



# Contract Review Sheet

**SO-5428-23 (1)**

Intergovernmental Agreement #: SO-5428-23 Amendment #: 1

Contact: Bethany Johnston Department: Sheriff's Office

Phone #: 503-589-3261 Date Sent: January 31, 2024

Title: MCDA\_SB416 Pilot Program

Contractor's Name: Marion County District Attorney

Term - Date From: July 1, 2023 Expires: June 30, 2025

Original Contract Amount: \$ 299,257.20 Previous Amendments Amount: \$ -

Current Amendment: \$ (83,833.11) New Contract Total: \$ 215,424.09 Amd% -28%

Incoming Funds  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

Source Selection Method: 50-0010 General Exemptions (IGAs and QRFs)

**Description of Services or Grant Award**

MCDA & MCSO will collaborate to provide risk assessment and case management for a specific group and drug offenders with a Medium to High-Risk criminogenic risk factors. Amendment 1 of this contract will de-obligate funds for the DDA for the 23-25 biennium of -\$83,833.11, the reason for this de-obligation is that we had left over funds for the DDA in the 21-23 biennium that we were able to use to pay for Q1 & Q2 (July-December) of the 23-25 biennium. The remaining funds of \$215,424.09 will cover the remaining 18 months (Q3-Q8) of the original contract.

Desired BOC Session Date: 3/13/2024 Files submitted in CMS for Approval: 2/21/2024

Agenda Planning Date: 2/29/2024 Printed packets due in Finance: 2/27/2024

Management Update: 2/27/2024 BOC upload / Board Session email: 2/28/2024

BOC Session Presenter(s) Commander Mike Hartford

**FOR FINANCE USE**

Date Finance Received: 2/15/2024 Date Legal Received: \_\_\_\_\_

Comments: Y

**REQUIRED APPROVALS**

DocuSigned by:  
  
 \_\_\_\_\_  
D1FCCAACDB14CB...  
 Finance - Contracts 2/15/2024  
 Date

DocuSigned by:  
  
 \_\_\_\_\_  
D89BA3AA80AC4BF...  
 Contract Specialist 2/15/2024  
 Date

DocuSigned by:  
  
 \_\_\_\_\_  
60C98A6F708240B...  
 Legal Counsel 2/15/2024  
 Date

DocuSigned by:  
  
 \_\_\_\_\_  
1E984034585E453  
 Chief Administrative Officer 2/15/2024  
 Date



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Wednesday, March 13, 2024

Department: Sheriff's Office

Title: Amendment 1 MCDA SB416 Pilot Program

Management Update/Work Session Date: Tuesday, February 27, 2024 Audio/Visual aids

Time Required: 5 mins Contact: Bethany Johnston Phone: x3261

Requested Action: Staff recommends amendment 1 MCDA SB416 Pilot Program -28% de-obligation of funds from the 23-25 biennium.

Issue, Description & Background: Marion County District Attorney's office identifies a specific group of "non-violent property and drug offence with a Medium-to-High Criminogenic risk factors" a minimum of 100 participants per year as a part of the target population to receive community supervision and related services through the Marion County Sheriff's Office. A de-obligation of funds are needed because left over funding from the 21-23 biennium was available and was used to pay for (Q1&Q2) of the 23-25 biennium. The original contract was for \$299,257.20 -\$83,833.11 that was used for Q1 & Q2. Leaving the current contract needs at \$215,424.09 for the remaining 18 months (Q3- Q8) of the original Contract. The Marion County SB 416 Pilot is an alternative rehabilitative program for non-violent career property and drug offenders who have substance abuse issues, showing motivation to change their behavior and address their addiction.

Financial Impacts: The total amount of the original contract was \$299,257.20 for the 23-25 biennium. The de-obligation of funds in the amount of -\$83,833.11

Impacts to Department & External Agencies: the DDA had left over funding in the 21-23 biennium that were able to pay for the first two quarters July -December 2023. The remaining funds of \$215,424.09 will cover the remaining 18 months of the contract.

