



P. DAVID SOARES
DISTRICT ATTORNEY

COUNTY OF ALBANY
OFFICE OF THE DISTRICT ATTORNEY
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DAVID M. ROSSI
CHIEF ASSISTANT DISTRICT ATTORNEY

CHERYL K. FOWLER
DEPUTY CHIEF ASSISTANT DISTRICT
ATTORNEY

June 8, 2021

Brandon Russell, Majority Counsel
Albany County Legislature
112 State Street, Rm. 700
Albany, N.Y. 12207

Arnis Zilgme, Minority Counsel
Albany County Legislature
112 State Street, Rm. 1360
Albany, N.Y. 12207

Dear Sirs:

I am requesting legislative action to further the mission of the Office of the Albany County District Attorney. The attached resolution seeks permission to:

- Apply and accept funding from DCJS for the Gun Involved Violence Elimination (GIVE) Program;
- Apply and accept funding from DCJS for extending the Aid to Prosecution Program for 2020-2021;
- Apply and accept funding from DCJS for the Aid to Prosecution Program for 2021-2022;
- Apply and accept funding from DCJS for the Crimes Against Revenue Program (CARP); and
- Apply and accept funding from DCJS for the Motor Vehicle Theft and Insurance Fraud Program.

Attached is the request for legislative action and supporting documents. If you have any questions, please feel free to contact me at 275-4706.

Thank you for your assistance.

Sincerely,

P. David Soares
Albany County District Attorney

**FOR COUNSEL USE
ONLY**

Date Received: _____
Received By : _____
Method: Hand: _____
Courier: _____
Mail : _____

REQUEST FOR LEGISLATIVE ACTION

DATE: June 8, 2021
DEPARTMENT: Office of the District Attorney
Contact Person: Heather Orth
Telephone: 275-4704
Dept. Representative Attending
Committee Meeting: District Attorney David Soares and/or Heather Orth

PURPOSE OF REQUEST:

Adopting of Local Law _____
Amendment of prior Legislation _____
Approval/Adoption of Plan/Procedure _____
Bond Approval _____
Budget Amendment (See Below) _____
Contract Authorization (See below) X _____
Environmental Impact _____
Home Rule Request _____
Property Conveyance _____
Other: (State briefly if not listed above) X Permission to submit an application for state funds

CONCERNING BUDGET AMENDMENTS

STATE THE FOLLOWING:

Increase Account/Line No. _____
Source of Funds: _____
Title Change: _____

CONCERNING CONTRACT AUTHORIZATION

STATE THE FOLLOWING: N/A

TYPE OF CONTRACT

Change Order/Contract Amendment _____
Purchase (Equipment/Supplies) _____
Lease (Equipment/Supplies) _____
Requirements _____
Professional Services _____
Education/Training _____
Grant _____
New _____
Renewal X _____
Settlement of a Claim _____
Release of Liability _____
Other: (State briefly) _____

CONCERNING CONTRACT AUTHORIZATION (Cont'd)

STATE THE FOLLOWING :N/A

Contract Terms/Conditions:

Party (Name/Address):

Division of Criminal Justice Services, Office of Program Development and
Funding, Alfred E. Smith Building, 80 S. Swan Street. Albany NY 12210

Amount/Raise Schedule/Fee: _____

Term:

January 1, 2021 – December 31, 2021

Scope of Services:

These funds will support the Crimes Against Revenue Program.

Contract Funding:

Anticipated in Current Budget: Yes Yes X No _____

Funding Source: State Funds

County Budget Accounts

Revenue: A31165.0.3335

Appropriation: A91165 12010; 89010; 89030; 89060

Bond (Res.No. & Date of Adoption) _____

CONCERNING ALL REQUESTS:

Mandated Program/Service: Yes _____ No X

If Mandated Cite: Authority _____

Anticipated in Current Adopted Budget: Yes X No _____

If yes indicate Revenue/Appropriation Account: A31165.0.3335

A91165 19954; 44046; 22050; 44039; 12010; 89010;

89030; 89060

Fiscal Impact - Funding: (Dollars or Percentages)

Federal _____

State \$299,710

County _____

Term/Length of Funding One Year

Other Reimbursement: _____

Previous Requests for Identical or Similar Action:

Resolution /Law Number 20-96

Date of Adoption: 3/9/20

Justification: (State briefly why legislative action is requested)

This resolution is requested to provide the authority to apply, accept and enter into the contract with the Department of Criminal Justice Services for the Crimes Against Revenue Program.

