



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

**For Board Business Meeting of December 9, 2015**

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**DATE:** December 4, 2015.

**FROM:** Deevy Holcomb. Community Justice/Adult Parole & Probation 541-322-7644

**TITLE OF AGENDA ITEM:**

Review and signature of IGA #5280 between State of Oregon/Department of Corrections and Deschutes County/Community Justice

**PUBLIC HEARING ON THIS DATE?** No.

**BACKGROUND AND POLICY IMPLICATIONS:**

The state of Oregon departments of Human Services and Corrections were authorized by House Bill 3503 during the 2015 session to conduct a 10-year pilot program to combine correctional and dependency approaches to accountability and family preservation/reunification with offenders with minor children. Deschutes County was selected as a pilot county. The county will work with local DHS caseworkers to mutually support family preservation and offender behavior change goals, and reduce the number of parents sent to prison.

**FISCAL IMPLICATIONS:**

The IGA provides approximately \$74,000 per year to the Community Justice / Adult Parole & Probation department for the duration of the pilot program. Funding will be used to support .5 F T E of Parole/Probation Officer, training and offender treatment and other services.

**RECOMMENDATION & ACTION REQUESTED:**

Review by the Board and Board Chair signature approving the IGA

**ATTENDANCE:** Ken Hales and/or Tanner Wark.

**DISTRIBUTION OF DOCUMENTS:**

Telephone Deevy Holcomb (x7644) for pickup.

## DESCHUTES COUNTY DOCUMENT SUMMARY

(NOTE: This form is required to be submitted with ALL contracts and other agreements, regardless of whether the document is to be on a Board agenda or can be signed by the County Administrator or Department Director. If the document is to be on a Board agenda, the Agenda Request Form is also required. If this form is not included with the document, the document will be returned to the Department. Please submit documents to the Board Secretary for tracking purposes, and not directly to Legal Counsel, the County Administrator or the Commissioners. In addition to submitting this form with your documents, please submit this form electronically to the Board Secretary.)

Please complete all sections above the Official Review line.

**Date:** December 4, 2015    **Department:** Community Justice/Adult Parole & Probation

**Contractor/Supplier/Consultant Name:** State of Oregon/Dept. of Corrections

**Contractor Contact:** Denise Sitrler    **Contractor Phone #:** 503-378-5876

**Type of Document:** IGA # 5280 (Deschutes Doc # 2015-736)

**Goods and/or Services:** Specialized probation supervision and services by an Adult Parole & Probation Officer (PPO) in collaboration with the regional Department of Human Services (DHS) for offenders who are selected by the District Attorney's office for a downward departure sentence (diversion from prison to probation for a conviction that would otherwise have included a prison or jail sentence) who have physical custody of a minor child.

**Background & History:** The state of Oregon departments of Human Services and Corrections were authorized by House Bill 3503 during the 2015 session to conduct a 10-year pilot program to combine correctional and dependency approaches to accountability and family preservation/reunification with offenders with minor children. Deschutes County was selected as a pilot county. The county is submitting its formal program plan to DOC by December 15, 2015 which will be attached to this IGA as Exhibit A once the plan and this IGA are signed and agreed to by county and state.

**Agreement Starting Date:** January 1, 2016

**Ending Date:** June 30, 2017

**Annual Value or Total Payment:** \$221,594.83

☐ Insurance Certificate Received (check box)

Insurance Expiration Date: N/A

Check all that apply: N/A

☐ RFP, Solicitation or Bid Process

☐ Informal quotes (<\$150K)

☐ Exempt from RFP, Solicitation or Bid Process (specify – see DCC §2.37)

**Funding Source:** (Included in current budget? ☐ Yes ☒ No)

If **No**, has budget amendment been submitted? ☐ Yes ☒ No **In progress.**

**Is this a Grant Agreement providing revenue to the County?** ☒ Yes ☐ No

Special conditions attached to this grant: Incorporate principles into plan identified in this IGA section V, utilize an identified offender "flag" in the Department of Corrections' offender database, and provide data upon request to the Department of Correction. Additionally county must provide by December 15<sup>th</sup> the insurance certifications of any contracted provider conducting activities in support of this grant.

