

# Clackamas County Circuit Courthouse

## P3 Case Study



October 2022



## 1. Introduction

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**The Clackamas County Circuit Courthouse Public-Private Partnership (“P3”) Project (“the Project”) represents a momentous achievement in the P3 industry for social infrastructure. Clackamas County, Oregon (“the County”) and Clackamas Progress Partners LLC (the Project Company) entered into a project agreement on August 30, 2022. The project agreement was structured as a design-build-partial finance-operate-maintain (DBfOM).**



The procurement of the Project was one of the fastest P3 procurements ever conducted in the U.S due to a highly efficient process, extensive due diligence ahead of the RFQ, and the experience of the County’s team and the Project Company. It took only 11 months from the issuance of the RFQ to the selection of the winning proposer. Furthermore, it took just 11.5 months from issuance of the RFP to the execution of the project agreement and achievement of financial close. Despite serious turbulence in construction and financial markets, the procurement experienced no major delays and the County was able to stay on its original procurement schedule.

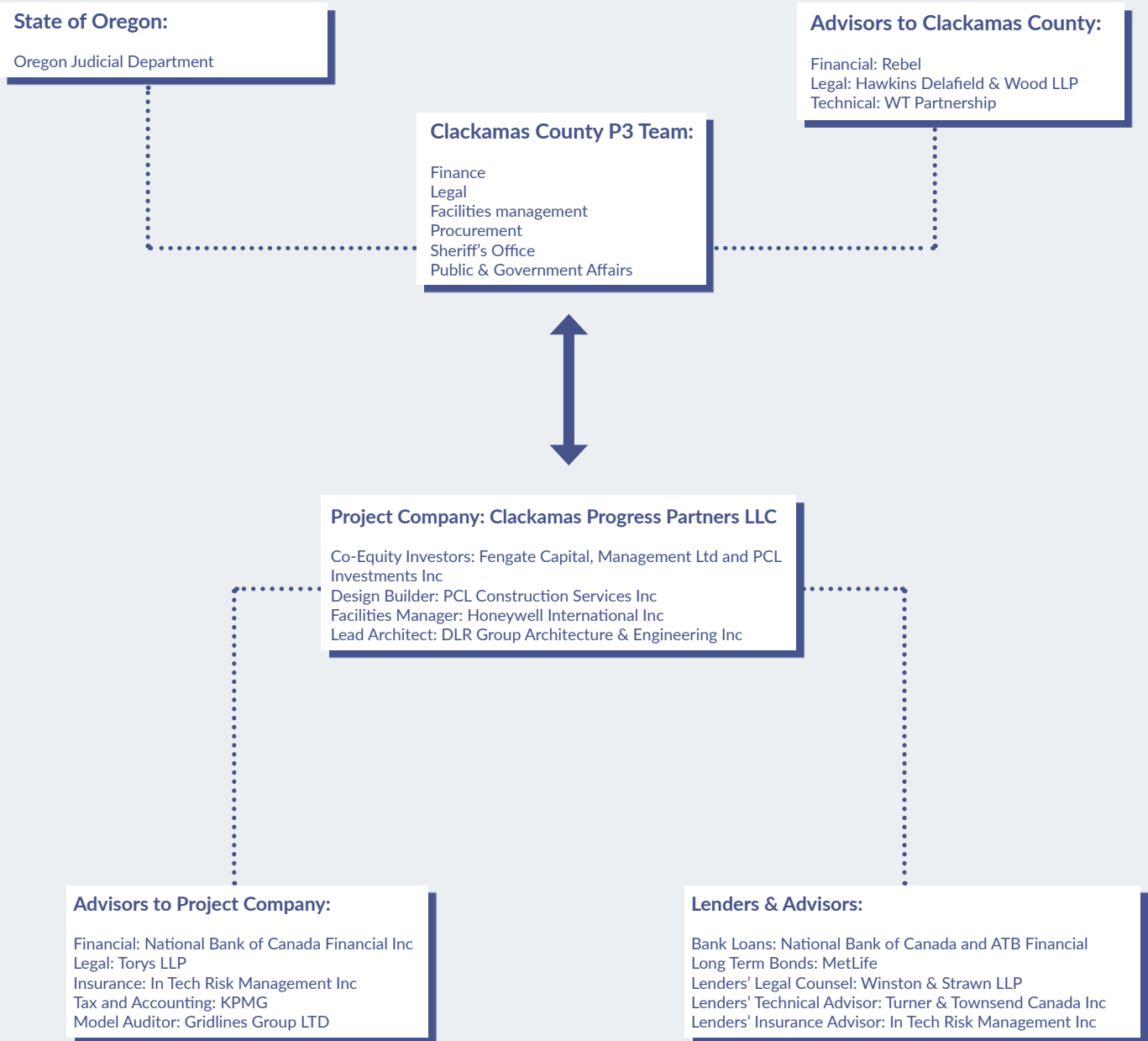
The robust pre-procurement preparation and procurement process resulted in a winning proposal that meets the County’s objectives and a balanced project agreement that will protect the County’s interests for the next 30+ years.

