



MARION COUNTY BOARD OF COMMISSIONERS


Board Session Agenda Review Form

Meeting date: 7/24/2019

Department: Sheriff's Office Agenda Planning Date: 7/18/2019 Time required: 5

☐ Audio/Visual aids

Contact: Camber Schlag Phone: x3944

Department Head Signature: 

TITLE Consider approval of the contract for services with 4M4 Solutions for \$200,000 through July 31, 2020.

Issue, Description & Background Marion County Sheriff's Office (MCSO) requests approval of this contract for services for Project Management Services with 4M4 Solutions. 4M4 Solutions will provide Project Management and Subject Matter Expert services on behalf of the MCSO for the Marion County Records Management System/Jail Management System purchase and installation project.

Financial Impacts:

Impacts to Department & External Agencies 4M4 Solutions will work closely with the Information Technology department on the purchase and installation of the Marion County Records Management System/Jail Management System

Options for Consideration:
1. Approve the contract for services
2. Deny the contract for services
3. Take no action at this time

Recommendation:
1. Approve the contract for services

List of attachments:
Contract for Services
Approved Special Procurement

Presenter:
Camber Schlag & Troy Clausen

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: cschlag@co.marion.or.us



Marion County
OREGON
FINANCE DEPARTMENT

Contract Review Sheet

Contract #: SO-2964-19

Person Sending: **Camber Schlag**

Department: **Sheriff's Office**

Contact Phone #: **x3944**

Date Sent: **7/12/2019**

☒ Contract ☐ Amendment# ☐ Lease ☐ IGA ☐ MOU ☐ Grant (attach approved grant award transmittal form)

Title: **RMS/JMS Project Management Services**

Contractor's Name: **4M4 Solutions**

Term - Date From: **Execution**

Expires: **7/31/2020**

Contract Total: **\$200,000.00**

Amendment Amount: _____

New Contract Total: _____

Source Selection Method: Special Procurement (attach approval)

SO-615-19

Additional Considerations (check all that apply)

☐ Board Order# _____

☐ Feasibility Determination (attach approved form)

☐ Incoming Funds

☐ Federal Funds (attach sub-recipient / contractor analysis)

☐ Independent Contractor (LECS) approval date: _____

☐ Reinstatement (attach written justification)

☐ Insurance Waiver (attach)

☐ Retroactive (attach written justification)

☐ CIP# _____ (required for all goods /software greater than \$5,000)

Description of Services or Grant Award:

Contractor will provide Project Management and Subject Matter Expert services on behalf of the Sheriff's Office for the RMS/JMS project contract negotiation and installation.

FOR FINANCE USE

Date Finance Received: _____

BOC Planning Date: _____

Date Legal Received: _____

Comments: _____

REQUIRED APPROVALS:

Finance - Contracts

Date

Risk Manager

Date

Legal Counsel

Date

Chief Administrative Officer

Date

Date _____ ☐ To be filed ☐ Added to Finance Table

☐ Date _____ Returned to department for signature

MARION COUNTY CONTRACT FOR SERVICES

This contract is between Marion County (a political subdivision of the State of Oregon) hereinafter called County, and 4M4 Solutions, an Sole Proprieter, hereinafter called Contractor.

Contractor agrees to perform, and County agrees to pay for, the services and deliverables described in Exhibit A (the "Work").

1. TERM. This Contract is effective on the date it has been signed by all parties and all required County approvals have been obtained. This Contract expires on **July 31, 2020**. The parties may extend the term of this Contract provided that the total Contract term does not extend beyond December 31, 2020.

2. CONSIDERATION.

A. The maximum, not-to-exceed compensation payable to Contractor under this Contract, which includes any allowable expenses, is \$200,000. County will not pay Contractor any amount in excess of the not-to-exceed compensation of this Contract for completing the Work, and will not pay for Work performed before the date this Contract becomes effective or after the termination of this Contract. If the maximum compensation is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

B. Interim payments to Contractor shall be made in accordance with the payment schedule and requirements in Exhibit A.

3. COMPLIANCE WITH STATUTES AND RULES.

A. County and the Contractor agree to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules.

Unless otherwise specified, responsibility for all taxes, assessment, and any other charges imposed by law upon employers shall be the sole responsibility of the Contractor. Failure of the Contractor or the County to comply with the provisions of this contract and all applicable federal, state, and local statutes and rules shall be cause for termination of this contract as specified in sections concerning recovery of funds and termination.

County's performance under this Contract is conditioned upon Contractor's compliance with the obligations intended for contractors under ORS 279B.220, 279B.225 (if applicable to this Contract), 279B.230 and 279B.235 (if applicable to this Contract), which are incorporated by reference herein.

B. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in subsection 27. C. (i) through (iv) of this Contract.

i. Any violation of subsection B of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty, in subsection 27.3 of this Contract, that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle the County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

a. Termination of this Contract, in whole or in part;

b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and

c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. The County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in a replacement contractor.