Deadlines for reporting to the grantor: Upon request.

If a new FTE will be hired with grant funds, confirm that Personnel has been notified that it is a grant-funded position so that this will be noted in the offer letter: ☐ Yes ☐ No

Contact information for the person responsible for grant compliance:

Name: Denise Sitler

Phone #: (503) 378-5867

**Departmental Contact and Title:** Deevy Holcomb, Management Analyst  
**Phone #:** 541-322-7644

**Department Director Approval:**

  
Signature

12.5.15  
Date

**Distribution of Document:** Who gets the original document and/or copies after it has been signed? Include complete information if the document is to be mailed.

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**Official Review:**

County Signature Required (check one): ☐ BOCC ☐ Department Director (if <\$25K)

☐ Administrator (if >\$25K but <\$150K; if >\$150K, BOCC Order No. \_\_\_\_\_)

Legal Review \_\_\_\_\_

Date \_\_\_\_\_

Document Number \_\_\_\_\_

INTERGOVERNMENTAL AGREEMENT #5280  
BETWEEN THE STATE OF OREGON AND DESCHUTES COUNTY  
("Agreement")

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This Agreement is between the State of Oregon acting by and through its Department of Corrections, hereafter called DEPARTMENT, and Deschutes County, hereafter called COUNTY.

Whereas, DEPARTMENT is an agency of the State of Oregon and COUNTY is a unit of local government of the State of Oregon and both parties desire to cooperate by agreement to provide correctional services in COUNTY within the requirements as authorized by ORS 423.475 to 423.565;

Whereas, the Legislative Assembly of Oregon enacted legislation establishing shared responsibility between county corrections programs and the DEPARTMENT on a continuing basis (ORS 423.475 to 423.565);

Whereas, ORS 144.106 provides "the supervisory authority shall use a continuum of administrative Sanctions for violations of post-prison supervision";

Whereas, section 1, Chapter 830, Oregon Laws 2015, was passed by the 2015 Legislature to implement a program designed to divert qualified offenders who have primary custody of a minor child at the time of the offense from prison to probation for the purposes of promoting reunification of families, preventing children from entering the foster care system, holding offenders accountable, and authorizing DEPARTMENT to make grants to counties to provide funding;

Whereas, the DEPARTMENT will administer distribution of grants to counties;

Now, therefore, THE PARTIES HERETO, in consideration of the mutual promises, terms and conditions hereinafter provided, agree to the following:

## **I DEFINITIONS**

- A. Amendment: Any change to this Agreement that alters the terms and conditions of the Agreement, excluding the Duration of the Agreement. Plan Modifications are NOT Amendments.
- B. Case Management Application (CMA) Case Plan: A dynamic document created collaboratively with an offender that specifically identifies the offender's evidence-based assessed risk and needs, accompanied by risk reduction strategies and plans of action, with timelines.
- C. Corrections Information System (CIS): A DEPARTMENT software program containing a data base of information about inmates in prison and on probation, parole and post-prison supervision;
- D. County Corrections: All COUNTY agencies and officials who carry out the responsibilities in ORS 423.478(2)(a)-(f).
- E. Family Sentencing Alternative Program (FSAP) Grant: Grant(s) made by DEPARTMENT to assist COUNTY in the implementation and operation of the Plan.
- F. Family Sentencing Alternative Program Plan (Plan): A document developed by the COUNTY in collaboration with the DEPARTMENT which describes COUNTY's approach to providing effective interventions designed to promote reunification of families, prevent children from entering the foster care system, and hold offenders accountable for program participants under COUNTY supervision. The Family Sentencing Alternative Program Plan (FSAP) Plan is described in Exhibit A, County Plan and Budget Summary.
- G. FSAP Plan Budget Summary: A budget submitted by COUNTY and approved by DEPARTMENT which identifies personnel, materials, services and funding COUNTY will use to implement the Plan. COUNTY's Budget Summary is described in Exhibit A.
- H. FSAP Participant Flag: CIS Code for which COUNTY must use to identify the Participants with their program.

