q general obligation bonds or other obligations subsequently authorized and issued by the State for the Project, including Phase II State Funds to be realized from the sale of Article XI-Q bonds in 2017; Phase III State Funds that may be realized from the sale of Article XI-Q bonds in 2018 or subsequent years; and any bonds or other obligations issued by the State to refinance the State Bonds.

(gg) “State Project Monitor” means the individual named in the Project Summary and Contact Information above, an employee of DAS who, pursuant to an interagency agreement between DAS and OJD, will monitor and review the County’s Project activities and compliance with this Agreement as set forth herein.

(hh) “Unspent Funds” means any amounts of the Phase I Project Financing that the County fails to spend during Phase I as provided in this Agreement.

4. Recitals. The parties recite:

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

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

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

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

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

(d) On January 13, 2014, at the request of OJD, on behalf of the County and in anticipation of the Project, DAS adopted a “Declaration of Official Intent to Reimburse Capital Costs with Oregon Article XI-Q General Obligation Bonds.” This Declaration memorialized DAS’s expectation of issuing Article XI-Q bonds for the Phase I State Funds.

(e) On September 11, 2014, in anticipation of the Project, the approval of the Project Application and this Funding Agreement, the parties executed an Intergovernmental Agreement for Interim Funding of the Multnomah County Courthouse (the “Interim Funding Agreement”) setting forth the parties’ general understandings about the Project.

As of the Effective Date, this Agreement supersedes the Interim Funding Agreement with regard to the Project.

- (f) On February 12, 2015, the County submitted the Project Application, which set forth the County's need for the Project and basic Project information.
- (g) On March 16, 2015, the Chief Justice approved the Project Application and determined that significant structural defects in the Existing Courthouse threaten human health and safety, that construction of a new building to house the Multnomah County Circuit Court is more cost-effective than remodeling the Existing Courthouse, and that replacement of the Existing Courthouse will create an opportunity for the colocation of other state offices in a newly constructed courthouse.
- (h) On March 16, 2015, DAS approved the Project Application.
- (i) On March 31, 2015, the State of Oregon Treasurer sold the State Bonds to provide the Phase I State Funds for the Project.
- (j) The State of Oregon Treasurer has deposited into the Fund the net proceeds of the State Bonds representing the Phase I State Funds.
- (k) In 2017, Article XI-Q bonds are expected to be sold to provide the Phase II State Funds.
- (l) The State of Oregon is contributing the Phase I State Funds to the Project in anticipation of the parties entering into the Phase II Funding Agreement, and as a portion of the consideration for the leasehold interest in the OJD Premises that the County shall convey to OJD pursuant to the Lease.
- (m) The parties expect to execute the Lease during Phase II.
- (n) The County will meet the Phase I Benchmarks pursuant to Section 11 below, on or before the Phase I Completion Date (as it may be extended by the State, in its reasonable discretion).
- (o) Pursuant to Section 12 below, the parties shall enter into the Phase II Funding Agreement, subject to (i) the County meeting the Phase I Benchmarks and (ii) future State and County approvals of appropriations required for Phase II of the Project, in order to memorialize the State's contribution of the Phase II State Funds for the Project and the parties' other obligations and understandings with regard to Phase II.
- (p) The parties estimate that, if they enter into the Phase II Funding Agreement, the Project will be fully constructed on or before April 30, 2020.
- (q) 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 Phase I State Funds, and the Phase II State Funds up to the amount of \$17,400,000 that the Oregon Legislative Assembly authorized for the Project during the 2015 Legislative Session, with such funds to be realized from the sale of Article XI-Q bonds in 2017.