Back-up Material Submitted: Grant Award Letter, previous resolution.

Submitted By:

Heather Orth

Title:

Confidential Assistant to the District Attorney



Division of Criminal Justice Services

ANDREW M. CUOMO
Governor

MICHAEL C. GREEN
Executive Deputy Commissioner

JEFFREY P. BENDER
Deputy Commissioner

Grant Award Notice

Grantee/Contractor: Albany County District Attorney	Date: January 29, 2021
Program Name: Crimes Against Revenue Program (CARP)	Award Amount: \$299,710
District Attorney Name: David Soares, District Attorney	Term Dates: January 1, 2021 to December 31, 2021
Email: dsoares@albanycounty.com	Project ID No.: To Be Determined
	Contract No.: C445117

Additional Information:
The Crimes Against Revenue Program (CARP) is managed by the New York State Division of Criminal Justice Services (DCJS) in coordination with the Department of Taxation and Finance (DTF).

Please be advised that this is the second of two optional 1-year renewals to your 2018-19 CARP contract. The award amount listed above is contingent on the availability of appropriations, which may be reduced during the contract period pursuant to language included in the FY21 enacted state budget.

DCJS Office of Program Development and Funding (OPDF) Program Representative, Katelyn Mallick will contact your office to assist in the development of the grant contract. Please see the CARP Contract Instruction Sheet attached for additional contract information and note that items are required within 30 days of receiving this letter. In the meantime, should you have any questions, please contact Katelyn at:

Katelyn Mallick
Public Safety Grant Representative
NYS Division of Criminal Justice Services
Office of Program Development and Funding
(518) 457-3776 or Katelyn.mallick@dcjs.ny.gov

Congratulations on your award. DCJS, in coordination with DTF, looks forward to working with you on this important project.

Attachment (1)



Division of Criminal Justice Services

CRIMES AGAINST REVENUE CERTIFICATION

By signing the certification at the bottom of this document, the grantee agrees that CARP funds will be used to supplement¹, and not supplant, existing funds and services, and that all personnel supported by this contract will work on CARP activities for the percentage of time that is commensurate with the portion of their salary that is paid by this grant.

Please answer the following questions:

- ✓ How many positions (including full- and part-time positions and consultants) will be supported under this grant (total)? _____
- ✓ How many of these positions were supported under your most recent CARP contract? _____
- ✓ How many of these positions will be used:
 - a) to hire new, additional people (including to fill existing vacancies that are no longer funded in your agency's budget) _____
 - b) to rehire people who have already been laid off (by January 1, 2021) as a result of state, local, or federal budget reductions _____
 - c) to rehire people who are (by January 1, 2021) currently scheduled to be laid off on a specific future date as a result of state, local, or federal budget reductions _____
 - d) to continue the same staff currently funded under existing or most recent CARP contract _____

"I certify that all funds received under this contract will not be used to supplant state, local or federal funds, but will be used to increase the amounts of such funds that would, in the absence of state funds, be made available for CARP activities. Furthermore, daily time records will be maintained for each individual paid under this contract, documenting the percentage of their time devoted to CARP activities."

Signature

1 What is Supplanting?

General Definition. For a unit of local government to reduce local or federal funds for an activity specifically because state funds are available (or expected to be available) to fund that same activity. State funds must be used to **supplement** existing state, local or federal funds for program activities and may not replace state, local or federal funds that have been appropriated or allocated for the same purpose. In those instances, where a question of supplanting arises, the grantee will be required to substantiate that the reduction in non-state resources occurred for reasons other than the receipt or expected receipt of state funds.

As a practical matter, the non-supplanting requirement means that **all** positions supported under this grant **that were not paid for under the previous CARP contract** must either be **new hires** (on or after the official contract start date); **rehires of people who have already been laid off** prior to the effective date of this contract; or **rehires of people who are (at the start date of the contract) currently scheduled to be laid off on a future date** as a result of state, local, or federal budget cuts.