- I. Participant: An offender, under supervision of the COUNTY and enrolled in the program.
- J. Plan Modification: A written change or alteration to the Plan promulgated by COUNTY modifying the Plan; or the Duration of the Agreement.
- K. Sanctions: A response to Participant violations of conditions of the program.
- L. Supervisory Authority: The local corrections official or officials designated by COUNTY's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.

## II AUTHORITY AND DURATION

### A. Authority

This Agreement is entered into pursuant to the provisions of ORS 423.520.

### B. Duration

This Agreement will become effective on **January 1, 2016** and will remain in effect until **June 30, 2017** or until terminated according to Section XI (*Termination*).

## III PLAN; PLAN MODIFICATIONS

- A. The Plan must be received and approved by DEPARTMENT before disbursements of funds described in Section VIII can be made to COUNTY.
- B. Plan Modifications: COUNTY and DEPARTMENT agree that the Plan must remain a flexible instrument capable of responding to unforeseen needs and requirements. A copy of all Plan Modifications will be marked in sequence beginning with the designation "Plan Modification 1" and attached to the above-mentioned Plan. DEPARTMENT will notify COUNTY of any concerns about the modification or the need for an amendment within a 30 calendar day period after DEPARTMENT receives the Plan Modification.
- C. Notice of Modification: No Plan Modifications shall take effect until COUNTY gives written notice to DEPARTMENT, in a form approved by DEPARTMENT. DEPARTMENT shall provide to COUNTY an approved form for modifications as soon as practicable after execution of this Agreement.
- D. Plan Modifications shall become effective upon the date the Plan Modification is approved in writing by the DEPARTMENT.

## IV AMENDMENTS GENERALLY

The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written Amendment signed by the parties. An Amendment shall become effective only after all parties have signed and all approvals have been obtained.

## V DUTIES AND RESPONSIBILITIES OF COUNTY

- A. COUNTY shall assume administrative responsibility to provide services as outlined in the Plan.
- B. COUNTY shall incorporate the principles described below into the Plan:

1. Work collaboratively with the Oregon Department of Human Services (ODHS) in a multi-disciplinary team process to promote the reunification of families, prevent children from entering the foster care system, and hold offenders accountable.
2. Consult with ODHS to determine appropriateness for entry into the FSAP program.
3. Treatment programs shall be evidence-based and gender specific to the gender being served. Evidence-based programs are delivered consistent with the findings in research about what works best to reduce recidivism.
4. Assessment which is standardized, objective, and comprehensive shall be used to prioritize programming and interventions, as well as, determine criminal risk factors. Assessments of risk shall be based on actuarial risk assessment tools.
5. Rules, requirements and expectations for Participants, including consequences for success and for failure are made formal and clear by an authority figure.
6. An individual Case Management Plan shall be developed for each Participant including the most relevant evidence based case management which may include additional conditions including but not limited to geographic restrictions, vocational training, parenting classes, alcohol and drug and/or mental health treatment, life skills, etc.
7. Supervision will be conducted using the most relevant evidenced based case management including but not limited to: Gender specific and general risk/need assessment, case planning, Parole/Probation officer (PO) led cognitive behavioral interventions (i.e., EPICS, Carey Guides), evidenced based parenting, mental health, alcohol/drug and cognitive programming, all programming should be evidenced based and include gender specific components.
8. Treatment shall be based on cognitive and behavioral interventions and social learning approaches. Treatment programs shall be of sufficient length and intensity to produce stable behavior changes based on replacing old patterns of thinking and behaving and learning and practicing new skills for avoiding drug use and criminal behavior.
9. Contact standards will be at a higher rate than that of typical offenders and will involve a minimum of two PO contacts a month with the offender and their children in the home. As the primary case manager, the PO will be responsible to coordinate additional contacts made by a ODHS worker, and/or any other program service provider such as mentors, health care provider, or in-home service provider. Frequency of contact may decrease as Participant progresses in achieving CMA case plan goals. In addition, offenders will be required to submit logs outlining daily routines, family time, and activities such as playtime, reading with children a minimum of twenty minutes per day, homework assistance, and pro-social events. Collateral contacts will include local multi-disciplinary teams focused on the FSAP including community corrections, local department of human services, and other service providers.
10. The Plan shall utilize a system of graduated Sanctions and incentives which are swift and sure and which encourage program goals while holding Participants accountable for non-compliance behaviors.
11. Weekly random drug testing shall occur, however frequency may decrease as Participant progresses in achieving CMA case plan goals. There shall be a consequence for this or any other rule violation, but that consequence shall not

automatically result in withdrawal from the program. Sanctions shall be administered in a manner that is mindful of the impact on the children and families.

