

MEMORANDUM OF UNDERSTANDING

Diversion/Homeless Court Program

THIS MEMORANDUM OF UNDERSTANDING (“Memorandum”) is made and entered into on this ____ day of _____, 2020, by and between the Superior Court of California, County of Merced (“Court”), Merced County District Attorney’s Office (“DA”), Merced County Public Defender’s Office (“PD”), Ciummo and Associates, City of Merced and Merced City Attorney’s Office (“CA”) and the County of Merced (“County”).

RECITALS

WHEREAS, the Parties desire to jointly collaborate on a Criminal Justice Diversion/Homeless Court Program that provides coordinated access to positive programming services, to qualifying individuals, that will improve the health, safety and welfare of the individual and the community while reducing the demands on the criminal justice system;

WHEREAS, the Court has partnered with the City and County of Merced to establish a Diversion/Homeless Court Program (“HCP”) for homeless defendants to resolve outstanding eligible pre and post judgment criminal cases and/or infractions to promote public and individual safety;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. SCOPE OF SERVICES

The HCP will address the unique needs of the homeless population, focusing on their legal challenges and limited resources that hinder their ability to reestablish themselves into society. Through joint collaborative partnerships, the HCP will enable the homeless population to gain greater access to self-help services and court resources. The HCP will assess the homeless population to resolve outstanding minor criminal court cases and/or infractions, warrants, fines and fees. The HCP will benefit both the Court and the community. With the homeless population increasing in Merced County, the HCP is necessary to help resolve the problems that homelessness presents with practical and effective solutions.

2. OBLIGATIONS AND RESPONSIBILITIES

The obligations and responsibilities of the Court and its joint collaborative partners for the HCP are as follows:

2.1 Prosecuting Agencies (Merced County District Attorney and Merced City Attorney) agree to:

- A. Provide an attorney for all HCP sessions, as resources allow.
- B. Provide input to the Court regarding the list of eligible and ineligible charges in HCP.
- C. Review the HCP calendar and be prepared to discuss a negotiated disposition of case(s) with Defense Counsel on terms consistent with the objectives of the HCP.
- D. On open cases where a plea needs to be entered, review recommendations from the Homeless Court Coordinator (“HCC”) and offers from Defense Counsel for case resolution.
- E. Participate in and attend Case Conference Review meetings, as necessary.

2.2 Defense Counsel (Merced County Public Defender and Ciummo and Associates) agrees to:

- A. Provide an attorney for all HCP sessions, as resources allow.
- B. Provide input to the Court regarding the list of eligible and ineligible charges in the HCP.
- C. Review the HCP court calendar and provide legal services to clients in the HCP. Legal services may include, but are not limited to, reviewing all cases and available discovery, verifying the client’s enrollment and participation in services, as well as program accomplishments.

- D. Review the HCP court calendar and be prepared to discuss a negotiated disposition of cases with the Prosecuting Agencies on terms consistent with the objectives of the HCP.
- E. On open cases where a plea needs to be entered, review recommendations from the HCC and submit an offer to the Prosecuting Agencies for case resolution.
- F. Participate in and attend Case Conference Review meetings, as necessary.

2.3 Merced County Superior Court agrees to:

- A. Provide a judicial officer, bailiff, and courtroom clerical staff for the monthly court sessions held on the last Tuesday of every month beginning April 2020, in a location to be determined. HCP will not be held if the last Tuesday of the month falls on a Holiday.
- B. Adequately staff the HCP with court legal processing and courtroom clerks. Court staff will maintain a record of all proceedings and prepare calendars prior to each HCP session. The number of cases on each calendar is subject to court approval.
- C. Approve the list of eligible and ineligible charges.
- D. Stay warrants and release DMV holds as ordered by the Court.
- E. Route court orders involving fines, fees, and civil assessments to the Court Collection Office.
- F. Route the HCP Calendar Request Form to the Criminal Calendar Clerk for processing and email the designated Homeless Court Case Conference Review Team (“HCCCRT”) email group.
- G. Send the HCP calendar to the DA, CA, PD, Ciummo and Associates, and the HCCCRT one week prior to the HCP court hearings.

- H. Provide HCCCRT access to view the Court's Case Management System to look up party information, case numbers, case events, and hearing dates.

2.4 Merced County agrees to:

- A. Provide a Homeless Court Coordinator, to coordinate, facilitate, and implement the administrative functions of the Homeless Court Program as set forth in the job description for the position and/or policies and procedures for the program.

