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MARC GONZALES
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

June 25, 2015

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of the Courthouse Improvement Intergovernmental
Agreement, OJD Contract No. 150571

Purpose/Outcomes	Upgrade the existing high and low voltage wiring in portions of the Courthouse to accommodate improvements necessary for implementation of the Oregon eCourt system and for comfort and safety of County employees and the public.
Dollar Amount and Fiscal Impact	County will pay two thirds of the total or \$81,293 plus any excess beyond the estimated total amount of the project valued at \$121,940. Oregon Judicial Department will pay \$40,647 or one third of the total costs incurred, whichever is less.
Funding Source	Project funding will come from Capital Improvement Project Fund 420 9110 482300 in 2015/16 fiscal year.
Safety Impact	Upgraded wiring for safe implementation and increased efficiency of the electronic filing system within the Clackamas County Circuit Court.
Duration	One time approval is required.
Previous Board Action	None.
Contact Person	Marc Gonzales, Finance Director

BACKGROUND:

The Intergovernmental Agreement (Contract No. 150571) is proposed between the Oregon Judicial Department (OJD) and Clackamas County (County) to establish funding for the upgrade of the wiring system within Clackamas County Circuit Court and to allow for the improvements necessary to implement the eCourt system. This wiring upgrade and courthouse improvement is part of a larger state wide effort to allow for electronic filing of pleadings and court documents at Oregon Circuit Courts.

OJD will contribute one-third of the funding and County will provide two-thirds of the funding to complete the wiring project. The parties have agreed to the provisions and terms and conditions outlined in the intergovernmental agreement attached hereto. The proposed Draft IGA is subject to revisions based on the final discussions of the parties.

This Intergovernmental Agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board of County Commissioners, on behalf of the County approve entering into the IGA for Courthouse Improvement as ultimately negotiated between the parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marc Gorzales". The signature is written in a cursive style with a large, stylized initial "M".

Marc Gorzales

Finance Director

Courthouse Improvement
INTERGOVERNMENTAL AGREEMENT
OJD Contract No. 150571

This Agreement is between the Oregon Judicial Department (OJD) and Clackamas County (County), a political subdivision of the State of Oregon.

RECITALS:

- A. Both Parties have an interest in improvements to the Clackamas County Courthouse (the Courthouse) owned by the County and occupied by the Clackamas County Circuit Court (the Court) and County offices. The Parties agree that the existing high voltage and low voltage wiring in portions of the Courthouse needs to be upgraded to accommodate improvements necessary for implementation of Oregon eCourt and for the comfort and safety of County employees, judges and Court employees and the public.
- B. OJD has agreed to provide one-third of the total cost of the high voltage and low voltage wiring upgrades up to \$40,647 from the 2013-2015 5th Judicial District budget. County has agreed to provide the remaining two-thirds and if necessary any amount over OJD's \$40,647 contribution. This Agreement will outline the process of funding the purchase and installation of the upgraded high voltage and low voltage wiring (Project) and identify each party's responsibilities.
- C. County and OJD are authorized by 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 of its responsibilities set forth in subsections 3.a through 3.k below or October 31, 2015, whichever is earlier.
3. **COUNTY'S RESPONSIBILITIES:**
 - a. County shall collaborate with the Trial Court Administrator or Designee (TCA) to create a mutually agreed requirements document that describes the minimum requirements and standards and potential alternate features that both parties are seeking for the Project.
 - b. County shall initiate and complete a procurement process for such services needed to complete the Project in conformance with laws and rules applicable to County procurements and consistent with the requirements document mentioned above.
 - c. In addition to all other terms required by law, County shall secure in all contracts related to this Project, agreements that:
 - i. name OJD as a third party beneficiary;
 - ii. indemnify and hold harmless OJD on the same terms as the contractor(s) agree to indemnify and hold harmless County; and

- iii. name OJD as an additional insured on the Contractor's Insurance on the same terms the contract(s) agree to name the County as an additional insured.

Contractor shall furnish OJD with evidence of such insurance.