5. Representations, Warranties and Covenants of the County. The County represents, warrants and covenants, as applicable, as follows:

- (a) 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.
- (b) The County has taken all actions required by law for the County to acquire and use the Phase I County Contribution for Phase I, and the Phase I County Contribution is now available, or will be available as needed, to be spent on Phase I.
- (c) The County shall contribute the full amount of the Phase I County Contribution to the Project.
- (d) The County understands, acknowledges and agrees that the State has no obligation of any kind to provide additional funding, other than the Phase I State Funds and Phase II State Funds up to the amount of \$17,400,000 that the Oregon Legislative Assembly authorized for the Project during the 2015 Legislative Session, with such funds to be realized from the sale of Article XI-Q bonds in 2017.
- (e) The County understands, acknowledges and agrees that the State has no obligation of any kind to enter into the Phase II Funding Agreement except as set forth in Section 12 below.
- (f) The County owns fee simple title to the Hawthorne Block, free and clear of all encumbrances other than those listed on Exhibit D-1.
- (g) The County has purchased a standard form of title insurance policy for the value of the purchase price of the Hawthorne Block that shows the County owns fee simple title to the Hawthorne Block.
- (h) The County anticipates acquiring fee simple title to the Jefferson Station Parcel, as part of the Project Parcel.
- (i) The County is negotiating with the property owner the terms and conditions for purchase of the Veritable Quandary Property, and anticipates acquiring fee simple title as part of the Project Parcel.
- (j) When it purchases the Jefferson Station Parcel, the County or the Jefferson Station Parcel seller shall purchase a standard form of title insurance policy for the value of the purchase price of the Jefferson Station Parcel that shows the County owns fee simple title to the Jefferson Station Parcel.
- (k) If and when it purchases the Veritable Quandary Property, the County or the Veritable Quandary Property seller would purchase a standard form of title insurance policy for the value of the purchase price of the Veritable Quandary Property that shows the County owns fee simple title to the Veritable Quandary Property.
- (l) As of the Effective Date, no litigation or claims (environmental or otherwise) are presently pending against the County regarding the development, construction or use of the Project or the Hawthorne Block. 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, the Hawthorne Block or, after their acquisition by the County, the Jefferson Station Parcel and, if applicable, the Veritable Quandary Property.
- (m) As of the Effective Date, the County's current employees (except for J.D.

Deschamps, Project Manager, and Clifton Serres, Engineering Services Manager) 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.

6. Phase I County Contribution: Deposits.

(a) Generally. In order to receive credits toward the Phase I County Contribution pursuant to Section 7 below, and disbursements from the Phase I State Funds pursuant to Section 8 below, the County shall deposit the full amount of the Phase I County Contribution with OJD. The County may deposit the Phase I County Contribution with OJD in either of the following ways, or a combination thereof:

- (i) direct transfer of funds (pursuant to Section 6(b) below); or
- (ii) the application of the value of the Jefferson Station Parcel (pursuant to Section 6(c) below) and the value of the Veritable Quandary Property (pursuant to Section 6(d) below).

(b) Direct Transfer of Funds.

- (i) The County may transfer to OJD any amount of the Phase I County Contribution, in one or more installments, for deposit in the Fund.
- (ii) Within two (2) business days after OJD's receipt of any amount of the Phase I 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 pursuant to this Section 6(b) shall be "original" funds—in other words, the County shall not transfer the same funds to OJD more than once.

(c) Value of Jefferson Station Parcel. If the County wishes to apply the value of the Jefferson Station Parcel as a deposit toward the Phase I County Contribution, as allowed by the Act, the County shall submit the following documents to OJD, within one hundred eighty (180) days after the Effective Date:

- (i) an appraisal that is satisfactory to OJD, in terms of content and timeliness, representing the current value of the Jefferson Station Parcel;
- (ii) the sale documents representing the actual purchase price of the Jefferson Station Parcel by the County; and
- (iii) documentation that is satisfactory to OJD, showing that the Jefferson Station Parcel is land purchased by the County for the Courthouse, pursuant to the Act.

Upon receipt of such documents, OJD shall apply the higher of the appraised value or the purchase price as a deposit to the Phase I County Contribution.