12. Programs shall include relapse prevention planning and comprehensive transition planning so that participants are more likely to adjust to changes in living situations.
  13. Addictions treatment programs must be licensed by the State of Oregon to provide addictions treatment.
- C. COUNTY shall incorporate the following data requirements in the Plan:
1. COUNTY will utilize the FSAP Participant Flag.
  2. The start and stop date of any treatment programming relevant to participation in the FSAP, as well as program exit code, will be entered into the CIS Treatment Module.
  3. Numbers of hours in treatment programming designed to promote family reunification and/or reduce recidivism.
- D. COUNTY will prepare and furnish such data, descriptive information and reports as may be requested by DEPARTMENT as needed to comply with ORS 423.520, which states in part, "The department shall require recipients of the grants to cooperate in the collection and sharing of data necessary to evaluate the effect of community corrections programs on future criminal conduct." COUNTY will enter data into CIS in a complete, accurate, and timely manner. COUNTY acknowledges and agrees that DEPARTMENT has the right to reproduce, use and disclose all or any part of such reports, data and technical information furnished under this Agreement.
- E. COUNTY will permit authorized representatives of DEPARTMENT to make such review of records of COUNTY as may be necessary to satisfy audit and/or program review purposes. A copy of any audit or monitoring report will be made available to COUNTY.
- F. COUNTY will follow DEPARTMENT's prescribed allotment and expenditure reporting system in accordance with Exhibit A. This system will be used for controlling County Corrections FSAP Grant funds by DEPARTMENT and to provide suitable records for an audit.
- G. If funding from DEPARTMENT is reduced or discontinued by legislative action, COUNTY will not be required to increase use of COUNTY revenue for continuing or maintaining corrections services as set out in this Agreement.

## **VI DEPARTMENT RESPONSIBILITIES**

- A. Participate according to this Agreement.
- B. Provide funding as described in Section VIII of this Agreement.
- C. Furnish or make available to COUNTY, in a timely manner, those rules, administrative directives and procedures required for COUNTY to meet its obligations described herein.
- D. Subject to system capacity and data processing capabilities, DEPARTMENT will furnish data, descriptive information and reports, available to DEPARTMENT and requested by COUNTY that will assist COUNTY in complying with DEPARTMENT requirements. DEPARTMENT hereby grants to COUNTY the right to reproduce, use, and disclose all or part of such reports, data, and technical information furnished under this Agreement.



- E. If by legislative action, funding from DEPARTMENT is reduced to COUNTY, DEPARTMENT agrees to provide reasonable notice and transition opportunity to COUNTY of changes that may significantly alter approved appropriations and programs.
- F. DEPARTMENT will provide technical assistance to COUNTY in implementing and evaluating COUNTY's Plan.
- G. DEPARTMENT will work collaboratively with COUNTY and ODHS to implement a Plan, which may include data transfers for purposes of preparing the statutorily required legislative report and collaborative case management.
- H. DEPARTMENT will automate the FSAP Participant Flag.

## **VII PERFORMANCE GOALS**

Plans funded under this Agreement will be evaluated by the DEPARTMENT for program effectiveness. Goals for the evaluation are to determine if:

- A. Children are successfully diverted from entering the foster care system and/or families are reunified.
- B. Prison bed usage is reduced.
- C. Recidivism is reduced.
- D. Participants show evidence of improved community functioning: Improved community functioning will be measured by successful completion of the program and through the existing community corrections performance measures outlined in other intergovernmental agreements that COUNTY is party to (i.e., successful completion of supervision, employment, payment of restitution and/or community service work).
- E. Treatment programs are evidence-based. Those designed to reduce recidivism will be evaluated using the Corrections Program Checklist.
- F. Any other identified program goals.