List of attachments: CRS, Agenda review form, Amendment, Original IGA, Narrative

Presenter: Cmdr. Mike Hartford

Department Head Signature: Jay Bergman  
DocuSigned by: A8360599C95D420...



**Marion County**  
OREGON

**AMENDMENT 1 to SO-5428-23 the  
INTERGOVERNMENTAL AGREEMENT  
between**

**MARION COUNTY and MARION COUNTY DISTRICT ATTORNEY**

The Intergovernmental Agreement, entered into pursuant to ORS Chapter 190, as may be amended from time to time, the “Agreement,” between Marion County “County”, a political subdivision of the State of Oregon, and Marion County District Attorney, (MCDA) dated July 1, 2023.

The Agreement is hereby amended as follows (new language is indicated by underlining and deleted language is indicated by ~~strikethrough~~):

- 4.1 The total amount paid under this contract shall not exceed ~~\$299,257.20~~ \$215,424.09. Payments under this contract shall be made on a basis according to the following terms: MCDA will submit expenditure reports for the cost associated with providing Payments under this agreement.

Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. The Parties certify that the representations, warranties, and certifications contained in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

**MARION COUNTY SIGNATURES  
BOARD OF COMMISSIONERS**


Chair \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Commissioner \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature:  \_\_\_\_\_ Date: 2/15/2024  
DocuSigned by:  
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Department Director or designee \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature:  \_\_\_\_\_ Date: 2/15/2024  
DocuSigned by:  
1E984034585E453...

Chief Administrative Officer \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature:  \_\_\_\_\_ Date: 2/15/2024  
DocuSigned by:  
60C98A6E708240B...

Marion County Legal Counsel \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by Signature:  \_\_\_\_\_ Date: 2/15/2024  
DocuSigned by:  
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Marion County Contracts & Procurement \_\_\_\_\_ Date \_\_\_\_\_

**MARION COUNTY DISTRICT ATTORNEY**

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_



# Contract Review Sheet

SO-5428-23

Intergovernmental Agreement #: SO-5428-23 Amendment #: \_\_\_\_\_

Contact: Bethany Johnston Department: Sheriff's Office

Phone #: 503-589-3261 Date Sent: Tuesday, June 6, 2023

Title: MCDA\_SB416 Pilot Program

Contractor's Name: Marion County District Attorney

Term - Date From: July 1, 2023 Expires: June 30, 2025

Original Contract Amount: \$299,257.20 Previous Amendments Amount: \$0.00

Current Amendment: \$0.00 New Contract Total: \$299,257.20 Amd% 0%

Incoming Funds  Federal Funds  Reinstatement  Retroactive  Amendment greater than 25%

Source Selection Method: 50-0010 General Exemptions (IGAs and QRFs) n/a

### Description of Services or Grant Award

MCDA & MCSO will collaborate to provide risk assessment and case management for a specific group and drug offenders with Medium to High-Risk criminogenic risk factors.  
IGA amount is \$299,257.20 for the 23-25 Biennium with options to renew every two years through June 30, 2029

Desired BOC Session Date: 6/28/2023 BOC Planning Date: 6/15/2023

Files submitted in CMS: 6/7/2023 Printed packet & copies due in Finance: 6/13/2023

BOC Session Presenter(s) Undersheriff Wood, Commander Bergman

### FOR FINANCE USE

Date Finance Received: 6/9/2023 Date Legal Received: \_\_\_\_\_

Comments: Y

### REQUIRED APPROVALS

DocuSigned by:  
Camber Schlag 6/9/2023  
Finance - Contracts Date

DocuSigned by:  
Bethany Johnston 6/13/2023  
Contract Specialist Date

DocuSigned by:  
Jane E Vetto 6/13/2023  
Legal Counsel Date

DocuSigned by:  
Jan Fritz 6/13/2023  
Chief Administrative Officer Date





MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: Wednesday, June 28, 2023 June 21, 2023

Department: Sheriff's Office Agenda Planning Date: 06/15/2023 Time required: 5 mins

Audio/Visual aids

Contact: Bethany Johnston Phone: 503-589-3261

Department Head Signature: DocuSigned by: [Signature] D35430AD507F404...