C. These remedies are cumulative to the extent the remedies are not inconsistent, and the County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

4. CIVIL RIGHTS, REHABILITATION ACT, AMERICANS WITH DISABILITIES ACT and TITLE VI OF THE CIVIL RIGHTS ACT. Contractor agrees to comply with the Civil Rights Act of 1964, and 1991, Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and Title VI as implemented by 45 CFR 80 and 84 which states in part, No qualified person shall on the basis of disability, race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from federal financial assistance.

5. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance of this Contract.

6. FORCE MAJEURE. Neither County nor Contractor shall be responsible for any failure to perform or for any delay in the performance of any obligation under this Contract caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond the breaching party's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate the cause of Contractor's delay or breach and shall, upon the cessation of the cause, continue performing under this Contract. County may terminate this Contract upon written notice to Contractor after reasonably determining that the delay or breach will likely prevent successful performance of this Contract.

7. FUNDING MODIFICATION.

A. County may reduce or terminate this contract when state or federal funds are reduced or eliminated by providing written notice to the respective parties.

B. In the event the Board of Commissioners of the County reduces, changes, eliminates, or otherwise modifies the funding for any of the services identified, the Contractor agrees to abide by any such decision including termination of service.

8. RECOVERY OF FUNDS. Expenditures of the Contractor may be charged to this contract only if they (1) are in payment of services performed under this contract, (2) conform to applicable state and federal regulations and statutes, and (3) are in payment of an obligation incurred during the contract period.

Any County funds spent for purposes not authorized by this contract and payments by the County in excess of authorized expenditures shall be deducted from future payments or refunded to the County no later than thirty (30) days after notice of unauthorized expenditure or notice of excess payment.

Contractor shall be responsible to repay for prior contract period excess payments and un-recovered advanced payments provided by the County. Repayment of prior period obligations shall be made to the County in a manner agreed on.

9. ACCESS TO RECORDS.

A. Contractor shall permit authorized representatives of the County, State of Oregon, or the applicable audit agencies of the U.S. Government to review the records of the Contractor as they relate to the contract services in order to satisfy audit or program evaluation purposes deemed necessary by the County and permitted by law.

B. Contractor agrees to establish and maintain financial records, which indicate the number of hours of work provided, and other appropriate records pertinent to this contract shall be retained for a minimum of three (3) years after the end of the contract period. If there are unresolved audit questions at the end of the three-year period, the records must be maintained until the questions are resolved.

10. REPORTING REQUIREMENTS. Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such reports provided by the Contractor shall be supported by documentation in Contractor's possession from third parties to the extent as applicable.

11. CONFIDENTIALITY OF RECORDS.

A. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.

B. Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidential provision.

C. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which shall become part of this Contract, if attached hereto.

D. Client records shall be kept confidential in accordance with ORS 179.505, OAR 309-11-020, 45 CFR 205.50 and 42 CFR Part 2 as applicable.

12. INDEMNIFICATION AND INSURANCE.

A. Contractor shall defend, save, indemnify, and hold harmless the County, its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorney fees, resulting from, arising out of, or relating to the activities of Contractor or its officers, employees, subcontractors, or agents under this Contract. Contractor shall have control of the defense and settlement of any claim that is subject to this section. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of either County or any department of County, nor purport to act as legal representative of either County or any of its departments, without first receiving from County Legal Counsel authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of County without the approval of County Legal Counsel. County may, at its election and expense, assume its own defense and settlement.

B. Contractor shall obtain the insurance required under section 23 prior to performing under this Contract and shall maintain the required insurance throughout the duration of this Contract and all warranty periods.

C. County, pursuant to applicable provisions of ORS 30.260 to 30.300, maintains a self-insurance program that provides property damage and personal injury coverage.

13. EARLY TERMINATION. This Contract may be terminated as follows:

A. County and Contractor, by mutual written agreement, may terminate this Contract at any time.

B. County in its sole discretion may terminate this Contract for any reason on 30 days written notice to Contractor.

C. Either County or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

D. Notwithstanding section 13C, County may terminate this Contract immediately by written notice to Contractor upon denial, suspension, revocation or non-renewal of any license, permit or certificate that Contractor must hold to provide services under this Contract.

14. PAYMENT ON EARLY TERMINATION. Upon termination pursuant to section 13, payment shall be made as follows:

A. If terminated under 13A or 13B for the convenience of the County, the County shall pay Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract. County shall not be liable for direct, indirect or consequential damages. Termination shall not result in a waiver of any other claim County may have against Contractor.

B. If terminated under 13C by the Contractor due to a breach by the County, then the County shall pay the Contractor for Work performed prior to the termination date if such Work was performed in accordance with the Contract.

