

Courthouse Improvement
INTERGOVERNMENTAL AGREEMENT
OJD Contract No. 230008

This Agreement is between the State of Oregon Judicial Department (“OJD”) and Tillamook County (“County” or “Local Government”), a political subdivision of the State of Oregon, collectively referred to in this Agreement as the “Parties”.

RECITALS:

- A. The Tillamook County Courthouse (“Courthouse”) is owned by County and occupied by the Tillamook County Circuit Court (“the Court”) and County offices. Both Parties were interested in remodeling the Courthouse to benefit Court staff, judges, County staff and members of the public. The Parties agreed that the Courthouse improvements must include remodeling of meeting rooms A and B into a courtroom to be occupied and used by the OJD (“Project”).
- B. OJD has agreed to provide up to \$77,696.00 from the 2021-2023 State Court Facilities and Security Account (ORS 1.178) for the Project. This Agreement outlines the process of funding the Project and identifies each Party’s responsibilities.
- C. County and OJD are authorized by ORS 1.002, ORS 8.125, and ORS 190.110 to enter into an intergovernmental agreement for any lawful purpose, including this Agreement.

The Parties agree as follows:

- 1. RECITALS ARE CONTRACTUAL.** The Recitals are incorporated into the substantive provisions of this Agreement.
- 2. TERM.** This Agreement shall be effective upon its execution and shall continue until the Project is finished and County has completed all its responsibilities set forth in this Agreement.

3. COUNTY’S RESPONSIBILITIES:

- a. Within seven (7) days after executing this Agreement County shall provide OJD with an electronic copy of the executed contracts for the completion of the Project to the OJD contacts identified in Section 16 below.
- b. County shall contribute any excess funds necessary to complete the Project beyond the \$77,696.00 maximum OJD contribution.
- c. County agrees to use the funds received from OJD solely to pay costs due under the Project-related contracts for work and services or to reimburse the County for payment of such expenses.
- d. County shall make full payment to the Contractor and other persons or entities entitled to payment related to the Project and shall provide electronic copies of all paid invoices to the OJD contacts identified in Section 16 below.
- e. In the event that the Project cost was less than \$77,969.00 or County is unable to complete the Project, County shall return to OJD any unexpended funds transferred pursuant to this Agreement by not later than one (1) month after cancellation or completion of the Project whichever is earliest.
- f. County shall certify that the substantial completion of the Project is in accordance with provisions contained in its plans, procurement documents and OJD Minimum Security Standards. County shall provide OJD with proof of compliance with the OJD Minimum Security Standards and allow OJD inspection

if requested by OJD.

- g. County shall require Contractor to correct any defects in Contractor's work that arise during the twelve (12) month period following Project substantial completion, or arising under any rights County may have under any warranty covering the work on the Project.
- h. County shall own the improvements resulting from this Project and shall be responsible for all obligations and costs associated with ongoing maintenance, repairs, or performance related to the Project.
- i. If at any time during the useful life of the facility improvements resulting from this Project, the Court's right to occupy the Tillamook County Circuit Court Facilities is substantially restricted by County, County shall reimburse OJD, to the full extent allowed by applicable law, for all amounts contributed to the Project from the State Court Facilities and Security Account. Reimbursement will be in proportion to the expected remaining useful life of the facility improvements.
- j. County shall forward to OJD all public records requests for security footage of Court occupied spaces. County agrees OJD will be responsible for responding to such public records requests. Further, County shall provide to OJD, at no cost, copies of all video footage requested by OJD. For video coverage requests arising from an emergency, a public records request or any other time sensitive obligations, as determined by OJD, County shall provide the requested footage within twenty-four (24) hours of OJD's request. For any other requests from OJD, County shall provide the footage within ten (10) business days. Finally, audio capability, if available on the Equipment, must be turned off at all times in all court-occupied spaces.

4. OJD'S RESPONSIBILITIES:

- a. Within fourteen (14) days of execution of this Agreement, OJD will make a one-time transfer from the 2021-2023 State Court Facilities and Security Account to County in the total amount of \$77,969.00. OJD shall not be responsible or liable for any additional funds that were or may be required to complete the Project.
- b. OJD shall not own the improvements resulting from this Project or be responsible for any obligations or costs associated with ongoing maintenance, repairs or performance related to the Project.

5. REPRESENTATIONS AND WARRANTIES. County represents and warrants to OJD that:

- a. County has the power and authority to enter into and perform this Agreement; and
- b. The making and performance by County of this Agreement (a) has been duly authorized by County, (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County's charter or other organizational document, and (c) does not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is party or by which County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement, other than those that have already been obtained.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by County.

6. HOLD HARMLESS AND CONTRIBUTION:

- a. Upon completion of any transfer of funds by OJD pursuant to this Agreement, County agrees to be solely responsible for any and all future expenditures of those funds and shall defend and hold harmless OJD and its officials and employees from any action or claim arising out of this Agreement, for the future use

of the funds transferred hereunder including, but not limited to any action or claim by or on behalf of the State of Oregon or any of its agencies.

