

DACMS USAGE AGREEMENT

This Intergovernmental Agreement (hereinafter the "Agreement") is made by and between Marion County, a political subdivision of the state of Oregon, acting by and through its District Attorney's Office (hereinafter the "County"), and the City of Salem, an Oregon municipal corporation, acting by and through its Police Department (hereinafter the "Salem Police Department ") collectively referred to herein as the "Parties," for the purpose of allowing Salem Police Department to access and print case information from the County's District Attorney's Case Management System (hereinafter "DACMS").

RECITALS

- A. The County and Salem Police Department are both public bodies engaged in providing municipal services, including law enforcement, to their citizens; and
- B. The County maintains a records management system referred to as DACMS which is utilized in providing law enforcement services; and
- C. The County wishes to allow approved employees of Salem Police Department with access to DACMS: "read only" access for the purpose of viewing and printing data that is stored on certain portions of the County's DACMS database. Salem Police Department's use of DACMS shall be solely for law enforcement purposes; and
- D. The Parties find that the performance of this Agreement will benefit the public; and
- E. This Agreement is entered into pursuant to Oregon Revised Statutes Chapter 190.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and benefits contained herein, the County and Salem Police Department agree as follows:

1. Salem Police Department 'S OBLIGATIONS:

1.1. Salem Police Department shall ensure that any and all employees accessing DACMS (hereinafter "Authorized Users") shall utilize an exclusive username and password.

1.2. Salem Police Department shall submit a written list of all Authorized Users of DACMS to the Marion County District Attorney for approval. Such written list shall contain each Authorized User's unique username for accessing DACMS. Salem Police Department acknowledges that County has complete discretion to deny access to any employee.

1.3. Salem Police Department agrees to follow all applicable statutes, rules, and court orders regarding the use of DACMS.

1.4. Salem Police Department agrees that it is responsible for its Authorized Users' proper use of DACMS and for the safekeeping of all usernames and passwords.

1.5. Salem Police Department agrees to notify the Marion County District Attorney or his designee immediately if any unauthorized use of DACMS by an employee is found or suspected. Salem Police Department acknowledges that any suspected misuse of DACMS may result in the suspension of its access to and use of DACMS.

1.6. Salem Police Department agrees that the County may/will monitor all access to and use of DACMS by its Authorized Users.

1.7. Salem Police Department agrees to take any and all reasonable steps to ensure that any computer used to access DACMS contains no malicious computer code or virus that might be harmful to DACMS.

1.8. Salem Police Department agrees to update its contact information and Authorized User list required in Subsection 1.2 when any information set forth therein changes. Salem Police Department will promptly provide updated information to the Marion County District Attorney or his designee for approval.

1.9. Salem Police Department is solely responsible for ensuring that its equipment is compatible with the requirements needed to upload information onto DACMS, or to view or print information contained in DACMS.

1.10. Salem Police Department shall ensure that all internet connections and firewalls used in accessing and/or viewing DACMS are secure.

1.11. Salem Police Department shall train its Authorized Users on the proper use of DACMS.

1.12. Salem Police Department shall ensure that any access and use of DACMS is done in conformance with current case law.

1.13. Salem Police Department is solely responsible for training its Authorized Users in the lawful use of DACMS.

1.14. Salem Police Department understands and agrees that DACMS may contain errors and uses any information or report contained in DACMS at its own risk.

1.15. Salem Police Department understands and agrees that DACMS may be unavailable at times due to regularly scheduled maintenance or unexpected system problems. The County disclaims any liability due to the unavailability of DACMS.

1.16. Upon termination of this Agreement, Salem Police Department agrees to take all necessary steps to sever any access to DACMS by its Authorized Users and to restore any needed firewalls.

1.17. Salem Police Department is not required to pay any licensing costs associated with its use of DACMS at this time. If it is determined that additional licensing costs arise from Salem Police Department use of DACMS software, County will, to the extent possible, provide Salem Police Department with advance notice so that Salem Police Department may plan appropriately. Salem Police Department agrees to pay any additional licensing costs associated with its use of DACMS software.

2. COUNTY'S OBLIGATIONS:

2.1. The County agrees to allow County-approved Authorized Users of Salem Police Department with "read only" access to DACMS for the purpose of viewing and printing data that is stored on certain portions of the County's DACMS database.

