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## AGENDA COVER MEMORANDUM

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AGENDA DATE: May 5, 2004  
TO: LANE COUNTY BOARD OF COMMISSIONERS  
FROM: LANE COUNTY INTERGOVERNMENTAL RELATIONS  
PRESENTED BY: Anthony S. Bieda, IGR Manager  
AGENDA TITLE: Community Corrections Options: Post April E-Board

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ISSUES: 1) What should be Lane County's response to the partial restoration of funding for the Community Corrections program provided by the Legislature's Emergency Board?  
2) How soon should that response occur?

### RECENT EVENTS:

A disappropriation of \$8.9 million to the statewide community corrections budget occurred May 1 due to the failure of Measure 30 and subsequent unwillingness of the Legislature to fully restore the \$17.8 million disappropriation specified by HB 5077.

On April 9, the Legislature's Emergency Board restored half of the disappropriation by moving \$8.9 million from its emergency fund to the Department of Corrections budget. Further, it instructed the department to apply the appropriated funds to maintain base funding level payments for the 5<sup>th</sup> and 6<sup>th</sup> quarters of the current biennium.

In effect, Lane County's community corrections grants receipts will be preserved at current levels through calendar year 2004. Without additional restorations by the legislature, however, support from the state for community corrections in Lane County will fall short by about \$1 million in FY 05. Because funding for community corrections for the entire biennium now falls below the base amount required by statute, Lane County has the authority to decide, for the second time in 12 months, whether to remain in the program or notify the state of its intentions to discontinue participation.

In advance of the E-Board meeting, the Association of Oregon Counties had made it clear to the Governor's office and legislative leadership that full restoration of the funding was imperative. The Board of Lane County Commissioners had conveyed the same sentiments to our legislative delegation and to the Department of Corrections. When the E-Board reviewed its options, partial restoration was proposed and supported by the leadership of the House and Senate, and endorsed by the Office of the Governor.

In addition, the E-Board heard testimony from the Department director that community corrections is the preferred model for serving this offender population; that the department is serious about doing everything possible to preserve county participation in the program; and that local control of this offender population is a superior to having it supervised by the state, for fiscal and effectiveness reasons.

The E-Board instructed the department and Legislative Fiscal to bring back more information at the September meeting. The additional considerations at that time will include:

- Amount of emergency funds expended to fight wildfires over the summer
- Offender population actuals and forecasts
- Analysis of county reserving practices relative to community corrections grants
- Number of counties that have sent notice to discontinue participation

(As of May 1, Linn, Douglas and Curry Counties have indicated they will give notice to discontinue participation in the program; Douglas County is working diligently with the state to make the transition as early as July 1, 2004. Baker, Columbia, Deschutes, Jefferson, Jackson, and Polk Counties have left the door open but are not sending letters at this time. Nine other counties have indicated no intention of opting out.)

#### BACKGROUND:

Lane County participates in the community corrections program, modified by SB 1145 (ORS 423.478), which provides sanctions, supervision and treatment for a category of offenders who were once the responsibility of the Oregon Department of Corrections. Community corrections includes all adult parole, post-prison supervision, and probation services for the state, and the responsibility for offenders who otherwise would have spent 12 months or less in the state prison system (the "local control" population).

Statewide, the local control population consists of about 1,600 offenders; the total community corrections caseload is about 30,000 offenders. Approximately 3,400 offenders are on community supervision at the present time in Lane County.

Unique to the community corrections partnership with the state are statutory provisions that allow a county to discontinue participation if the total state community corrections appropriation for the services drops below the 1999 baseline level, adjusted for phased-in or phased-out programs, increased or decreased caseloads, pilot programs and inflation. A 180-day advance notice is required.

If Lane County were to discontinue participation, it would forego community corrections resources from the state (about \$18 million/biennium); it would also relinquish control and authority over the local control and parole and probation populations, and the personnel required to operate the programs. Some of the state's \$9.2 million investment in expanded county jail capacity would also need to be reconciled. (Teresa Wilson's memo of April 4, 2003).

In 2003, when the legislature's proposed funding level for Community Corrections fell

below the base, Lane County and at least two other counties notified the state of their intentions to return the program. When the legislature subsequently decided to fund the program at an appropriate level, Lane County rescinded its notification.