This Project represents the first successful closing of an availability payment P3 in Oregon. This document presents the Clackamas County Circuit Courthouse P3 pre-procurement preparation and procurement process and identifies insights that the P3 market can use in developing new projects. In developing this case study, key members of the County, the County’s advisors and shortlisted bidders were interviewed, and the team conducted a work session to discuss lessons learned. The intended audience of this report includes public agencies considering P3, and the larger P3 community, including investors, advisors, and developers.



## Participating parties

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## 2. Background, History and County Objectives

Providing safe facilities for the administration of justice is a county government responsibility in Oregon. For almost 60 years, the County has been examining options to replace the existing courthouse, which was originally built in 1937. The current courthouse is too small for its intended purpose and has significant

**"A new courthouse has been discussed, planned for and sought since the 1960s. I started practicing in 1981 and was promised one then. I was told by 5 presiding judges before I got the position that it would never happen! The fact that so many folks were involved in this effort and the methodology by way of a P3 was the lynch pin."**

Judge Kathie Steele, Clackamas County Circuit Court

security and operational issues, including not having separate circulation for the public, the judicial staff, and defendants. In addition, the building is nearing the end of its useful life and will require substantial investment to renovate and update to modern standards. Furthermore, there are significant seismic concerns with the existing building. The location for the new

courthouse on the Red Soils Campus, near the Clackamas County Adult Detention Facility and Juvenile Court building, was identified in the 1998 in the campus masterplan. Finally, the State of Oregon currently has a program – the Oregon Courthouse Capital Construction and Improvement Fund (“OCCCIF”) – that will provide up to half the capital costs for new courthouse buildings, and the County was accepted into the program, which means that the cost to replace the existing courthouse with a suitable alternative may never be lower.

### Challenges with the Existing Courthouse

#### Security challenges

With just one courtroom built originally in 1937, the existing courthouse has been expanded over the years to accommodate 11 courtrooms. A needs assessment conducted in 2019 by the National Center for State Courts determined that current population demands require 14 courtrooms at a minimum, and 16 courtrooms in the next 40 years. With the current courthouse, the gap between space availability and judicial needs leads to delays in justice. The existing courthouse cannot handle the demands of the population, which has led to delays in trials and incarcerations, and affected child support hearings and civil litigation trials.

#### Safety concerns

There are significant safety concerns due to failing building systems. Mechanical, electrical and plumbing systems are functionally obsolete and in some cases beyond repair.

#### Delays in Justice

A capacity shortage in the current courthouse highlights the need for separate building ‘circulation zones.’ The current courthouse lacks separate paths for victims, witnesses, and prisoners/defendants. Jurors have no sequestration room on site, increasing the risk of improper communications.