TITLE Consider approval of the Intergovernmental Agreement for the Marion County District Attorney's office in the amount of \$299,257.20, to provided an initial risk assessment information, through the Public Safety Checklist (PSC) to the Marion County Sheriff's Office as described in the SB 416 Program Narrative.

Issue, Description & Background Marion County District Attorney Office will identify a specific group of "non-violent property and drug offences with Medium-to-High Criminogenic Risk factors" a minimum of 100 participants per year as part of the target population to receive community supervision and related services through the Marion County Sheriff's Office.

Financial Impacts: The total amount of the agreement is \$299,257.20, for the 2023-2025 biennium. The program is funded through the Criminal Justice Commission's Justice Reinvestment Initiative, with monies being shared between the Marion County Sheriff's Office and the District Attorney's (DA's) Office.

Impacts to Department & External Agencies The Marion County SB 416 Pilot is an alternative rehabilitative program for non-violent career property and drug offenders who have an identifiable substance abuse issue and motivation to change their behavior and address their addiction. Providing a balance of treatment, professional mentors, and intensive supervision through the Community Corrections Division of the Marion County Sheriff's Office.

Options for Consideration: 1. Approve the agreement for services with Marion County District Attorney's Office for SB416. 2. Deny the agreement for service with Marion County District Attorney's Office for SB416 3. Take no Action at this time.

Recommendation: Staff recommends option 1, that the board approve the agreement between the Marion County Sheriff's Office and the District Attorney's (DA's) Office in the amount of \$299,257.20 identifying potential candidates who meet the qualifying criteria designed to strike a balance between community safety and the goals of the program.

List of attachments: Board Agenda Review Form, Contract Review Sheet, Original IGA.

Presenter: Undersheriff Wood , Commander Bergman

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

Copies to: Jay Bergmann, jbergmann@co.marion.or.us Bethany Johnston, Btjohnston@co.marion.or.us

## **INTERGOVERNMENTAL AGREEMENT**

**Between**

### **MARION COUNTY and MARION COUNTY DISTRICT ATTORNEY SO-5428-23**

#### **1. PARTIES TO AGREEMENT**

This Agreement between Marion County District Attorney, hereafter called MCDA, and Marion County, a political subdivision of the state of Oregon, hereafter called MCSO, is made pursuant to ORS 190.010 (Cooperative Agreements).

#### **2. PURPOSE/STATEMENT OF WORK**

The purpose of this Agreement is to establish the terms and conditions under which the MCDA will provide pre-sentence risk assessments and screenings to identify clients eligible for the SB416 program and refer potential candidates to the MCSO services for further assessment. These services are further described in Section 5.

#### **3. TERM AND TERMINATION**

- 3.1 This Agreement shall be effective for the period of July 01, 2023 through June 30, 2025 unless sooner terminated or extended as provided herein. The parties may extend the term of this Agreement provided that the total Agreement term does not extend beyond June 30, 2029.
- 3.2 This Agreement may be extended for an additional period of one year by agreement of the parties. Any modifications in the terms of such amendment shall be in writing.
- 3.3 This agreement may be terminated by mutual consent of both parties at any time or by either party upon 30 days' notice in writing and delivered by mail or in person. Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.
- 3.4 MCSO may terminate this agreement effective upon delivery of written notice to MCDA or at such later date as may be established under any of the following conditions:
  - a. If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for the purchase of the indicated quantity of services. This agreement may be modified to accommodate a reduction in funds.
  - b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this agreement or are no longer eligible for the funding proposed for payments authorized by this agreement.
  - c. If any license, certificate, or insurance required by law or regulation to be held by MCDA to provide the services required by this agreement is for any reason denied, revoked, or not renewed.

- d. If the MCDA fails to provide services called for by this agreement within the time specified herein or any extension thereof.
- e. If MCDA fails to perform any of the provisions of this agreement or so fails to pursue the work as to endanger the performance of this agreement in accordance with its terms and after written notice from MCSO, fails to correct such failure(s) within ten (10) days or such longer period as the MCSO may authorize.

