

**SECOND MEMORANDUM OF UNDERSTANDING
BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA COUNTY
AND THE OKLAHOMA COUNTY PUBLIC DEFENDER**

Based upon the following recitals, the Board of County Commissioners of Oklahoma County (hereinafter BOCC), and The Oklahoma County Public Defender (hereinafter Contractor), enter into this Agreement to become effective upon its approval by all parties.

ARTICLE I: RECITALS

WHEREAS, the Board of County Commissioners is the body corporate and politic of Oklahoma County and is empowered to provide funding for drug abuse prevention programs within the county in accordance with Section 339 of Title 19.

WHEREAS, in 2016 Oklahoma voters approved State Question 781, which required the costs saved from the reduction and length of incarceration of certain drug offenses be invested in county treatment programs; and

WHEREAS, to account for the cost savings from State Question 781, the Oklahoma Legislature passed, and the Governor signed, Senate Bill 844, currently codified as Section 2-312.1 *et seq.* of Title 43A, which created a new revolving fund, the *County Community Safety Investment Fund*, and provided that the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) is to manage and oversee this fund; and

WHEREAS, in its effort to distribute these monies to county governments, ODMHSAS has requested proposals from counties for the use of funds for the purposes outlined in Section 2-312.4 of Title 43A, including the development and implementation of evidenced based mental health and substance abuse treatment programs or other healthcare programs, pretrial diversion programs, employment programs, or housing programs; and

WHEREAS, in order to bolster pretrial diversion programs and treatment courts in Oklahoma County, the BOCC applied for and was awarded Two Million, Four Hundred Fifty-Two Thousand, Six Hundred Seventy-Six Dollars and No Cents (\$2,452,676.00) in Fiscal Year 24 from the *County Community Safety Investment Fund*; and

WHEREAS, the parties entered the First MOU, on April 10, 2024, with a performance period of March 1, 2024, through June 30, 2024, with a not to exceed amount of Eight Hundred Seventeen Thousand, Five Hundred Fifty-Eight Dollars and Sixty-Seven Cents (\$817,558.67); and

WHEREAS the performance period under this Second MOU is from July 1, 2024, through February 28, 2025; and

WHEREAS, the parties acknowledge that funding for the services provided by the contractor under this Second MOU will utilize the balance of the FY24 funds received by the County from the State in the amount not to exceed One Million Six Hundred Thirty - Five Thousand One Hundred Seventeen Dollars and Thirty-Three Cents (\$1,635,117.33); and

WHEREAS, due to timing issue on the availability of the FY 25 funds from the State, the parties acknowledge that County will submit a lump sum invoice to the State, upon receipt of invoices from Contactor, in an amount not to exceed \$ One Million Six Hundred Thirty -Five Thousand One Hundred Seventeen Dollars and Thirty-Three Cents (\$1,635,117.33) for the period beginning July 1, 2024, through February 28, 2025; and

WHEREAS, upon receipt of the initial FY25 funds from the State, the parties will enter a Third MOU covering the performance period of March 1, 2025, through June 30, 2025; and

WHEREAS the BOCC acknowledges that Contractor will utilize Subcontractors for the provision of services outlined in the approved agreement between the BOCC and ODMHSAS; and

WHEREAS, the Contractor acknowledges that any Subcontractor Agreements expending funds from the *County Community Safety Investment Fund* will be in accordance with all applicable federal and state laws, rules, regulations, ordinances, and orders, and in accordance with the contract for such funds between ODMHSAS and Oklahoma County which is adopted and incorporated by reference as if fully set forth herein.

NOW THEREFORE, in accordance with the laws of the State of Oklahoma the parties now enter this MOU to memorialize their respective roles and responsibilities with regard to the provision of services and expenditure of funds in accordance with Section 2-312.1 *et seq.* of Title 43A and the contractual obligations imposed upon the BOCC by ODMHSAS with regard thereto.

