

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF MONTEREY
AND
THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY
FOR THE DUI COURT PROGRAM**

This Memorandum of Understanding (“MOU”), entered into on September 30, 2015, which date is stated for purpose of reference only, is by and between the Superior Court of California - County of Monterey (“COURT”) and the County of Monterey (“COUNTY”) acting through four County agencies: the Monterey County District Attorney’s Office (“the DA”), the Monterey County Public Defender’s Office (“the PD”), the Monterey County Health Department, Behavioral Health Bureau (“BHB”), and the Monterey County Probation Department (“PROBATION”) (collectively, “COUNTY agencies”).

The purpose of this MOU is to set forth the roles and responsibilities of the parties participating in a DUI Court program, and to delineate their rights and responsibilities in fulfilling the purposes of grant number AL1602 (“OTS Grant”) which is attached hereto as Exhibit 1 and incorporated herein by reference. The OTS Grant was awarded to the COURT by the California Office of Traffic Safety (“OTS”) through the National Highway Traffic Safety Administration. The purpose of the OTS Grant is to initiate a DUI Court program at the Monterey County Superior Court. The DUI Court program focuses on high-risk multiple DUI offenders, holding them accountable for their actions and instituting a protocol to facilitate lasting behavioral changes, which shall include regular testing for substance use, participation in self-help meetings or court approved treatment programs, and close supervision by PROBATION and other service providers.

BACKGROUND

The California Office of Traffic Safety, through the National Highway Traffic Safety Administration, awarded the OTS Grant to the COURT in the amount of three hundred fifty thousand dollars (\$350,000) for one (1) year, from October 1, 2015 to September 30, 2016, in order to establish a DUI Court program in collaboration with agency partners. The DUI Court program implemented will address the challenge of repeat-offense drunk drivers through a program based on the Drug Court model. The COURT’s application for the OTS Grant was developed in consultation with the COUNTY agencies.

To implement the terms of the grant, the COURT and its partnering COUNTY agencies have established a collaboration through which the DUI Court program will operate and pursuant to which: the COURT provides judicial and administrative services, DA provides prosecution services, PD provides legal representation services, BHB provides treatment referrals, alcohol and drug testing, and case management services, and PROBATION provides drug and alcohol testing and probation oversight services.

Therefore, in order to reaffirm the understanding by which the DUI Court program will operate, to establish a self-sustaining system that will include contracted treatment providers and client payment, and to confirm an understanding regarding the implementation of the OTS Grant

and the reimbursement of certain costs, the COURT and the COUNTY hereby agree to the terms set forth in this MOU.

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1.0 TERM, CONTINUANCE, AND TERMINATION

- 1.1 Except as set forth in Paragraph 1.2 below, the duration of this MOU is concurrent with the OTS Grant period, and shall commence on October 1, 2015, and end on September 30, 2016 or on such later date, as is established by an extension of the grant period. Obligations that continue beyond the end of the OTS Grant period and are necessary to carry out the purposes or terms of the grant, such as those that concern invoicing and reporting, shall continue for such reasonable period beyond the end of the OTS Grant period as is necessary for their accomplishment.
- 1.2 If, prior to the end of the OTS Grant period and any extensions thereof, the parties have agreed to continue the DUI Court program, the parties shall act in good faith to negotiate the terms of a new MOU or other agreement for the DUI Court program.
- 1.3 Any party to this MOU, including any of the participating COUNTY agencies, may terminate its involvement in the DUI Court program, with or without cause, upon thirty (30) calendar days' written notice to the COURT and the other participating COUNTY agencies. All parties will thereafter meet to determine the appropriate disposition of the program participants who will be affected by the termination. Obligations pertaining to indemnification for, and defense of, any cause of action accruing during the term of this MOU shall survive the termination of this MOU.

2.0 RESPONSIBILITIES OF PARTICIPATING AGENCIES AND STAFF

The agencies participating in the DUI Court program agree to provide staff and resources to assume the responsibilities and perform the services described below:

2.1 The Superior Court

The COURT shall assign COURT personnel to the DUI Court program as follows:

2.1.1 Judicial Officer

The COURT shall assign one (1) or more Judicial Officers to preside over the cases in the program. The services of the Judicial Officers are not reimbursable under the OTS Grant.