3. TERM AND TERMINATION:

3.1. This Agreement shall be effective upon the date of execution by both Parties. If the Parties sign on separate dates, the latter date shall be the effective date. This Agreement shall remain in effect for five (5) years unless terminated as provided herein.

3.2. The County may, in its sole discretion, for any or no reason, and without notice, terminate this Agreement and take all necessary steps to stop Salem Police Department's access to DACMS. The County shall not be liable to Salem Police Department or any third party for any termination of access to DACMS.

3.3. Salem Police Department may terminate this Agreement for any or no reason upon not less than ten (10) days' prior written notice to the County.

4. INDEMNIFICATION:

4.1. Salem Police Department agrees to defend, indemnify, and hold harmless County, its officers, agents, and employees from damages arising out of the tortious acts of the Salem Police Department, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.

4.2. Likewise, the County agrees to defend, indemnify, and hold harmless Salem Police Department, its officers, agents, and employees from damages arising out of the tortious acts of the County, its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, Article XI, Section 7.

4.3. Nothing in this agreement shall be deemed to limit the right of either party to make a claim against the other for damages and injuries incurred by one party as a result of the actions of the other party's officers, agents and employees.

4.4 Each party shall maintain insurance or self-insurance for general liability. Each party shall provide workers' compensation insurance in compliance with ORS Chapter 656 for all employees performing work under this agreement.

5. DISCLAIMER OF WARRANTIES: The use of any material or information downloaded, printed or otherwise obtained from DACMS is at Salem Police Department's own discretion and risk, and Salem Police Department will be solely responsible for any damage to Salem Police Department's computer system or loss of data that may result from the use of DACMS.

6. NOTIFICATIONS: Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed facsimile at the address or facsimile number set forth below:

If to the County:

Walt Beglau
Marion County District Attorney's Office
PO Box 14500
Salem, OR 97309
Fax: (503) 588-3564

If to Salem Police Department:

Jerry Moore, Chief
Salem Police Department
555 Liberty St. SE Rm 130
Salem, OR 97301

Any notice delivered by personal delivery shall be deemed to be given upon actual receipt. Any notice sent by United States mail shall be deemed to be given five (5) days after mailing. Any notice sent by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

7. GENERAL PROVISIONS:

7.1. Each Party working under this Agreement is either an employer that will comply with ORS 656.017 or an employer that is exempt under ORS 656.126. Each Party agrees that it is solely responsible for obtaining and maintaining insured or self-insured coverage for its own employees as required by that law.

7.2. This Agreement represents the entire integrated agreement between the Parties concerning the subject matter hereof. This Agreement supersedes all prior agreements, negotiations and representations relating to the same subject matter between the Parties.

7.3. This Agreement may be amended only by written instrument executed with the same formalities as this Agreement.

7.4. Salem Police Department agrees that it shall comply with all federal, state, and local laws, regulations, executive orders and ordinances that may be applicable to this Agreement. Salem Police Department agrees that no person shall, on the grounds of race, color, religion, age, mental or physical disability, sexual orientation, creed, national origin, sex, marital status, familial status or domestic partnership, gender identity, or source of income, suffer discrimination in the performance of this Agreement when employed by it. Salem Police Department further agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and agrees not to discriminate against minority-owned, women-owned or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225, in awarding subcontracts as required by ORS 279A.110.

7.5. This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Marion County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the District of Oregon. Each Party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.

7.6. Neither party to this Agreement shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's officers, employees or agents.

7.7. One or more waivers or failures to object by either party to any breach, violation or default of any provision, term, condition or covenant contained in this Agreement shall not be construed or operate as a waiver of any subsequent breach, violation or default of that or of any other provision, term, condition or covenant.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF SALEM:

Linda Davis 08/14/2012
City Manager Date

[Signature] 8-17-2012
Chief of Police Date

MARION COUNTY:

[Signature] 9-21-12
Marion County District Attorney Date

[Signature] 10/11/12
John Lattimer Date
Chief Administrative Officer

APPROVED AS TO FORM:

[Signature] 10/5/12
Marion County Contracts

[Signature] 10/11/12
Marion County Legal Counsel