ARTICLE II: DUTIES OF THE PARTIES

- A. Duties of the Board of County Commissioners are set forth below and no other.
 - 1. Provide to Contractor a copy of the contract between ODMHSAS and the Board of County Commissioners governing the use of funds from the *County Community Safety Investment Fund*, receipt of which is acknowledged by the signatures of the parties below.
 - 2. Upon receipt of invoices from Contractor, submit invoices to ODMHSAS by the 15th of each month for payment from funds awarded to Oklahoma

County from the *County Community Safety Investment Fund* to support enhanced services of the pretrial diversion and treatment programs in Oklahoma County.

- a. Transfer funds received from State to the Public Defender's Ok County community Safety Investment Fund (6047) Voucher Account) at the next meeting regular or special meeting of the Oklahoma County Budget Board.
 3. In order to provide services as outlined in the County's approved application, payment may be disbursed to Contractor in arrears.
 4. Funding from the *County Community Safety Investment Fund* payable to Contractor during the performance period of this Second MOU shall be in an amount not to exceed One Million Six Hundred Thirty-Five Thousand One Hundred Seventeen Dollars and Thirty-Three Cents (\$1,635,117.33) for the period beginning July 1, 2024, through February 28, 2025.
- B. Duties of Contractor are as follows and no other.
1. Serve as primary administrator, with input and advice of the Oklahoma County District Attorney and the Presiding Judge of the District Court, of funds awarded to Oklahoma County from the *County Community Safety Investment Fund* for use in the expansion of the pretrial and diversion court programs that serve Oklahoma County and its residents.
 2. Expend funds awarded to Oklahoma County from the *County Community Safety Investment Fund* in accordance with all applicable federal and state laws, rules, regulations, ordinances, and orders and in accordance with the contract for such funds between ODMHSAS and Oklahoma County which is adopted and incorporated by reference as if fully set forth herein.
 3. Contractor and its employees shall adhere to the State Information Security Policy, Procedures, and Guidelines as set forth at https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf which is adopted and incorporated by reference as if fully set forth herein.
 4. To the extent the services provided by Contract necessitate delivery of electronic communications, Contractor shall ensure such communications and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. In addition, non-electronic documents shall be made available in an alternate format that is accessible to individuals with disabilities upon request and at no additional cost.

5. Develop and implement tracking and reporting mechanisms related to the use of funds from the *County Community Safety Investment Fund*.
6. Meet all reporting requirements of ODMHSAS and provide quarterly reports to the BOCC.
7. In the event of a change in programming or need to reallocate funding in any manner other than as described in the application submitted to ODMHSAS on behalf of Oklahoma County and/or this Agreement, Contractor shall inform and seek the approval of the BOCC and ODMHSAS by written agreement prior to enacting any changes.
8. Conduct an audit at the conclusion of the Thirty-Six (36) performance period of funds awarded to Oklahoma County from the *County Community Safety Investment Fund* and provide a copy of the audit to the BOCC.
9. Ensure that all pretrial diversion and treatment court programs operate in accordance with all applicable federal and state laws, rules, regulations, ordinances, and orders and in accordance with the terms of the application submitted for funds from ODMHSAS by Oklahoma County.
10. Ensure that all staff comply with the terms and conditions for receipt of funds from the *County Community Safety Investment Fund* as stated in the contract between the Board of County Commissioners and ODMHSAS.
11. Require staff to attend training and meetings as directed by the ODMHSAS.
12. Submit data and participate in ODMHSAS evaluation processes, including those necessary to complete an annual program report.
13. Respond to and remedy any notice of non-compliance issued by the ODMHSAS within thirty (30) days of the notice.
14. Respond to and remedy any performance deficiencies as identified by the Director of Diversion Programs.
15. Ensure that all staff maintain the confidentiality of State and citizen data and records in the performance of duties under this Agreement and prohibit the sale, assignment, conveyance, provision, release, dissemination or other disclosure of such confidential data except as required by law or prior written approval of the consumer. Any unauthorized disclosure, use, appropriation, sale, assignment, release, or access to such data and records will be promptly reported to the BOCC.
16. Maintain records relative to the contract between ODMHSAS and the Board of County Commissioners governing the use of funds from the *County Community Safety Investment Fund* for the duration of this Agreement and

for a period of seven (7) years following the termination of this Agreement. If a claim, audit, litigation or other action involving the performance under this Agreement arises before the end of the seven (7) year period, all records shall be maintained for two (2) years from the date that all issues arising out of the action are resolved.