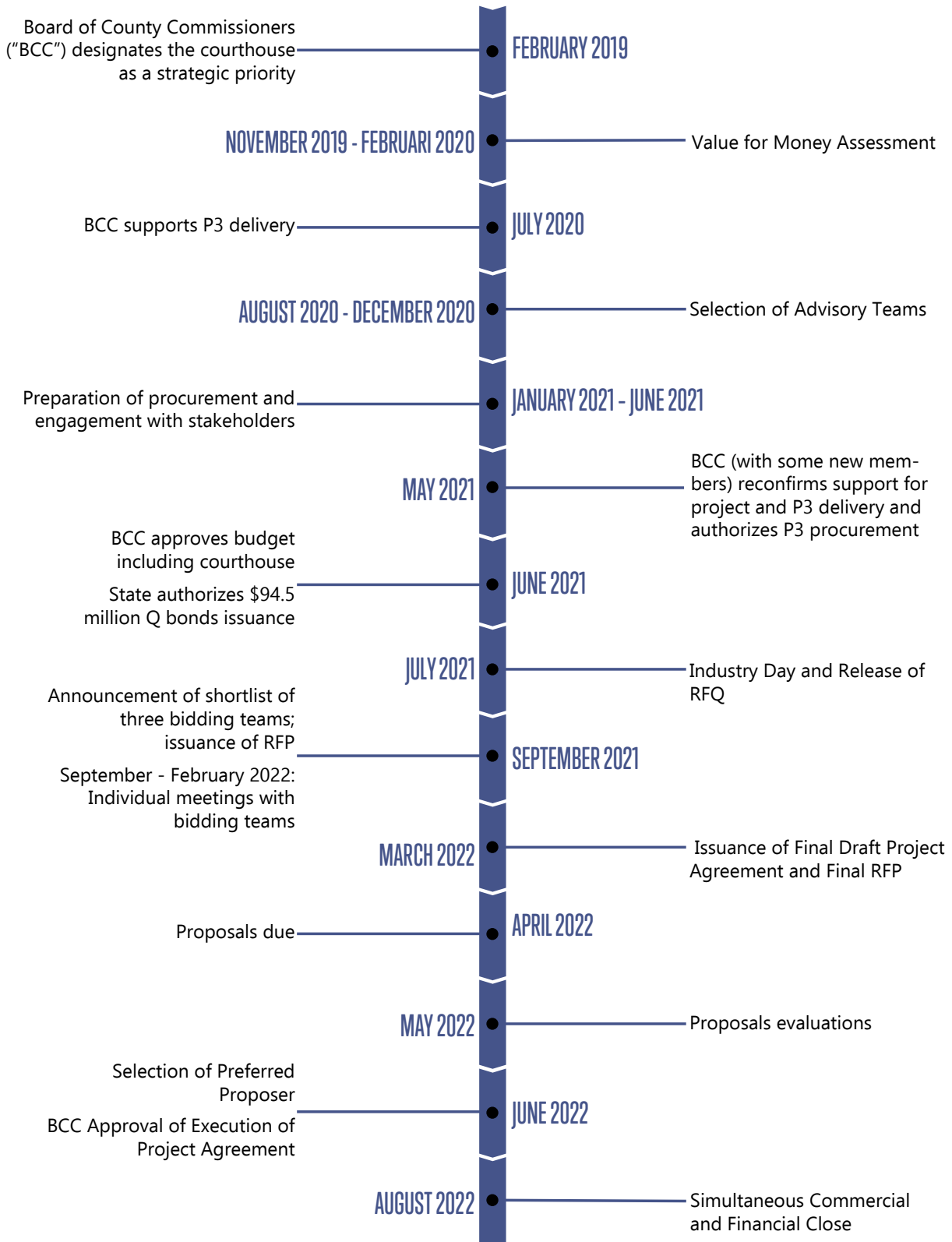
#### Earthquake Risks

A 2015 seismic evaluation found the existing courthouse has numerous structural deficiencies. Soil tests indicate the ground under the building could liquefy during an earthquake. The courthouse is currently three feet from an eroding cliff that ends at the Willamette River and cannot be seismically retrofitted or modified to modern standards.



## Overall Project Timeline

While the new Clackamas County Circuit Courthouse ("New Courthouse") had been considered since the 1960s, this most recent P3-focused effort began in February of 2019, as indicated below.





### 3. Selection of P3 Procurement

The County undertook a systematic effort to determine the optimal method of procuring the New Courthouse. Because this would be the largest individual capital project in County history, it retained advisors to assist it. Originally, the County retained a dedicated Project Manager for the effort. The Project Manager was a former County employee and was familiar with all relevant parties and issues. His research uncovered the potential benefits of a P3 delivery method and, working with Hawkins Delafield and Wood LLP, it was determined that P3 was a legally permissible procurement and contracting structure for the County and would ultimately be eligible for matching state funds. This was important to determine, as it would be the first availability payment P3 in Oregon, and the County did not want to waste time and effort pursuing an option that wasn't legally or financially viable.

The County then retained Rebel as financial and transaction advisor to perform a Value for Money analysis targeted at understanding the potential risk transfer and financial implications of the different procurement methodologies, and identifying the optimal delivery method. The County had a number of key objectives for the project, including:

- Ensuring delivery of a high-quality building that would meet the County's needs for decades
- Minimizing impact on the County's short-term budget
- Optimizing budgeting and cost certainty
- Meeting the requirements of the State's capital funds matching grant program.

The Value for Money ("VfM") analysis focused on (a) helping the County understand the trade-offs and high-level implications of each alternative, and (b) producing information that could be used by the Board of County Commissioners (BCC) in their decision-making. Using the cost estimates the County had already prepared, market benchmark transactions, and the County's experience with operating and maintaining its current facilities, Rebel compared the qualitative and quantitative aspects of five procurement options: (1) traditional design-bid-build, (2) design-build, (3) design-build-maintain, (4) design-build-finance-operate-maintain, and (5) a 63-20 tax exempt procurement.





The VfM process involved three workshops with a cross-functional team of County and State employees, who represented all the stakeholders and areas of expertise that would be involved. This included court operations, the Presiding Judge, the Sheriff's office, County maintenance services, County finance, County legal, and County capital projects experts. These workshops were used to: 1) reach agreement on the County's objectives for the project and the overall analytical approach to the VfM analysis, 2) provide an interim update and preliminary results based on the data collected, and get County guidance on areas for refinement, and 3) provide and discuss the final results to determine a recommendation that would be taken to the BCC for final approval (or rejection).

It is important to note that this process did not involve days of detailed technical meetings and granular risk workshops. While those would come later as the payment mechanism was being developed, the team felt that level of analysis at this stage would lead to a level of "false precision" in the VfM. In particular, the team believed that such false precision could end up distracting the discussion from the critical qualitative decisions that needed to be made (e.g. "What are the costs/benefits of transferring maintenance risk to the private sector?") to arguments over whether or not the correct assumptions had been made on detailed items. Instead, these workshops served to develop a cross-functional team of County employees who were well-educated on the full picture of challenges and benefits presented by a P3 procurement, who became advocates for the project, and who provided keen insight into what types of information would be most helpful to supply the BCC in its decision making.