- d. No later than June 30, 2015, County shall provide OJD with an electronic copy of the official estimates necessary to prove the cost of the Project to the OJD contacts identified in Section 9 below. If some or all of the work performed on the Project is to be performed by county employees, County shall provide OJD an estimate describing the work to be performed by County employees and the calculation of cost for such work on the Project.
- e. County shall provide the OJD contacts identified in Section 9 below progress reports at various milestones related to the Project including when the County initiates its procurement process, awards the contract, begins and completes the Project and such other times as reasonably requested by OJD.
- f. County shall cooperate with the TCA to minimize the impact of the Project on the daily operation of the Court. County shall include the TCA in the planning and implementing of those portions of the Project that will affect Court administration.
- g. County shall ensure that the Contractor completes the Project, including all required inspections, by no later than October 31, 2015.
- h. County shall contribute funds equal to two-thirds of the total cost of the Project plus any excess costs necessary after OJD has paid \$40,647.
- i. County shall make full payment to all 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 9 below.
- j. In the event that the Project costs less than \$121,940, or in the event that County is unable to complete the Project, County shall return to OJD any unexpended funds transferred pursuant to this Agreement by no later than one month after the cancellation or completion of the Project, including required inspections, or by October 31, 2015, whichever is earliest.
- k. County shall approve the completed Project in accordance with provisions contained in its plans, procurement documents and contract documents.
- l. County shall pursue its warranty rights to correct any defects of the completed Project against the appropriate party, as applicable, in the event that performance issues arise during the warranty period.
- m. County shall own the upgraded high voltage and low voltage wiring and shall be responsible for all associated ongoing maintenance related to the Project.
- n. The responsibilities included in subsections 3.l, and 3.m will survive the expiration of this Agreement.

4. OJD'S RESPONSIBILITIES:

- a. Prior to June 30, 2015 and after OJD receives from the County a copy of the official estimates necessary to prove Project cost, OJD will make a one-time transfer of 2013-2015 5th Judicial District budget funds to County in the amount of one-third of the total Project-related expenses or \$40,647, whichever is less. These funds are to be used by County solely to pay the costs due

under the Project-related contracts. OJD shall not be responsible or liable for any additional funds that may be required to complete the Project.

- b. OJD shall not be responsible for any aspect of the procurement process, contract award, or contract administration associated with the Project.
 - c. OJD shall not own the upgraded high voltage and low voltage wiring or be responsible for any obligations or costs associated with ongoing maintenance, repairs or performance related to the Project.
5. **INDEMNIFICATION:** 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. Further, subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, for all other claims or actions, OJD and County shall indemnify, hold harmless and defend the other, its officers, agents, and employees, from and against all other claims, suits, actions, damages, losses, and all expenses and costs incidental to the investigation and defense thereof, including reasonable attorney fees, resulting from or arising out of the other's negligent acts in the performance of this Agreement.
6. **ACCESS TO RECORDS:** County shall maintain all financial and other records relating to this Agreement. County acknowledges that the State of Oregon, the State of Oregon Judicial Department, the Secretary of State, the Federal government, and their authorized representatives shall have reasonable access, at their own cost and expense, and only following reasonable notice to County, to such records, in paper or electronic form, for their examination and audit and to make excerpts and transcripts. County shall retain and keep accessible all such records for a minimum of 7 (seven) years, or longer as may be required by 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.
7. **AMENDMENT:** No amendment to this Agreement shall be effective unless it is made in writing and is signed by both parties.
8. **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.
9. **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:

Debbie Spradley
Trial Court Administrator-5th Judicial District
Debbie.D.Spradley@ojd.state.or.us
Clackamas County Courthouse
807 Main St.
Oregon City, OR 97045
(503) 655-8670

David Moon
Business & Fiscal Services Division Director
David.t.moon@ojd.state.or.us
Office of the State Court Administrator
1163 State Street
Salem, OR 97301-2563
(503) 986-5150

County:

Marc Gonzales
Clackamas County Director
Department of Finance
marcg@co.clackamas.or.us
2051 Kaen Road
Oregon City, OR 97045
(503) 742-5405 or (503) 742-5400

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

10. **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.
11. **NO PARTNERSHIP:** Neither party to this Agreement shall be deemed an agent, partner, joint venturer, or related entity of the other by reason of this Agreement.
12. **GOVERNING LAW:** This Agreement shall be governed by, and shall be 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.

13. **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, 5, 6, and 7.

14. **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 30 (thirty) days advance written notice of termination.
- c. Either Party may terminate this Agreement by providing the other Party no fewer than 10 (ten) 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 10 (ten) 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 14 (fourteen) 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 with 10 (ten) days' notice if funding from federal, state, or other sources is not obtained or continued at levels sufficient for implementation of this Agreement.

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

Clackamas County Board of Commissioners
Signing on Behalf of Board

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

By: _____
John Ludlow

By: _____
Kingsley W. Click

Title: Chair of the Clackamas Board of
Commissioners

Title: State Court Administrator

Date: _____

Date: _____

TKB:gil/L2G15035