2.5 All parties agree to:

- A. Designate a lead individual for questions pertaining to this Memorandum and the duties thereof.
- B. Meet with the program parties, on an annual basis, to update the list of eligible charges on an as-needed basis, depending on several factors, including, but not limited to, new legislation, changes in procedures, and the needs of the HCP.
- C. Attend the monthly HCP hearings at a time, date and department designated by the Court, when applicable.
- D. HCP hearings will be held at the location designated by the Court. The location of the HCP hearings is subject to change.
- E. The HCP shall not require participants to waive any protections afforded by due process. Participants shall have meaningful time to review their cases and resolve issues prior to disposition.
- F. The HCP process and any disposition therein should recognize participants' voluntary efforts to improve their lives and move toward greater self-sufficiency.
- G. HCP participants may receive credit for accomplishments with Positive Programming Services for case disposition and sentencing. These services include, but are not limited to, life-skills, chemical dependency or AA/NA meetings, computer and

literacy classes, training or searching for employment, medical care (physical and mental), and counseling. These activities typically replace the traditional court sanctions of fines, community service, and imprisonment.

- H. Defendants who have completed appropriate services prior to appearing before the HCP may have minor charges dismissed, and, where appropriate, may have misdemeanor charges reduced or dismissed. Where charges are dismissed, public access to the records shall be governed by law.
- I. Positive Programming hours may be accepted in lieu of community service and credited towards any fines or fees owed. Credit shall be determined by the Court Standing Order for the Authorized Rate of Community Service Hours Worked.

3. ELIGIBLE AND INELIGIBLE CASES FOR HCP

3.1 Eligible Cases for HCP:

- A. All unadjudicated infractions.
- B. All unadjudicated misdemeanors where the prosecuting agency agrees to reduce the charge(s) to an infraction.
- C. All adjudicated infractions and misdemeanors that are resolved by plea, where there are unpaid fines/fees or the defendant has not completed a court ordered program.
- D. Except as provided in Section 3.2, unadjudicated misdemeanors, with the following limitation: Guilty pleas to first offense driving under the influence (DUI) cases may be heard in HCP with the consent of all parties to the plea agreement. The Court has discretion to modify fines/fees in these matters. In exercising its discretion, the Court may consider the defendant's efforts at rehabilitation. Cases involving a DUI with one prior conviction (DUI or "wet reckless") will not be adjudicated in HCP except to consider a reduction of fines/fees or modification of a court-ordered program. No other DUIs will be adjudicated in HCP.

3.2 Ineligible Cases for HCP – Pre and/or post judgment case(s) involving the following:

- A. All felonies (except for felony fines as agreed upon by the prosecuting agency).
- B. Penal Code § 1210 (Proposition 36).
- C. Drug Court.
- D. Drug dealing and possession of drugs for sales charges.
- E. Domestic violence (including elder abuse).
- F. Child endangerment (Penal Code §§ 270 – 273.5 inclusive).
- G. Juvenile (any filing in Juvenile Court).
- H. Sexual offenses including Penal Code §§ 647(a), 647.6, and offenses specified in Penal Code § 290(c); and violations of Sex Offender Registration per Penal Code § 290.
- I. Arson charges or possession of an incendiary device.
- J. Cases involving violence and any immediate public safety issue(s), as determined in the discretion of the CA/DA.
- K. New offenses after being admitted to HCP. Commission of a new felony offense, misdemeanor offense, or two or more infraction offenses while in HCP makes a defendant ineligible to continue in HCP. However, commission of a new infraction or misdemeanor will be considered on a case by case basis by the DA as to whether or not the defendant may continue in HCP. For Merced Municipal Code (“MMC”) violations, the defendant may apply to the CA for continuance in HCP following the commission of a new MMC violation, whether misdemeanor or infraction. The DA and CA will try to be flexible and the assigned attorneys have discretion to make exceptions.

Regarding all of the above: Borderline cases can be reviewed on a case by case basis. Particular facts of the case, defendant's criminal history, and defendant's specific situation or circumstances will be taken into consideration.

4. TERM

This Memorandum shall be effective upon execution by the parties and shall continue in effect unless and until terminated in accordance with paragraph 5.

5. TERMINATION FOR CONVENIENCE

Any party may terminate, in whole or in part, this Memorandum for convenience upon sixty (60) days' written notice.

6. OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

This Memorandum is subject to the availability of staffing and authorized funds. Any party may terminate this Memorandum at any time and for any reason or no reason by providing written notice to the other parties as set forth in paragraph 5.