C. If terminated under 13C or 13D by the County due to a breach by the Contractor, then the County shall pay the Contractor for Work performed prior to the termination date provided such Work was performed in accordance with the Contract less any setoff to which the County is entitled.

15. INDEPENDENT CONTRACTOR.

A. The Contractor is a separate and independently established business, retains sole and absolute discretion over the manner and means of carrying out the Contractor's activities and responsibilities for the purpose of implementing the provisions of this contract, and maintains the appropriate license/certifications, if required under Oregon Law. This contract shall not be construed as creating an agency, partnership, joint venture, employment relationship or any other relationship between the parties other than that of independent parties. The Contractor is acting as an "independent contractor" and is not an employee of County, and accepts full responsibility for taxes or other obligations associated with payment for services under this contract. As an "independent contractor", Contractor will not receive any benefits normally accruing to County employees unless required by applicable law. Furthermore, Contractor is free to contract with other parties for the duration of the contract.

B. SUBCONTRACTING/NONASSIGNMENT. No portion of the Contract may be contracted or assigned to any other individual, firm or entity without the express and prior approval of the County.

16. GOVERNING LAW AND VENUE. This Contract shall be governed by the laws of the State of Oregon. Any action commenced in connection with this Contract shall be in the Circuit Court of Marion County. All rights and remedies of the County shall be cumulative and may be exercised successively or concurrently. The foregoing is without limitation to or waiver of any other rights or remedies of the County according to law.

17. OWNERSHIP AND USE OF DOCUMENTS. All documents, or other material submitted to the County by Contractor shall become the sole and exclusive property of the County. All material prepared by Contractor under this Contract may be subject to Oregon's Public Records Laws.

18. NO THIRD PARTY BENEFICIARIES.

A. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.

B. Nothing in this contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

19. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns.

20. MERGER CLAUSE. This Contract and the attached exhibits constitute the entire agreement between the parties.

A. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.

B. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.

C. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

21. WAIVER. The failure of any Party to enforce any provision of this Contract shall not constitute a waiver by that Party or any other provision. Waiver of any default under this Contract by any Party shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

22. REMEDIES. In the event of breach of this Contract, the Parties shall have the following remedies:

A. If terminated under 13C by County due to a breach by the Contractor, the County may complete the Work either itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the Work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall pay to the County the amount of the reasonable excess.

B. In addition to the remedies in sections 13 and 14 for a breach by the Contractor, County also shall be entitled to any other equitable and legal remedies that are available.

C. If County breaches this Contract, Contractor's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Contractor is entitled.

23. INSURANCE.

A. **REQUIRED INSURANCE.** Contractor shall obtain at Contractor's expense the insurance specified in this section prior to performing under this Contract and shall maintain it in full force and at its own expense throughout the duration of this Contract and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to County:

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

ii. PROFESSIONAL LIABILITY. Covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☒ Required by County ☐ Not required by County.

- ☒ \$1,000,000 Per occurrence limit for any single claimant; and
- ☒ \$2,000,000 Per occurrence limit for multiple claimants
- ☐ Exclusion Approved by Risk Manager

iii. COMMERCIAL GENERAL LIABILITY. Covering bodily injury, death and property damage in a form and with coverages that are satisfactory to the County. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☒ Required by County ☐ Not required by County.

Bodily Injury/Death:

- ☒ \$1,000,000 Per occurrence limit for any single claimant; and
- ☒ \$2,000,000 Per occurrence limit for multiple claimants
- ☐ Exclusion Approved by Risk Manager
- ☐ \$500,000 Per occurrence limit for any single claimant
- ☐ \$1,000,000 Per occurrence limit for multiple claimant

iv. AUTOMOBILE LIABILITY INSURANCE. Covering all owned, non-owned, or hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Contractor shall provide proof of insurance of not less than the following amounts as determined by the County:

☒ Required by County ☐ Not required by County.

Bodily Injury/Death:

- ☒ Oregon Financial Responsibility Law, ORS 806.060 (\$25,000 *property damage*/\$50,000 *bodily injury* \$5,000 *personal injury*).
- ☐ \$500,000 Per occurrence limit for any single claimant; and
- ☐ \$1,000,000 Per occurrence limit for multiple claimants
- ☐ Exclusion Approved by Risk Manager

B. ADDITIONAL INSURED. The Commercial General Liability insurance required under this Contract shall include Marion County, its officers, employees and agents as Additional Insureds but only with respect to Contractor's activities to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

C. NOTICE OF CANCELLATION OR CHANGE. There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without 30 days written notice from this Contractor or its insurer(s) to County. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of Contract and shall be grounds for immediate termination of this Contract by County.

D. **CERTIFICATE(S) OF INSURANCE.** Contractor shall provide to County Certificate(s) of Insurance for all required insurance before delivering any Goods and performing any Services required under this Contract. The Certificate(s) must specify all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

24. NOTICE. Except as otherwise expressly provided in this contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, or mailing the same, postage prepaid.

A. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.

B. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage delivered to:

To Contractor:

4M4 Solutions
Attn: Melissa Weesner
4816 NE 138th Court
Vancouver, WA 98682

To County:

Procurement & Contracts Manager
555 Court Street NE, Suite 5232
P.O. Box 14500
Salem, Oregon 97309
Fax No. 503-588-5237

25. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in sections 2, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26.

26. SEVERABILITY. If any term or provision of this Contract is declared illegal or in conflict with any law by a court of competent jurisdiction, the validity of the remaining terms and provisions that shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

27. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to the County that:

A. Contractor has the power and authority to enter into and perform this Contract.

B. This Contract, when executed and delivered, is a valid and binding obligation of Contractor, enforceable in accordance with its terms.

C. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the effective date of this Contract, faithfully has complied with:

i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;

ii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;

iii. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and

iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

D. Any Goods granted to the County under this Contract, and Contractor's Services rendered in the performance of Contractor's obligations under this Contract, shall be provided to the County free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

28. CERTIFICATIONS AND SIGNATURE. THIS CONTRACT MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor.

**MARION COUNTY SIGNATURE
BOARD OF COMMISSIONERS:**

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

4M4 SOLUTIONS SIGNATURE

Authorized Signature: _____
Date

Title: _____

EXHIBIT A STATEMENT OF WORK

1. STATEMENT OF SERVICES. Contractor shall perform Services as described below.

A. GENERAL INFORMATION. The Marion County Sheriff's Office (MCSO) recently solicited a Request for Proposal for firms to supply a Records Management System/Jail Management System (RMS/JMS) that includes software, ancillary equipment, necessary sub-systems, and hardware specifications, which result in a solution to fulfill the county's need for an integrated public safety technology solution, including the following technological elements:

- Law Enforcement Records Management System (RMS)
- Jail Management System (JMS)
- Field Based Reporting (FBR)
- Evidence and Property Management
- Document Management
- Workflow / Collaboration
- Other Integrated Services

MCSO also provides and will continue to provide RMS/JMS capability to our partner agencies any future partners identified in Addendum #1.

Replacing the existing system will be a major project requiring coordination of efforts across the new system's provider, the Marion County Information Technology (MCIT) Department, and MCSO. MCSO, also known as "the County", does not have the subject matter expertise for the replacement system internally. 4M4 Solutions will provide MCSO subject matter expert consulting services to MCSO for the Marion County Records Management System/Jail Management System (RMS/JMS) related to business configuration, testing and training.

The effort involves working in conjunction with MCIT and the overall Project Manager through the configuration of the new RMS/JMS software, data validation, testing, and training and eventual "Go-Live" process.

B. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

The Contractor will direct MCSO's efforts and serve as the primary point of contact for the department. The responsibilities of the Contractor as the MCSO Consultant for the RMS/JMS Project include:

B.1 General Expectations.

- a) Consultant will be contracted solely through MCSO as a Subject Matter Expert (SME) working in conjunction with overall Project Manager provided through MCIT.
- b) Identify the efforts required of MCSO staff to meet the MCSO's task requirements and milestones in the Statement of Work and Project Schedule.
- c) Review the preliminary Project Schedule with MCIT and vendor's Project Manager, and assist in developing a detailed Project Schedule defining the detailed tasks and a schedule of vendor, MCIT and MCSO responsibilities.
- d) Review vendor's invoices on behalf of MCSO SME to ensure milestone payments align with task requirements and milestones in the Statement of Work and Project Schedule, provide approval to MCIT and work with MCIT for any invoice issues.
- e) Monitor the project to insure that MCSO support resources are available as scheduled.
- f) Attend status meetings with MCIT and vendor's Project Manager.
- g) Provide timely responses to issues related to project progress.
- h) Liaison and coordinate with MCIT Project Manager, and the MCSO's Project Team.

- i) Review proposed changes for impacts to MCSO business practices, work flows, use and operations and any additional aspects, to include hardware recommendations that are directly related to work flow or aspects of the daily job tasks.
- j) Ensure that all appropriate MCSO personnel attend and actively participate in all project activities.
- k) Assign one or more personnel who will work with vendor staff as needed for the duration of the project.
- l) Work with vendor personnel in designing and approving a MCSO specific task list.
- m) Debrief with the MCSO staff at completion to ensure that all outstanding problems are solved and start-up is achieved.
- n) Develop data conversion/validation plan/timelines with MCIT project manager.
- o) Develop testing plans/timelines with MCIT project manager.
- p) Develop Training plans/timelines with MCIT project manager and MCSO staff.
- q) Provide other consulting support as requested.

