

W.3.E.1.

ABREVIATED CONSENT CALENDAR MEMO

Memorandum Date: 19 September 2007
Order Date: 3 October 2007

TO: Board of County Commissioners

DEPARTMENT: Lane County Sheriff's Office

PRESENTED BY: Judy Simpson

**AGENDA ITEM TITLE: IN THE MATTER OF DELEGATING AUTHORITY
TO THE COUNTY ADMINISTRATOR TO EXECUTE
INTERGOVERNMENTAL AGREEMENT #3720
BETWEEN STATE OF OREGON, DEPARTMENT OF
CORRECTIONS AND LANE COUNTY FOR
PARTICIPATION IN A STATEWIDE AUTOMATED
VICTIM NOTIFICATON SYSTEM**

I. MOTION

MOVE TO APPROVE EXECUTION OF DEPARTMENT OF CORRECTIONS
INTERGOVERNMENTAL AGREEMENT #3720

DISCUSSION

A. Background/Analysis

State of Oregon through its Department of Corrections (DOC) intends to enter into a service agreement with Appriss Inc., a provider of a statewide automated victim notification system.

Appriss Inc. developed Victim Information and Notification Everyday (VINE), which provides incoming and outgoing call services for crime victims. Victims of crime call a toll-free number to receive basic information about an offender in custody. VINE also automatically notifies a crime victim when an offender is released, transferred, escapes, dies or has a change in parole or probation status.

The VINE Call Center receives information transmitted from local agencies' automated offender tracking systems.

Under the service agreement for the statewide victim notification system, DOC will have the authority to grant non-exclusive, non-transferable sublicenses to local agencies desiring to participate.

Lane County's participation in VINE will be governed by Intergovernmental Agreement #3720, which will be attached to and incorporated into the DOC Service Agreement with Appriss Inc.

The VINE system has been implemented in Oregon in 29 County Sheriff's Departments, the Oregon Youth Authority and the Department of Corrections.

DOC has funds authorized and available to pay license fees to include annual maintenance fees for the statewide victim notification system for six (6) years.

Lane Manual 21.145 requires Board of Commissioner approval for execution of agreements exceeding three (3) years in length.

B. RECOMMENDATION

Staff recommends approving execution of Intergovernmental Agreement #3720 with the Department of Corrections.

Lane County should take advantage of the funding opportunity to participate in a statewide effort to provide services to victims of violent crimes.

II. ATTACHMENTS

1. Proposed Board Order No. _____.
2. Intergovernmental Agreement #3720 between Department of Corrections and Lane County.

ORDER NO.

APPROVED AS TO FORM
Date 9/21/07 lane county
David Lewis
OFFICE OF LEGAL COUNSEL

SAVNS INTERGOVERNMENTAL AGREEMENT #3720

THIS AGREEMENT is made and entered into by and between the State of Oregon, acting by and through its Department of Corrections ("DOC") and Lane County Sheriff's Department ("Local Agency").

RECITALS

WHEREAS, DOC and the Oregon Department of Justice ("DOJ") previously entered into a grant award agreement to coordinate their efforts to grant financial and other assistance in support of a project that will further the goals of providing services to victims of violent crimes, and DOC and DOJ intend to continue those efforts;

WHEREAS, DOC, DOJ, state and local law enforcement and corrections officials, court administrators and prosecutors, and victims of violent crimes and victims' advocates, have identified as an important goal the development of a statewide 24-hour automated victim notification system that will give victims of violent crimes access to and notification about critical information concerning the criminal justice process and events related to the criminal offender; and

WHEREAS, DOC intends to enter into a service agreement that is in substantially the same form as the one attached hereto as Exhibit A with Appriss, Inc. (the "Service Provider"), a provider of a statewide automated victim notification system ("SAVNS");

WHEREAS, Local Agency desires to participate in SAVNS;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms and conditions set forth below, the parties hereby agree as follows:

1. EFFECTIVE DATE

This Agreement is effective on the date on which the last party has signed this Agreement and all required approvals have been obtained, or on the effective date of the service agreement between DOC and Service Provider (the "SAVNS Service Agreement"), whichever is later ("Effective Date").