#### ANALYSIS:

A number of factors enter into consideration of whether or not to send notification of Lane County's discontinuation in Community Corrections. They include:

- **Timing.** Notification of intent to discontinue may be sent at any time, but may have more impact if it occurs in concert with notifications from other counties or as part of a coalition strategy to restore full funding.
- **Sources to restore the state appropriation.** Emergency funds may be exhausted in the next few months fighting wildfires, eliminating one possible source of restoration. Revenue above forecast may make additional funds available, but would require action by the legislature meeting in special session to create access to those resources for restoring community corrections funding.
- **Continuity/predictability of resources.** Personnel, facilities and other resources necessary to operate the program successfully cannot be easily acquired and deployed in short timeframes. Subjecting the program to mid-biennium decrements, then partial restorations, creates uncertainty and planning challenges that lessen the attractiveness and effectiveness of this program.
- **Long-term viability** of county-provided community corrections programs. Without a clear and consistent message from county governments that retention of this program is conditional on sufficient funding from the state, community corrections will become another competitor for limited general fund discretionary resources and may lose even more support in subsequent legislative budgets.

#### DISCUSSION:

The Board will discuss the status of funding for Community Corrections in the wake of the failure of Measure 30, and the partial restoration of base funding by the E-Board, and direct staff to provide additional information and analysis as appropriate. The board will also discuss whether or not to send additional written communications to the state at this time. (Proposed letter attached).

#### CONTACT:

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May 5, 2004

The Honorable Karen Minnis, Speaker  
Oregon House of Representatives  
Salem, Oregon

The Honorable Peter Courtney, President  
Oregon Senate  
Salem, Oregon

Dear Speaker Minnis and President Courtney:

We appreciate and acknowledge the good work of the Legislature's Emergency Board last month in partially restoring funding for community corrections for the 03-05 biennium. At a time of extreme fiscal constraints, when reductions in county general fund programs of more than \$4 million will be necessary, it is heartening to know that our warnings about preserving basic public safety are being heard in Salem.

Unfortunately, the remaining \$8.9 million disappropriation for community corrections means the resources available to operate Lane County's public safety system will be diminished by at least \$1 million next fiscal year. That will prevent us from providing enough jail beds to impose appropriate sanctions, and leave us with an unacceptable level of service for offenders under the supervision of Parole & Probation. The inadequate supervision resources will force us to either keep highly unmanageable caseloads, or to expand the use of casebanking for offenders who would otherwise be actively supervised.

Exposing our communities and common constituents to additional risk because the legislature has not lived up to its funding commitments is unacceptable. While we have been patient during the ebb and flow of state general fund capacity during the last few years, the unreliability of state funding has become problematic. Personnel, facilities and other resources necessary operate the program appropriately cannot be easily acquired and deployed in short timeframes. Subjecting the program to mid-biennium decrements, then partial restorations, creates uncertainty and planning challenges that diminish the effectiveness of this program, as well as our interest in continuing our participation.

We have instructed our staff to prepare notice of our intent to discontinue Lane County's participation in the Community Corrections program, knowing that the Legislature and the Governor have pledged to revisit the funding issue again in the early Fall.

We still believe the community corrections partnership is a good investment, and that it deserves to be sustained and supported as a top priority, at the baseline funding level.

Sincerely,

Bobby Green Sr.  
Chair, Lane County Board of Commissioners

Copies: Craig Campbell/Office of the Governor; Reps. Ackerman, Barnhart, Beyer, Brown, Farr, Holvey, Kruse, Verger; Senators Messerle, Morrisette, Prozanski, Walker.

