



January 23, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

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Intergovernmental Agreement between the State of Oregon (Oregon State Police) and
Clackamas County for Medical Examiner's Office Building Agreement

Purpose/Outcome	The purpose of this Agreement is to permit the County's use of and access to facilities and use of an enhanced account for the MDI Log Case Management System
Dollar Amount and Fiscal Impact	Clackamas Medical Examiner's Office will be paying \$2,674.25 monthly for use of the Oregon State Medical Examiner's Office Facility and Log Case Management System. This is a budgeted expense.
Funding Source	General Fund
Duration	Two Fiscal Years
Previous Board Action/Review	None
Strategic Plan Alignment	1. Provide medicolegal death investigation service to decedents and their next of kin, and the medical and legal communities. 2. Ensure safe, healthy and secure communities.
Counsel Review	January 2, 2020
Contact Person	Nancy Bush, Director, 503-655-8665
Contract No.	None

BACKGROUND: Since October 2004 Clackamas County Medical Examiner's Office has shared space with the Oregon State Medical Examiner's Office. The County has paid for those services through an IGA. The most recent IGA signed was in 2008. Amendments have been provided since that time, but there were no or little financial impacts and either the department director or the county administrator signed the amendments.

Oregon State Police/Medical Examiner's Office is now updating language regarding the facilities and increasing the monthly fee from \$2,187.50 to \$2,674.25.

The agreement covers 24/7 use and access to the facilities and the Log Case Management System that is required for all medical examiner cases. It is important to note that the Oregon State Medical Examiner's Office provides autopsies and toxicology services at no cost.

RECOMMENDATION: Staff respectfully recommends Board approval of the Intergovernmental Agreement between Oregon State Police/Medical Examiner's Office and Clackamas County.

Respectfully submitted,

Nancy Bush, Director

INTERGOVERNMENTAL AGREEMENT

Agreement No. IGA-540-19

This Agreement is between the State of Oregon acting by and through its Oregon State Police (“Agency”) and Clackamas County (“County”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110 and ORS chapter 146.

SECTION 2: PURPOSE

The purpose of this Agreement is to permit the County’s use of and access to certain facilities and use of an enhanced account for the MDI Log Case Management System owned by Agency subject to the terms and conditions identified herein. Other County operating costs are not covered by this Agreement and will be the responsibility of the County.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on the date of the last signature, and terminates on June 30, 2021 unless terminated earlier in accordance with Section 13.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 Agency’s Authorized Representative is:

Major Alexander R. Gardner
3565 Trelstad Ave. SE, Salem, OR 97317
503-934-0237
AGardner@osp.oregon.gov

4.2 County’s Authorized Representative is:

Nancy Bush, Director
Disaster Management
2200 Kaen Road, Oregon City, OR 97045
503-655-8665
nbush@clackamas.us

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

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1 Agency shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.
- 5.2 County shall pay Agency as described in Section 6.

SECTION 6: COMPENSATION AND PAYMENT TERMS

County shall pay Agency, as identified on Exhibit B (Costs), a fixed monthly fee of \$2,674.25 for the use of the premises as described in Exhibits A and C, and the case management system described in Exhibit A, to conduct business, storage, and other lawful purposes related to the operations of its business.

County shall pay the fee in arrears by the 10th day of each month for the preceding month or partial month. The base fee for any partial month shall be prorated on a per diem basis.

SECTION 7: GOVERNING LAW, CONSENT TO JURISDICTION

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

SECTION 8: DEFENSE AND CONTRIBUTION

- 8.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a Party (the “Notified Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other

Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's contribution obligation under this Section with respect to the Third Party Claim.

- 8.2** With respect to a Third Party Claim for which County is jointly liable with Agency (or would be if joined in the Third Party Claim), County shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of County on the one hand and of Agency on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. County's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 8.3** With respect to a Third Party Claim for which Agency is jointly liable with County (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by County in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of County on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 9: DEFAULT

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

SECTION 10: REMEDIES

- 10.1** In the event Agency is in default under Section 9, County may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to termination of this Agreement under Section 13.

- 10.2** In the event County is in default under Section 10, Agency may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to termination of this Agreement under Section 13.

SECTION 11: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 8, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 12: TERMINATION

- 12.1** This Agreement may be terminated at any time by mutual written consent of the Parties. If the Agreement is terminated by Agency, Agency will provide County with 30 days to vacate the premises.
- 12.2** Either Party may terminate this Agreement as follows:
- 12.2.1** Upon 30 days advance written notice to the other Party;
 - 12.2.2** Immediately upon written notice to the other Party, if the terminating Party fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in that Party's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 12.2.3** Immediately upon written notice to the other Party, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the terminating Party's performance under this Agreement is prohibited or the terminating Party is prohibited from paying for such performance from the planned funding source;
 - 12.2.4** Immediately upon written notice to the other Party, if the other Party is in default under this Agreement and such default remains uncured 15 days after written notice thereof to the other Party; or
 - 12.2.5** As otherwise expressly provided in this Agreement.

SECTION 13: INSURANCE

- 13.1.1** Agency represents that it is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300).

- 13.1.2** County represents that it is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS chapter 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300).

SECTION 14: AMENDMENTS

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

SECTION 15: NOTICE

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

SECTION 16: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 7, 8, 11, 19 and this Section 16 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 17: SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

SECTION 18: COUNTERPARTS

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

SECTION 19: INTENDED BENEFICIARIES

County and Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 20: FORCE MAJEURE

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

SECTION 21: MERGER, WAIVER

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

SECTION 22: AGREEMENT DOCUMENTS

This Agreement consists of the following document: this Agreement, Exhibit A (the Statement of Work), Exhibit B (Costs) and Exhibit C (Space Map Diagram). Exhibits A, B and C are incorporated herein by this reference.