17. Contractor will immediately notify the State Purchasing Director, BOCC, and the Oklahoma County District Attorney of any third-party request for data or records related to the provision of services under this Agreement and shall fully cooperate with all efforts to protect the security and confidentiality of such data and records to the extent the same are confidential under state or federal law or regulation.
18. Contractor will immediately notify ODMHSAS, BOCC, and the Oklahoma County District Attorney of any outside activity or interest that may conflict with the best interests of the State, County, or the pretrial and diversion programs.
19. In the event any funds are determined by any governing authority to have been misspent for any reason and resulting in recoupment of said funds by ODMHSAS, Contractor will remit those funds to Oklahoma County.
20. Any unused funds provided to the Contractor from the County's FY24 *County Community Safety Investment Fund* covering the period of performance from March 1, 2024, through February 28, 2025, shall be returned to the County within Ninety (90) days of February 28, 2025.

ARTICLE III: GENERAL PROVISIONS

A. **CONTINGENT AGREEMENT:** Contractor acknowledges that ODMHSAS must give written approval of all subcontractors and their employees which may be retained by Oklahoma County to provide enhanced pretrial and diversion services and funded with monies from the *County Community Safety Investment Fund*. Contractor further acknowledges that this Agreement with the BOCC is contingent upon approval of Contractor by ODMHSAS. Contractor further acknowledges that this is a continuing obligation and if for any reason Contractor is not approved or approval is revoked by ODMHSAS, the obligations of the BOCC under this Agreement will immediately terminate without further notice.

B. **NO GUARANTEE OF FUNDING:** The parties recognize the funding from the *County Community Safety Investment Fund* for the programs outlined in the application is subject to Legislative prerogative and may be suspended, reduced, or terminated by ODMHSAS. In the event the Legislature or ODMHSAS elects to alter funding received pursuant to Section 2-312.1 *et seq.* of Title 43A, Oklahoma County will not provide funds to offset the loss of state funding. In the event funding is reduced, suspended, or terminated, the BOCC may immediately terminate this Agreement without

further notice to Contractor. Any termination under these circumstances shall not be considered a default by the BOCC or a breach of this Agreement.

The parties further recognize the award of funds is on an annual basis with no guarantee of a continued partnership between the BOCC and the Contractor. In addition, the parties recognize that Oklahoma County may elect to enter into other Agreements with additional entities or providers should additional funding beyond the initial Two Million, Four Hundred Fifty-Two Thousand, Six Hundred Seventy-Six Dollars and No Cents (\$2,452,676.00) be available to the County from the *County Community Safety Investment Fund* in future fiscal years.

C. NO SUPPLANTING: Contractor acknowledges that funds from the *County Community Safety Investment Fund* are intended to be used to expand existing services or provide new services in the areas identified by Section 2-312.1 *et seq.* of Title 43A. Contractor agrees that funds provided pursuant to this Agreement will not supplant existing funding sources or otherwise be used to fund programs or services which are already provided by Contractor.

D. LIABILITY: The parties will be solely responsible for the acts or omissions of their own employees or agents in performing this Agreement, subject to the limitations described in the Oklahoma Governmental Tort Claims Act, Title 51, Sections 151 *et seq.*, and shall not be responsible for the acts or omissions of the others. Each party reserves all rights and defenses available at law or in equity, the terms herein shall not in any way constitute a waiver of such rights or defenses.

