


T4C

AGENDA COVER MEMO

AGENDA DATE: April 29, 2003

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPT.: LANE COUNTY OFFICE OF LEGAL COUNSEL

PRESENTED BY: Teresa J. Wilson, County Counsel 

AGENDA ITEM TITLE: In the Matter of Giving Notice to the State of Oregon of Lane County's Intent to Discontinue Participation in SB 1145 Programs

I. MOTION: I move to give the 180-day notice to the State to discontinue participation in SB 1145 programs.

II. ISSUE OR PROBLEM: The State funding for SB 1145 programs has dropped below the established baseline, which triggers the County's right to discontinue providing those programs.

III. DISCUSSION:

A. Background/Analysis. The background and analysis is outlined in the April 4, 2003 memo from County Counsel regarding the process and risks for "opting out" under SB 1145, attached to this cover memo.

The County Administrator Bill Van Vactor, Sheriff Jan Clements, Director of Health and Human Services Rob Rockstroh, Captain John Clague, Parole and Probation Manager Grant Nelson, Senior Management Analyst David Garnick and I met on April 10th and reviewed the process and implications of giving notice to discontinue under SB 1145. There was also a discussion of the impact this would have on the local correctional and public safety system and the complexity involved in transferring programs back to the State. The group concluded with a recommendation that the notice should given based on the lack of adequate funding, even though they recognized and appreciated the seriousness of the impact this would have on the public safety system and the complexity involved. They also recommended that the Board be asked to reconsider this action, should the funding picture change in a more positive direction.

B. Alternatives/Options.

1. Give notice of intend to discontinue participation under SB 1145.
2. Send a letter to the Governor and Legislative delegation expressing grave concerns about the adequacy of funding of SB 1145 programs, but implement the reductions and continue the programs at a reduced funding level.
3. Backfill the reduced funding for the SB 1145 programs in order to be able to maintain the programs at the service level contemplated by the baseline funding; this would mean reducing other programs funding by Lane County funds.

C. Recommendations. The group identified above recommends the first option, giving of the notice, with a reservation of right to reconsider if funding is restored. A draft letter has been prepared which would implement this decision. (See attached).

IV. IMPLEMENTATION/FOLLOW-UP: If the Board authorizes giving notice, staff will then begin the process of planning on how to implement the transition of programs and inmates back to the state, including the impact on employees, and appropriate negotiations with the State Department of Corrections regarding the buildings.

V. ATTACHMENTS:

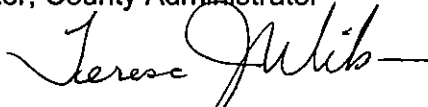
April 4, 2003 memorandum on "Process and Risks for 'Opting Out' under SB 1145
Draft Letter from County Administrator to Director, Oregon Department of Corrections.

MEMORANDUM

Date: April 4, 2003

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

From: Teresa J. Wilson, County Counsel



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

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

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

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

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

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

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

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

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

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

Discussion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Issues/Implications/Risks

1. Issues/Next Steps After Giving of Notice

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

CORRECTIONS

CHAPTER 423. CORRECTIONS AND CRIME CONTROL ADMINISTRATION AND PROGRAMS

COMMUNITY CORRECTIONS

423.475. Findings.

The Legislative Assembly finds and declares that:

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

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

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

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

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

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

(1) The Department of Corrections shall:

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

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

(A) Allow tracking of offenders; and

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

(c) Provide interstate compact administration and jail inspections.

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

(a) On parole;

(b) On probation;

(c) On post-prison supervision;

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

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

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

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

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

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

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

EXHIBIT B

Facilities Lease

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

Term: 11/6/97 to earlier of:

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

Property Leased by County to the State

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

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

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

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

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

Facilities Sublease

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

Term: 11/6/97 to earlier of:

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

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

Property Subleased by State to County – same as Lease

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

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

County Obligations if Sublease is terminated:

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

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

DRAFT LETTER

DATE:

Benjamin de Haan, Director
Oregon Department of Corrections
2575 Center Street NE
Salem, OR 97301-4667

Re: Lane County Discontinuing Participation in the SB 1145 Programs

Dear Mr. de Haan:

This letter is the required written advance notification by Lane County that we intend to discontinue participation in the Community Corrections partnership created by SB 1145, 180 days from the date of this letter, in accordance with ORS ch. 423, in particular ORS 423.475(4) and 423.483. See the attached Lane County Board of Commissioners Order No. _____. We also intend to terminate the Facilities Sublease (but not the Lease) between the State (Department of Administrative Services) and Lane County dated as of November 6, 1997 at the same time, in accordance with the provisions contained in that Sublease. This notice is given based on the State's reduction in funding as presented in Amendment #2 to Intergovernmental Agreement #2037 reducing funding by \$1015,872 effective April 1, 2003.