Ultimately, the County selected a design-build-partially finance-operate-maintain ("DBfOM") delivery method for the New Courthouse. Under this delivery method, the winning proposer establishes a single purpose entity (Project Company) composed of numerous proposer team members, such as investors and subcontractors. The Project Company is responsible to the County for designing, building, partially financing, operating and maintaining the courthouse for a 30-year term following completion of construction. The Project Company will perform all design-build ("DB") activities for the courthouse, including the building for the courthouse, exterior grounds and amenities, surface parking lots, access and circulation roadways and utility connections. The Project Company's facilities management responsibilities will last for a 30-year term following the completion of the DB activities, and will include preventive (or scheduled) maintenance, reactive (or unscheduled) maintenance, custodial services, renewal and replacement.

### **Key lessons learned**

- The qualitative components of a VfM analysis are at least as important as the quantitative
- Save the detailed risk workshops for developing the payment mechanism – "false precision" can distract from the decisions that need to be made
- At this stage, education is at least as important as analysis
- Get buy-in from decision makers upfront
- Having a dedicated project manager/champion from the start is critical



## 4. Collaborative Procurement Process

Having selected and approved the DBfOM procurement method, the County proceeded with the procurement. Following industry leading practices, the County chose to “do the homework” before launching the RFQ/RFP phase of the project.

### 4.1. Doing the Homework

Specifically, the County proceeded to 1) further validate the cost estimates and specifications for the New Courthouse, 2) conduct detailed risk and technical workshops to determine the technical and performance specifications and requirements that would be in the Request For Proposal (“RFP”) and Project Agreement (“PA”), 3) draft the Request for Qualifications (“RFQ”), RFP, and PA, and 4) discuss with key stakeholders (e.g. City of Oregon City, Oregon Judicial Department) how this P3 arrangement would be different from a traditional procurement and might require different timing on approvals and payments than other transactions. Beginning all of these processes together had a number of benefits for the transaction, including:

- Early identification and resolution of potential significant issues before the RFP phase
- Accelerated procurement schedule once the RFQ was launched, as all the key documents and understandings were drafted and available for immediate feedback
- Optimized competitive tension throughout the process, as terms were refined while multiple bidders were still preparing their bids
- Enabling the transaction to stay on schedule in the midst of a highly volatile market and political changes.

“It is important to ensure you understand what the needs are for your project. That involves developing a clear needs assessment, meeting with stakeholders, documenting, and reviewing it a few more times to make sure you did not miss anything.”

Debbie Spradley, Trial Court Administrator





To lead the technical elements of these efforts, the County engaged WT Partnership as technical advisor. WT conducted numerous workshops with all of the stakeholders who had been assembled during the VfM analysis phase, to develop a set of technical performance specifications that complied with the State and County's needs for the Project. Based on these specifications, the County team 1) developed a draft payment mechanism that was designed to be "on market" and would lead to competitive bids from P3 proponents, and 2) defined the most important elements on which the P3 partner would have to deliver, informing the selection and evaluation criteria.

As the November 2020 elections had led to a revised composition of the Board of County Commissioners ("the BCC"), the project team decided to seek explicit reconfirmation of the BCC's support for the project and the P3 approach. Several information sessions were held and the questions from commissioners were answered, ultimately leading to the reconfirmation of the BCC's support for the project and for the P3 procurement. Moreover, the short term and long-term liabilities associated with the courthouse P3 were considered and discussed by the General County Budget Committee and approved by the BCC in the County's budget approval process ahead of the launch of the procurement.

## 4.2. RFQ and RFP

Once the County's "homework" was done and the draft documents prepared, the transaction was launched to the P3 community with the release of the RFQ in July 2021. During a well-prepared industry event, the County was able to demonstrate that it was fully committed to implementing the project and that it had prepared a marketable P3 structure and a solid P3 procurement process. Moreover, the stipend that the County offered unsuccessful bidding teams was a testament to its commitment to

**"The County made our pursuit decision very easy. The project had been prepared extremely well, resulting in an opportunity that had everything we were looking for, despite the relatively small investment opportunity."**

Jensen Clarke, Director, Infrastructure Investments, Fengage

delivering the project as a P3. The result was strong market interest: eight bidding teams responded to the RFQ in early August 2021, and a shortlist of three bidders was selected in September 2021. Again, a cross-functional team of engaged stakeholders was used to evaluate the RFQ across six clearly defined criteria, including Project Understanding, General Qualifications, and Experience and Qualifications in Design, Construction, Facilities Management and Project Financing. The selection of three shortlisted bidders was designed to optimize competitive tension throughout the process by ensuring that there were few enough bidders that each team felt it had a strong chance, but also that there were enough bidders in case one dropped out during the process.