## **VIII FUNDS**

- A. Exhibit A identifies the FSAP Grant Funds authorized under this Agreement for the implementation of the Plan during the term of this Agreement.
- B. Payment to COUNTY of the entire amount of Grant funds will be made within 15 days after execution of this Agreement, subject to the conditions set forth in subsection G of this Section.
- C. Both parties agree that all reallocations of funds within programs shall require a Plan Modification.
- D. Unexpended Funds: Fund balances remaining after the budget year or expiration of the Agreement may be retained by the COUNTY, upon approval by DEPARTMENT, for the provision of on-going supervision, correctional services, and Sanctions in accordance with the Plan.
- E. Unauthorized Expenditures: Any Grant Funds (defined below) disbursed to COUNTY that are expended for unauthorized purposes, or any unexpended Funds not retained by COUNTY under Section VIII.E, will be deducted by DEPARTMENT from payment or refunded to DEPARTMENT promptly upon DEPARTMENT's written request, which is in no case later than 15 days after DEPARTMENT's written request.

- F. **Maximum Grant Amount.** Grant funds are based upon COUNTY's Application for FSAP Funds. Unless amended, the maximum, not-to-exceed FSAP Grant payable to COUNTY under this Agreement is **\$221,594.83** (the "Grant Funds"). The maximum grant amount may be increased only by written amendment of this Agreement which is signed by all parties and with all required State approvals.
- G. Disbursement of Grant Funds under this Agreement is contingent on DEPARTMENT receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow DEPARTMENT, in the exercise of its reasonable administrative discretion, to make the disbursement.

## **IX NONCOMPLIANCE**

- A. The Assistant Director of Community Corrections or the Assistant Director's designee of the Community Corrections Division shall review COUNTY's compliance with this Agreement. COUNTY must substantially comply with the provisions of the Plan received by DEPARTMENT and this Agreement.

If, upon review, DEPARTMENT determines that there are reasonable grounds to believe that COUNTY is not in substantial compliance with the Agreement or Plan, the Department may pursue all remedies available to it at law or equity, including without limitation suspending COUNTY's participation in the FSAP program or, to the extent allowed by law, withholding the amount of any misexpended Grant Funds under this Agreement from moneys payable by the DEPARTMENT to COUNTY under other grant programs. Substantial compliance will include but is not limited to oversight of case management interventions and strategies, collaborative relationships, maintenance of contact standards, and/or standards of evidence-based treatment programs as required in Section V.B., as well as OAR Chapter 291-031.

## **X INDEMNIFICATION. See Exhibit B.**

## **XI TERMINATION**

- A. **Parties Right to Terminate at its Discretion.** At its sole discretion, any party to this Agreement may terminate this Agreement for its convenience upon 30 days' prior written notice.
- B. Parties may terminate this Agreement immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that DEPARTMENT or COUNTY cannot lawfully perform its obligations under this Agreement.
- C. It is understood and agreed by the parties hereto that this Agreement will remain in force only during its term and will not continue in force after its term. There will be no automatic extension, but this Agreement may be extended only by written consent of the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this agreement, including any part, term or provision of any appended material, is held by a court to be illegal or in conflict with any law of the State of Oregon or applicable administrative rule, that element of the Agreement including relevant appended materials will be void and without effect and will be treated by the parties as having been terminated as of the date of determination of the voidness.
- E. It is understood and agreed by the parties hereto that this Agreement will automatically terminate if the State of Oregon provides no funding. If there is reduced state funding, COUNTY may terminate the Agreement as described herein.

## **XII COMPLIANCE WITH APPLICABLE LAW**

Both Parties shall comply with all federal, state and local laws, regulations, executive orders, and ordinances to which each is subject and which is applicable to this Agreement. Without limiting the generality of the foregoing, the parties expressly agree to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to those laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. All employers, including COUNTY, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. COUNTY shall ensure that each of its subcontractors complies with these requirements.