## MEMORANDUM

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Date: April 4, 2003

To: Sheriff Jan Clements; Rob Rockstroh, Director of Health and Human Services;  
Captain John Clague; Bill Van Vactor, County Administrator

From: Teresa J. Wilson, County Counsel

Subject: Process and Risks for "Opting Out" under SB 1145

Facts: The Legislature adopted SB 1145 in 1995. Pursuant to SB 1145, the County assumed responsibility for services for felony offenders on parole, probation, post-prison supervision, or sentenced or sanctioned to 12 months or less incarceration, or on conditional release. The State agreed to fund these services, pursuant to an approved plan, with a baseline for the funding established for the biennia beginning after June 30, 1999. The original baseline date was June 30, 1997, but was legislatively modified in 1999 with an additional appropriation. Under the statutory funding scheme (ORS 423.483), counties have the right to discontinue participation if the total state community corrections appropriation for the services drops below the 1999 baseline level, adjusted for phased-in or phased-out programs, increased or decreased caseloads, pilot programs and inflation. (See Exhibit A, attached statutes).

The services and funding are described in biennial intergovernmental agreements (IGA) between the County and the State Department of Corrections (DOC). An IGA was signed between the County and DOC for the period July 1, 1999 through June 30, 2001 for a sum of \$15.2 million (known as grant-in-aid funds). The contract contained several termination provisions: 1) Statutory - recognition of the County's right to discontinue participation under ORS 423.483(2) "at the end of any month upon the delivery of a resolution of the Board of Commissioners to the Director designee of [DOC] not less than 180 calendar days before the termination date." 2) Automatic - if the State fails to provide any funding; and 3) County election - specifically: "If there is reduced state funding, County may elect to amend the Agreement pursuant to Section V or terminate the Agreement pursuant to this Section XI [the Termination section]." Arguably this third "County election" section broadens the right to terminate to include a right if there is any reduction in state funding to Lane County, whereas the statutory right is based on a reduction in the total state appropriation for services for all counties. The counter argument is that third section is merely a poorly worded reference back to the statutory termination provision and does not broaden it.

An amendment was signed in June, 2001 to the 1999 IGA, extending it through June 30, 2003. The State agreed to provide \$18.7 million for the additional two-year period. There were no changes to the termination language. There have been subsequent legislative funding reductions due to state fiscal shortfalls, which are captured in an amendment going through the system now. This most recent amendment reduces the funding to Lane County by \$899,166 to \$17.69 million.

Also under SB 1145, the State agreed to provide funding for construction for new facilities to enable the counties to manage this new population of inmates. The State procured the funding through a large bond sale. Counties built new or enlarged existing

facilities, with the construction payments being made by the State. The counties leased the facilities to the State for terms of roughly 30 years; the State granted a mortgage on its leasehold interests in favor of a bond trustee; the State then subleased the facilities back to the counties for operations. Lane County accessed \$9.2 million for construction through this arrangement. More specific facts regarding the Lane County Lease and Sublease are outlined on Exhibit B, and will be discussed as pertinent below.

Lane County also entered into an arrangement in January, 1998, with the U.S. Marshals Service, under which the County received an additional \$1.25 million in what are known as "CAP funds" for construction, in return for which we agreed that we would provide detention space for 50 federal prisoners per day for a period of 15 years after construction was completed. The U.S. Marshals Service also agreed to pay for the use of those beds at an agreed upon per diem rate. After construction was completed, this agreement could only be terminated by mutual agreement of the parties. An unremedied breach of the agreement by the County triggers an obligation to repay the \$1.25 million plus interest plus the cost of relocating the federal inmates.

Question: What is the process for exercising the County's right to discontinue providing services under SB 1145? What risks are involved?

Answer: The initial process is fairly straightforward, and under ORS 423.483(2), involves sending written notification to the State Director of Corrections 180 days prior to implementation. The notice should identify that it is in exercise of the statutory rights, the rights under the IGA and those of the Sublease, and that the intent is both to discontinue participation in the Community Corrections partnership created with SB 1145 and to terminate the Sublease.

The practical process is more complicated and would involve transfer of prisoners, transfer of employees, potentially the transfer of funds, transfer of personal property/equipment purchased with Community Corrections Act funds and terminating the Sublease for the Facilities that were constructed with SB 1145 construction funds, i.e., turning the Facilities over to the State to use or sublease to another tenant. The latter will mean working out an arrangement that permits the State (or its Sublessee) to operate those Facilities. See the Discussion below. The risks involved with opting out are also covered below.