Upon notice that a third party may bring a claim arising out of the services provided in this Agreement, the parties agree to provide prompt written notice of such claim to the other.

With respect to any claim or cause of action arising under or related to this Agreement, the BOCC shall not be liable to Contractor for any claim of lost profits, lost sales or business, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages.

E. NO AGENCY: The parties agree that nothing contained in this Agreement will be construed as creating an employment or agency relationship between the parties. The parties further stipulate that Contractor is engaged as an independent contractor to perform the services set forth herein, and the Contractor hereby accepts such engagement. Contractor represents that it will secure all designated personnel as set forth by this Agreement. Such personnel shall not be employees of or have any agency relationship with Oklahoma County or the BOCC.

F. THIRD PARTY BENEFICIARIES: The parties do not intent to create any rights in any third parties by entering into this Agreement.

G. AMENDMENT OR ASSIGNMENT: This Agreement may not be amended or assigned by either party without approval of the ODMHSAS and without the prior express written agreement of both parties. Any change to or substitution of the services to be provided herein in the absence of a written agreement shall constitute a material breach of this Agreement.

H. PUBLICITY: The existence of this Agreement is in no way an endorsement of Contractor or the serviced provided by them by the BOCC or ODMHSAS and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the BOCC and ODMHSAS all advertising, sales, promotion, and other publicity matters relating to this Agreement wherein the name of the State or County or any Customer is mentioned or language used from which an endorsement may be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written permission of the BOCC and ODMHSAS.

I. ENTIRE AGREEMENT: It is mutually understood and agreed by the parties that this Agreement contains all the covenants, stipulations, and provisions contemplated by the parties, and no employee, agent or other person has authority to alter or change the terms hereof and no party is or will be bound by any statement of representation not in conformity with this Agreement.

J. COUNTERPART ORIGINALS: This Agreement may be executed in counterparts, each of which will be deemed an original document, but all of which will constitute a single document.

K. WAIVER: Failure of the BOCC to enforce any provision of, or exercise a right under, this Agreement shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of this Agreement or any part thereof, or the right of the BOCC to enforce any provision of, or exercise any right under, the Agreement at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of this Agreement shall not affect or waive any subsequent breach of the same provision or a breach of any other provision of this Agreement.

L. TERM OF AGREEMENT: This Agreement shall commence upon its execution by both parties and approval by the ODMHSAS and cover the period of March 1, 2024, through June 30, 2024. The parties contemplate extending this Agreement based upon the County's approved application subject to continued legislative appropriation. Each of the renewals shall be by written agreement.

M. TERMINATION OF AGREEMENT: Except for grounds of immediate termination as is otherwise provided herein, either party may terminate this Agreement by thirty (30) days advance written notice to the other party. Upon notice of termination under this Section or any other of this Agreement, Contractor shall immediately take all

necessary steps to minimize the incurrence of costs allocable to the services provided by this Agreement.

N. NOTICES: All notices, designations, consents, offers, acceptances, or any other communication provided for herein will be given in writing and delivered by First Class U.S. Mail, by receipted hand delivery, or other similar and reliable carrier and addressed to each party as stated below. Notice will be deemed to be provided at the time it is actually received or within five days after deposited in First Class U.S. Mail.

Board of County Commissioners of Oklahoma County
c/o Office of the County Clerk
320 Robert S. Kerr, 2nd Floor
Oklahoma City, OK 73102

Oklahoma County Public Defender
320 Robert S. Kerr, 6th Floor
Oklahoma City, OK 73102

With courtesy copies to:

Oklahoma County District Attorney
211 N. Robinson, Suite 700N
Oklahoma City, OK 73102

Oklahoma County Grant Writer
320 Robert S. Kerr, 2nd Floor
Oklahoma City, OK 73102

Approved by the Oklahoma County Public Defender this _____ day of _____, 2025.

Public Defender

Approved by the Oklahoma County Board of County Commissioners this _____ day of _____, 2025.

Chairperson

Member

Member

ATTEST:

County Clerk