3.5 Any such termination of this agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

#### **4. FUNDING AND BILLING**

- 4.1 The total amount paid under this contract shall not exceed \$299,257.20. Payments under this contract shall be made on a basis according to the following terms: MCDA will submit expenditure reports for the cost associated with providing Payments under this agreement.
- 4.2 MCSO will provide payment using the County's journal entry process to reimburse personnel costs upon receipt of the expenditure report provided by MCDA.

#### **5. OBLIGATIONS UNDER THE TERMS OF THIS AGREEMENT**

5.1 UNDER THE TERMS OF THIS AGREEMENT, MCDA SHALL:

- a. MCDA will identify a specific group of "non-violent property and drug offences with Medium-to-High Criminogenic Risk factors" as described and incorporated Attachment A: SB 416 Program Narrative. As well as MCDA will provide an initial risk assessment information, through the Public Safety Checklist (PSC) to MCSO as described in the SB 416 Program Narrative of Attachment A.
- b. MCDA shall identify a minimum of 100 participants per year as part of the target population to receive community supervision and related services through the MCSO.

5.2 UNDER THE TERMS OF THIS AGREEMENT, MCSO SHALL:

- a. MCSO will provide additional risk assessment information to MCDA prior to any sentencing, which will in-turn be shared with defense counsel and the Marion County Circuit Court for final disposition and program consideration as described in Attachment A: SB 416 Program Narrative.
- b. MCSO will provide integrated case management for participants on a formal supervision. A community Corrections Deputy shall provide enhanced supervision with the program participants. MCSO will also make available short-term jail beds for participants as a sanction when necessary.

**6. COMPLIANCE WITH APPLICABLE LAWS**

The parties agree that both shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement. The parties agree that this agreement shall be administered and construed under the laws of the state of Oregon.

**7. NONDISCRIMINATION**

The parties agree to comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules, and regulations in the performance of this agreement.

**8. HOLD HARMLESS**

To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, each party agrees to waive, forgive, and acquit any and all claims it may otherwise have against the other and the officers, employees, and agents of the other, for or resulting from damage or loss, provided that this discharge and waiver shall not apply to claims by one party against any officer, employee, or agent of the other arising from such person's malfeasance in office, willful or wanton neglect of duty, or actions outside the course and scope of his or her official duties.

**9. INSURANCE**

Each party shall insure or self-insure and be independently responsible for the risk of its own liability for claims within the scope of the Oregon tort claims act (ORS 30.260 TO 30.300).

**10. MERGER CLAUSE**

Parties concur and agree that this agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change to the terms of this agreement shall bind either party unless in writing and signed by both parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Parties, by the signatures below of their authorized representatives, hereby agree to be bound by its terms and conditions.

**11. NOTICES**

Any notice required to be given MCDA or MCSO under this Agreement shall be sufficient if given, in writing, by first class mail or in person as follows:

For MCDA:  
Marion County District Attorney's Office  
555 Court St NE Ste 5232  
Salem, OR 97301

For MCSO:  
Sheriff's Office  
PO BOX 14500 Salem OR 97309  
Salem OR 97309  
SO-Contracts@co.marion.or.us

- 12. Confidentiality:** The parties expressly agree to comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, 42 USC sections 130d et seq., and the implementing regulations at 45 CFR Parts 160 and 164. This agreement, in and of itself, does not authorize any party to disclose protected health information to any other party absent separate compliance with the HIPAA laws. See Addendum No. 1

13. SIGNATURES

This agreement and any changes, alterations, modifications, or amendments will be effective when approved in writing by the authorized representative of the parties hereto as of the effective date set forth herein.

In witness whereof, the parties hereto have caused this agreement to be executed on the date set forth below.

MARION COUNTY SIGNATURE BOARD OF COMMISSIONERS:

Columbiller 6/21/2023  
Chair Date

Kim Cannon 6.21.2023  
Commissioner Date

DB 6-21-2023  
Commissioner Date

Authorized Signature: Wood 6/9/2023  
D35430AD507E404  
Sheriff or Undersheriff Date

Authorized Signature: Jan Fritz 6/13/2023  
DC16351248DE4EC  
Chief Administrative Officer Date

Reviewed by Signature: Jane E Vetto 6/13/2023  
DOCEC5B04B9F483...  
Marion County Legal Counsel Date

Reviewed by Signature: Camber Schlag 6/9/2023  
C5B2F3DF257E444...  
Marion County Contracts & Procurement Date

MARION COUNTY DISTRICT ATTORNEY

Authorized Signature: Paige Clarkson Date: 6/23/2023  
4D15B38FC4C9497...