SECTION 23: STATUS OF COUNTY

- 23.1** It is the intent of the Parties that for purposes of this Agreement, County, including its officers, employees, or agents, are not officers, employees or agents of the Oregon Department of State Police, the Oregon State Medical Examiner, or the State of Oregon.
- 23.2** For the purposes of this Agreement, neither County nor its officers, employees or agents shall hold themselves out as officers, employees or agents of the Oregon Department of State Police, the Oregon State Medical Examiner, or the State of Oregon based solely on County's participation in this Agreement or on any right or obligation arising from this Agreement.
- 23.3** County, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement are subject employees under the Oregon Workers' Compensation Law and shall comply with ORS 656.005 *et. seq.* Nothing in this Agreement is intended to create the relationship of employer and employee as between Oregon Department of State Police, the Oregon State Medical Examiner, or the State of Oregon and the County.

SECTION 24: SIGNATURES

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

STATE OF OREGON acting by and through its Oregon State Police

Major Alex Gardner, Forensic Science and Pathology Bureau

Date

Clackamas County

Nancy Bush, Director of Disaster Management

Date

Clackamas County Board of County Commissioners

Chair

Date

EXHIBIT A

STATEMENT OF WORK

PURPOSE

By execution of this Agreement, Agency hereby agrees to let the County access and use that portion of its facility located at 13309 SE 84th Avenue Suite 100 in Clackamas County, Oregon which is shown on Exhibit C (“Rental Space”). The access and use of the Rental Space is subject to the following terms and conditions:

- a. County shall be entitled to full access to and use of the Rental Space for the entire term of this Agreement for County’s government office and related purposes. County staff assigned to work in the Rental Space may reasonably use common areas of the facility such as restrooms, break rooms and hallways.
- b. Agency shall be responsible for providing the following:
 - i. One super-administrator account for the MDI-Log Case Management system.
 - ii. Two (2) 8’ X 8’ cubicle workspaces, one (1) 157 sq. ft. office and 100 sq. ft. storage space hereafter referred to as “Rental Space” as identified on Exhibit C (Space Map Diagram).
 - iii. Telephone service for three (3) lines. Includes lines, handsets and local service charges incurred within this facility on building’s telephone equipment.
 - iv. Agency-owned Furniture. Agency will allow County staff the continued use of the already-assigned Agency-owned furniture. This consists of two (2) existing Herman Miller 8’ X 8’ workstations, chairs, and telephone handsets. County is responsible for maintaining furniture in good condition, subject to ordinary wear. Any damage, loss, or destruction to the furniture will be charged to the County at its costs of replacing or repairing the furniture, including materials, parts and labor. County shall not remove any item of furniture from building without Agency’s prior written approval.

Any new furniture or modifications, if requested, to existing will be charged to the County at its costs, including materials, parts and labor. County owned or privately owned items are not included, such as qualifying ergonomic items and chairs.
 - v. All infrastructure support, HVAC, utilities, sewer and water, waste management/biohazard disposal, shredding/recycling, and office janitorial service.
 - vi. Building Security which includes outside fencing of the rear parking and receiving area, security lighting, interior card readers and security logging software and bullet resistant glass at the public receiving area.

- vii. Office Equipment. Use of, maintenance, and support of office equipment deemed necessary by the State Medical Examiner's Office, such as FAX machines, dictation/transcription devices, large volume printer, and copy machines.
 - viii. Lab Equipment. Use of, maintenance, and support of all lab equipment deemed necessary by the State Medical Examiner's Office. To include radiology equipment (including licenses), autopsy tables, sinks, body lifts, dictation systems, floor scales, photography infrastructure, washer/dryer and lab storage cabinets.
 - ix. Cleaning and other supplies for the lab areas, to include autopsy instruments and maintenance, body shrouds, and other related items.
 - x. Information Technology support and hardware. Agency will provide limited information technology support and hardware that includes computer servers, network routers, network hubs, access to outside connectivity, network licenses, and data outlets.
 - xi. Reserved parking for two (2) County Medical Examiner vehicles. Limited off-street parking will be available to County staff on a first come, first served basis. Parking for the disabled will always be provided in compliance with the Oregon Revised Statutes (ORS) 447.233.
- c. County will be responsible for the following:
- i. Its own desktop workstations, notebook computers, and printers, and support of these items.
 - ii. The setup and connection to their external county systems with coordination through the State Medical Examiner and Oregon State Police Information Technology representative.
 - iii. Improvements and Alterations. County may place chattels, partitions, and may make nonstructural improvements and alterations to the Rental Space only at its own expense and only after receiving Agency's written approval, which shall not be unreasonably withheld. County will retain ownership of all its chattels, partitions, and the like placed in the Rental Space by County. Any County improvement work which modifies or affects proper operation of the HVAC system shall not be allowed.

EXHIBIT B
COSTS

Services Provided	Fiscal Year 2019-20 Monthly Costs	Fiscal Year 2020-21 Monthly Costs
1. Super Admin MDI- Log Account	\$1,500.00	\$1,500.00
2. Rental Space	\$1,174.25	\$1,174.25
Total Monthly Amount	\$2,674.25	\$2,674.25