(d) Value of Veritable Quandary Property. If the County negotiates a purchase and sale agreement with the property owner, acquires the Veritable Quandary Property and wishes to apply its value as a deposit toward the Phase I County Contribution, as allowed by the Act, the County shall submit the following documents to OJD, within one hundred eighty (180) days after the Effective Date:

- (i) an appraisal that is satisfactory to OJD, in terms of content and timeliness, representing the current value of the Veritable Quandary Property;
- (ii) the sale documents representing the actual purchase price of the Veritable Quandary Property by the County; and
- (iii) documentation that is satisfactory to OJD, showing that the Veritable Quandary Property is land purchased by the County for the Courthouse, pursuant to the Act.

Upon receipt of such documents, OJD shall apply the higher of the appraised value or the purchase price as a deposit to the Phase I County Contribution.

7. Phase I County Contribution: Credits.

(a) Generally. In order to receive credits toward the Phase I County Contribution, the County shall submit Disbursement Requests pursuant to this Section 7. 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 Phase I Authorized Costs of the Project; or
- (ii) for Phase I Authorized Costs of the Project that the County has incurred and will pay to unrelated third parties no later than five (5) business days after OJD makes the disbursement, as set forth in Section 7(h) below.

(b) Credits Not to Exceed Deposits. The total credits to the County for the Phase I County Contribution may not at any time exceed the total amount that the County has deposited with OJD pursuant to Section 6 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 E. 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 Phase I Authorized Costs. The County shall submit Disbursement Requests to the State Project Monitor no more frequently than once every fourteen (14) days, and no less frequently than every one hundred twenty (120) 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 E and otherwise complies with Section 7(c) above; and
- (ii) the expenses set forth in the Disbursement Request represent Phase I Authorized Costs and are otherwise eligible for reimbursement pursuant to this Agreement.

(e) **Approved Amounts.** If the State Project Monitor determines that any amount or amounts set forth in a Disbursement Request represent Phase I Authorized Costs (any such amount being an “Approved Amount”), then:

- (i) fifty percent (50%) of the Approved Amount shall be credited toward the Phase I County Contribution; and
- (ii) fifty percent (50%) of the Approved Amount shall be disbursed to the County from the Phase I State Funds, pursuant to Section 8 below, and such amount shall be credited toward the Phase I State Funds.

(f) **Tracking Credits and Disbursements.** OJD shall keep current and accurate calculations of the credits to the Phase I County Contribution and the disbursements from the Phase I State Funds, pursuant to Section 7(e) above.

(g) **Disapproved Amounts.** If the State Project Monitor determines that any cost shown on a Disbursement Request is not a Phase I 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 Phase I County Contribution or disbursed to the County from the Phase I State Funds.

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

(i) **Retainage.** OJD shall retain three and one half percent (3.5%) of the Approved Amounts from the Phase I State Funds. This retainage shall not be disbursed to the County until the County has met the Phase I Benchmarks pursuant to Section 11 below and contributed the full amount of the Phase I County Contribution, and until any mechanics’ and materialmen’s liens filed against the Project Parcel have been discharged of record or bonded off.

8. Disbursement of Phase I State Funds.

(a) **Generally.** The disbursement of Phase I State Funds to the County pursuant to Section 7(e) above is subject to the provisions of this Section 8.

(b) **Maximum State Contribution.** Unless the amount of Phase I State Funds authorized by the Act is increased after the Effective Date, the State’s maximum monetary obligation with respect to the Project shall not exceed \$15,000,000. In the event that the costs of Phase I exceed the Phase I Project Financing and the parties have not amended this Agreement or entered into a Phase II Funding Agreement 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 Phase I State Funds.

(c) **Sufficient Appropriations.** The disbursement of Phase I State Funds under Section 7(e) above is contingent on OJD receiving appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly sufficient to allow OJD

to transfer amounts from the Fund to the County.

