

INTERGOVERNMENTAL AGREEMENT

Agreement No. 5783

This Agreement is between the State of Oregon acting by and through its Oregon Department of Corrections (“Agency”) and Yamhill County, acting by and through its Community Corrections Office (“County”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110.

SECTION 2: BACKGROUND AND PURPOSE

Whereas, Agency and County utilize both the Corrections Information System (DOC400) and the Offender Management System (OMS) as the primary statewide information systems for offender case management.

Whereas, there is a need to create an Application Program Interface (API) between the DOC400 and OMS so that Agency and Oregon County Community Corrections offices no longer have to enter information separately into each system.

Whereas, in order to create the API, Agency must first obtain a full needs analysis/assessment to construct a business case that will be submitted through the Stage Gate process with the Department of Administrative Services (DAS).

Whereas, Agency has the ability to contract with an IT Business Analyst (“Contractor”) to conduct the needs analysis with the county community corrections agencies and any other applicable stakeholders and prepare the business case documentation that would ultimately be submitted to DAS.

Whereas, the County agrees to pay a share of the cost for Agency to obtain Contractor services to perform a business analysis (“Services”).

Now therefore, the purpose of this Agreement is to document and describe the process for County to reimburse Agency for the cost of Services provided by an IT Business Analyst.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on the date of the last signature, and terminates December 31, 2019 unless terminated earlier in accordance with the Termination Section.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency's Authorized Representative is:

Denise Sitler
2575 Center Street NE
Salem, OR 97301
Fax: 503-373-7810
Phone (Office): 503-945-9051
denise.sitler@doc.state.or.us

4.2 County's Authorized Representative is:

Jessica Beach, Director
Yamhill County Community Corrections
615 E Sixth Street
McMinnville OR 97128
Fax: 503-472-5216
Phone (Office): 503-434-7513
Email: beachj@co.yamhill.or.us

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

Each Party agrees to responsibilities as described in Exhibit A, "Responsibilities of the Parties", attached hereto and incorporated herein by this reference.

SECTION 6: COMPENSATION; INVOICING AND PAYMENT

6.1 Compensation

County agrees to pay to Agency a one-time fixed fee in the amount of \$2,395.00 for IT Business Analyst services as described in Section 2.

6.2 Invoicing and Payment.

6.2.1 County shall submit payment in full in the amount identified in Section 6.1 to Agency within 45 days after receipt of an invoice.

6.2.2 Agency shall include Agreement number on invoice.

SECTION 7: REPRESENTATIONS AND WARRANTIES

County represents and warrants to Agency that:

- 7.1 County is organized and validly existing. County has the power and authority to enter into and perform this Agreement;
- 7.2 The making and performance by County of this Agreement (a) have been duly authorized by County, (b) do 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) do 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;
- 7.3 This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County enforceable in accordance with its terms;
- 7.4 County has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and County will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 7.5 County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

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.

SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; 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 for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 9: CONTRIBUTION

- 9.1** 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 10 with respect to the Third Party Claim.
- 9.2** With respect to a Third Party Claim for which Agency is jointly liable with County (or would be if joined in the Third Party Claim), Agency 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 Agency 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 Agency 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. Agency’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.
- 9.3** With respect to a Third Party Claim for which County is jointly liable with Agency (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 Agency in such proportion as is appropriate to reflect the relative fault of County on the one hand and of Agency 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 Agency 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 it had sole liability in the proceeding.

SECTION 10: COUNTY DEFAULT

County will be in default under this Agreement upon the occurrence of any of the following events:

- 10.1** County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 10.2** Any representation, warranty or statement made by County in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by County is untrue in any material respect when made;
- 10.3** 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 a 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
- 10.4** 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 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).

SECTION 11: AGENCY DEFAULT

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 12: REMEDIES

- 12.1** In the event County is in default under Section 11, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that County has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring

County to perform, at County's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

- 12.2** In the event Agency is in default under Section 12 and whether or not County elects to exercise its right to terminate this Agreement under Section 14.3.3, or in the event Agency terminates this Agreement under Sections 14.2.1, 14.2.2, 14.2.3, or 14.2.5, County's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against County, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against County. In no event will Agency be liable to County for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to County exceed the amount due to County under this Section 13.2, County shall promptly pay any excess to Agency.

