



Office of the City Manager

CONSENT CALENDAR  
July 28, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police

Subject: MOU with California Department of Justice to accept \$312,284 grant for submission and testing of Sexual Assault Evidence

RECOMMENDATION

Adopt a Resolution approving the Memorandum of Understanding (MOU) entitled “Memorandum of Understanding with the California Department of Justice.” The Berkeley Police Department has been selected to receive a \$312,284 grant for testing untested Sexual Assault Evidence. Approving this MOU will allow reimbursement of testing expenses and related costs covered by the grant. Authorize the Chief of Police to enter into this agreement and any amendments.

FISCAL IMPACT OF RECOMMENDATION

The Department of Justice will fund up to \$312,284 dollars of evidence processing and DNA testing of untested evidence in Sexual Assault cases. The grant funds will be deposited into and expensed from the One-Time Grant: No Capital Expenditures Fund to ensure proper tracking and reconciliation of authorized grant activity within the Police Department Budget. The appropriation of the grant funds will be included in the First Amendment to the FY 2021 Annual Appropriations Ordinance that will be submitted to Council in November.

CURRENT SITUATION AND ITS EFFECTS

The Berkeley Police Department applied for and was selected to receive Grant funding for testing of sexual assault evidence. The Berkeley Police Department Sexual Assault Unit does not have a Sexual Assault Kit backlog. However, DNA technology has advanced significantly in recent years including better DNA recovery from clothing and objects using “touch DNA”. The Special Victims Unit applied for grant funding in order to reexamine unsolved cold cases for opportunities to test more evidence using more modern DNA recovery techniques.

BACKGROUND

In 2016, the Special Victims Unit added staffing to investigate unsolved sexual assault cases. The Berkeley Police Department does not have a backlog of Sexual Assault Kits. The California DOJ has made funding available for increased testing of untested evidence of any kind in Sexual Assault cases. The Special Victims Unit applied for and was selected to receive funding from this Grant to fund additional testing of sexual assault evidence in cold cases.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Approval of this Memorandum of Understanding with the California Department of Justice is required for disbursement of funding awarded by this Grant. It will allow for additional testing which may lead to identification of persons responsible for sexual assault related crimes.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-5900

ATTACHMENTS

1. Memorandum of Understanding with the California Department of Justice
2. Resolution

## *Berkeley Police Department*

Contact Person: Sergeant Jesse Grant  
2100 Martin Luther King Jr. Way, Berkeley, CA 94704  
(510) 981-5717  
jgrant@cityofberkeley.info

## **MEMORANDUM OF UNDERSTANDING**

with the

California Department of Justice

Expires June 30, 2022

**I PURPOSE**

This Memorandum of Understanding (“MOU”) is entered into by the Department of Justice (“DOJ”) and the **BERKELEY POLICE DEPARTMENT** (hereinafter, “Grantee”), to provide grant funds to Grantee for expenditure. The Grantee will expend funds for the purposes identified in the approved Grant Application submitted by Grantee in response to the DOJ’s Request for Applications for activities for California’s local law enforcement agencies to submit and test untested sexual assault evidence.

This MOU shall become effective upon execution by all parties and shall expire on June 30, 2022.

The DOJ grants to Grantee **\$312,284**, (the “Grant Amount”), for expenditure in accordance with this MOU, including the Scope of Work included in the approved Grant Application.

The Request for Applications and Grant Application are incorporated by reference into this MOU.

**II COMMUNICATION**

All reports, notices, requests, and/or correspondence pertaining to this MOU shall be forwarded to the DOJ at:

California Department of Justice  
Division of Law Enforcement  
Attn: Nicole Behler  
1300 I Street, Suite 1150  
Sacramento, CA 95814  
[SAESubmission@doj.ca.gov](mailto:SAESubmission@doj.ca.gov)

**III BUDGET**

Grantee shall expend the Grant Amount in accordance with the approved Budget as follows:

<b>EXPENDITURE CATEGORY</b>	<b>TOTAL AUTHORIZED AMOUNT</b>
Personal Services (personnel salaries, overtime)	\$39,874
Operating Expenditures (outsourcing)	\$272,410
<b>TOTAL</b>	<b>\$312,284</b>

Grantee shall submit any request for a change to an Approved Budget item in writing or via e-mail to the DOJ, and any changes to the Approved Budget must be pre-approved in writing by the DOJ at least thirty (30) days in advance of any change to any Approved Budget item.