(d) Conditions Precedent. OJD's obligation to disburse the Phase I State Funds to the County for any Approved Amount is subject to satisfaction of each of the following conditions precedent, with respect to each disbursement:

- (i) The State Bonds representing the Phase I State Funds have been sold, the proceeds thereof have been made available for disbursement by OJD and OJD has received sufficient expenditure authorizations to allow OJD, in the exercise of its reasonable administrative discretion, to make the disbursement.
- (ii) No County Default (as defined in Section 18(a) below) has occurred and is continuing.
- (iii) The County's representations and warranties set forth in Section 5 above are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

9. Payment of State Project Monitor. OJD shall directly pay the State Project Monitor in accordance with the interagency agreement between DAS and OJD, pursuant to which DAS will submit invoices to OJD for the State Project Monitor's services. Upon OJD's payment of each such invoice for the State Project Monitor's services, OJD shall credit fifty percent (50%) of such payment to the Phase I County Contribution and fifty percent (50%) to the Phase I State Funds.

10. Phase I Work.

- (a) The County shall meet the Phase I Benchmarks pursuant to Section 11 below, on or before the Phase I Completion Date (as it may be extended by the State, in its reasonable discretion).
- (b) The County shall use all commercially reasonable efforts to meet the Phase I Benchmarks on or before the Phase I Completion Date.
- (c) The County shall design the Project in accordance with Oregon law 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 solar technology, as applicable to the Project. The County shall provide OJD with copies of all reports required by OAR 330-135-0055 as applicable to the Project and as required by the Oregon Department of Energy; and
 - (ii) all statutes and administrative rules relating to Public Works, if the Project is a Public Work as defined in ORS 279C.800.
- (d) The County shall contract with competent, properly licensed and bonded professionals for all Phase I Work.
- (e) The County shall be responsible for organizing, advertising and obtaining bids for all aspects of the Phase I Work in accordance with applicable sections of Oregon Revised Statutes Chapters 279A, 279B, and 279C, other applicable law and local contracting

procedures; and in compliance with Oregon Laws 2014, chapter 66 (HB 4111). The County shall document all solicitations, selection and award processes used for contracting the Phase I Work.

(f) The County shall be responsible for awarding and managing all contracts and property acquisitions necessary to complete the Phase I Work in accordance with the Project Application and the Initial Plans.

(g) All subagreements that the County may enter into which are funded wholly or in part with Phase I 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.

(h) The Phase I Work shall be performed in compliance with all applicable federal, state and local laws and ordinances.

(i) 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 adequate.

(j) The State and its employees, agents and representatives, and the State Project Monitor, shall have access to the Project Parcel and Project documentation and records at all reasonable times throughout the term of this Agreement, and as otherwise required under this Agreement, to inspect the work, operation and accounting records related to the Project.

(k) The County shall refer to OJD any credible evidence that a principal, employee, agent, contractor, subcontractor or other person has submitted a false claim under the False Claims Act, ORS180.750 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 Phase I Project Financing.

(l) During the term of this Agreement, the County shall, promptly upon request, deliver to the State Project Monitor any requested information relating to the Phase I Work, in sufficient detail to enable the State Project Monitor to determine whether the Phase I Work is proceeding in a timely fashion.

(m) The County shall pay when due all claims for work performed on the Phase I Work by or through County for services rendered or materials furnished to the Project, and shall keep 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 Parcel, or any portion thereof, the County shall cause the same to be discharged of record or bonded off, as permitted by statute, within thirty (30) days after the County's receipt of written notice of same.

(n) The Project will not be enrolled in the State Energy Efficiency Design (SEED) program.

11. Phase I Benchmarks. The County shall be deemed to have met the Phase I Benchmarks if:

- (a) the State, in its reasonable discretion, approves in writing the Project Plans and Specifications, the Project Schedule, and those portions of the Project Budget and the Guaranteed Maximum Price (GMP) of the Project developed by the County in accordance with the Phase I Work and to which the State will contribute funding;
- (b) the County acquires fee simple title to the Jefferson Station Parcel; and
- (c) the County acquires fee simple title to the Veritable Quandary Property, if applicable.