**The County's preparatory work resulted in a project that checked the boxes of many qualified P3 bidding teams:**

- ✓ Undisputed purpose and need for the project
- ✓ Political support for the project and the delivery model
- ✓ Selection of P3 after thorough consideration of alternative delivery options
- ✓ Key decision making had taken place
- ✓ Robust project team with experienced advisors
- ✓ Commitment to deliver, also demonstrated by stipend
- ✓ Clear and well-structured procurement plan
- ✓ Clear intent to use precedent P3 agreements as starting point
- ✓ Shortlist of three bidders



Soon after announcing the shortlist, the RFP was launched in mid-September 2021, along with issuance of the Draft Project Agreement to all three shortlisted bidders. Kickoff calls were held with each team, and through February 2022, three rounds of individual meetings were held with each bidding group to discuss technical topics, including clarifications and alternative technical concepts being considered by the bidders, and to discuss suggested changes to the commercial terms proposed in the Draft Project Agreement that would improve the contract and facilitate the best partnership over the course of the agreement.

Being able to hold these meetings in person allowed for a more productive interaction than would have been possible in a virtual format. This facilitated the rapid and efficient inclusion of a number of critical elements that occurred during the course of the procurement, enabling all parties to adapt to quickly changing conditions. These included:

- The removal of the initial “affordability ceiling” as unprecedented inflation made historical cost estimates obsolete
- The inclusion of a specific number of points in the evaluation criteria for the use of mass timber to reflect the County’s priorities of both timber use and cost effectiveness
- Allowing flexibility in the design to save money while still meeting courthouse needs for the next few decades
- County assuming the scope for “off-project site” road works and permitting as City permitting and traffic studies were delayed
- County assuming System Development Charges
- Increasing the Milestone Payment, as it became apparent that the State’s share of costs would be increasing in connection with construction cost increases.

Despite all of these changes, and one bidder withdrawing mid-process due to unforeseen circumstances, the procurement proceeded ultimately on schedule, with selection of Preferred Bidder in June 2022, approval by the BCC to proceed in July 2022, and simultaneous commercial and financial close in August 2022 – a period of roughly 11 months from release of the RFP to financial close.

### 4.3. Getting to Close

Once the Preferred Bidder was selected by the cross-functional County selection team, BCC approval to sign the Project Agreement needed to be obtained. While the BCC had been kept informally up to date on the progress of the project – and most importantly that costs were coming in higher despite all the efficiencies that were being achieved in the negotiations – this would be the first time that the BCC saw the final concepts and numbers. Fortunately, all the work that had been done engaging the BCC



in the original approval of the P3 process, the reapproval with the new board following elections, the preparation and delivery of a thoughtful presentation by the County's cross-functional team (in advance of the meeting), and tireless work by the Project Manager, led to BCC approval to proceed with finalizing the PA, subject to the Availability Payments not exceeding a certain limit.



Given that capital costs and facilities management costs had been fixed upon receipt of committed bids (subject to inflation in the case of facilities management costs), the largest outstanding risk to the transaction closing was interest rate risk. To mitigate this risk, the preferred bidder – Clackamas Progress Partners (“CPP”) – arranged to purchase an interest rate hedge that would cap the County's Availability Payment at a level below the approved affordability ceiling. The County approved including this cost in CPP's financial closing costs, and agreed to pay it as an addition to the stipend should financial close not be achieved. This innovation enabled the team to cost-effectively guarantee that the Courthouse would come in within the new affordability limits, and that the Project Agreement could be signed on time without having to go back for BCC approval. Because this hedge came with an expiration date, it provided both the financial certainty and motivation necessary to rapidly move to a simultaneous commercial and financial close.

Over the next month and a half, the team went through a final design validation process with the preferred bidder, identifying areas of the design that were compliant yet could be further optimized, examining the potential benefits of slight changes in risk allocation (including who purchased which insurance), finalizing site access and coordination issues, and finalizing the Project Agreement and financing documents and financial close procedures.

With all of these items complete, the transaction closed on August 30, 2022.



## 5. Lessons Learned

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Overall, the Clackamas County Courthouse transaction represents a seminal transaction in the US P3 market. Coming in at the same record time as the Howard County, Maryland Courthouse transaction (11 months from RFP to Financial Close), it did so in the midst of significant volatility in the construction and financial markets that sidelined many other transactions. Some of the key lessons learned reinforce or refine existing best practices, and others define new ones. These lessons learned include the following:

### 1. Having dedicated, informed project leadership throughout the process is crucial

It has long been known that it is critical to a project's success to have a dedicated project manager as well as a high-level project champion who can help manage a process through the inevitable bureaucratic and political challenges. The Clackamas County Project Manager was dedicated and steadfast. The Presiding Judge was a true project champion. The volatility associated with this transaction demonstrated that this project champion not only needs to understand how to navigate the bureaucracy, but also needs to really understand the "how and why" of P3s, so that rapid decisions can be made without stalling the process.

"Success factors for this project were having a dedicated project manager who cared about this project and moving it forward and bringing in of experienced advisors. This project would not be moving forward without either of these occurring."

Debbie Spradley, Trial Court Administrator

### 2. A committed cross-functional team should be engaged throughout the process

One of the strengths of the Clackamas team was that the same cross-functional team was engaged throughout the transaction from the beginning of the Value for Money exercise through financial close. This included representatives from the County's Finance, Technical, and Legal departments, and the "users" of the courthouse including representatives from the OJD, the Presiding Judge, the DA, and the Sheriff's Department. This continuity of experts and key stakeholders enabled the project to make quick decisions and to seamlessly manage through changes in political and governmental leadership.