#### Discussion:

A. Process. As described in the Answer above, the process to give notice of intent to discontinue participation in the SB 1145 programs (and the IGA) is straightforward – simply sending written notice to the State Director of Corrections 180 days prior to implementation. Under the current IGA, this should be accompanied by a resolution of the Board of County Commissioners that identifies the basis for giving notice – the failure of the State to appropriate adequate funding under ORS 423.483. Care needs to be taken that the facts exist which would support giving the notice – i.e. we need to make sure that the State in fact has failed to appropriate funding sufficient to meet the test outlined in ORS 423.483. Stated differently, either we need to have evidence from the State that they agree that there is insufficient funding to meet the test described in ORS 423.483(2), or we need to make the calculation ourselves on a statewide basis.

If we do not have an actual admission from the State on the funding issue, but we have a good faith belief that the reductions in funding meet the requirement, then we could give the notice and during the 180-day period perform such fact gathering as is necessary to actually run the calculation. If we determine that the State has met its obligation, we would then rescind the notice. There is some risk involved in this approach, as there is no statutory provision regarding the rescission of notice or the consequences of such should the State have incurred costs in preparation for taking over the programs.

The notice also needs to address the situation of the Lease/Sublease. The Sublease permits termination if the County discontinues participation in the SB 1145 program. It also provides that if the Sublease is terminated for that reason, the Lease does not necessarily terminate. The County could terminate the Lease by paying the Defeasance amount, i.e., the remaining balance on the \$9.2 million of the State loan. Given the current County financial situation, that is not a likely option. (See Exhibit B for further description of Lease and Sublease.) The County should thus be clear that it is also giving notice that it intends, on the basis of discontinuing participation in the SB 1145 partnership, to terminate the Sublease, but not the Lease, effective the date that responsibility for the Community Corrections programs is turned over to the State.

In summary, the points to be made in the Notice are:

1. In accordance with the provisions of ORS 423.475(4) and 423.483, the County is giving the required 180 day notice of its intent to terminate participation in the Community Corrections partnership created by SB 1145, and simultaneously, at the end of the notice period, to terminate the 1997 Sublease entered into between Lane County and the State, through the Department of Corrections, for the Facilities constructed under the SB 1145 program.

2. The County is specifically not intending to terminate the 1997 Lease that was also entered into under the SB 1145 program. It is willing to meet with State representatives to work out necessary arrangements for the State to assume possession and operation of the Leased Facilities.

3. The basis for this notice is the State's reduction in funding for these Community Corrections services that has occurred to date, such that the funding has fallen below the baseline established by ORS 423.483.

If the County wishes to continue the Community Corrections services should State funding be restored to the baseline level before the end of the 180 day notice period, then that should also be indicated in the notice.

B. Implementation Issues. There are many implementation issues that will arise after the giving of the notice, in order to be able to appropriately and smoothly turn over the operation of the programs and the facilities.

1. Prisoners – Under the Sentencing Guidelines, as I understand them, offenders with terms of incarceration of 12 months or less serve them at the direction of the local supervisory authority, regardless of who is operating the Community Corrections programs, while those with terms of 12 months or more are in the legal and physical custody of the DOC. OAR 213-005-0001. Under the recently adopted

temporary rule OAR 291-031-0095, the DOC will perform the duties of the local supervisory authority in the situation of a County that is discontinuing the SB 1145 partnership. [Note: The DOC has recently adopted several temporary rules that cover the situation of counties discontinuing the SB 1145 programs. As temporary rules, they cover the period 2-21-03 through 8-20-03; however, it is reasonable to anticipate they will be made permanent rules. Where I cite a rule that has temporary status, I will identify it as such. The rules can be found at on the State website at <http://arcweb.sos.state.or.us/banners/rules.htm> .]

We will need to prepare to identify all prisoners in custody that the State will assume responsibility for, and get ready so that on the date of implementation, these are the only ones who are physically in the Leased Facilities. If there are any prisoners who remain the County's responsibility and who are in the Leased Facilities after the implementation date, the Sublease provides that we are then liable for the debt service on the State loan.