12. Phase II Funding Agreement.

- (a) **Condition.** The parties shall enter into the Phase II Funding Agreement, to memorialize the State's contribution of the Phase II State Funds for the Project, and their other obligations and understandings regarding Phase II, only if the County meets the Phase I Benchmarks on or before the Phase I Completion Date (as it may be extended by the State, in its reasonable discretion).
- (b) **County Notice.** The County shall provide ninety (90) days' notice to the State in advance of the estimated date of the County's completion of the Phase I Benchmarks. After receiving this notice, the State will have thirty (30) days to provide the County with a draft Phase II Funding Agreement.
- (c) **Execution.** The parties shall use their good-faith efforts to negotiate and execute a Phase II Funding Agreement within thirty (30) days after the County meets the Phase I Benchmarks.
- (d) **Excess Phase I State Funds.** In the event the parties enter into the Phase II Funding Agreement and not all of the Phase I State Funds have been disbursed to the County pursuant to this Agreement, any such excess funds shall be added to the Phase II State Funds.

13. 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 Sections 7(g) or 7(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 thirty (30) days after receipt of the notice described in Section 13(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 Phase I County Contribution and the Phase I 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 Phase I Authorized Costs.

A failure by the County to cure the Misspent Funds or the Unspent Funds pursuant to this Section 13(b) shall constitute a County Default.

14. Taxes and Assessments; Utilities. During the Phase I 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.

15. Tax Covenants.

(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.

16. 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.

17. Insurance. 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 Parcel in an amount at least equal to the amount of the Phase I Project Financing. Insurance proceeds from an insured loss affecting the Project Parcel shall be exclusively used by the County to rebuild, repair and restore the Project Parcel in a manner consistent with the terms of this Agreement. OJD shall consult with the County and approve plans for rebuilding, repairing and restoring the Project Parcel. OJD shall be provided notice of any cancellation or material modification to the policy at least thirty (30) 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 thirty (30) 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. The County's self-insured deductible shall not exceed \$100,000 each loss, except the earthquake and flood deductible shall not exceed five percent (5%) of each loss or \$100,000, whichever is more, without prior consent of OJD.

18. Default and Remedies.

(a) Default by County. Any of the following shall constitute a "County Default":

- (i) The County fails to meet the Phase I Benchmarks on or before the Phase I Completion Date (as it may be extended by the State, in its reasonable discretion).
- (ii) The County fails to perform, observe or discharge any of its other duties or obligations under this Agreement (except for curing Misspent Funds or Unspent Funds as set forth in Section 18(a)(iii) below) within thirty (30) 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.
- (iii) The County fails to cure any Misspent Funds or Unspent Funds as required by Section 13(b) above.
- (iv) Any representation or statement made by the County in this 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 Phase I Project Financing, is untrue in any material respect when made.
- (v) 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 of its property, 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.

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

- (i) ceasing disbursement of Phase I State Funds;
- (ii) terminating this Agreement, in which event:
 - (1) the County shall pay to the State within sixty (60) days of the termination an amount sufficient to defease the then-outstanding State Bonds and any costs of defeasing the State Bonds, as reasonably determined by the State, plus any principal and interest attributable to the State's sale of the then-outstanding State Bonds (such costs being the "Defeasance Costs"). If the amount of Defeasance Costs paid by the

County to the State pursuant to this Section 18(b)(ii) exceeds the State's actual Defeasance Costs, the State shall refund the excess to the County within thirty (30) 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 thirty (30) days after the State notifies the County.

(2) If the County, in its reasonable discretion, is not able to directly pay the State the Defeasance Costs, or any portion thereof, pursuant to Section 18(b)(ii)(1) above, the County may convey to the State an interest in the Project Parcel or in other real property owned by the County and any improvements thereon, such "Real Property Termination Interest" to be equal to the unpaid Defeasance Costs, provided that such Real Property Termination Interest is acceptable to the State, in the State's sole discretion. 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.

(iii) bringing an action at law to recover damages incurred as a result of the County Default, in order to recover all Phase I State Funds disbursed to the County hereunder, with interest thereon; and

(iv) seeking any equitable remedies, including specific performance, which may be available to the State.