### 3. Experienced advisors are even more valuable in challenging times

The County brought on a full team of legal, financial, and technical advisors with deep experience in courthouse and social infrastructure P3 projects. Through this experience, the team was able to keep the decision-making focused on the critical issues, while also managing through the urgent – but less crucial – issues that arose. The advisors were fully engaged and in constant contact with each other to ensure no deadlines were missed and that all documents reflected the expertise of all advisors, which is critical given the cross-discipline nature of P3s. In addition, because the advisors had closed numerous transactions, they were able to rapidly identify solutions to problems that had been overcome in the past, and to innovate new solutions that met Clackamas' needs in the most efficient means.

### 4. Be reasonable and listen to the market

The County and its advisory team had decided early in the project preparation that it wanted the procurement to be a solid foundation for a 30+ year partnership. Rather than starting with an extreme risk allocation and unrealistic specifications that would result in lengthy negotiations during the procurement or – worse – an unsustainable deal, the County decided to work off of precedent transactions and present to the bidders a Project Agreement reflecting a reasonable risk allocation that would be marketable without significant renegotiation of commercial terms. This saved unnecessary transaction costs for all parties involved and allowed for a deeper dive into technical issues during individual meetings. Particularly in these unprecedented times of cost escalation, the feedback received from bidders throughout the procurement process was instrumental in identifying efficiencies in cost and schedule while still meeting the County's and OJD's needs and without sacrificing the quality of processes or materials.





## 5. Keep communication discipline in volatile times

It is a long-known truth that communication among stakeholders during a P3 process is crucial to success and any approving bodies should not be surprised when the final agreement comes for their approval. The Clackamas Courthouse transaction demonstrated the importance of this communication being disciplined and focused during times of volatility. As markets moved rapidly and estimates for cost and scope also moved, the team chose to communicate only that information necessary to keep high level decision makers like the County Administrator and the BCC apprised of the status of the project and the options being considered, without bringing them into discussions that didn't require decision making at their level. A number of key learnings arose, such as:

- Consult decision makers near key decision points. Too frequent "updates" in rapidly moving markets can lead to unnecessary distraction for all;
- If there are political changes mid-stream, ensure you get buy-in from the new Board. Reaffirming the P3 approach with the new Board prior to launching the P3 (even though authority had already been granted) gave the opportunity for the new Board members to get educated on the P3 methodology and to express their concerns and buy-in; and
- Obtaining approval and delegating authority to proceed with signing the PA within certain parameters to accommodate interest rate and other risks facilitates certainty and speed of execution in volatile times.



"Politicians who had to make the decision on the county and state level change over time and quite regularly. We had to convince each new elected official that this was the way to go."

Judge Kathie Steele, Clackamas County Circuit Court



## **6. Interest rate hedging can increase closing certainty**

The interest rate hedge that was purchased enabled the County to cap its most significant risk to achieving financial close – interest rate risk. While public authorities involved in most P3 transactions have chosen to carry this risk between commercial and financial close, the 2022 market environment presented unusual volatility. By agreeing to reimburse the Project Company for a relatively inexpensive financial instrument, the County ensured that it would be able to limit its risks. In addition, because the hedge had an expiration date, this provided additional incentive for the team to focus and make efficient decisions in order to achieve a timely financial close.

## **7. Sticking to a timeline is even more important in times of volatility**

It has long been known that delays to P3 procurements can lead to increased bid costs for all parties, “deal fatigue” by bidders, and higher contingencies from bidding groups. In times of volatility, these risks and costs only increase. By sticking to the aggressive but achievable schedule (including a simultaneous commercial and financial close), bidders were able to minimize their contingencies, and the fixed components of the bid were able to be maintained.

## **8. Maintain momentum and act as if the deal will close**

Almost every complex financial transaction runs into “bumps in the road” and feels as if it may not close at some point during the process. However, it is important to keep moving forward and managing all of the issues for which the public sector will be responsible according to the P3 procurement schedule. This can be particularly challenging in projects like the Clackamas County Courthouse, where the County had been pursuing the procurement under different structures for more than 8 years. In such cases a “wait and see” attitude may develop that leads to challenges at and after financial close. For example, some of the County functions that were housed in buildings on the site that would need to be demolished had not yet negotiated leases for new space by financial close, which caused a resequencing of the mobilization and site preparation activities.

## **9. Do your homework**

By waiting to launch the procurement until all the key documents had been drafted, the payment mechanism and technical specifications developed, and the approval processes with stakeholders identified, the procurement was able to move quickly and efficiently through the challenges that inevitably arise with any transaction – and quite a few unusual ones in the 2022 markets. The County and OJD had clearly identified their priorities and dependencies and were able to make decisions timely. The bidding groups had nearly complete “state of the art” documents against which to design and comment, enabling them to clearly understand what the County wanted, and also to identify areas of confusion and propose suggestions for improvement. This enabled a full finalization of all specifications and documents a month and a half before the final bids were received.





