

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into on this 9th day of October, 2014, by and between THE FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE ("DISTRICT ATTORNEY"), LAW OFFICE OF THE PUBLIC DEFENDER ("PUBLIC DEFENDER"), SANTA FE COUNTY ("COUNTY"), a political subdivision of the State of New Mexico, DRUG POLICY ALLIANCE ("DPA"), and THE CITY OF SANTA FE, a municipal cooperation ("CITY"), regarding the LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM ("LEAD").

RECITALS:

WHEREAS, the City and its residents want to improve public safety and public order by reducing future criminal behavior by low-level drug offenders in their community; and

WHEREAS, booking, prosecuting, and jailing individuals committing low-level drug offenses has had limited effectiveness in improving either public safety or public health; and

WHEREAS, interventions that connect low-level drug offenders with services may cost less and be more successful at reducing future criminal behavior than processing these individuals through the criminal justice system; and

WHEREAS, the City has stepped forward to provide start-up funding for the operation and evaluation of a robust pre-booking diversion demonstration project in the City with the understanding that the project presents a unique opportunity to work with local partners on a new strategy that holds promise for effecting systemic changes and paradigm shift in the public response to individuals' low-level drug involvement; and

WHEREAS, a program grounded in harm reduction, such as LEAD, may provide better results than traditional abstinence-only programs; and

WHEREAS, harm reduction is a public health philosophy and intervention that seeks to reduce the harms associated with drug use; and

WHEREAS, pursuant to Resolution No. 2014, the City of Santa Fe is authorized to enter into a Memorandum of Understanding with other concerned government and private organizations to establish the LEAD Coordinating Group to further ensure the ethical and effective operation of the Santa Fe LEAD program.

NOW, THEREFORE, THE PARTIES STATE THEIR INTENT AS FOLLOWS:

A. Formation, Purposes and Membership of the Law Enforcement Assisted Diversion (“LEAD”) Coordinating Group.

1. LEAD Coordinating Group is hereby formed for the LEAD pre-booking diversion pilot project. The purposes of the Coordinating Group are to make policy-level decisions regarding the LEAD program, to provide periodic administrative oversight of the program, and to protect the integrity of the LEAD model and uphold its guiding principles.¹ The Coordinating Group’s membership shall consist of representatives from each of the following entities and organizations:

- a. The City of Santa Fe
- b. The First Judicial District Attorney’s Office;
- c. Law Office of the Public Defender;
- d. Santa Fe County; and

¹ Guiding principles are outlined on page 13 of the LEAD Task Force Report: “City of Santa Fe’s LEAD Task Force: Recommendations to the City Council.”

e. The Drug Policy Alliance (advisory role);

2. By written amendment signed by all parties to this Agreement, additional member entities and organizations may be added to the Coordinating Group, as either voting or advisory members, upon unanimous consent of the existing members.

B. Responsibilities

1. The role of the Coordinating Group or Operational Group is to make policy-level decisions regarding the (note: Group may be subject to Opens Meeting Act) LEAD program to provide periodic administrative oversight of the program, and to uphold the guiding principles of the model,² including a commitment to harm reduction. Specific responsibilities include, but are not limited to, the following:

- a. Review of LEAD referral and diversion protocols;
- b. Selection of a funding hub/fiscal (“Funding Hub”) sponsor to receive and administer funding granted for LEAD operation and evaluation;³
- c. Collaboration with the Funding Hub on grant applications for funds and oversee the administration of those grant agreements for LEAD operation and evaluation;
- d. Review of RFP’s for LEAD service provision and evaluation;
- e. In accordance with HIPAA and all other federal, state, and local laws and regulations, make available criminal justice and human services system data for comparison and evaluative purposes;

² Guiding principles are outlined on page 13 of the LEAD Task Force Report: “City of Santa Fe’s LEAD Task Force: Recommendations to the City Council.”

³ The City of Santa Fe and Santa Fe County may administer their own funds allocated for the LEAD program, rather than transferring said funds to the Funding Hub.

- f. Oversight of the LEAD program implementation, including but not limited to, regular review of reports from the Operational Group, contract compliance of service providers and evaluators, Operational Group and service provider program compliance, ensuring a commitment to a harm reduction philosophy, and solicitation and review of community feedback; and
- g. Modification of service provision, or evaluation criteria and process, as needed.

C. MOU Signatories' Individual Statement of Intent

The parties signing this Memorandum of Understanding (“MOU”) specifically state their respective intents and commitments as follows:

- 1. The City of Santa Fe (“City”)
 - a. The City agrees to: i) commit staff to manage the City’s funds to support the operations including compliance with all State of New Mexico purchasing requirements, City Purchasing Manual, and City Finance Department’s processes to account for the receipt and dispersal of City funds; assist with legislative advocacy and fundraising as needed; and participate on a policy level through an appointee from the Mayor’s office or a City Councilor
 - b. The City of Santa Fe Police Department (“SFPD”) agrees to: i) commit to participate in the LEAD program on both an operational and policy level; ii) assign several personnel to this pilot including all members of the Property Crime’s Unit, who will receive additional focused training on

harm reduction and the LEAD referral process; and iii) provide an additional designee of the Chief of Police, who will ensure that officers remain committed to the harm reduction philosophy at the core of this project. Program expansion to other units, particularly, Patrol, shall occur as needed.