We take this action with great reluctance. We believe that the changes made by SB 1145 have worked to the benefit of all, but without adequate funding from the State, Lane County is simply unable to fund the cost of the responsibilities specified in ORS 423.478(2). The partnership was based on both parties fulfilling their obligations; the State's inability to provide adequate funding is a breach of that basic premise. We simply have no other choice at this time but to return the programs we had assumed as part of that partnership. We will be contacting you in the near future to begin the process of planning for the transition.

Should funding be restored in the State's FY 2003-2005 budget to meet the baseline funding requirements of the statute, or there be appropriate workload reductions, Lane County reserves the right to reconsider this notice and continue the partnership to the benefit of our citizens. This is clearly the choice we would all much prefer.

Sincerely,

William A. Van Vactor
County Administrator

cc: Gary Weeks, Director, Department of Administrative Services

IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO. 03-04-

) IN THE MATTER OF GIVING NOTICE TO
) THE STATE OF OREGON OF LANE
) COUNTY'S INTENT TO DISCONTINUE
) PARTICIPATION IN SB 1145 PROGRAMS

WHEREAS, in response to the voter-approved mandatory minimum penalties for violent offenders, the Oregon Legislature adopted SB 1145 (ORS 423.475-423.565) in 1995 which created a partnership between the State and the counties, in which the counties agreed to assume responsibility for felony offenders sentenced to a term of incarceration of 12 months or less, and the State agreed to provide an adequate level of funding, and

WHEREAS, under ORS 423.483 as is now, if the total state community corrections appropriation is less than a baseline funding established as of June 30, 1999 as adjusted for program modifications and inflation, a county may discontinue participation in the SB 1145 programs by giving 180 days notification to the State Director of Corrections, and

WHEREAS, in order to build facilities necessary to house the new population under SB 1145, the State made available funds for construction. Lane County accessed \$9,221,774 of those funds, which it used to construct additions to the jail, the community corrections center, and a satellite control station and visiting center. Lane County owns those new facilities, but as part of the financing transaction, agreed to a Facilities Lease of the new facilities to the State, upon which the State then placed a trust deed. The State then entered into a Sublease of the facilities back to the County for operations, and

WHEREAS, the Sublease contains provisions in which it is terminated if the County terminates participation under SB 1145 pursuant to ORS 423.483, in which case the County is obliged to surrender possession of the Leased Facilities, and

WHEREAS, under the current intergovernmental agreement (July 2001 through June 30, 2003) with the State of Oregon Department of Corrections, the State agreed to provide \$18.7 million in funding for the SB 1145 programs, which has been amended several times due to legislative funding reductions due to state fiscal shortfalls, the most recent amendment reducing the total amount to Lane County to \$17.69 million, and

WHEREAS, the Board believes that this reductions is below the baseline funding as described by ORS 423.483, and further believes that the Legislature will not appropriate adequate funds to meet the baseline funding level in the new biennium,

NOW, THEREFORE IT IS HEREBY ORDERED that, on the basis of the facts recited above, the Board of Commissioners authorizes the County Administrator to give the Director of Corrections for the State of Oregon the 180 day notice of intent to discontinue participation in the Community Corrections partnership created by SB 1145


in accordance with state law and to terminate the Sublease (but not the Lease) upon implementation of that transfer of the SB 1145 programs to the State at the end of the notice period, and it is further

ORDERED that the County Administrator is directed to work with the Sheriff and the Director of Health and Human Services to develop an orderly transition plan for these programs, and it is further

ORDERED that the Board expressly reserves its right to reconsider the notice in the event funding is restored to meet the baseline funding requirements pursuant to statute or there are appropriate workload reductions.

DATED this _____ day of April, 2003.

Chair, Lane County Board of
Commissioners

APPROVED AS TO FORM
Date 7/17/03 lane county

OFFICE OF LEGAL COUNSEL