- b. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third-Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this Section 6 with respect to the Third Party Claim.
- c. With respect to a Third Party Claim for which OJD is jointly liable with County (or would be if joined in the Third Party Claim), OJD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of OJD on the one hand and of County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OJD on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. OJD’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- d. With respect to a Third Party Claim for which County is jointly liable with OJD (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by OJD in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OJD on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of OJD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the County had sole liability in the proceeding.

7. INDEMNIFICATION BY SUBCONTRACTORS. County shall take all reasonable steps to cause its Contractor or contractors that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents (“Indemnitee”) from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys’ fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County’s contractor or any of the officers, agents, employees or subcontractors of the contractor (“Claims”). It is the specific intention of the Parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the

Indemnitee, be indemnified by the contractor from and against any and all Claims.

- 8. COUNTY DEFAULT.** County will be in default under this Agreement upon the occurrence of any of the following events:
- a. County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement.
 - b. Any representation, warranty or statement made by County in this Agreement or in any documents or reports relied upon by OJD to measure the delivery of services, the expenditure of funds or the performance by County is untrue in any material respect when made;
 - c. County (a) 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, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated as bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
 - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of County, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (c) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty (60) consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).
- 9. OJD DEFAULT.** OJD will be in default under this Agreement if OJD fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.
- 10. REMEDIES.** In the event either party is in default under this Agreement, the other party may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity. The party may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.
- 11. LIMITATION OF LIABILITY.** EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 6, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.
- 12. Reserved.**
- 13. ACCESS TO RECORDS.** County shall maintain all financial records relating to this Agreement in accordance

with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OJD and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

- 14. AMENDMENT.** No amendment to this Agreement shall be effective unless it is made in writing and is signed by both Parties.

- 15. PARTIES TO THIS AGREEMENT.** OJD and County agree that they 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 or otherwise, to any other third parties.

- 16. CONTACTS AND NOTICES.** 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 to the other party at the address set forth below or, if emailed, on the date delivered to the email address set forth below as confirmed by a return receipt:

OJD:

Robert Baxter
Procurement Manager
Business and Fiscal Services Division
robert.a.baxter@ojd.state.or.us
Office of the State Court Administrator
1163 State Street
Salem, OR 97301-2563
(503) 986-6410

County:

Rachel Hagerty
Chief of Staff
Board of Commissioners' Office
rhagerty@co.tillamook.or.us
201 Laurel Avenue
Tillamook, OR 97141
(503) 842-3404

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 16, be conclusively deemed to be the address of the party giving such notice.

- 17. WAIVER.** The failure of either party to enforce any provision of this Agreement, or the waiver of any violation or nonperformance of this Agreement in one instance, shall not constitute a waiver by the party of that or any other provision, nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties, and with respect to OJD's waiver or consent, all necessary OJD or State of Oregon approvals have been obtained. Such waiver, consent, modification, or change, if made shall be effective only in the specific instance and for the specific purpose given.
- 18. INDEPENDENT CONTRACTORS.** The Parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.
- 19. GOVERNING LAW.** This Agreement shall be governed by, construed, and enforced 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 Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Marion County for the State of Oregon; provided however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court of the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise. COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 20. THIRD PARTY BENEFICIARIES.** OJD and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
- 21. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Agreement, except the rights and obligations which by their nature extend beyond contract termination, including those set forth in Section 3.k, 3.l, 3.m, 3.n, 6, 7, 10, 11, and 13, provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination
- 22. SEVERABILITY.** The Parties agree that 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 will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

23. COMPLIANCE WITH THE LAW. In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

24. TERMINATION:

- a. The Parties may terminate this Agreement at any time by mutual agreement.
- b. Either party may terminate this Agreement, for any cause or no cause, by providing the other party no fewer than thirty (30) days advance written notice of termination.
- c. Either party may terminate this Agreement by providing the other party no fewer than ten (10) days advance written notice of termination 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 Agreement is prohibited.
- d. Either party may terminate this Agreement, in whole or in part, by providing the other Party no fewer than ten (10) days advance written notice of termination, if either party commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement and the defaulting party fails to correct such material breach, default or failure to perform within fourteen (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.
- e. OJD may terminate this Agreement immediately upon written notice to County, if OJD fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in OJD's reasonable administrative discretion, to perform its obligations under this Agreement.
- f. If County terminates this Agreement, County shall reimburse OJD, within thirty (30) of termination, all amounts contributed to the Project from the State Court Facilities and Security Account.

Each party, by the signature of its authorized representative, hereby agrees to be bound by the terms and conditions of this Intergovernmental Agreement.

Tillamook County

The Oregon Judicial Department, by and through the Office of State Court Administrator

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Legal Review and Approval:

Legal Review and Approval:

By: _____

By: _____

County Counsel

OJD Office of General Counsel