SECTION 13: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, 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.

SECTION 14: TERMINATION

- 14.1** This Agreement may be terminated at any time by mutual written consent of the Parties.

- 14.2** Agency may terminate this Agreement as follows:

14.2.1 Upon 60 days advance written notice to County;

14.2.2 Immediately upon written notice to County, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

- 14.2.3 Immediately upon written notice to County, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;
 - 14.2.4 Immediately upon written notice to County, if County is in default under this Agreement and such default remains uncured 15 days after written notice thereof to County; or
 - 14.2.5 As otherwise expressly provided in this Agreement.
- 14.3 County may terminate this Agreement as follows:
- 14.3.1 Upon 60 days advance written notice to Agency;
 - 14.3.2 Immediately upon written notice to Agency, if County fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in County's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 14.3.3 Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that County's performance under this Agreement is prohibited or County is prohibited from paying for such performance from the planned funding source;
 - 14.3.4 Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or
 - 14.3.5 As otherwise expressly provided in this Agreement.
- 14.4 Upon receiving a notice of termination of this Agreement, County will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, County will surrender to Agency all Mobile Devices in County's possession and is responsible to fulfill all on-going User Carrier plan agreements.

SECTION 15: NONAPPROPRIATION

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

SECTION 16: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 17: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 17. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 18: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 13 and 18 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 19: 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.

SECTION 20: COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original.

SECTION 21: COMPLIANCE WITH LAW

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

SECTION 22: 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.

SECTION 23: INTENDED BENEFICIARIES

Agency 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.

SECTION 24: FORCE MAJEURE

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to County after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 25: ASSIGNMENT AND SUCCESSORS IN INTEREST

County may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by County to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to County's assignment or transfer of its interest in this Agreement will not relieve County of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 26: SUBCONTRACTS

County shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of County under this Agreement. Agency's consent to any subcontract will not relieve County of any of its duties or obligations under this Agreement.

SECTION 27: TIME IS OF THE ESSENCE

Time is of the essence in County's performance of its obligations under this Agreement.

SECTION 28: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 29: RECORDS MAINTENANCE AND ACCESS

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 Agency 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.

SECTION 30: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

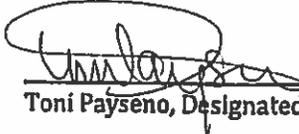
SECTION 31: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A.

SECTION 32: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

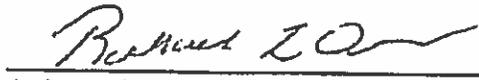
STATE OF OREGON acting by and through its Department of Corrections



Toni Payseno, Designated Procurement Officer

1/28/19
Date

Yamhill County, acting by and through its Community Corrections Office



Authorized Signature

1-24-19
Date

Accepted by Yamhill County
Board of Commissioners on
1/24/19 by Board Order
19-19

EXHIBIT A

RESPONSIBILITIES OF THE PARTIES

1. AGENCY RESPONSIBILITIES

1.1 Agency shall enter into a Personal Services Contract with, and supervise the services of, an IT Business Analyst ("Contractor") who shall work with stakeholders, including County to:

1.1.1. Define problem by meeting with stakeholders to interview and document data access needs and problem areas with current data access.

1.1.2. Propose opportunity of providing data more easily to stakeholders; what data is needed, frequency and format.

1.1.3. Perform a risk analysis of providing data to stakeholders and propose potential mitigation strategies.

1.1.4. Provide a technical assessment of technology that is available and an analysis of the alternatives.

1.1.5. Gather and document the business and technical requirements of all stakeholders, including data and access needs of the counties as well as architecture and security requirements and constraints for Agency, ITS and the DAS Enterprise Security Office.

1.1.6. Provide a written report to the counties summarizing all the findings.

2. COUNTY RESPONSIBILITIES

2.1 County shall provide Contractor with access to County personnel and information as needed to allow Contractor to perform services described in Section 1, above.

2.2 County shall provide payment as described in Section 6.1, page 2, of this Agreement.