2. LOCAL AGENCY AS SUBLICENSEE

Pursuant to authority granted to DOC in the SAVNS Service Agreement with the Service Provider, DOC hereby grants a non-exclusive, non-transferable sublicense to Local Agency to participate in SAVNS. Local Agency's participation shall be governed by the terms of the SAVNS Service Agreement and the terms and conditions stated in this Agreement.

3. LICENSE FEES

Local Agency understands and agrees that license fees payable to the Service Provider for services rendered to DOC and Local Agency under the SAVNS Service Agreement, consisting of start up costs, if any, and annual maintenance fees, will be paid by DOC from the Effective Date through the date of expiration of the initial term of this Agreement as

described in Section 6 below. If the SAVNS Service Agreement is extended beyond the initial term, to the extent DOC cannot fund payment of maintenance fees for such contract extension period for any reason including the reason stated in Section 4 below, DOC reserves the right to request payment of maintenance fees by Local Agency as consideration for Local Agency's continued participation in SAVNS beyond the initial term of this Agreement.

4. FUNDS AVAILABLE AND AUTHORIZED

DOC represents that at the time this Agreement is written that sufficient funds are available and authorized for expenditure to pay license fees consisting of start up fees, if any, and annual maintenance fees for six (6) years of service under the SAVNS Service Agreement. Local Agency understands that payment of annual maintenance fees for SAVNS for contract extension periods beyond the six (6) year term is contingent on DOC receiving from the Oregon Legislative Assembly or other funding sources sufficient funds, appropriations, limitations and other expenditure authority to pay those maintenance fees. In the event the Oregon Legislative Assembly or other funding source fails to provide funds or approve sufficient appropriations, limitations, and other expenditure authority, DOC may request Local Agency to pay necessary maintenance fees to ensure the continued availability of SAVNS services during any contract extension period, or alternatively, DOC may terminate this Agreement, effective upon delivery of written notice to Local Agency. In the event of termination, DOC shall provide written notice to Local Agency as soon as possible, and termination of this Agreement shall be effective immediately, but shall not affect obligations of either party to the other that have accrued prior to the date of notice and for which funding lawfully is available.

5. OBLIGATIONS OF LOCAL AGENCY

As part of its license to participate in SAVNS, Local Agency agrees to comply with and perform the following obligations under this Agreement:

a) Interface

(1) Local Agency shall maintain timely and accurate data input into its computer systems from which the Service Provider can interface, extract and make appropriate, timely notification calls on, or answer appropriate status inquiry calls from the public. Local Agency understands that delays in inputting qualified offender status changes would substantially diminish the value of the interface and the total system.

(2) If Local Agency does not have a software interface between its existing computer system and the Service Provider's Call Center, or converts to a type or version of software that is incompatible with the interface to the Service Provider's Call Center, Local Agency shall provide a sufficient amount of technical computer staff support in order to assist in the development of the software interface. Specifically, Local Agency technical staff will develop a process to transfer pertinent information into a transaction file in order for the Service Provider's interface to harvest the information in the transaction file and transmit it back to its Call Center. The programming cost of creating this transaction file process, along with providing the Service Provider assistance with the programming and testing of its interface, will be the responsibility of Local Agency. If the owner of the software being used by Local Agency for its case management system requires a one time fee in order to allow the Service Provider interface authorization, this

fee, if assessed, will be the responsibility of DOC, not Local Agency. If Local Agency does not have an automated case management system, DOC will assert all rights granted to it under the SAVNS Service Agreement to request the Service Provider's assistance in establishing a system and system interface for Local Agency that will permit Local Agency to participate in SAVNS.

b) Training

(1) Locations

Local Agency shall identify a point of contact for the Service Provider to undertake the following duties:

- (i) to determine locations of regional monthly training sessions across the state;
- (ii) to provide Service Provider with the names and phone numbers of those hosting the monthly training sessions;
- (iii) to schedule the times of the training sessions;
- (iv) to secure equipment for the training sessions (i.e. VCRs, overhead projectors, etc.).