Nothing in this Agreement shall require COUNTY or DEPARTMENT to act in violation of state or federal law or the Constitution of the State of Oregon.

## **XIII ACCESS TO RECORDS**

For not less than six (6) years after Agreement expiration, DEPARTMENT, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of COUNTY which are directly pertinent to this specific Agreement for the purpose of making audit, examination, excerpts, and transcripts. COUNTY shall retain all pertinent records until the later of (i) the date that is not less than six years following the Agreement expiration date or (ii) the date on which all litigation regarding this Agreement is resolved. COUNTY agrees full access to DEPARTMENT will be provided in preparation for and during litigation. Copies of applicable records shall be made available upon request. DEPARTMENT shall reimburse COUNTY for the cost of copies DEPARTMENT requests.

## **XIV SURVIVAL**

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections IV, X, XI, XII, XIII, XIV, and XV.

## **XV GOVERNING LAW; JURISDICTION; VENUE**

The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

## **XVI WAIVER**

The failure of either party to enforce any provision of this Agreement will not constitute a waiver by that party of that or any other provision.

## **XVII EXECUTION AND COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

## **XVIII NOTICE**

Except as otherwise expressly provided in this Agreement, any notices between the parties to be given hereunder shall be given in writing by personal delivery, facsimile, electronic mail, or mailing the same, postage prepaid to COUNTY or DEPARTMENT at the address or number set forth below, or to such other addresses or numbers as any party may indicate pursuant to this section. Any notice so addressed and mailed shall be effective five (5) days after mailing. Any notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Any notice delivered by electronic mail shall be effective on the day of notification of delivery receipt, if delivery was during normal business hours of the recipient, or on the next business day, if delivery was outside normal business hours of the recipient. Any notice given by personal delivery shall be effective when actually delivered to the Authorized Representatives listed below:

To DEPARTMENT: Jeremiah Stromberg, Assistant Director  
Community Corrections Division  
Department of Corrections  
2575 Center St. NE  
Salem, OR 97301  
Telephone: 503-945-8876; Fax: 503-373-7810  
E-Mail: Jeremiah.P.Stromberg@doc.state.or.us

To COUNTY: Ken Hales, Director  
Deschutes County Community Corrections  
63360 Britta Street, Building 2  
Bend, OR 97701  
Telephone: 541-385-3246; Fax: 541-385-1804  
Email: ken.hales@co.deschutes.or.us

The parties may change the persons named in this section by notice to the other party as provided herein. No amendment to this Agreement is required to make such change.

## **XIX MERGER; INTEGRATION**

This instrument contains the entire agreement between the parties and no statement made by any party hereto, or agent thereof, not contained or attached with reference thereto in this written Agreement will be valid or binding. This Agreement will supersede all previous communications, representations, wither verbal or written, between the parties hereto. This Agreement may not be enlarged, modified or altered except in writing, signed by the parties, and attached.

STATE OF OREGON  
DEPT. OF CORRECTIONS

DESCHUTES COUNTY APPROVALS

\_\_\_\_\_  
Jeremiah Stromberg, Assistant Director

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Reviewed by the  
Oregon Attorney General's Office:

/s/ Cynthia Byrnes per email dated 11/23/15  
Assistant Attorney General

**EXHIBIT A**  
**FSAP PLAN and BUDGET SUMMARY**  
**DESCHUTES COUNTY**  
**(To be attached upon signature and return of Agreement by County)**

**EXHIBIT B  
INDEMNIFICATION  
DESCHUTES COUNTY**

**Contribution**

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 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either 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 paragraph and 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 liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State 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 the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the 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. The State'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.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the 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 the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State 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. The 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.

**Alternative Dispute Resolution**

The parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**Indemnification by Subcontractors**

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

## **Subcontractor Insurance Requirements**

### **GENERAL.**

County shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between County and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Department. County shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, County shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. County shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a contractor to work under a Subcontract when the County is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the county directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

### **TYPES AND AMOUNTS.**

#### **PROFESSIONAL LIABILITY**

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than \$2,000,000, as determined by the Agency:

"TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and County 's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and Department may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If Department approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.