#### IV COST REIMBURSEMENT/INVOICING

DOJ shall reimburse Grantee, in arrears, for Grantee's actual expenditures incurred while performing the required workload. Grantee shall submit to DOJ **two (2)** Grantee Invoices for each month (one original and one copy) for all expenditures incurred during such month, including completed travel. Grantee shall ensure that it has accepted and approved all vendor deliverables, all equipment has been delivered, all travel is complete, and all administrative activities have been performed. All invoices must be sent to the grant manager via U.S. Mail or overnight delivery.

A) **Receipts and Documentation:**

Grantee shall provide substantiation to DOJ pertaining to acceptance of hardware, software, services, and deliverables along with Grantee Invoices for payment. Invoices paid by the Grantee and submitted to the DOJ for reimbursement shall include the invoice number, invoice date, service period, agreement number, vendor name, vendor contact information, amounts, and the approved Budget Template, clearly identifying with which Expenditure the invoice associates.

Grantee shall provide copies of packing slips substantiating delivery of purchased equipment. Grantee Invoices and supporting documentation must be sent to the DOJ in hard copy format no later than the 15<sup>th</sup> calendar day following the month of the Expenditure. (For example, a purchase made on June 2<sup>nd</sup> would require that the related Grantee Invoice be received by the DOJ no later than July 15<sup>th</sup>).

B) **Workload Justification:**

Each agency request for reimbursement shall be submitted in an invoice format and contain the following workload information associated with the reimbursement period:

- 1) For the reporting period, the total number of untested sexual assault cases submitted for testing, or the total number of cases tested if the agency (e.g., a crime lab) performed testing on evidence received from a submitting agency.

C) **Match Requirements:**

There is no match requirement for this grant.

Grantee Invoices must be delivered via U.S. Mail or overnight delivery and addressed to:

California Department of Justice  
Division of Law Enforcement  
Attn: Nicole Behler  
1300 I Street, Suite 1150  
Sacramento, CA 95814  
[SAESubmission@doj.ca.gov](mailto:SAESubmission@doj.ca.gov)

## **V BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this MOU does not appropriate sufficient funds for the purposes contemplated by this MOU, this MOU shall be of no further force and effect. In such event, the DOJ shall have no liability to pay any funds whatsoever to Grantee or to furnish any other consideration under this MOU, and Grantee shall not be obligated to perform any provisions of this MOU for which it would have been reimbursed.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this MOU, the DOJ shall have the option either to cancel this MOU with no liability occurring to the DOJ, or offer an amendment to the Grantee to reflect the reduced amount.

## **VI ADMINISTRATION AND AUDIT**

The DOJ is not liable for the Grantee's use of funds or any subsequent audit findings.

Grantee agrees that the DOJ and the California State Auditor, or their designated representatives shall have the right to review and copy any records and supporting documentation pertaining to the funds expended by Grantee and the Grantee's performance under this MOU. Grantee agrees to maintain all such records and reports for possible audit for a minimum of three (3) years after payment by DOJ of the final Grantee Invoice submitted by Grantee. Grantee agrees to allow access to such records during normal business hours and to allow interviews with officers and employees who might reasonably have information related to such records. Grantee agrees to include a similar right for DOJ and the California State Auditor to audit records and interview staff in any subcontract related to performance of the MOU.

Should Grantee fail to comply with this MOU, including by submitting for reimbursement expenditures for purposes not permitted under the MOU, DOJ may take one or more actions. Actions include but are not limited to requiring Grantee to return all or any portion of grant funds, and any other remedies available under law. In addition, the Grantee may be disqualified from applying for or receiving future grant funds.

This section shall survive expiration or termination of this MOU.