(c) **Default by State.** The following shall constitute a "State Default":

(i) OJD fails to pay the County any amount as required by this Agreement, and OJD fails to cure such failure within thirty (30) days after the County's notice or such longer period as the County may specify in such notice; or

(ii) OJD or DAS commits any material breach or default of any covenant, warranty or obligation under this Agreement other than one described in Section 18(c)(i) above, and such breach or default is not cured within thirty (30) days after the County's notice or such longer period as the County may specify in such notice.

(d) **County's Remedies for State Default.** In the event of a State Default, the County may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity.

19. Termination.

(a) **By State.** In the event OJD fails to receive sufficient appropriations, expenditure limitations and other state authorizations to permit OJD in the reasonable exercise of its administrative discretion to continue making payments under this Agreement, OJD may immediately terminate this Agreement without penalty or liability, effective upon the delivery of notice to the County.

(b) By County.

(i) The County may not terminate this Agreement prior to meeting the Phase I Benchmarks and otherwise fulfilling the County's obligations hereunder unless and until the County pays to the State the Defeasance Costs or the Real Property Termination Interest, pursuant to Section 19(b)(ii) or (iii) below, respectively.

(ii) If the County wishes to terminate this Agreement pursuant to this Section 19(b), the County shall so notify the State and specify a proposed termination date (which shall be at least sixty (60) days after the County gives the notice to the State). Upon receipt of the County's notice, the State shall estimate the Defeasance Costs for a termination on the date specified in the County's notice, and provide that estimate to the County at least fifteen (15) days after the State receives the County's notice. If the County then desires to proceed with terminating this Agreement pursuant to this Section 19(b), the County shall so notify the State and pay the estimated Defeasance Costs to the State not later than thirty (30) days before the proposed termination date specified in the County's notice. If the amount of Defeasance Costs paid by the County to the State pursuant to this Section 19(b)(ii) exceeds the State's actual Defeasance Costs, the State shall refund the excess to the County within thirty (30) 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 thirty (30) days after the State notifies the County.

(iii) If the County, in its reasonable discretion, is not able to directly pay the State the Defeasance Costs, or any portion thereof, pursuant to Section 19(b)(ii) above, the County may convey to the State a Real Property Termination Interest in accordance with Section 18(b)(ii)(2) above.

20. Indemnity.

(a) Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 as applicable to a "local public body" as defined therein, the County shall indemnify, hold harmless and defend the State of Oregon, its officers, employees and agents, from and against all claims, suits, actions, damages, losses, and all costs and expenses incidental to the investigation and defense thereof, including reasonable attorney fees, resulting from or arising out of the County's performance of this Agreement.

(b) In the event the County defends or indemnifies the State, and its officers, employees and agents, the County shall have control of the defense and settlement of any claim that is subject to Section 20(a) above; provided, however, that neither the County nor any attorney engaged by the County shall defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without first receiving from the Oregon Attorney General, in a form and manner determined appropriate by the Attorney General, authority to act as legal counsel for the State of Oregon, nor shall the County settle any

claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that the County is prohibited from defending the State of Oregon or is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

21. 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.

22. 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. Notwithstanding the foregoing, the State Project Monitor has all of the rights as set forth in this Agreement.

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

24. Compliance with Applicable Law.

(a) The County shall comply with all applicable federal, state and local laws, rules, regulations, executive orders, ordinances or orders applicable to this 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.3 and 290 ee-34), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - (xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
 - (xvii) the requirements of any other nondiscrimination statute(s) which may apply to the application; and
 - (xviii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this Section 24(a).
- (b)** The County shall ensure that the Architectural & Engineering Services Contract, the CM/GC Contract and all of the first-tier subcontracts for Project work or materials resulting from this Agreement shall include the terms of this Section 24. The County shall make reasonable efforts to ensure that all contractors performing Project work or providing materials under contracts resulting from this Agreement shall comply with the terms of this Section 24.