We will also need to identify all individuals not in custody but who are on parole, post-prison supervision, probation or conditional release under ORS 420A.206 for transfer to the State's responsibility on the date of implementation. The State will not assume responsibility for the supervision of offenders convicted of misdemeanors (ORS 423.483(2); OAR 291-031-0095 (temp)), so the County will need to determine if it is going to continue supervision of any of these individuals, and if so, how and by whom.

Lastly, we will need to review the federal court order placing a cap on the jail, and make arrangements to revise as necessary, given the loss of beds under our control.

2. Employees – The employees who work in the SB 1145 programs will be transferred to State employment when the duties of the programs are transferred, to the extent funds are available. The transfer will take place pursuant to ORS 236.610-.640 and OAR 291-031-0140 (temp). If there is reduced funding, there may be a commensurate reduction in staff positions, i.e., layoffs. Given the probable timing of any notice to be given by the County, it is likely that layoffs to accommodate reductions in State funding will have already been implemented at the County level before any transfer.

The notice of intent to transfer the SB 1145 programs and the employees may well trigger an obligation under the applicable collective bargaining agreements to give notice and an opportunity to bargain. However, the rights to be bargained are in great part controlled by the transfer statutes, ORS 236.610-.640. This is different than when the State initially transferred the community corrections employees to the County under SB 1145, as ORS 423.549 made clear that implementation of SB 1145 did not trigger any obligation to bargain under ORS 243.650-243.782. There is no such statutory waiver of bargaining obligations for a transfer back to the State. The notice and bargaining do not necessarily prevent implementation after the expiration of a 45 day period (AFSCME contract). Any other impacted contract will need to be reviewed regarding similar limitations.

Under ORS 236.610(2), the transferred employees may not have their salaries reduced during the first 12 months at the State. The County will need to liquidate any accrued compensatory time. ORS 236.610(3). The employees have the right to elect to retain accrued sick leave, up to 80 hours vacation leave and any additional vacation

leave if agreed to by the State and County. ORS 236.610(4). The County is obligated to pay to the State funds equal to the accrued leave, ORS 236.610(4)(b), and presumably to make payment to the employees for any leave accruals beyond that transferred pursuant to the County's normal employee termination policies. After the transfer, the employees will receive leave in accordance with State policies. The State will also arrange for a waiver of any waiting period with its health insurer. ORS 236.610(5).

The County will be obliged to furnish the State with the employment records of all transferred employees. The timing of the transfer is to be by written agreement of the State and County. ORS 236.610(6).

The transferred employees will retain the seniority accrued with the County, as if it had been accrued at the State. ORS 236.620(1)(c). After the transfer, the transferred employees will have the same privileges, benefits, hours and conditions of employment, and be subject to the same regulations as all other State employees. ORS 236.620(1)(d).

3. CCA Funds – Under OAR 291-031-0100(temp), grant-in-aid funds allocated to the County will be retained by the State if the County discontinues participation. If the transfer of responsibility is for less than the full 24-month biennium, the funds will be prorated to the date of transfer. The County is required to provide a financial closing statement to the State within 60 days of the transfer, and to return any funds received but not spent. DOC will also retain all supervision fees collected from offenders during its supervision after it assumes responsibility.

4. Facilities – The following list is the property (Leased Facilities) that is subject to the Lease and Sublease signed with DOC:

- a) 40 bed addition to Community Corrections Center (2 story on N side) (9460 sq. ft.)
- b) 92 bed addition to Jail (2 stories on NE side) (26,497 sq. ft)
- c) Satellite control station and public visitation area on S. side of Jail (1637 sq. ft.)

Pursuant to the Sublease, upon the date the responsibilities for the SB 1145 programs are transferred to the State, the County is obliged to surrender possession of these Leased Facilities to the State, broom clean and in good condition (except for reasonable wear and tear), free of all tenants and prisoners except those for whom the State assumes responsibility. Note: if the County fails to surrender possession or continues to use the Leased Facilities within 30 days after termination, the County is liable for the debt service on the State loan for the County Project, and any other damages suffered by the State.

Under both the Lease and the Sublease, the County must also make utilities, garbage service, and all other services or amenities which were available for the Leased Facilities under the County operation available to the State/Lessee or new Sublessee. This includes use of exercise areas and food service. County can bill the State/Lessee or Sublessee for these services at the rate of the County's cost. State may use the Leased Facilities for any lawful purpose if Sublease is terminated.