## **VII GRANTEE CONTACT INFORMATION**

Sergeant Jesse Grant  
Berkeley Police Department, Investigations Division, Special Victims Unit.  
2100 Martin Luther King Jr. Way, Berkeley, CA 94704  
(510) 981-5717  
jgrant@cityofberkeley.info

Lieutenant Dan Montgomery  
Berkeley Police Department, Investigations Division, Detective Bureau  
2100 Martin Luther King Jr. Way, Berkeley, CA 94704  
(510) 981-5733  
dmontgomery@cityofberkeley.info

Chuck Gunter, Administration, Fiscal Services Manager  
Berkeley Police Department  
2100 Martin Luther King Jr. Way, Berkeley, CA 94704  
(510) 981-5976  
cgunter@cityofberkeley.info

## VIII MISCELLANEOUS PROVISIONS

Amendment- No amendment or variation of the terms of this MOU is valid unless made in writing, and signed by the duly authorized representatives of the parties.

Assignment- This MOU is not assignable by Grantee in whole or in part.

Indemnification- To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the DOJ, its officers, agents and employees (collectively, the Indemnified Parties), against any and all losses, damages, claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under any statutory law or at common law or otherwise, arising out of or based upon or in any way relating to the performance of this MOU, except to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party. The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant this section shall survive the expiration or termination of this MOU.

Optional Termination- The DOJ may terminate this MOU and be relieved of any obligation to provide grant funds to Grantee should Grantee fail to perform the scope of work at the time and in the manner provided in this MOU.

## IX REPORTING REQUIREMENT

**BERKELEY POLICE DEPARTMENT** agrees to submit a quarterly report beginning September 1, 2020. The following information must be included in the report:

- a. For the reporting period, the total number of untested sexual assault cases submitted for testing, or the total number of cases tested if the agency (e.g., a crime lab) performed testing on evidence received from a submitting agency. The report shall

include the following information:

- 1.) Agency case number
- 2.) Date evidence was received by agency
- 3.) If the submitted evidence was a sexual assault kit, specify if it was included in the audit report the agency sent to DOJ per AB 3118 requirements
- 4.) Date evidence was submitted to a crime laboratory for processing
- 5.) Submitting agency and submitting agency case number, if applicable

**A final quarterly report of untested sexual assault cases must be submitted to the DOJ on or before June 30, 2022.**



**IX AUTHORIZATION**

The DOJ and Grantee, by their duly authorized officials, have executed this MOU on the respective dates indicated below. This MOU and any future amendments shall be forwarded to the Division of Law Enforcement, Office of the Chief, with all of its attachments, and will become effective upon completion of signature from all parties.

\_\_\_\_\_  
**ANDREW R. GREENWOOD**  
Berkeley Police Department, Chief of Police

\_\_\_\_\_  
Date

\_\_\_\_\_  
**NICOLE BEHLER, Grant Administrator**  
Bureau of Forensic Services  
California Department of Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
**BARRY MILLER, Director**  
Bureau of Forensic Services  
California Department of Justice

\_\_\_\_\_  
Date

\_\_\_\_\_  
**CHRIS RYAN, Chief**  
Division of Operations  
California Department of Justice

\_\_\_\_\_  
Date

RESOLUTION NO. ##,###-N.S.

**MEMORANDUM OF UNDERSTANDING:  
CALIFORNIA DEPARTMENT OF JUSTICE**

WHEREAS, The City of Berkeley Police Department applied for Grant funding to test additional sexual assault evidence; and

WHEREAS, The California Department of Justice approved the application and approved a grant award of \$312,284 for the testing of untested evidence in sexual assault cases; and

WHEREAS, The grant funds will be deposited into and expensed from the One-Time Grant: No Capital Expenditures Fund to ensure proper tracking and reconciliation of authorized grant activity within the Police Department Budget; and the appropriation of the grant funds will be included in the First Amendment to the FY 2021 Annual Appropriations Ordinance that will be submitted to Council in November; and

WHEREAS, acceptance of the grant funding requires entering into a Memorandum of Understanding regarding this allocation and procedures for disbursement or reimbursement of said award; and

WHEREAS, additional funding for testing untested evidence may lead to solving unsolved sexual assault cases by identifying persons who have committed sexual assault and hold them accountable for their crimes.

NOW THEREFORE, BE IT RESOLVED by the City Council of Berkeley that the Chief of Police is authorized to enter into and execute the Memorandum of Understanding "Memorandum of Understanding with the California Department of Justice" and any amendments thereto.