7. MISCELLANEOUS

- 7.1 Non-Assignment. None of the rights, privileges, interests, immunities, duties, or obligations created by this Memorandum is assignable by any of the parties.
- 7.2 Entire Agreement. This Memorandum contains the entire and complete understanding of the parties hereto and supersedes any and all other previous or contemporaneous agreements, representations, and warranties, whether oral or written.
- 7.3 Amendment. No addition to or alteration of the terms of this Memorandum shall be valid unless made in the form of a written amendment to this Memorandum, which is formally approved and executed by the Court Executive Officer, the County Board of Supervisors and the City Council.

- 7.4 Days. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday, holiday, or furlough day of Court, City of Merced or County, such payment shall be made or act performed on the next business day.
- 7.5 Further Assurances. Each party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effect the provisions and purposes of this Memorandum.
- 7.6 Time of Performance. Time is of the essence in the performance of each of the provisions of this Memorandum.
- 7.7 Notices. Any notices required or permitted hereunder shall be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service; addressed as follows or to such other place as each party hereto may designate by subsequent written notice to the other party:

Court: Superior Court of California
County of Merced
Amanda Toste, Interim Court Executive Officer
2260 N Street
Merced, CA 95340

DA: Merced County District Attorney's Office
Kimberly Helms-Lewis
550 West Main Street
Merced, CA 95340

CA: Merced City Attorney's Office
Phaedra Norton
678 West 18th Street
Merced, CA 95340

PD: Merced County Public Defender's Office
Vincent Andrade
1944 M Street
Merced, CA 95340

Conflict: Ciummo and Associates
Doug Foster, Chief Defense Attorney
139 west El Portal Drive, Ste. D
Merced, CA 95348

County Merced County CEO Office
John Ceccoli
2222 M Street
Merced, CA 95340

- 7.8 Waiver. Any waiver by any party hereto of a breach of any of the terms of this Memorandum shall not be construed as a waiver of any successive breach of the same or other term of this Memorandum.
- 7.9 Binding Effect. This Memorandum shall be binding upon the successors and assigns of the Court, the City, and the County subject to the non-assignment provision previously stated.
- 7.10 Counsel and Drafting. Each party hereto, by its due execution of this Memorandum, represents to the other parties that it has reviewed each term of this Memorandum with its counsel, or has had the opportunity for such review with its counsel. No party shall deny the validity of this Memorandum on the ground that such party did not have the advice of counsel. Each party hereto has had the opportunity to participate in drafting and preparation of this Memorandum. The provisions and terms of this Memorandum shall be interpreted in accordance with the plain meaning thereof.
- 7.11 Counterparts. This Memorandum may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.
- 7.12 Severability. In the event any provision of this Memorandum is held by a court of competent jurisdiction to be invalid, void, or

unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way, and the parties wish for this Memorandum to be reformed by the Court to the greatest extent possible to reflect their original intent.

7.13 Governing Law. This Memorandum shall be construed under the laws of the State of California, without regard to its conflict of law provisions.

7.14 Liability to Third Parties; Indemnification.

A. The parties waive pursuant to Government Code Section 895.4 the pro rata (per capita) risk allocation provided by Government Code Section 895.6.

B. Each party shall defend, indemnify, and hold the other party harmless, to the maximum extent permitted by law, from claims, damages, expenses, or liabilities, including attorney fees and costs, that arise out of its duties or obligations, or that of its officers, judicial officers, judges, subordinate judicial officers, board members, employees, contractors, representatives, or agents under this Memorandum, or its negligence or willful misconduct.

7.15 Compliance with Laws. Notwithstanding any provision to the contrary contained in this Memorandum, the parties agree that no provision of this Memorandum shall require any party to violate any applicable statute, rule of law, or regulation.

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IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed on the date first above written.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MERCED

BY: _____
(Signature)

(Typed Name)

Title

MERCED COUNTY DISTRICT
ATTORNEY'S OFFICE

BY: _____
(Signature)

(Typed Name)

Title

CITY OF MERCED AND THE
MERCED CITY ATTORNEY'S
OFFICE

APPROVED AS TO FORM



BY: _____
(Signature)

(Typed Name)

Title

MERCED COUNTY PUBLIC
DEFENDER'S OFFICE

BY: _____
(Signature)

(Typed Name)

Title

MERCED COUNTY OFFICE OF
CIUMMO AND ASSOCIATES

BY: _____
(Signature)

(Typed Name)

Title

MERCED COUNTY

BY: _____
(Signature)

(Typed Name)

Title