## Appendix 1 - Risk Matrix

This table is representative of the risk allocation in the Clackamas County Courthouse P3 contract documents, and procurement process.

Risk Category	Description	Clackamas County	Project Company	Shared
<b>Design</b>	Risks associated with design of the Project, including delays with design, errors & omissions, etc.		X	
<b>Construction</b>	Risks associated with construction phase of the Project including cost overruns, delays, coordination, etc.		X	
<b>Existing site conditions</b>	Clackamas County has worked towards mitigating risks by providing information on site conditions.	X		
<b>Infrastructure improvements</b>	Clackamas County retains the responsibility for the uncertain site improvements dependent on the traffic analysis.	X		
<b>Permits</b>	The Project Company will be expected to assume responsibility for the permitting process, which will follow usual Clackamas County standards.		X	
<b>Operations &amp; Maintenance</b>	Risks associated with building O&M for the Project include cost and availability of labor, and maintenance materials, asset failures, etc. The Project Company will be responsible for making the facilities available as per the definition in the Project Agreement, and for the condition of the asset at handback (as defined in the PA). Judicial functions and operations will continue to be conducted by the State, Sheriff's office and other relevant parties.		X	
<b>Financial</b>	The private partner provides all short and long-term financing and obligation to repay. To optimize the structure, a milestone payment will be made, funded by a matching capital contribution from the State.		X	
<b>Force Majeure</b>	Risks associated with the impact of force majeure events, which can impact construction, and availability of the facility during O&M. Force majeure events are defined in the PA and will be shared by Clackamas County and the Project Company since this risk cannot be reasonably controlled by either party.			X
<b>Procurement / Political</b>	Risk of completing the procurement process in a fair and timely manner, and the political risk associated with obtaining approvals necessary to award the contract. Due to the nature of this risk, it is largely retained by Clackamas County, as they are in the best position to mitigate that risk. However, note that bidders also carried some procurement risk and had to produce a lot of information and complete steps to submit compliant bids, and then later reach financial close within the 180-day period.			X



## Appendix 2 - P3 Term Sheet

<b>Service Provider</b>	Clackamas Progress Partners LLC (the " <b>Project Company</b> "), a single purpose entity formed by Fengate Capital Management Ltd and PCL Investments Inc, for the purpose of performing under the Project Agreement. The Project Company subcontracted with PCL Construction Services Inc for the design-build work, DLR Group Architecture & Engineering Inc as architect, and with Honeywell International Inc for the facilities management services.
<b>Scope of Services</b>	The Project Company will design, build, partially finance, operate and maintain, a 241,000 square foot, LEED Gold certified courthouse that is equipped with additional courtrooms and space for juries, staff, district attorney, and other judicial functions. In addition, there will be facilities provided for the State of Oregon's Office of Public Defense Services and Department of Human Services.
<b>Term</b>	30 years, commencing with Occupancy Readiness (the " <b>Term</b> "). The County may terminate the Project Agreement at any time for its convenience.
<b>Ownership of Assets</b>	The Project, in its entirety, is owned by the County.
<b>Private Financing</b>	The Project Company shall be responsible for obtaining and repaying all financing necessary for the Project at its own cost and risk and without recourse to the County.
<b>Financing Structure</b>	The overall structure included a bank facility (National Bank of Canada and ATB Financial) combined with long terms bonds (Metlife). Equity contributions were provided by Fengate Capital Management Ltd and PCL Investments Inc with a 70/30 split.
<b>Commercial Close and Financial Close</b>	Commercial Close and Financial Close occurred simultaneously.
<b>Project Company Responsibilities</b>	The Project Company is responsible for the design of the Project and for all construction work relating to the Project. The Project Company is also responsible for the facilities management services, such as repair and maintenance, janitorial, landscaping, trash removal, parking structure management, window washing and snow removal services.



## Appendix 2 - P3 Term Sheet

<b>County Responsibilities</b>	The County retains responsibility for: (1) building security operations; (2) judicial and other related operations; (3) payment of utility costs; (4) payment of the Construction Milestone Payment, the Moveable FF&E Payment and the Service Fee; and (5) construction of any improvements to roads surrounding the Red Soils campus that may be required by the City of Oregon City.
<b>Occupancy Readiness Date</b>	The Project Company will complete all design, construction and commissioning required to cause the Project to be fully operational and ready for occupancy by the County (" <b>Occupancy Readiness</b> ") within 975 days after Financial Close, which occurred on August 30, 2022 (the " <b>Scheduled Occupancy Readiness Date</b> ").
<b>Handback Requirements</b>	The Project is required to meet a Facilities Condition Index (FCI) of .10 or better at handback. Each Project component also will be in a condition consistent with the remaining useful life requirements at handback.
<b>Construction Milestone Payment and Moveable FF&amp;E Payment</b>	The County will make two, one-time payments, within three business day of the achievement of Occupancy Readiness by the Project Company: (1) a \$130,000,000 " <b>Occupancy Readiness Milestone Payment</b> " and (2) a " <b>Moveable FF&amp;E Payment</b> ", for reimbursement of moveable furniture, fixtures and equipment, for both State and County portions of the building, and which is expected not to exceed \$11,400,000.
<b>Service Fee</b>	<p>The County will make monthly Service Fee payments, over the Term, to the Project Company following the achievement of Occupancy Readiness. The Service Fee will be composed of (1) a fixed capital component in respect of the financing of the Project; (2) an inflation-adjusted facilities management services component; (3) a deductions credit for failure to achieve performance requirements of the Project Agreement; (4) an inflation-adjusted renewal and replacement component; and (5) an extraordinary items component, primarily for Relief Event costs incurred from time to time.</p> <p>The Service Fee is approximately \$15 million annually, allowing for smoothing of the renewal and replacement component, annually (2022\$).</p>
<b>Relief Events</b>	Changes in law, force majeure events, and other uncontrollable circumstances are " <b>Relief Events</b> " and may entitle the Project Company to price, schedule, and performance relief (or any appropriate combination thereof).