(2) Invitations

Local Agency shall supply Service Provider with names and addresses of individuals or agencies (police/victim advocates) to invite to training sessions. Local Agency understands that the Service Provider will work with Local Agency's point of contact person to draft and approve of the invitation to training sessions.

(3) Actual Training

Local Agency's point of contact person shall attend training sessions if possible to address local issues that a trainer cannot answer.

c) Media Relations

(1) News Conference

- (i) At DOC's request, Local Agency shall assist DOC's Public Information Officer and the Service Provider with plans to invite media to attend training sessions; DOC may request Local Agency's assistance with the planning of any news conferences to be conducted by DOC;
- (ii) Local Agency shall offer any necessary assistance requested by DOC relating to DOC's preparation of news releases;
- (iii) At DOC's request, Local Agency shall assist Service Provider in developing media lists;
- (iv) Local Agency shall ensure that appropriate participants are invited to or included in news conferences.

(2) Media Assistance

At DOC's request, Local Agency shall help secure a local spokesperson to appear on news talk shows and at other events.

(3) Public Service Announcements

- (i) At DOC's request, Local Agency will assist DOC with DOC's development and approval of television and radio public service announcements;
- (ii) At DOC's request, Local Agency shall offer any necessary assistance with the placement of Public Service Announcements on local stations and cable outlets.

d) Long Term

(1) At DOC's request, Local Agency shall work with Service Provider to produce additional support materials in accordance with the SAVNS Service Agreement;

(2) At DOC's request, Local Agency shall work with Service Provider to provide long-term media relations support for National Crime Victims Rights Week events and for Domestic Violence Awareness Month events.

6. TERM

This Agreement begins on the date designated under Section 1 of this Agreement and expires when the SAVNS Service Agreement between DOC and the Service Provider expires or is terminated, unless this Agreement terminated early under the provisions of Section 7 below.

7. TERMINATION

7.1 DOC or Local Agency may terminate this Agreement without cause at any time upon thirty (30) days' prior written notice to the other party.

7.2 Upon expiration or termination of this Agreement:

(a) if termination occurs as a result of a party's default of its obligations under this Agreement, the non-defaulting party shall be entitled to exercise all rights and remedies available for such default at law or in equity or pursuant to the terms of this Agreement;

(b) All rights and obligations of DOC and Local Agency under this Agreement shall cease except those rights and obligations that expressly survive expiration or termination of this Agreement. The rights and obligations of the parties under Sections 7, 8, 9, 10, 20, 23 and 24 shall survive the expiration or termination of this Agreement.

8. INDEMNIFICATION/HOLD HARMLESS

8.1 To the extent permitted by the Oregon Tort Claims Act and applicable provisions of the Oregon Constitution, including Article XI, Section 10 of the Oregon Constitution if Local Agency is a county, Local Agency shall indemnify, defend, save and hold harmless DOC against liability for damage to life or property arising from Local Agency's activities under this Agreement, provided Local Agency shall not be required to indemnify DOC for any such liability arising out of the wrongful acts of employees or agents of DOC.

8.2 To the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, DOC shall indemnify, defend, save and hold harmless Local Agency against liability for damage to life or property arising from DOC's activities under this Agreement, provided DOC shall not be required to indemnify Local Agency for any such liability arising out of the wrongful acts of employees or agents of Local Agency.

9. REPRESENTATIONS AND WARRANTIES OF DOC

DOC represents and warrants to Local Agency that:

9.1 DOC meets the eligibility criteria for participation in the statewide automated victim notification system development program as authorized under ORS 147.231.

9.2 DOC has the power, authority and legal right to enter into this Agreement and to incur and perform its obligations under this Agreement pursuant to ORS 190.110.

9.3 Execution of this Agreement and DOC's performance hereunder have been duly authorized by all necessary action of DOC and this Agreement has been duly executed and delivered on behalf of DOC.

