

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
COUNTY OF LAMOILLE  
AND  
STATE OF VERMONT DEPARTMENT OF BUILDINGS AND GENERAL SERVICES

WHEREAS, the County of Lamoille (hereinafter "County") and the State of Vermont, Department of Buildings and General Services (hereinafter "BGS") have agreed to general terms regarding construction of two additions and improvements to the existing county courthouse (collectively "the Project"). The existing county courthouse is owned by the County of Lamoille and located in the town of Hyde Park, Vermont; and

WHEREAS, the Lamoille County Courthouse (hereinafter "the Courthouse") was originally constructed in 1911; and

WHEREAS, the Courthouse provides facilities for the Vermont Superior Court, Civil, Criminal, Family, Probate Divisions, Environmental and Judicial Bureau; and

WHEREAS, the parties agree that the current facilities are inadequate and outdated, and do not provide the necessary space and utility required to meet the needs of its Courthouse functions; and

WHEREAS, the parties have agreed to cooperate and collectively address the status of the current facilities and have pledged to work together on the design, permitting, construction of the Project.

WHEREAS, the Project will include one addition to the east side of the Courthouse, and a larger addition to the south side of the Courthouse (collectively "the Additions"), as well as improvements and upgrades to the Courthouse building, including but not limited to, a new sprinkler system, new windows and other code compliant improvements; and

WHEREAS, the State, through the Department of Buildings and General Services, has agreed to pay for all of the construction and associated costs of the Project, including but not limited to the costs associated with the complete renovation of the existing building as well as Heating Ventilating and Air Conditioning systems, electrical upgrades and ADA compliance, as contemplated by the current architectural drawings (the "Plans") ("Plans for the Renovation & Additions Lamoille County Courthouse Construction Drawings, dated February 27, 2015, which is the basis for the CM's GMP, in addition to subsequent change orders as approved by all parties"); and

WHEREAS, the State, through the Department of Buildings and General Services, shall be responsible for the planning, design, and construction of the renovations and improvements to the existing Additions to the Courthouse building. BGS shall consult with County in all aspects of design, permitting, and construction of the Project. Each party shall appoint a lead person for the project. The lead for BGS is Tricia Harper. The County contact will be the side judges, Joel Page and Karen

Bradley. BGS will pay for the cost of renovations and improvements to the existing Courthouse as well as the cost of construction of the Additions up to the amount approved by the General Assembly. (\$ 8,750,000.00).

Section 37 of Act 26 of the Acts and Resolves of 2015 places the following conditions on the project:

Sec. 37. LAMOILLE COUNTY COURTHOUSE; MEMORANDUM OF UNDERSTANDING; OPERATING AGREEMENT

(a) The Department of Buildings and General Services and the Lamoille County side judges, in consultation with the Judiciary, shall enter into a Memorandum of Understanding (MOU) regarding the construction, operation, and maintenance of the Lamoille County Courthouse. The MOU shall establish:

(1) The procedures for the operation of the Courthouse and the division of responsibilities between the State and the County; and

(2) The legal framework for ensuring that the State maintains an ownership interest in the new additions to the Courthouse, and receives a percentage of the sale price, or value in the building, equal to the percentage of capital funding appropriated to the Courthouse in the event the County decides to sell the building or to cease operations of the building as a Courthouse, or the State ceases to use the Courthouse for Superior Court functions.

(b) Any amounts repaid to the State under subsection (a) of this section shall not be in excess of the amount of the original State capital appropriation, and shall be appropriated to future capital construction acts.

(c) The Judiciary and the Lamoille County side judges shall enter into an operating agreement regarding the internal functions and use of space within the Lamoille County Courthouse.

(d) The MOU described in subsection (a) of this section and the operating agreement described in subsection (b) of this section shall be executed prior to the State's occupancy of the Courthouse.

And

WHEREAS, the State, through the Department of Buildings and General Services, will pay the aforementioned costs and will be granted an easement authorizing the construction of the Additions, the use of the land for the Additions, and enabling the SOV to "tie into" the structure and systems of the existing Courthouse. The County shall be granted easements for the use of the Additions, utilities and systems and ingress and egress through the Additions. It is the intent of the parties that the Additions be fully integrated into the existing Courthouse and all systems and components of the Project are to be designed, constructed, and operated as if the finished County Courthouse were owned by only one party (County). That said, the parties agree that the State will retain ownership of the Additions. The parties

agree that the easement shall be perpetual and that the County will grant the easement, in a form agreed upon by the parties, in consideration for the improvements made to the courthouse by the State.