2.1.2 Grant Director

The COURT shall assign a Grant Director to the DUI Court program. The Grant Director will administer the OTS Grant and monitor the reporting compliance, monitor and approve expenditures, and assist the DUI Court team in other areas necessary for an effective implementation. The services of the Grant Director are not reimbursable under the OTS Grant.

2.1.3 Courtroom Staff

The COURT shall assign one or more courtroom staff to provide clerical support and attend to duties associated with the courtroom functions associated with the DUI Court. The services of the courtroom staff are not reimbursable under the OTS Grant.

2.2 The District Attorney

The DA shall assign Deputy District Attorneys to the DUI Court program, whose duties shall include but are not necessarily limited to:

- 2.2.1 Overseeing the case processing of participants through the DUI Court program;
- 2.2.2 Providing counsel on legal questions or problems relating to criminal law or procedure that may arise in the course of operating the DUI Court program, and as the issues relate to prosecutorial functions;
- 2.2.3 The services of the Deputy District Attorneys are not reimbursable under the OTS Grant; and
- 2.2.4 Identifying individuals who may qualify for referral to the DUI Court program. The DA may, but is not required to, recommend a referral for a particular defendant. If the DA finds, after review of the defendant's file, including but not limited to police reports and criminal history, that the defendant does or does not qualify for the DUI Court program, the DA will inform the Court of this determination. The decision to recommend referral of a person to the program is solely within the discretion of the DA.

2.3 The Public Defender

The PD shall assign Deputy Public Defenders to the DUI Court program, to the extent necessary to represent Public Defender clients, whose duties shall include:

- 2.3.1 Providing legal representation to defendants, including those defendants who were initially represented by private attorneys who request PD representation and who qualify for representation under Government Code Section 27706;
- 2.3.2 Requesting, on behalf of defendants, that cases be set for DUI Court evaluation and that the cases be calendared for the next court session at the appropriate DUI Court location;
- 2.3.3 Interviewing candidates for program suitability and, during the interview, outlining the program requirements, giving the necessary legal advisements, and eliciting an agreement to participate from clients who wish to participate; and

- 2.3.4. The services of the Deputy Public Defenders are not reimbursable under the OTS Grant.

2.4 Health Department, Behavioral Health Bureau

- 2.4.1 BHB shall assign one (1) preferably Bi-lingual (Spanish) Psychiatric Social Worker II to serve as a Compliance Monitor to the DUI Court program and provide the services as follows:
- 2.4.1.1 Perform intake and assessment of offenders who are being evaluated for admission into the DUI Court program;
 - 2.4.1.2 Provide referrals and match clients with substance abuse treatment programs and monitor participation;
 - 2.4.1.3 Monitor DUI participant compliance through regular check-ins, including alcohol tests;
 - 2.4.1.4 Provide case management and referrals to community resources;
 - 2.4.1.5 Assist clients with time management and transportation needs; and
 - 2.4.1.6 Orally report on participant progress during DUI Court hearings.
- 2.4.2 The salary and benefits of the one (1) FTE Bi-lingual (Spanish) Psychiatric Social Worker II is reimbursable pursuant to the budget provided in Schedule B-1 of the OTS Grant AL1602.
- 2.4.3 BHB shall assign additional staff as BHB deems necessary to insure the performance of the following services in support of the DUI Court program:
- 2.4.3.1 Continuing, for the duration of the OTS Grant, to evaluate potential program participants, track participation and regularly report on participant progress during DUI Court hearings;
 - 2.4.3.2 Attend regular DUI Court team meetings and trainings pursuant to OTS Grant AL1602; and
 - 2.4.3.3 The services of the staff performing these services are not reimbursable under the OTS grant.
- 2.4.4 BHB will purchase supplies for alcohol testing of DUI Court participants in order to detect their use of prohibited substances. These supplies may include, EtG (ethyl glucuronide) alcohol tests, breathalyzers, urine screening tests, and other similar products designed to measure recent

alcohol or alcohol and substance use. BHB will also purchase supplies for the Courage to Change Interactive Journaling System.