B.2 Workshops and Information Gathering

- a) Assign appropriate MCSO personnel to attend vendor required workshop sessions such as the functional review session.
- b) Provide assistance in obtaining the state standards and requirements.
- c) Provide acceptance of vendor RMS/JMS general system reporting specifications.
- d) Participate in the review of the RMS/JMS functionality, based on the current or proposed Design Specifications.
- e) Coordinate, collect and provide all system table and validation data values requested for development and functional review.

B.3 Develop Project Schedule Document

The Contractor shall assist MCIT and the vendor in defining the preliminary Project Schedule with MCSO. The Project Schedule will be finalized and mutually agreed upon between MCSO, MCIT and the vendor.

- a) Review with MCSO personnel the identified implementation tasks, priorities, inter-dependencies and other requirements needed to establish the Project Schedule.
- b) Monitor and review the MCSO tasks within the Project Schedule.

B.4 Project Plan Development

The Contractor shall assist in the development of a Project Plan with MCIT and the vendor for MCSO approval. The plan will include:

- a) A project synopsis with key objectives and goals of the new systems.
- b) A reiteration of the project organization and staffing.
- c) An abbreviated list of contract deliverables as outlined in the vendor SOW.
- d) An initial implementation schedule showing key milestones and installation sequences.
- e) A training plan that will lay out the training requirements in hours, schedule, training facilities, and responsibilities. The actual scheduling of personnel will be done at a date closer to the Training and Live Operations phase.
- f) A data conversion plan.
- g) A cut-over plan for go-live operations.

B.5 Acceptance Test Plan

The Contractor and MCIT shall coordinate the development of an Acceptance Test Plan in conjunction with the vendor. The system acceptance plan will detail the criteria and procedures to be used for the acceptance testing. The plan will include:

- a) Functional Test Plan – Certification that the system is configured according to deployment specifications, including MCSO specific configurations and customizations.

- b) Data Conversion Acceptance Test Plan – Certification that the data conversion has been completed in accordance with the data conversion plan.
- c) Interface Test Plan – Certification that the deployed interface is operational according the development and deployment specifications (provided per interface).
- d) Reliability Acceptance Test Plan – Certification that the deployed system will adhere to mutually agreed on reliability standards within a defined period of time following the commencement of system operations.

B.6 Configuration and Development

The Contractor and MCIT shall coordinate in conjunction with the vendor the development of the County designated modifications incorporated into the RMS/JMS; specifically the system configuration and customization specification. This includes, but is not limited to the following:

- a. Review and accept above listed configuration/development changes.
- b. Ensure that necessary certifications, approvals and other related issues will be completed by the the County prior to scheduled interface work.
- c. Identify in writing each discrepancy between subsystem functionality and the provided vendor configuration/programming documentation.
- d. Provide information to vendor regarding the various departmental report/output and system printouts.

B.7 Interface Development

- a) Coordinate with MCIT to provide, on request, currently existing information, record layouts and documents necessary to establish interfaces with all local and remote systems and facilities prior to interface installation.
- b) Coordinate with MCIT to review and accept the vendor provided interface programming specification.
- c) Coordinate MCIT to conduct test procedures and verify all inter-system communications between installed vendor systems and non-vendor systems to ensure conformance with the approved standard document and interface control documents.
- d) Assist the project team with the identifying each discrepancy between subsystem functionality and the provided interface documentation and interface control documents.

B.8 Data Conversion

- a) Provide subject matter expert(s) with sufficient expertise related to the data being converted. The subject matter expert(s) will work with vendor during the Data Review and Sign-Off phases.
- b) Review the MCIT legacy data extract from existing RMS/JMS system to be provided to the vendor in common exchange format.
- c) Review with the Project Team and approve results of test data conversion.
- d) Verify the integrity of the conversion and notify vendor of any conversion errors or anomalies.

B.9 Training

- a) Coordinate with the Project Team to develop and enter all MCSO-specific input data that is to be entered manually.
- b) Coordinate with the Project Team to be responsible for the accuracy and completeness of the data provided and entered.
- c) Coordinate with the Project Team, and identified partner agencies, to ensure the participation of the appropriate personnel in the training session, and general user training.
- d) Coordinate the designation of a training coordinator that will work with the vendor project manager to schedule training at the County. The training coordinator will be responsible to ensure that County personnel are available, and relieved of routine duties, during scheduled training sessions.
- e) Make arrangements and assignments for all required personnel to attend training with their appropriate functional group. Ensure the participation of the appropriate personnel in the training session, and general user training.

- f) Provide data entry policies and procedures for each functional group.
- g) Follow up with any training attendees who may need extra help and assistance in order to grasp needed concepts.
- h) Ensure system administrative personnel attend and is available during each scheduled training session to answer policy questions.
- i) Coordinate a dedicated training area that can comfortably accommodate the scheduled classes.
- j) Coordinate with the Project Team to determine selected staff to receive administrative training.
- k) Coordinate with the Project Team to develop user accounts for access to SSRS reporting services related to the selected staff.
- l) Ensure the participation of the appropriate personnel in the training session, and general user training.
- m) Provide other consulting support as requested.