THEREFORE, the Parties agree as follows:

- 1) Design and Construction. BGS is responsible for the design and construction of the Project and will pay all expenses associated with permitting and construction of the Project, including but not limited to, the costs incurred by the State for consultants, internal overhead, permitting, subdivision and other filing fees, and the State's attorney's fees. BGS will consult with the County in all aspects of design, permitting and construction of the Project. Any design or construction modification to the Project of a material nature, in particular those that may affect the historic nature or aesthetics of the Courthouse, shall be implemented only after the County has had a reasonable opportunity to review the proposed modification and collaborate with BGS and the construction team. The County shall be responsible for its own attorney's fees associated with the Project and any other costs incurred by the County related to the planning and construction of this Project. BGS shall be responsible for obtaining any and all necessary occupancy permits, and the County shall be co-applicant and reasonably cooperate in the efforts to obtain such permits. The State's obligations under this paragraph shall be satisfied when the Additions are complete, fully occupied, and all punch list items have been completed to the County and BGS's satisfaction and all necessary final municipal and state approvals and permits have been obtained, including but not limited to an unconditional certificate of occupancy. BGS shall secure final lien waivers from the Construction Manager and shall provide copies of same to the County. BGS shall keep the Project free of liens for services and materials during the course of construction. Upon completion of the Project, the County agrees to operate the Courthouse in a manner generally consistent with BGS policies listed in paragraph 6. Said policies will be incorporated into an operational plan for the Courthouse, to be negotiated in good faith between Judiciary and the County.
- 2) Ownership. The State, through the Department of Buildings and General Services, will own the Additions and the County will execute any and all documents reasonably necessary to evidence this ownership. The State will not take fee or other title to the land beneath the additions, other than the rights and obligations contained in the easement.
- 3) Mutual Easements. The parties will negotiate in good faith and execute an easement(s) with mutually agreeable terms for the area located beneath the Additions, together with associated mutual rights of access for ingress and egress through the Courthouse and the Additions, and permissions to "tie into" the existing Courthouse structure and utilities as reasonably required. The parties shall each grant to the other any and all rights that may be necessary for the purpose of ingress and egress to, on and over the Property, and utility and water, storm water and sewer hook-ups to the Courthouse and the Additions and to address the requirements of Sec. 37 (a)(2) of the Acts and Resolves of 2015.
- 4) Expenses after Completion. Upon final completion of the Project and receipt of a certificate of occupancy, including completion of punch list items, all to the reasonable satisfaction of the County, ("Completion") the County shall thereafter be solely responsible for maintaining and operating the Courthouse (existing and additions) subject to contribution from the State as set

forth herein. After Completion, the County will be responsible for payment of any and all operating and maintenance costs associated with the completed Courthouse (“O and M Expenses”) including the state-owned Additions, subject to the State/BGS’s reimbursement obligations set forth herein. O and M costs shall include; (i) the cost of custodial services; (ii) maintenance and replacement costs; (iii) all utility expenses, including, but not limited to, water, electric, gas, oil and/or propane as applicable; (iii) the cost of snow removal; (iv) telecommunications costs; (v) lawn care; (vi) all insurance costs; and (vii) real estate and personal property taxes (other than PILOT for which the State shall be 100% responsible).<sup>1</sup> The County will pay the O and M Expenses when due and then invoice / bill BGS each quarter for the State’s share of the O and M Expenses of the existing Courthouse and the Additions. The State shall remit payment within thirty days of invoice. The State shall be responsible for Forty percent (40 %) of the total O and M Expenses Notwithstanding the foregoing, the State shall be solely responsible for insurance and maintenance, replacement or repair of the security systems and related equipment for the Courthouse and Additions, including but not limited to, security cameras, detention area equipment and fixtures, body scanner(s) and related equipment, security officer(s), computer(s), cameras, monitors, related software and wiring, and card readers; audio visual systems, including but not limited to recording and speaker systems, related computers, software and wiring. In the future, the State shall also be solely responsible for the maintenance, replacement or repair (and any insurance on these fixtures) of any fixtures<sup>2</sup> in the Additions that exclusively benefit the Additions. Maintenance, replacement or repair costs of any fixture that benefits the entire Project shall be split 60 /40 (State’s obligation being 40 %) per this paragraph.