2.4.4.1 Pursuant to OTS Grant AL1602 these items are reimbursable up to the limits provided in Budget Schedule B-1.

2.5 The Probation Department

2.5.1 PROBATION shall assign one (1) Deputy Probation Officer to the DUI Court program to perform the following services described below:

2.5.1.1 Evaluation of individuals that petition the COURT to enter the DUI Court program; verifying that the participants meet program standards by investigating residence, criminal, family, and social background issues;

2.5.1.2 Collaborating with participants and other team members to formalize a case plan that defines participant needs and goal-attainment strategies, and then working within the team to allocate responsibility for monitoring participant progress toward each goal;

2.5.1.3 Assessing the risk for re-offense of each participant, formulating supervision strategies to hold each participant accountable for violations, addressing any violations swiftly by notifying all parties within the team and working with the team members to recommend an appropriate sanction;

2.5.1.4 Testing participants for alcohol and conducting home visits to insure compliance with DUI Court and Probation rules;

2.5.1.5 Tracking and monitoring testing results, and tracking the sanctions imposed by the COURT; and

2.5.1.6 Report client progress with the COURT that address the participants' actions and observable behavior, both positive and negative, and offer the team's recommendations to the COURT.

2.5.2 Pursuant to OTS Grant AL 1602, the salary and benefits of one (1) Probation Officer is reimbursable to the limits provided in Budget Schedule B-1.

2.5.3 PROBATION will purchase supplies for, as well as any appropriate laboratory analyses of, alcohol testing of DUI Court participants in order to detect their use of prohibited substances. These supplies may include EtG (ethyl glucuronide) alcohol tests, breathalyzers, urine screening tests, alternative monitoring devices such as a continuous

transdermal ankle bracelet or a camera enabled remote alcohol breath analyzer and and other similar products designed to measure recent alcohol or alcohol and substance use.

2.5.3.1 Pursuant to OTS Grant AL 1602, the testing supplies are reimbursable to the limits provided in Budget Schedule B-1.

3.0 PROGRAM COORDINATION AND REPORTING

3.1 Program Coordination

- 3.1.1 The activities of DUI Court personnel shall be coordinated pursuant to applicable program policies and procedures to the extent that such policies and procedures do not conflict with those of their employing agencies.
- 3.1.2 DUI Court personnel shall work together as a team, coordinating and communicating with each other as much as possible to accomplish the goals and objectives of the DUI Court program.
- 3.1.3 The COURT shall meet regularly with BHB and PROBATION regarding grant expenditures and reporting to insure that the procedures set forth in this MOU are being followed, and to address any issues that may arise.

3.2 Program Reporting

- 3.2.2 BHB and PROBATION shall establish and maintain procedures for gathering and retrieving output data regarding their participation in the DUI Court program. Financial records and data relating to the operation of the DUI Court program shall be maintained in as required by OTS, which will enable the COURT to meet the fiscal reporting requirements of the OTS Grant and enable the COURT and/or OTS to perform an accounting of program costs.
- 3.2.3 BHB and PROBATION will provide to the COURT, within fifteen (15) days after the end of each quarterly grant reporting period (January 30, April 30, July 30, October 30), the information and documentation needed by the COURT in order for it to make quarterly reports to OTS regarding the progress made toward achieving the objectives of the grant award and the expenditure of grant funds within the reporting period.
- 3.2.4 BHB and PROBATION shall establish and maintain procedures for gathering and retrieving data for DUI Court participants regarding number of individuals screened and number of individuals participated in program, the status of their compliance with court orders, results of their tests, and demographic data – that will be of help to the COURT in its coordination of the DUI Court program, and in its publication of the results of the program.

4.0 FISCAL ACCOUNTABILITY

4.1 Administrative Agent for the OTS Grant

As the lead administrative agency for implementing the terms of the OTS Grant, the COURT is responsible for reporting to OTS on the progress of the DUI Court in achieving the grant objectives; and is responsible as well for submitting, for review and approval by OTS, all claims and supporting documentation regarding expenses qualifying for reimbursement under the OTS Grant.