10. REPRESENTATIONS AND WARRANTIES OF LOCAL AGENCY

Local Agency represents and warrants to DOC that:

10.1 Local Agency meets the eligibility criteria for participation in the statewide automated victim notification system development program as authorized under ORS 147.231.

10.2 Local Agency has the power, authority and legal right to enter into this Agreement and to incur and perform its obligations under this Agreement pursuant to ORS 190.110.

10.3 Execution of this Agreement and Local Agency's performance hereunder have been duly authorized by all necessary action of Local Agency and this Agreement has been duly executed and delivered on behalf of Local Agency.

11. SUBCONTRACTS AND ASSIGNMENTS

Neither party may assign or transfer any of its interests in this Agreement without the prior written consent of the other party. The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto, and their respective successors and permitted assigns, if any.

12. THIRD PARTY BENEFICIARY

DOC and Local Agency are the only parties to this Agreement and are the only parties entitled to enforce its terms. The Service Provider is a third party beneficiary to this Agreement entitled to enforce only those obligations imposed on Local Agency that arise out of Section 5 of this Agreement. Nothing in this Agreement gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to any other third persons.

13. COMPLIANCE WITH APPLICABLE LAW

Local Agency shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement. Without limiting the generality of the foregoing, Local Agency expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and accountability Act of 1996; (vi) The Age Discrimination in Employment Act of 1967, as amended, and the

Age Discrimination Act of 1975, as amended; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. DOC's performance under the Agreement is conditioned upon Local Agency's compliance with the provisions of ORS 279B.220, 279B.230, 279B.235, and 279B.270, which are incorporated by reference herein.

14. WORKERS' COMPENSATION

All employers, including Local Agency, that employ subject Workers who provide Services under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Local Agency shall ensure that each of its subcontractors complies with these requirements.

15. 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.

16. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which will be an original, all of which will constitute but one and the same instrument.

17. ENTIRE AGREEMENT; AMENDMENTS

This Agreement constitutes 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, consent, modification, or change of terms of this Agreement will bind either party unless in writing and signed by both parties and all necessary signatures and approvals have been obtained. Such waiver, consent, modification or change, if made, is effective only in the specific instance and for the specific purpose given. This Agreement may be amended, modified or supplemented only by a written amendment signed by DOC and Local Agency. No amendment shall be effective until all requisite signatures and approvals are obtained.

18. NO WAIVER

No failure on the part of either party to exercise, or delay in exercising, any right or remedy under this Agreement, shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies provided in this Agreement are cumulative and not exclusive of any other remedies provided by law.

19. TIME IS OF THE ESSENCE

Time is of the essence in DOC's and Local Agency's performance of each and every obligation and duty under this Agreement.

20. CONFIDENTIALITY

Local Agency and DOC agree that for and during the entire term of this Agreement, any confidential information or data received from each other shall be considered and kept as the private and privileged records of the party providing the information and will not be divulged in any form to any person, firm, corporation, or other entity except as provided by this Agreement and in the SAVNS Service Agreement. Further, upon the termination of this Agreement for any cause, the parties agree that they will continue to treat as private and privileged such information or data received and will not release any such information and will, upon request, return such information to the requesting party.

21. INDEPENDENT CONTRACTOR STATUS

The parties are acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Specifically, and not in limitation of the foregoing, neither DOC nor Local Agency, or their affiliates, officers, employees or agents are or shall be construed to be officers, employees or agents of each other for purposes of the Oregon Tort Claims Act, ORS 30.260 to 30.300.

22. FORCE MAJEURE

Neither DOC nor Local Agency shall bear any liability or responsibility whatsoever to each other or to any other party for any failure to perform or delay caused by fire, earthquake, explosion, flood, hurricane, tornadoes, the elements, acts of God or the public enemy, restrictions, limitations or interference of governmental authorities or agents, war, invasion, insurrection, rebellion, riots, strikes or lockouts, inability to obtain necessary materials, goods, services, utilities or labor, or any other cause whether similar or dissimilar to the foregoing which is beyond the reasonable control of the nonperforming party, and any such failure or delay due to said causes or any of them.

23. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between DOC and Local Agency 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, that if a Claim must be brought in a federal forum, then it shall be brought and adjudicated 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 it is sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID

COURT(S).

24. ACCESS TO RECORDS

The parties shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles and shall maintain any other records relating to this Agreement in such a manner as to clearly document each parties' performance hereunder. The State of Oregon, and its agencies, and the Secretary of State Audits Division and their duly authorized representatives, shall have access to such fiscal records and to all other books, documents, papers, plans and writings of the parties which relate to this Agreement to perform examinations and audits and make excerpts and transcripts. The parties shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

25. RECYCLABLE PRODUCTS

Local Agency shall, to the maximum extent economically feasible in the performance of this Contract, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

26. NOTICES

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery of or mailing the same, postage prepaid, to DOC or Local Agency at the addresses set forth below, or to such other addresses as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually received by the appropriate authorized representative.

Authorized Representative for DOC:

Karen Roddy
Victims Services Program Coordinator
Snake River Correctional Institution
777 Stanton Blvd
Ontario, OR 97914-0595
Telephone: 541-881-4625
Fax: 541-881-4688
E-mail: Karen.G.Roddy@doc.state.or.us

Authorized Representative for Local Agency:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

27. COMMUNICATIONS/DISPUTE RESOLUTION

The parties agree to a commitment to avoid disputes, recognizing their intentions to work together in agreement that achieves mutual goals operating and sustaining the statewide automated victims notification system. The parties agree that sharing information between DOC and Local Agency officers and employees is deemed critical and appropriate.

If a dispute arises, the parties agree to the following protocol:

1) DOC's and Local Agency's authorized representatives identified in Section 26 above will meet to define the dispute and clearly identify the decisions that need to be made for dispute resolution, especially those decisions dependent on the consensus between parties.

2) Failing agreement or dispute resolution by the parties in Step 1, senior management personnel designated by DOC and Local Agency, respectively, will join the parties' authorized representatives for reasonable discussions relating to the dispute and to specify a timeline for dispute resolution. If the dispute is not resolved within fourteen (14) days, or such other period as mutually agreed upon by the parties, the parties will submit to mediation.

3) Each party shall select one mediator, and the two mediators shall select a third mediator to hear the dispute, before which time the mediators shall establish the procedure for the mediation. Any decision rendered by the mediators shall be non-binding on the parties.

Failing resolution by mediation, the parties may avail themselves of any other judicial, legal, and/or lawful remedies available to them, but only after the parties have attempted to resolve any dispute with the procedures available under Steps 1 through 3 of this Agreement.

The parties shall bear their own costs, expenses, and counsel fees associated with Steps 1 and 2, and pay equally the fees and expenses of the mediation under Step 3 unless otherwise agreed in writing.

28. SIGNATURE APPROVALS; CERTIFICATION

The undersigned representatives of DOC and Local Agency agree and certify on behalf of the agencies they represent that:

- a. He/she has read and understands all terms and conditions contained in this Agreement (including Exhibit A attached hereto);
- b. He/she is an authorized representative of the agency on whose behalf he or she is signing this Agreement, is specifically authorized to execute and deliver this Agreement on behalf of that agency, and the information provided in this Agreement is true and accurate;
- c. the agency they represent shall be bound by and will comply with all requirements, specifications, and terms and conditions contained in this Agreement;
- d. the agency they represent is not in violation of any Oregon tax laws.

The parties have executed this SAVNS INTERGOVERNMENTAL AGREEMENT as of the date set forth below.

STATE OF OREGON ACTING BY AND
THROUGH ITS' DEPARTMENT OF
CORRECTIONS

By: _____

Name: Max Williams

Title: Director,

Oregon Department of Corrections

Date: _____

LOCAL AGENCY:

LANE COUNTY

By: R. E. Burger

Name: R. E. BURGER

Title: SHERIFF

Date: 9/12/07

Approved as to Legal Sufficiency:

By: _____

Name: _____

Title: Assistant Attorney General,

Oregon Department of Justice

Date: _____

By: _____

Name: William A. Van Vactor

Title: County Administrator

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____