Under the Sublease, the County has the obligation to maintain/repair the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, sidewalks and parking areas that serve the Leased Facilities, as well as the HVAC,

plumbing, electrical, lighting, carpet and other floor coverings in the Leased Facilities. It is not clear who would have these responsibilities in the event the Sublease is terminated, as this requirement is not contained in the Lease.

Clearly, given the nature of the Leased Facilities, the County will need to engage in detailed negotiations with whoever the State chooses to operate the Leased Facilities, in order to work out the necessary cooperative arrangements to enable reasonable functioning of both the Leased Facilities and the facilities remaining under the County's control.

The County will also need to review any lease signed with the State regarding the State Office Building that has been used to provide offices for Parole and Probation. I have not reviewed that Lease at this time, and so am unaware of either on-going obligations or any termination notice provisions.

5. Equipment – Under OAR 291-031-0025(2)(f) and 291-031-0120(temp), upon the County discontinuing participation, DOC assumes title to any property that was transferred when the programs were initially transferred to the County, and any equipment, furnishings, vehicles or property purchased with state funds to provide parole and probation services. The County is required to provide DOC a list of all such equipment, furnishings, vehicles or property with a value of over \$250 within 30 days of the giving of the notice of intent to discontinue participation.

6. Continued role of PSCC – If the County discontinues participation, then the DOC will be responsible under OAR 291-031-0110(temp) for the development of the community corrections plan. They will meet with the local Public Safety Coordinating Council to review County recommendations on how the state resources should be used for the local offender population, and the plan will be submitted to the County Commissioners for information and comment.

### C. Issues/Implications/Risks

#### 1. Issues/Next Steps After Giving of Notice

a. Validate whether the statewide funding meets the statutory test to trigger the County's right to discontinue participation in the SB 1145 program.

b. Begin development of a plan regarding the release and/or transfer of prisoners to the State, and of those offenders under supervision by Parole and Probation.

c. Determine what to do with respect to any offenders currently under supervision due to misdemeanors.

d. Review the federal court order regarding the jail cap and determine if it needs amendment.

e. Give appropriate notice to any affected union(s) under applicable collective bargaining agreement(s), at least 45 days prior to any anticipated implementation date.

f. Review and plan to manage the operational impact of the loss of the Leased Facilities to the remaining local correctional system.

g. Review the lease of the State Office Building, where Parole and Probation is housed, and analyze any on-going obligations and the termination provisions.

h. Develop and sent a list to DOC within 30 days of giving the notice to discontinue participation of the equipment, furnishings, vehicles and property over \$250 in value and purchased with State funds for Parole and Probation.

i. Begin planning for the necessary coordination with a new tenant of the Leased Facilities to make reasonable use for both parties.

2. Implications – One of the implications of discontinuing participation is that the State has indicated in the temporary rule, OAR 291-031-0085(3) that a County may only make an election to participate or discontinue participation once per biennium. The original premise of SB 1145 was that these offenders who would soon return to the community in any event, were better managed locally, under the guidance and direction of local supervision. There will also be implications for members of the community by the County discontinuing participation, and by having the State perform the responsibilities for this offender population with a reduced responsiveness to local concerns.

3. Risks – Throughout this memo, I have attempted to identify the operational, programmatic and procedural risks. To date, I have not identified any that cannot be managed, nor have I found any that are so fiscally risky as to recommend against the giving of notice to discontinue participation is SB 1145. The largest financial risks are if we continue to use the Leased Facilities after transfer of responsibility, which would trigger an obligation to pay the debt service on the State Loan, or if we breach the U.S. Marshals contract, which would trigger an obligation to repay the \$1.25 million plus interest plus the cost of relocating the federal inmates. The latter is not a concern so long as we are able to honor the obligation to provide 50 beds per day.

## **EXHIBIT A**

### **CORRECTIONS**

#### **CHAPTER 423. CORRECTIONS AND CRIME CONTROL ADMINISTRATION AND PROGRAMS**

##### **COMMUNITY CORRECTIONS**

#### **423.475. Findings.**

The Legislative Assembly finds and declares that:

(1) Passage by the voters of chapter 2, Oregon Laws 1995, has created mandatory minimum penalties for certain violent offenses, and the probable effect thereof will be a significant increase in the demands placed on state secure facilities.