4.2 Reimbursement of Expenses from OTS Grant Funds

For qualifying expenses incurred during the OTS Grant period and any extensions thereof, and subject to approval by OTS, the COURT shall reimburse BHB and PROBATION as reimbursed by OTS, as follows:

- 4.2.1 To BHB, in amounts not to exceed one hundred sixteen thousand four hundred ninety-four dollars (\$116,494) for the service of one (1) preferably Bi-lingual (Spanish) Psychiatric Social Worker II/Compliance Monitor, four thousand three hundred fifty-eight dollars (\$4,358) for in and out-of-state training travel expenses, and twenty-three thousand nine hundred ninety-eight dollars (\$23,998) for DUI testing and monitoring supplies and other supplies as detailed in Schedule B of the OTS Grant AL1602 budget.
- 4.2.2 To PROBATION, in amounts not to exceed one hundred forty-three thousand one hundred sixty-six dollars (\$143,166) for the service of one deputy probation officer, four thousand three hundred fifty-eight dollars (\$4,358) for in and out-of-state training travel expenses, and forty-six thousand seven hundred fifty-six dollars (\$46,756) for DUI testing and monitoring supplies, bus passes, and office equipment as detailed in Schedule B of the OTS Grant AL 1602 budget.

4.3 Requirements re: Claims for Reimbursement

Claims for reimbursement for qualifying expenses incurred during the OTS Grant period shall be made by BHB and PROBATION as follows:

- 4.3.1 BHB and PROBATION shall submit quarterly claims using OTS form OTS-39 for services rendered by their respective personnel, and for testing supplies and analyses, within fifteen (15) days after the end of the each quarterly grant period (January 30, April 30, July 30, October 30) for which the claim is being made, even if no expenses were incurred. It is imperative that such claims be made in a timely manner in order for the COURT and grant participants to meet the requirements of the grant and to insure appropriate reimbursement by OTS.

- 4.3.2 All claims submitted to COURT shall be complete and shall include proof of payment as well as all required backup documentation.
- 4.3.3 BHB and PROBATION shall provide a quarterly Employee Time Certification for employees receiving 100% personnel services funding from the OTS grant and who work 100% of their time on OTS grant activities. For employees who work less than 100% of their time on OTS grant activities and /or only partially funded through the OTS grant, BHB and PROBATION shall submit Personnel Activity Reports (PAR) each quarter. The PAR of each staff member for whom salary and benefit reimbursement is sought shall accurately reflect the program and, if any, the non-program hours coded by the staff member during the period covered. Employee Time Certifications and PARs must be signed by the employee and their immediate supervisor as required by OTS.
- 4.3.4 It is understood that the failure to submit timely and complete reimbursement claims with all appropriate supporting documentation may result in the denial of such claims by OTS.
- 4.3.5 The Court will provide reimbursement of claims to BHB and PROBATION in the amount authorized and paid by OTS within ten (10) days of receipt from OTS.
- 4.3.6 It is understood and agreed that, in order for any purchase of testing supplies or analyses to be reimbursable under the OTS Grant, the relevant order must have been placed after the start of the OTS Grant period, within the budgeted amounts provided within the grant, and all testing supplies so ordered must be used, and all analyses must be performed, before the end of the OTS Grant period and any extension thereof.
- 4.3.7 BHB and PROBATION shall comply with all provisions of the OTS Grant and applicable local, state, and federal policies governing the use of OTS Grant funds.

4.4 Requirements for Record Keeping

- 4.4.1 BHB and PROBATION also agree to provide the COURT, at the end of the first year of the OTS Grant period, a computation of the unreimbursed annual expenses of said agency, if any, that are attributable to the DUI Court program.
- 4.4.2 BHB and PROBATION shall maintain financial records and data (e.g., receipts, invoices, time-sheets) relating to services rendered and expenses claimed for reimbursement under the OTS Grant for a period in accordance with state and federal law, with the minimum retention period being no less than three (3) years.
- 4.4.3 It is understood that accounting records must be maintained which adequately identify and segregate OTS resources and expenditures from

all other transactions and adequate source documentation must be retained by all grant participants.