C. SPECIAL REQUIREMENTS.

Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.

Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence and perform Services in a timely, professional and workmanlike manner in accordance with standards applicable to Contractor's industry, trade or profession.

The Business Associate Contract Provisions required by the Health Insurance Portability and Accountability Act, of 1996, (HIPAA), as amended, are attached as ADDENDUM #2 to this contract and are incorporated herein.

Contractor personnel must pass a Criminal Justice Information Systems (CJIS) fingerprint-based background check and maintain CJIS eligibility.

- i. **KEY PERSONS.** Contractor and County agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of Services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to County the expertise, experience, judgment, and personal attention required to perform Services ("Key Person"). Each of the following is a Key Person under this Contract:

Melissa Weesner

Neither Contractor nor any Key Person of Contractor shall delegate performance of Services that any Key Person is required to perform under this Contract to others without first obtaining County's written consent. Further, Contractor shall not, without first obtaining County's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide County with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests County to approve a re-assignment or transfer of a Key Person, County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual County approves as a replacement for a Key Person is deemed a Key Person under this Contract.

2. COMPENSATION. The total amount available for payment to Contractor under Exhibit A, section 2.A and for authorized reimbursement to Contractor under Exhibit A, section 2.C is \$200,000.

A. METHOD OF PAYMENT FOR SERVICES. County shall pay Contractor \$85 per hour up to but not in excess of \$200,000 for completing all Services required under this Contract.

B. BASIS OF PAYMENT FOR SERVICES. Monthly progress payments for completed Services. County shall pay Contractor monthly progress payments upon County's approval of Contractor's invoice submitted to County for completed Services and delivered Goods, but only after County has determined that Contractor has completed, and County has accepted the completed Services and County has accepted the delivered goods.

C. EXPENSE REIMBURSEMENT. County will not reimburse Contractor for any expenses under this Contract.

D. GENERAL PAYMENT PROVISIONS. Notwithstanding any other payment provision of this contract, failure of the Contractor to submit required reports when due, or failure to perform or document the performance of contracted services, may result in withholding of payments under this contract. Such withholding of payment for cause shall begin thirty (30) days after written notice is given by the County to the Contractor, and shall continue until the Contractor submits required reports, performs required services or establishes, to the County's satisfaction, that such failure arose out of causes beyond the control, and without the fault or negligence of the Contractor.

E. INVOICES. Contractor shall send all invoices to County's Contract Administrator at the address specified below or to any other address as County may indicate in writing to Contractor.

Marion County
Attn: Sheriff's Office, Camille Peterson
PO Box 14500
Salem, OR 97309

ADDENDUM 1

There are no other agencies currently set to adopt our deployment of the police RMS module(s). The booking process (form/module) will be web based so that agencies arriving at the jail can complete the booking document prior to entering the jail. Training would be necessary once the Jail intake system (J3) is live and available to the following government agencies:

Oregon State Police
Salem Police Department
Keizer Police Department
Woodburn Police Department
Hubbard Police Department
Silverton Police Department
Mt. Angel Police Department
Stayton Police Department
Aumsville Police Department
Turner Police Department

Aurora, Sublimity, Jefferson, and Chemawa Indian school are all contracts with the SO to provide law enforcement services.

ADDENDUM No. 2

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT BUSINESS ASSOCIATE CONTRACT PROVISIONS

INTRODUCTION

This Addendum to the contract between County, a political subdivision of the State of Oregon, hereinafter called the County, and _____, hereinafter called Contractor is required by the Health Insurance Portability and Accountability Act of 1996, (HIPAA), as amended.

WHEREAS, County will make available or transfer to Contractor certain information in conjunction with goods or services that are being provided by Contractor to County, that is confidential and must be afforded special treatment and protection.

WHEREAS, Contractor will have access to or receive from County certain information that can be received, maintained, used or disclosed only in accordance with this Contract and the Department of Health and Human Services Security Rule and Privacy Rule, 45 Code of Federal Regulations (CFR) Parts 160, 162 and 164.