(2) These demands are a shared responsibility of the State of Oregon and its county governments. The state recognizes that it is in a better position than counties to assume responsibility for serious violent offenders and career property offenders.

(3) Counties are willing, in the context of a partnership with the state, to assume responsibility for felony offenders sentenced to a term of incarceration of 12 months or less.

(4) Under the terms of the partnership agreement, the counties agree to assume responsibility for the offenders described in subsection (3) of this section, subject to the state agreeing to provide adequate funding to the counties for this responsibility.

(5) The amendments to statutes made by sections 1a to 5, 7, 8, 9a, 9b, 9c, 10 to 14, 17 to 19 and 22 to 29, chapter 423, Oregon Laws 1995, and the provisions of ORS 423.478, 423.483 and 423.549 and section 5a, chapter 423, Oregon Laws 1995, are intended to acknowledge and implement the terms of the partnership between the state and the counties. (1995 c. 423 § 1)

#### **423.478. Duties of department and counties; authority of county supervisory authority.**

(1) The Department of Corrections shall:

(a) Operate prisons for offenders sentenced to terms of incarceration for more than 12 months;

(b) Provide central information and data services sufficient to:

(A) Allow tracking of offenders; and

(B) Permit analysis of correlations between sanctions, supervision, services and programs, and future criminal conduct; and

(c) Provide interstate compact administration and jail inspections.

(2) Subject to ORS 423.483, the county, in partnership with the department, shall assume responsibility for community-based supervision, sanctions and services for offenders convicted of felonies who are:

(a) On parole;

(b) On probation;

(c) On post-prison supervision;

- (d) Sentenced, on or after January 1, 1997, to 12 months or less incarceration;
- (e) Sanctioned, on or after January 1, 1997, by a court or the State Board of Parole and Post-Prison Supervision to 12 months or less incarceration for violation of a condition of parole, probation or post-prison supervision; and
- (f) On conditional release under ORS 420A.206.

(3) Notwithstanding the fact that the court has sentenced a person to a term of incarceration, when an offender is committed to the custody of the supervisory authority of a county under ORS 137.124 (2) or (4), the supervisory authority may execute the sentence by imposing sanctions other than incarceration if deemed appropriate by the supervisory authority. If the supervisory authority releases a person from custody under this subsection and the person is required to report as a sex offender under ORS 181.595, the supervisory authority, as a condition of release, shall order the person to report to the Department of State Police, a chief of police or a county sheriff or to the supervising agency, if any:

- (a) When the person is released; and
- (b) Within 10 days of a change of residence. (1995 c. 423 § 9; 1997 c. 313 § 33; 1997 c. 433 § 9; 1999 c. 156 § 1; 1999 c. 626 § 21; amendments by 1999 c. 626 § 44 repealed by 2001 c. 884 § 1)

#### **423.483. Baseline funding; basis on which county can discontinue participation.**

(1) The baseline funding for biennia beginning after June 30, 1999, is the current service level for the expenses of providing management, support services, supervision and sanctions for offenders described in ORS 423.478 (2). At a minimum, each biennium's appropriation must be established at this baseline.

(2) If the total state community corrections appropriation is less than the baseline calculated under subsection (1) of this section, a county may discontinue participation by written notification to the director 180 days prior to implementation of the change. If a county discontinues participation, the responsibility for correctional services transferred to the county, and the portion of funding made available to the county under ORS 423.530 reverts to the Department of Corrections. In no case does responsibility for supervision and provision of correctional services to misdemeanor offenders revert to the department.