- 5) Accounting. The County shall provide an accounting of the O and M Expenses to BGS quarterly with the invoice for the State’s share. The accounting for the Shared Costs shall provide, at a minimum, the following information: (i) cost of custodial services; (ii) maintenance costs; (iii) all utility expenses by category: water & sewer, heat, electrical; (iii) the cost of snow removal; (iv) telecommunications costs; (v) lawn care; (vi) all insurance; and (vii) a summary of any other operating and maintenance costs for the Courthouse for the year. BGS reserves the right to review from time to time, all costs incurred by the County in the operation and maintenance of the Courthouse and to request copies of supporting documentation. The County agrees to provide BGS, upon request, all energy use data available for the term of the easement. BGS will reserve the right to sub-meter the state-owned portions of the Courthouse at BGS’ expense. The County agrees to use Energy Star Portfolio Manager generated templates to gather energy usage data the cost of which shall be shared pursuant to the formula set forth in 4 above.
- 6) Consultation/Alterations after Completion. Subsequent to Completion of the Project, the County agrees to consult with the Commissioner of Buildings and General Services and the Court Administrator before making decisions that affect space allocations, major interior

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<sup>1</sup> The State shall be responsible for 100 % of any PILOT obligation incurred due to the State’s ownership interests in the Project. Any PILOT obligation would be billed to and paid by the State separate from the O and M expenses identified in this paragraph.

<sup>2</sup> Fixture” means an article in the nature of personal property which has been so annexed to the realty that it is regarded as part of the land.

repairs or renovations, any alterations, repairs, or renovations to the Courthouse systems, or to the Courthouse envelope or any repair, replacement, renovation, or alteration that could increase the operating and maintenance costs of the Courthouse or could adversely impact the State's ownership interest in the Additions. After completion of the Project, the State/BGS shall not make any repairs, renovations or alterations to the Courthouse or Additions or systems without the prior written approval of the County, which consent shall not be unreasonably withheld by the County.

- 7) BGS Policies. The County agrees to comply with BGS facilities standards policies (attached as Exhibit 2), including but not limited to:
  - a. 0005 floor covering
  - b. 0008 pesticides
- 8) Permits. BGS shall, at its sole expense, obtain any and all permits that may be required for this Project, including, but not limited to, all local permits and approvals, including subdivision if required and an Act 250 amendment. BGS shall submit all applications to the County for its review and approval prior to submission. The County shall be co-applicant on all permit applications and shall counter-sign any applications as reasonably required.
- 9) Cooperation. The parties shall negotiate in good faith regarding all aspects of the Project and enter into an easement or easements, license, access, temporary construction agreements and other agreements, consistent with the terms of this Memorandum of Understanding to govern all aspects of the Project as set forth herein.
- 10) Entire Agreement. This MOU represents the entire agreement between the parties on the subject matter of the construction of, and the future operation and maintenance obligations of the parties regarding the Courthouse and the Additions. The parties acknowledge that there will be additional agreements between the County and the State of Vermont Judiciary regarding court building operations. Any modification to this MOU, between BGS and County, must be in writing and signed by duly authorized representatives of both parties. This agreement shall be governed by and subject to the laws of the State of Vermont.
- 11) Building Management Committee. The parties, along with a representative from the Judiciary, shall form a Building Management Committee to address building facility, assessment and maintenance issues, subject to the provisions of this Agreement. Its authority shall be advisory only. The parties acknowledge that the State has the right to conduct periodic building assessments at the State's sole cost and expense. The County agrees to work with the State to facilitate and aid the State in its building assessments. These assessments shall be shared with the County.
- 12) Dispute Resolution. If the parties to this agreement are unable, despite good faith efforts, to reach an agreement on any dispute arising under this Memorandum within thirty (30) days after either party gives notice of the dispute, then the dispute will be referred directly to the Commissioner of Buildings and General Services, the Court Administrator, and the designated assistant Judge, for the County.