### **About Fengate - Equity Investor**

Fengate is a leading alternative investment manager focused on infrastructure, private equity and real estate strategies. With offices in Ontario and Texas and team members across North America, Fengate is one of the most active real asset and growth equity investors in North America and the firm has been investing in and developing public-private partnerships and infrastructure since 2006. Learn more at [www.fengate.com](http://www.fengate.com). Please contact Jensen Clarke, Head of P3 Business Development on (416) 705-3969 or at [jensen.clarke@fengate.com](mailto:jensen.clarke@fengate.com).

### **About Hawkins Delafield & Wood LLP - Legal Advisor**

Hawkins Delafield & Wood LLP is a law firm that has represented public agencies on over 250 P3 and alternative delivery projects in over 25 states, a number which is unsurpassed among American law firms. We are leading experts in the planning, procurement, construction, operation and financing field using alternative delivery project delivery methods (such as design-build and public private partnerships). We specialize in all industry sectors across the United States with respect to structuring project transactions; preparing solicitation documents; evaluating proposals; drafting and negotiating final contracts; achieving commercial and financial close; and providing strategic assessments and legal advice relating to the procurement and negotiations. Ten of our firm's attorneys exclusively represent state and local governments in the alternative project delivery, public contract and P3 field. Firm Contact: Andrew Ligon – (212) 820-9403, [aligon@hawkins.com](mailto:aligon@hawkins.com).

### **About PCL Construction - Design/Builder**

PCL is a group of independent construction companies that carries out work across the United States, Canada, the Caribbean, and in Australia. These diverse operations in the civil infrastructure, heavy industrial, and buildings markets are supported by a strategic presence in more than 30 major centers. Together, these companies have an annual construction volume of more than \$6 billion USD, making PCL one of the largest contracting organizations in North America. Watch us build at [www.PCL.com](http://www.PCL.com).

### **About PCL Investments -Equity Investor**

PCL Investments is the development and equity arm of the PCL family of companies, one of North America's most prolific public-private partnership (P3) general contractors. PCL Investments supports PCL's P3 bids through committed capital ensuring interests are aligned between clients and PCL.

### **About Rebel - Financial Advisor**

IMG Rebel Advisory Inc ("Rebel") is a leading financial and transaction advisor in the US and Latin American P3 and innovative finance markets. We have advised clients on innovative financings in most infrastructure sectors including social, transit/rail, transportation, water, broadband, and evolving sectors like value capture, electric vehicles, and EV charging. We are also a leading advisor to the US federal government's credit programs, and a thought leader for federal and multilateral governments, having produced many of the "best practice" manuals for the USDOT, World Bank, and IDB. We are a member of the Rebel Group family of companies. Rebels work on the issues that affect all our futures, from sustainability, transportation and urban development to healthcare and the social sector. We make an impact, not only as financial advisors and consultants, but also as investors. We provide quality strategic advice, business policy support, partnership advisory, financial advice & modeling, and investment & fund management. Please visit our website at <https://www.rebelgroup.com/en/offices/united-states/> for more information. Firm Contact: Jim Ziglar – (917) 696 1331 [jim.ziglar@rebelgroup.com](mailto:jim.ziglar@rebelgroup.com).

### **About WT Partnership - Technical Advisor**

WT Partnership was founded in Australia in 1949 and has been one of the fastest growing P3 advisory firms in the U.S. and Canada since 2015. A trusted advisor to higher education, government, owners, developers, and private sector clients, WT currently manages billions of dollars of active mega projects across North America. Our expertise covers the building, construction, and infrastructure sectors, as well as the management of facilities and the provision of consultancy services and our service cover integrated project delivery from developing initial funding strategies to procurement and on to construction and implementation. Our clients can draw on expertise from our P3 Advisory, Cost Consulting, and Project Delivery services to ensure project goals are realized and our goal is the successful achievement of our client's ultimate commercial objectives. If you would like to find out more about WT, visit our website at [www.wtpartnership.co](http://www.wtpartnership.co). Firm Contact: Jose Davila – (919) 396-1944, [jose.davila@wtpartnership.com](mailto:jose.davila@wtpartnership.com).

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