NOW THEREFORE, the parties agree as follows:

1. Definitions.

- a. BUSINESS ASSOCIATE shall mean _____.
- b. BREACH means acquisition, access, use or disclosure of protected health information (PHI) in a manner that: (i) is not permitted by the HIPAA Privacy Regulations; (ii) poses a significant risk of financial, reputational, or other harm to the individual; and (iii) is not excluded from the definition of "Breach" found at 45 CFR 164.402. In the event of any inconsistency between the definition of "Breach" in this Agreement and the definition in the Privacy Regulations, the definition in the Privacy Regulations will control.
- c. COVERED ENTITY shall mean Marion County.
- d. HITECH Act shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act Public. Law No. 111-5.
- e. INDIVIDUAL shall mean the person who is the subject of the information and has the same meaning as the term "individual" defined in 45 CFR 160.103 and includes a person who qualifies as a personal representative pursuant to 45 CFR 164.502 (g).
- f. PRIVACY RULE shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, Subparts A and E.
- g. PROTECTED HEALTH INFORMATION shall have the same meaning as the term in 45 CFR 160.103, limited to information created or received by Business Associate from or on behalf of Covered Entity.
- h. REQUIRED BY LAW shall have the same meaning as the term in 45 CFR 164.103.

- i. SECRETARY shall mean the Secretary of the federal Department of Health and Human Services (HHS) and any other HHS officer or employee with delegated authority.
- j. SECURITY RULE shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160, and 164, Subparts A and C.
- k. UNSECURED PROTECTED HEALTH INFORMATION shall mean Protected Health Information in any form, including electronic, paper or verbal, that is not rendered usable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary pursuant to the HITECH Act, as such guidance may be updated by the Secretary from time to time.

Terms used, but not otherwise defined, in the Agreement shall have the same meaning as those terms in 45 CFR 160.103, 164.304 and 164. 501.

2. Term.

The term of the HIPAA obligations under this addendum shall commence as of the effective date of this contract and shall expire when all of the information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or if it is infeasible to return or destroy protected health information, protections are extended to the information in accordance with the termination provisions in this contract.

3. Limits on Use and Disclosure.

Business Associate shall not use or disclose protected health information provided or made available by Covered Entity for any purpose other than as expressly permitted or required by this contract or as Required by Law.

4. Permitted Uses and Disclosures by Business Associate.

a. Statutory Duties.

(1) Business Associate acknowledges that it has a statutory duty under the HITECH Act to, among other duties:

- (A) effective February 17, 2010, use and disclose Protected Health Information only in compliance with 45 C.F.R. § 164.504(e) (the provisions of which have been incorporated into this Agreement); and
- (B) effective February 17, 2010, comply with 45 C.F.R. §§ 164.308 ("Security Standards: General Rules"), 164.310 ("Administrative Safeguards"), 164.312 ("Technical Safeguards"), and 164.316 ("Policies and Procedures and Documentation Requirements"). In complying with 45 C.F.R. § 164.312 ("Technical Safeguards"), Business Associate shall consider guidance issued by the Secretary pursuant to Section 13401(c) of the HITECH Act and, if a decision is made to not follow such guidance, document the rationale for that decision.

(2) Business Associate acknowledges that its failure to comply with these or any other statutory duties could result in civil and/or criminal penalties under 42 U.S.C. §§1320d-5 and 1320d-6.

- (3) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

b. General Use and Disclosure Provision.

Except as otherwise limited in this contract, Business Associate may use or disclose protected health information to perform the functions, activities or services for, or on behalf of, Covered Entity as specified in the contract between the parties, provided that such use or disclosure would not violate the Security and Privacy Rules if done by the Covered Entity, or the minimum necessary policies of Covered Entity.

c. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Regulations if done by Covered Entity.

5. **Additional Purposes for Uses and Disclosures by Business Associate.**

- (a) Except as otherwise limited in this Contract, Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (b) Except as otherwise limited in this Contract, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that:
- (i) The disclosure is required by Law;
 - (ii) Reasonable assurances are obtained from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, that the person will use appropriate safeguards to prevent use or disclosure of the information, and that the person immediately notifies Business Associate of any instances of which the confidentiality of the information has been breached per section 6.d of this Contract;
 - (iii) Except as otherwise limited in this Contract, Business Associate may use protected health information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
 - (iv) Business Associate may use protected health information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
 - (v) As of the effective date of Section 13405(d) of the HITECH Act, Business Associate may not receive direct or indirect remuneration in exchange for Protected Health Information unless permitted by the Act or regulations issued by the Secretary.