Title: District Attorney

ADDENDUM NO. 1

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT  
BUSINESS ASSOCIATE CONTRACT PROVISIONS**

INTRODUCTION

This Addendum to the contract between MARION COUNTY, a political subdivision of the State of Oregon, hereinafter called the COUNTY, and Marion County District Attorney's Office, hereinafter called CONTRACTOR is required by the Health Insurance Portability and Accountability Act of 1996, (HIPAA), as amended.

WHERE AS, 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.

WHERE AS, 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 Marion County District Attorney's Office.
  - 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](http://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.

- (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 purpose that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE, its subcontractors or agents maintains 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.



## **Marion County Senate Bill (SB) 416 Prison Diversion Pilot Program Narrative**

The Marion County SB 416 Pilot is an alternative rehabilitative program for non-violent career property and drug offenders who have an identifiable substance abuse issue and motivation to change their behavior and address their addiction. By providing a balance of treatment, professional mentors, and intensive supervision through the Community Corrections Division of the Sheriff's Office, the program seeks to reverse long standing, substance abuse driven criminal thinking by offenders who are at a high risk to engage in future criminal behavior. The program is funded through the Criminal Justice Commission's Justice Reinvestment Initiative, with monies being shared between the Marion County Sheriff's Office, District Attorney's (DA's) Office, and Bridgeway Recovery Services (BRS).

The program allows up to 100 participants to enter the program over a one year period. All program participants receive a level of case management that ensures a coordinated delivery of services. Program participants also receive evidence-based substance abuse treatment programming, as well as professional mentoring services through BRS. Supervision practices include increased contacts and an adherence to the Effective Practices in Community Supervision (EPICS) model of supervision developed by the University of Cincinnati Corrections Institute. Access to employment services, housing, education, and parenting classes are also offered based on assessed risk factors.

A SB 416 participant must go through evaluations by both the District Attorney's Office and Sheriff's Office before entry is allowed. The District Attorney's office plays the role of gatekeeper by identifying potential candidates who meet the qualifying criteria designed to strike a balance between community safety and the goals of the program. Qualifying criteria that is considered includes: whether the current crime charged carries a prison term (required); defendant's history of substance abuse and motivation level to receive programming; the defendant's history of probation violations; the scope of the crime(s) charges, and whether the defendant's criminal history includes convictions for domestic violence, sex offenses, or violent felonies. If a defendant is considered appropriate, the DA's office confirms that the individual considered is a medium to high risk offender based on the results of the Public Safety Checklist (an actuarial risk assessment tool that uses offender characteristics to predict the probability of recidivism).

If a defendant is determined to be an appropriate candidate by the District Attorney's Office, a referral is sent to the Sheriff's Office. The Sheriff's Office conducts a series of assessments and interviews with potential candidates to determine if they are appropriate for the program. These assessments include: the Level of Service/Case Management Inventory (LS/CMI) and Women's Risk Needs Assessment (WRNA) to determine criminogenic (crime producing) risk factors; the Texas Christian University Client Evaluation of Self and Treatment (TCU CEST) to determine motivation level; and the Texas Christian University Drug Screen V (TCUDS V) to

determine the severity of addiction. The totality of these assessments determines whether the candidate proceeds forward in the court process as a program candidate.

If a candidate is referred and approved by both the DA's and Sheriff's Offices, they are allowed to participate in the program and receive the services upon pleading guilty and being convicted of the crime(s) charged. Through this process, the SB 416 program seeks to divert a specific group of defendants from prison into a highly structured and supportive program. By providing a higher level of supervision and services which address risk factors correlated to criminal activity, the goal is to decrease the likelihood of recidivism and enhancing community safety.