2. The First Judicial District Attorney's Office ("District Attorney") is dedicated to reducing the impact of problematic drug use on the community through a commitment to a harm reduction philosophy. The District Attorney will provide the following staffing to the program when practicable: an Assistant District Attorney or other prosecuting attorney to both the Operational and Coordinating Groups. The District Attorney and/or the Assistant District Attorney shall serve on each group as long as the groups exist or unless and until the District Attorney withdraws from the LEAD program. The District Attorney's Office will assist with legislative advocacy and fundraising as needed. Though they will be informed by the Operational Group's staffing recommendations regarding participants, the District Attorney retains the ultimate and exclusive authority to make filing decisions in all criminal cases.

3. Law Office of the Public Defender ("Public Defender") commits to participate in the LEAD program on both an operational and policy level. The Public Defender will assist with legislative advocacy and fundraising as needed.

4. Santa Fe County ("County") commits to participate in the LEAD program on both an evaluation and policy level. Santa Fe County will assist with legislative advocacy and fundraising as needed.

5. The Drug Policy Alliance ("DPA") will participate in an advisory capacity only. DPA will dedicate staffing resources for the Coordinating Group, facilitate the Operational

Group, provide technical assistance, and assist with legislative advocacy, fundraising, document drafting, stakeholder consultation, and troubleshooting as needed. DPA will serve as liaison between the funding hub, the program funders, and the Coordinating Group. DPA, with other partners, will advocate for fidelity to agreed protocols and core principles of LEAD. DPA, along with other partners, will be responsible for communication with interested policymakers and community leaders in other jurisdictions regarding the LEAD implementation process.

D. Governance

1. Participation in the Coordinating Group is voluntary, and any member may withdraw unilaterally at any time for any reason with ten days written notice to the other parties.

2. This MOU does not amend any law or ordinance; nor does it create any binding obligation on the part of any signatory. This MOU simply memorializes the intent of the Coordinating Group members in participating in this pilot project and describes the responsibilities they understand to be accepting through their participation.

3. All decisions of the Coordinating Group shall be made by consensus. For purposes of this MOU, “consensus” means a resolution that is acceptable to all participants even if not ideal to one or more. However, the District Attorney retains the ultimate and exclusive authority to make filing decisions in all cases. DPA shall not have decision-making authority in neither the Coordinating Group nor the Operational Group, and will operate in an advisory capacity only.

4. Each member organization shall designate one representative for purposes of determining consensus in all Coordinating Group decisions, but multiple representatives from each organization may attend meetings and participate in discussions, as non-voting representatives.

5. This MOU shall be signed in counterparts and shall be effective as of the date it is signed by all parties. It shall remain in effect until terminated at the end of the pilot project, or January 1, 2018, whichever occurs first. No amendment or modification of this MOU will have effect unless it is made in writing and agreed to by all signatories or their successors.

E. Liability:

Each party shall be liable for its actions in accordance with this MOU. Any liability incurred by the City, Santa Fe County, the Public Defender, and/or the District Attorney in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The City, Santa Fe County, the Public Defender, and the District Attorney, and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

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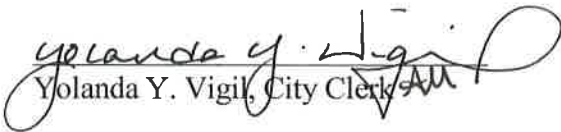
CITY OF SANTA FE:



Brian K. Snyder, City Manager

Date: 9-2-14

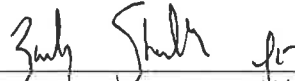
Attest:



Yolanda Y. Vigil, City Clerk

Date: 10-9-14

Approved as to Form:



Kelly A. Brennan, ~~Interim~~ City Attorney

Date: _____

SANTA FE COUNTY:



Katherine Miller, County Manager

Date: 10-3-2014

APPROVED AS TO FORM:



Gregory S. Shaffer, County Attorney

Date: 7/23/14
Amended 8/6/14


DRUG POLICY ALLIANCE:



Ryan Chavez, Manager Director of Finance

Date: 9-24-2014

FIRST JUDICIAL DISTRICT
ATTORNEY'S OFFICE:



Angela Pacheco,
First Judicial District Attorney

Date: 8/29/14

LAW OFFICE OF THE PUBLIC
DEFENDER:



Jorge A. Alvarado, Chief Public Defender

Date: 8/28/2014