5.0 CONFIDENTIALITY

- 5.1 The parties shall maintain the confidentiality of all participant records in accordance with all applicable federal, state, and local laws, regulations, ordinances, and directives relating to privacy and confidentiality. All non-public records and information concerning any and all matters referred to the COURT by DA, BHB, PD, PROBATION, or by the COURT to DA, BHB, PD, or PROBATION shall be considered and kept confidential by all parties and their respective staff, agents, employees, and volunteers to the extent permitted by law. All non-public information obtained by the COURT, DA, BHB, PD, or PROBATION in the performance of this MOU shall be treated as strictly confidential, and shall not be used for any purpose other than the performance of this MOU, except as may be required or permitted by law.
- 5.2 The COURT, DA, BHB, PD, and PROBATION shall institute policies and procedures to insure that participant information is not accessed by anyone not authorized to access the information or not needing to access the information as part of their assigned duties. The COURT, DA, BHB, PD, and PROBATION shall promptly investigate any indication of inappropriate access or sharing, and take appropriate action regarding any violations or potential further inappropriate access or disclosures.

6.0 INDEMNIFICATION

- 6.1 The COURT agrees to indemnify, defend with counsel approved in writing by the COUNTY, and hold the COUNTY, its elected and appointed officials, officers, agents, and employees harmless from any and all claims, demands, losses or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services or other performance provided by the COURT pursuant to this MOU. If judgment is entered against the COURT and the COUNTY by a court of competent jurisdiction because of the concurrent active negligence of the COUNTY, the COURT and the COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment of liability.
- 6.2 The COUNTY agrees to indemnify, defend with counsel approved in writing by the COURT, and hold the COURT, its elected and appointed officials, officers, agents, and employees harmless from any claims, demands, losses or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, or other performance provided by the COUNTY pursuant to this MOU. If judgment is entered against the COUNTY and the COURT by a court of competent jurisdiction because of the concurrent active negligence of the COURT, the COUNTY and the COURT agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment of liability.

7.0 NOTICES

Except for the parties' routine exchange of information and cooperation, any and all notices, requests, demands, and other communications required or permitted to be given under the terms of this MOU shall be in writing and shall be hand-delivered or mailed to the parties as follows, unless prior notice of a change of address is given:

7.1 Notices to the COURT shall be sent to the following:

Teresa A. Risi, Court Executive Officer (or designee)
Monterey County Superior Court
240 Church Street
Salinas, CA 93901

7.2 Notices to DA shall be sent to the following:

Dean D. Flippo, District Attorney (or designee)
Monterey County District Attorney
230 Church Street, Bldg. 3
Salinas, CA 93901

7.3 Notices to PD shall be sent to the following:

James S. Egar, Public Defender (or designee)
Monterey County Public Defender
111 West Alisal Street
Salinas, CA 93901

7.4 Notices to BHB shall be sent to the following:

Ray Bullick, Health Department, Director (or designee)
Monterey County Health Department
1270 Natividad Road
Salinas, CA 93906

7.5 Notices to PROBATION shall be sent to the following:

Marcia Parsons, Chief Probation Officer (or designee)
Monterey County Probation Department
20 East Alisal Street
Salinas, CA 93901

8.0 ALTERATION OF TERMS

This MOU, together with the exhibits attached hereto and incorporated herein by reference, expresses the full understanding of the parties and is the total agreement between the parties as to the subject matter of this MOU. No addition to, or alteration of, the terms of this MOU shall be valid unless made in the form of a written amendment to this MOU approved and executed by all parties.

[Signatures next page]

Acceptance: The parties hereto have agreed to the terms described in this MOU and have executed this MOU in the County of Monterey, State of California.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

By: _____
TERESA A. RISI
COURT EXECUTIVE OFFICER

Date: _____

COUNTY OF MONTEREY

By: _____
CHAIR OF THE BOARD OF SUPERVISORS

Date: _____

**APPROVED AS TO FORM:
COUNTY COUNSEL
MONTEREY COUNTY, CALIFORNIA**

By: _____
Deputy County Counsel

Date: _____

**RECOMMENDED FOR APPROVAL:
MONTEREY COUNTY DISTRICT ATTORNEY**

By: _____
DEAN D. FLIPPO
DISTRICT ATTORNEY

Date: _____

MONTEREY COUNTY HEALTH DEPARTMENT, BEHAVIORAL HEALTH BUREAU

By: _____
RAY BULLICK
DIRECTOR OF HEALTH

Date: _____

MONTEREY COUNTY PUBLIC DEFENDER

By: _____
JAMES S. EGAR
PUBLIC DEFENDER

Date: _____

MONTEREY COUNTY PROBATION DEPARTMENT

By: _____
MARCIA PARSONS
CHIEF PROBATION OFFICER

Date: _____