(3) As used in this section, "current service level" means the calculated cost of continuing current legislatively funded programs, phased in programs and increased caseloads minus one-time costs, decreased caseloads, phased out programs and pilot programs with the remainder adjusted for inflation as determined by the Legislative Assembly in its biennial appropriation to the Department of Corrections. (1995 c. 423 § 6; 1999 c. 952 § 1)

## **EXHIBIT B**

### **Facilities Lease**

Parties: Lane County (Owner/Lessor) and the State of Oregon (Department of Administrative Services) (Lessee)

Term: 11/6/97 to earlier of:

- a) 10 years after the final maturity of the State Loan (Loan is roughly 20 years, so this makes the Lease roughly 30 years)
- b) Date State Loan is paid in full
- c) Date the County pays the Defeasance Amount

#### Property Leased by County to the State

- a) 40 bed add. to Community Corrections Center (2 story on N side) (9460 sq. ft.)
- b) 92 bed add. to Jail (2 story on NE side) (26,497 sq. ft.)
- c) Satellite control station & public visitation area on S. side of Jail (1637 sq. ft.)

Defeasance Amount = enough to pay or prepay all unpaid principal, interest and redemption premiums on the portion of the State Loan that is allocable to financing the County Project, plus costs to defease. Initial principal attributable to County Project in 1997 was \$9,221,774.

Mortgage: The State borrowed money to fund construction statewide. The County agreed to permit, and the State in fact did grant a Trust Deed on its interest in the Lease to secure the debt. Note: If the State defaults on the Mortgage, and the Trustee forecloses, the possession of the Leased Facilities passes to a Replacement Lessee, who is required to use the property in a manner reasonable compatible with the County's use of the adjoining property.

Termination Provision: The County can terminate, if there has not been foreclosure of the State upon 30 days notice and upon payment of the Defeasance Amount.

County Obligations if Sublease is terminated: County must make utilities, garbage service, and all other services or amenities which were available for the Leased Facilities under the County operation available to the State/Lessee or new Sublessee. Includes use of exercise areas and food service. County shall bill Lessee for such at County's cost. State may use the Leased Facilities for any lawful purpose if Sublease is terminated.

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### **Facilities Sublease**

Parties: The State of Oregon (Department of Administrative Services) (Sublessor) and Lane County (Sublessee)

Term: 11/6/97 to earlier of:

- a) 10 years after the final maturity of the State Loan (Loan is roughly 20 years, so this makes the Lease roughly 30 years)
- b) Termination on earlier of:

- 1) the date the Mortgage is foreclosed
- 2) the date the County discontinues participation in Community Corrections Program under SB 1145
- 3) the date the State terminates Sublease in the event of Default (either Co. fails to meet obligations or DOC suspends funding due to Co. failure to substantially comply with terms of IGA)
- 4) the date the Facilities Lease terminates

Property Subleased by State to County – same as Lease

- a) 40 bed add. to Community Corrections Center (2 story on N side) (9460 sq. ft.)
- b) 92 bed add. to Jail (2 story on NE side) (26,497 sq. ft)
- c) Satellite control station & public visitation area on S. side of Jail (1637 sq. ft.)

Termination Provision: The Sublease acknowledges that SB 1145 permits the County to discontinue participation if the total State appropriation for community corrections services fails to meet the baseline upon 180 days written notice to DOC. If the County does discontinue participation, the Sublease is terminated the date the responsibility for correctional services reverts to DOC. The Sublease also provides that if it is terminated for that reason, the Facilities Lease does not terminate.

County Obligations if Sublease is terminated:

- a) The County must surrender possession of the Leased Facilities, broom clean and in good condition (except for reasonable wear and tear), free of all tenants and prisoners except those for whom the State assumes responsibility. Note: if the County fails to surrender possession or continue to use the Leased Facilities within 30 days after termination, the County is liable for the debt service on the State loan for the County Project, and any other damages suffered by the State.
- b) The County must make utilities, garbage service, and all other services or amenities which were available for the Leased Facilities under the County operation available to the State/Lessee or new Sublessee. Includes use of exercise areas and food service. County shall bill Lessee for such at County's cost. State may use the Leased Facilities for any lawful purpose if Sublease is terminated.

County Maintenance Duties: The County has the obligation under the Sublease to maintain/repair the structure, foundation, exterior walls, roof, doors and windows, elevators, emergency lighting, sidewalks and parking areas that serve the Leased Facilities, as well as the HVAC, plumbing, electrical, lighting, carpet and other floor coverings in the Leased Facilities. It is not clear who would have these responsibilities in the event the Sublease is terminated.