If the parties' representatives referenced above cannot resolve the dispute within thirty (30) days after the initial referral, the issue shall go to non-binding mediation. The mediator will be chosen by the parties and the costs of the mediation shall be shared equally by the parties.

- 13) Insurance: Upon occupancy, County and State must provide each other with certificates of insurance to show that the minimum coverages are in effect, including the following, as applicable. It is the responsibility of the parties to maintain current certificates of insurance on file with each other through the term of the MOU; annual updates must be provided throughout the term.

**Workers' Compensation:** With respect to all operations performed by County employees, the County shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

**General Liability and Property Damage:** With respect to all operations performed by County employees under the MOU, the County shall carry general liability insurance having all applicable major divisions of coverage including, but not limited to:

Premises - Operation  
Independent Contractors' Protective  
Products and completed Operations  
Personal Injury Liability  
Contractual Liability

The Policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products / completed products aggregate  
\$50,000 Fire Legal Liability

**Automotive Liability:** The County, to the extent it owns or leases any automobiles, shall carry automotive liability insurance covering all motor vehicles used in connection with the MOU. Limits of coverage shall not be less than: \$500,000 combined single limit.

**First Party Property Coverage:** Subject to reimbursement by the State in accordance with the formula set forth in Section 4, The County shall keep the Courthouse and Additions insured against loss or damage by fire or other hazard, with All Risks of Physical Loss or otherwise as County shall reasonably deem advisable. Coverage shall be on a full replacement basis. Specifically excluded are any personal property or equipment, furniture or fixtures belonging to the State. The State shall be responsible for its personal property, equipment, furniture or fixtures.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the County for the County's operations. These are solely minimums that have been set to protect the interests of the State.

County shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

14) Sale of Interest in the Additions. If the State, at any time desires to sell its interest in the Additions, then it shall first give the County written notice of its intent to sell that interest. The County shall then have, for a period of one hundred twenty (120) days from receipt of the written notice, the right to provide the State with a letter of intent to purchase the State's interest in the Additions for fair market value as determined by the County ("Fair Market Value"). If the State does not agree with the Fair Market Value as determined by the County, each party will select an appraiser and the average of the two appraisals shall be used to determine the fair market value for purposes of this provision. The State would then seek permission from the General Assembly to sell the Additions and the County would have sufficient time to comply with 24 VSA Section 82(b) to seek and procure a bond to purchase the Additions or find other funding sources.

15) Responsibility. The parties will act in an independent capacity and not as officers or employees of each other. Both parties assume the risks of their own actions and inactions under this Agreement, with each reserving its right to seek compensation for the negligent or wrongful acts or omissions of the other. The foregoing, however shall not limit the other duties, obligations and liabilities of the parties as set forth in this Agreement.

16) Taxes. The State shall be responsible for Payment in Lieu of Taxes ("PILOT"), if any, for the state-owned portion of the building.

17) Naming. The State shall have the right to name the Additions and the County shall have the right to name the Courthouse.

STATE OF VERMONT:

By: Michael J. Steinhilber 2/16/2016  
Duly authorized agent

COUNTY OF LAMOILLE

By: Joel Page  
Judge Joel Page

By: Karen Bradley  
Judge Karen Bradley

STATE OF VERMONT  
LAMOILLE COUNTY, SS.

At Hyde Park, in said County and State, this 10<sup>th</sup> day of February, 2016, personally appeared Judge Joel Page and Judge Karen Bradley, Duly Authorized Agents of the County of Lamoille and they acknowledge the foregoing instrument, by them subscribed, to be their free act and deed and the free act and deed of the County of Lamoille.

Before me, Kathleen B. Hebert  
Notary Public  
My commission expires: 02/10/19

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

At Montpelier, in said County and State, this 10<sup>th</sup> day of FEBRUARY, 2016, personally appeared MICHAEL OBUCHOWSKI, Duly Authorized Agent of State of Vermont, Department of Buildings and General Services, and he/she acknowledges the foregoing instrument, by him/her subscribed, to be his/her free act and deed and the free act and deed of the State of Vermont, Department of Buildings and General Services.

Before me, Judy Bruneau  
Notary Public  
My commission expires: 02/10/19