6. **Business Associate Obligations:**

- a. Limits on Use and Further Disclosure Established by Contract and Law. Business Associate agrees that information provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Contract or as Required by Law.
- b. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the protected health information other than as provided for by this Contract.
- c. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of the use or disclosure of protected health information by Business Associate in violation of the requirements of this Contract.
- d. Reports of Breach. Per the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) Public. Law 111-5, Business Associate agrees to report to Covered Entity as soon as possible any use or disclosure of the protected health information not provided for by this Contract of which it becomes aware. If a breach of unsecured protected health information occurs at or by a Business Associate, the Business Associate must notify the Covered Entity no later than 60 days from the discovery of the breach. To the extent possible, the Business Associate should provide the Covered Entity with the identification of each individual affected by the breach as well as any information required to be provided by the Covered Entity in its notification to affected individuals.
- e. Subcontractors and Agents. Business Associate agrees to ensure that any agent, including any subcontractor, to whom it provides protected health information received from, or created by Business Associate on behalf of Covered Entity agrees in writing to the same terms, conditions and restrictions on the use and disclosure of protected health information as contained in this Contract.
- f. Right of Access to Information. Business Associate agrees to provide access, at the request of Covered Entity, to protected health information in a Designated Record Set, either to the Covered Entity, or as directed by Covered Entity to an Individual. This right of access shall conform with and meet the requirements of 45 CFR 164.524, including substitution of the words "Covered Entity" with Business Associates where appropriate.
- g. Amendment and Incorporation of Amendments. Business Associate agrees to make and incorporate any amendments to protected health information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526.
- h. Provide Accounting. Business Associate agrees to make internal practices, books, and records, including policies and procedures and protected health information relating to the use and disclosure of protected health information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, the Secretary, or the Secretary's designee for the purposes of determining compliance with the Security and Privacy Rules.
- i. Documentation of Disclosures. Business Associate agrees to document disclosures of protected health information and information related to these disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.

- j. Access to Documentation of Disclosures. Business Associate agrees to provide Covered Entity information collected in accordance with Section 6(i) of this Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of protected health information in accordance with 45 CFR 164.528.
- k. False Claims, Fraud and Abuse. Business Associate shall cooperate with and participate in activities to implement and enforce the Covered Entity's policies and procedures to prevent, detect and investigate false claims, fraud and abuse relating to Oregon Health Plan, Medicare or Medicaid funds. Business Associate shall cooperate with authorized State of Oregon entities and Centers for Medicare and Medicaid (CMS) in activities for the prevention, detection and investigation of false claims, fraud and abuse. Business Associate shall allow the inspection, evaluation or audit of books, records, documents, files, accounts, and facilities as required, to investigate the incident of false claims, fraud or abuse. Business Associate is required to verify that their staff and Contractors are not excluded from providing services under this contract funded by Medicare and Medicaid before services are provided. Business Associate is required to check the following databases for excluded individuals and entities:
 - Office of Inspector General (OIG)
<https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>
 - Excluded Parties List System (EPLS) www.epls.gov

7. Obligations of Covered Entity.

- a. Limitations in Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 CFR 164.520, to the extent that the limitation may affect Business Associate's use or disclosure of protected health information.
- b. Changes in Use or Disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose protected health information, to the extent that the changes may affect Business Associate's use or disclosure of protected health information.
- c. Restrictions on Use or Disclosure of Protected Health Information. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information, that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that the restriction may affect Business Associate's use or disclosure of protected health information.

8. Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Security and Privacy Rules if done by Covered Entity, except if the Business Associate will use or disclose protected health information for, and the Contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

9. Security Assurances, the Business Associate will.

- a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the County as required by the Health Insurance Portability and Accountability Act of

1996 and the requirements of Health Insurance Reform, the Security Standards (45CFR Parts 160, 162 & 164); and, effective February 17, 2010, to comply with the provisions of the Security Rule identified in this Agreement.

- b. Ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it;
- c. Report to the County any material attempted or successful unauthorized access, use, disclosure, modification, or destruction of information, interference with system operations in an information system, or any security incident of which it becomes aware;
- d. Authorize termination of the contract by the County, if the County determines that the Business Associate has violated a material term of the contract.

10. Termination of Contract.

- a. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Contract, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - (2) Immediately terminate this Contract, if Business Associate has breached a material term of this Contract and cure is not possible; or
 - (3) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- b. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Contract, for any reason, Business Associate shall return or destroy all protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate, its subcontractors or agents, shall retain no copies of the protected health information. In the event that Business Associate requests protected health information, Covered Entity retains the right to grant or deny.
 - (2) In the event that Business Associate determines that returning or destroying protected health information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon written notice to Covered Entity that return or destruction of protected health information is infeasible, Business Associate shall extend the protections of this Contract to the protected health information and limit further uses and disclosures of protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate, its subcontractors or agents maintain protected health information.

11. Miscellaneous Provisions.

- a. Regulatory References. A reference in this Contract to a section in the Security and Privacy Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take any action as is necessary to amend this Contract from time to time needed for Covered Entity to comply with the requirements of the Security and Privacy Rules and the Health Insurance Portability and Accountability Act of 1996.
- c. Survival. The respective rights and obligations of Business Associate under Section 10 (b) of this Contract, Effect of Termination, shall survive the termination of this Contract.
- d. Interpretation. Any ambiguity in this Contract shall be resolved to permit Covered Entity to comply with the Security and Privacy Rules.
- e. Entire Agreement. This Contract consists of this Addendum and the Contract, together which constitutes the entire agreement between the Parties. Any alterations, variations, modifications or waivers of any provisions shall be valid only when they have been submitted in writing and approved by the Parties.