25. Records Maintenance; Review and Audit.

- (a)** The County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, consistently applied. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County acknowledges and agrees that DAS, OJD, the Oregon Secretary of State's Office and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of County that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts.
- (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 the date the State Bonds are redeemed, or the date of the conclusion of any audit, controversy or litigation arising out of or related to this Agreement.

26. Notice.

(a) 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 26(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 or Facsimile	the day sent (unless sent after 5:00 p.m., P.T., in which case the email or facsimile 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 (3) 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.

27. Severability; Waiver.

(a) 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 the Agreement did not contain the particular term or provisions held to be invalid.

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

28. Governing Law; Venue; Consent to Jurisdiction. This 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, (collectively, "Claim") between the State of Oregon and the County that arises from or relates to this 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 28 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 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.

29. Entire Agreement; Amendments.

(a) 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.

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

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

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

- (a)** 10 – Phase I Work;
- (b)** 15 – Tax Covenants;
- (c)** 18 – Default and Remedies;
- (d)** 20 – Indemnity;
- (e)** 22 – No Third Party Beneficiaries;
- (f)** 23 – Subcontracts, Successors and Assignments;
- (g)** 25 – Records Maintenance; Review and Audit;
- (h)** 27 – Severability; Waiver;
- (i)** 28 – Governing Law; Venue; Consent to Jurisdiction; and
- (j)** Any other provision of this Agreement that by its terms is intended to survive.

[remainder of page intentionally left blank]

The County, by execution of this Agreement, hereby acknowledges that the County 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: _____

Shelby E. Robinson, Assistant Attorney General

Multnomah County, Oregon (County):

Print Name: _____

Title: _____

Signature: _____

Reviewed for the County:

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

By: _____

Kenneth M. Elliott, Assistant County Attorney

#6565150v14

Exhibit A

Phase I Work

- Architectural reference design and space planning
- Site due diligence
- Geotechnical and environmental investigations
- Land surveys
- Traffic Impact Analysis
- Architectural Design and Engineering Services (A/E)
- Construction Manager/General Contractor (CM/GC) - pre-construction services
- Owner Consultant/Inspection costs
- Early Work Amendments (EWAs) including but not limited to: utility relocation, site preparation, selective demolition of structures, offsite public improvements
- Shoring design and installation, deep foundation systems
- Owner's Project management staff, including Owner's Representative Services
- Development of Project Plans and Specifications
- Development of Project Schedule
- Development of Project Budget
- Acquisition of Jefferson Station Parcel, including option fees paid to assemble Parcel and owner and tenant relocation benefits required by Oregon law
- Due diligence study of Jefferson Station Parcel
- Potential acquisition of Veritable Quandary Parcel
- City of Portland Development and Plan Review, Permit Fees, and System Development Charges (SDCs)
- Application fee to City of Portland's Major Project Group to assist with permitting
- Project team co-location costs – remodel improvements, technology infrastructure, servers, utility costs for co-location space, miscellaneous project-related consumable expenses, Courthouse move and relocation expenses

- 1.5% for solar (per State of Oregon requirements for public projects)
- 2% for Art (Compliance with Multnomah County Code §§ 8.450-.456 and Regional Arts & Culture Commission)
- State Historic Preservation Office application and permit fees

Exhibit B

Phase I Benchmarks

1. Finalizing the Project Plans and Specifications
2. Finalizing the Project Schedule
3. Finalizing the Project Budget
4. Finalizing the Guaranteed Maximum Price (GMP) of the Project
5. Acquiring fee simple title to the Jefferson Station Parcel
6. Acquiring fee simple title to the Veritable Quandary Property, if applicable

Exhibit C

Initial Plans

Exhibit D-1

Description of Hawthorne Block and Encumbrances

Description:

All of Block 7, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon

Following portions of Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon:

PARCEL I

Lots 1 through 4, Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL II

The North 25 feet of Lot 7, Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL III

The North 20 feet of the South 25 feet of Lot 7, Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

PARCEL IV

Lot 8, Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

Encumbrances:

Block 7:

1. Rights of the public to any portion of the Land lying within streets, roads and highways.
2. Conditions and restrictions as established by the City of Portland:
Purpose: Conditional use
Ordinance No/File No: CU 101-86/GP 15-86
Recording Date: November 26, 1986
Recording No: 86-097779, Book 1958, Page 1832
3. Conditions and restrictions as established by the City of Portland:
Ordinance No/File No: 96-00740 PR
Recording Date: November 27, 1996
Recording No: 96-179724

4. Tunnel easement agreement, including the terms and provisions thereof, between Two Main Development LLC, a Delaware limited liability company and Multnomah County, Oregon
Recording Date: August 25, 2009
Recording No.: 2009-122252

Block 8:

1. Rights of the public to any portion of the Land lying within streets, roads and highways.
2. Historic Conservation Easement, including the terms and provisions thereof,
Recording Date: December 17, 1981
Recording No.: 81-086880
Affects: appurtenant to Lots 7 and 8
3. Conditions and restrictions as established by the City of Portland:
Ordinance No/File No: DZ 124-90
Recording Date: January 30, 1991
Recording No: 91-007850
Affects: Parcel III
4. Conditions and restrictions as established by the City of Portland:
Ordinance No/File No: LUR 92-00557 DZ
Recording Date: January 21, 1993
Recording No: 93-007776
Affects: Parcel III
5. Conditions and restrictions as established by the City of Portland:
Ordinance No/File No: LUR 99-00332 DZ AD
Recording Date: August 6, 1999
Recording No: 99-186849
Affects: Parcel III
6. UNRECORDED LEASE as disclosed on tax assessors roll
Lessor: Multnomah County
Lessee: Dennis King and David L. Thomson
[Lease will be terminated if and when the County purchases the Veritable Quandary Property]

Exhibit D-2

Description of Jefferson Station Parcel

The Jefferson Station Condominium, located on Lot 5 and a portion of Lot 6, Block 8, "CITY OF PORTLAND;" submitted to condominium ownership under the Oregon Condominium Act by Declaration dated December 20, 2006, and recorded February 26, 2007, as Instrument No. 2007-034869, Multnomah County Records; and further described in the Condominium Plat thereof recorded on February 26, 2007, in Plat Book 1282, on Pages 98-102.

Exhibit D-3

Description of Veritable Quandary Property

Parcel 1:

The North 16 feet of Lot 6, Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

Parcel 2:

The South 5 feet of Lot 7, Block 8, CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon.

Parcel 3:

Unit 3, JEFFERSON STATION CONDOMINIUM, in the City of Portland, County of Multnomah and State of Oregon.

TOGETHER WITH an undivided percentage of ownership in the general common elements appertaining to said unit as described in said Declaration of Unit Ownership, recorded February 26, 2007, Recorder's No. 2007-034869.

ALSO TOGETHER WITH those limited common elements appertaining to said unit as described in said Declaration of Unit Ownership.

Exhibit E

Form of Disbursement Request

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

Dated: _____

Project Title: Multnomah County Courthouse

Bonds: Article XI-Q Series 2015 F Bonds

Funding Agreement: Multnomah County Courthouse Funding Agreement between OJD, DAS and Multnomah County dated _____, 2015 (the "Agreement")

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

On behalf of Multnomah County (the "County"), I hereby request a total disbursement of \$ _____ pursuant to the Agreement, fifty percent (50%) of such amount to be credited to the Phase I County Contribution, and the other fifty percent (50%) of such amount to be disbursed to the County from the Phase I 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 Phase I Authorized Costs for the Project pursuant to the 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 Phase I Authorized Costs of the Project; or
 - (b) for Phase I Authorized Costs of the Project that the County has incurred from unrelated third parties but has not yet paid, which the County will pay no later than five (5) business days after disbursement by OJD of the amount set forth herein.
3. The total amount credited to the Phase I County Contribution pursuant to Section 7(e) of the Agreement is equal to or greater than the total Phase I 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