Division of Criminal Justice Services

ATTACHMENT 1

Memorandum of Understanding Between the New York State Department of Taxation and Finance and the County District Attorney's Office

This agreement ("MOU") by and between the **New York State Department of Taxation and Finance ("DTF")** and the _____ **County District Attorney's Office** (the "DA's Office") is to be effective as of the date signed by both parties.

WHEREAS, the State of New York ("State") and DTF share with the District Attorney's Office a strong interest in robust enforcement of the tax laws, effective deterrence so as to increase voluntary compliance with those laws, and the recovery of revenues properly due the State and other units of government; and

WHEREAS, the State has, through its Division of Criminal Justice Services ("DCJS"), offered a contract and grant award to the DA's Office (the "grant") under the Crimes Against Revenue Program ("CARP") for the period from on or about January 1, 2021 to December 31, 2021; and

WHEREAS, the DA's Office has sought to accept that offer and has applied for the grant through the DCJS Grants Management System, and it is a condition of the grant, as set forth in the contract, that the DA's Office enter into this MOU with DTF;

Now, **THEREFORE**, DTF and the DA's Office hereby agree as follows:

I. Purpose and principles

This agreement is intended to set forth roles and responsibilities, as between the parties, with respect to the investigation and prosecution of tax crimes and other fraud that can adversely affect government revenues. The prosecutorial function is the responsibility of the DA's Office, as dictated by the Constitution and laws of this State. The parties to this MOU recognize and acknowledge that the District Attorney's responsibility and discretion to prosecute crimes in _____ County, as derived from the Constitution and laws of this State, remain unaffected by any provision in this MOU, and that DTF cannot require the DA's Office to exercise its prosecutorial discretion in any particular way. However, the DA's Office, by accepting the grant and entering into this MOU, agrees to abide by the terms thereof, and acknowledges and agrees that non-compliance with those terms may result in diminution or denial of grant funds to be provided.

II. Definitions of terms

- A. "Referral" shall mean a request by the Commissioner of DTF, or by an authorized designee on behalf of the Commissioner, that in a particular matter, the DA's Office institute an action or proceeding relating to allegations of violations of the tax laws or tax obligations.
- B. "Prosecutor's Request" shall mean a written request by a prosecutor in the DA's Office that DTF make a referral to the DA's Office in a particular matter.
- C. "Tax crime" shall mean any crime defined in the Tax Law, and also any crime arising from violation of obligations under the Tax Law.

III. Liaison

Each party will designate a member of its legal staff to serve as the primary liaison with the other party, and will notify the other party as to any changes in its designated liaison.

IV. Prosecutors' requests

- A. The DA's Office shall direct each Prosecutor's Request to the DTF liaison, with a copy to the relevant district office of the Criminal Investigations Division of DTF.
- B. A Prosecutor's Request should include reasons to believe that it would be appropriate for the DA's Office to investigate or prosecute one or more tax crimes, and a representation that such information will in fact be used to investigate at least one potential tax crime for possible prosecution.
- C. Before issuing a grand jury subpoena to DTF, the DA's Office will, unless impracticable, first try to obtain the desired records by Prosecutor's Request, and will allow a reasonable amount of time for DTF to act upon that Prosecutor's Request.
- D. DTF shall make good faith efforts – upon the receipt of sufficient information to reach a determination – to answer a Prosecutor's Request (by making a referral or a denial of such request) with reasonable promptness.

V. Judicial process

- A. When the DA's Office serves a grand jury subpoena for tax information from DTF, the DA's Office shall include therewith a certification that the subpoena may lawfully require production of the information sought. For example, a subpoena seeking a personal income tax return or portion thereof should include or be accompanied by a certification that in accordance with Tax Law §697(e)(2), the grand jury investigation in question is one under the provisions of article 22 of the Tax Law, and the materials sought are directly involved in and pertinent to such investigation.
- B. Grand jury subpoenas for tax information from DTF should have return dates far enough in the future so that production of responsive materials will not be unduly burdensome. Unless extraordinary circumstances require otherwise, return dates should allow at least two weeks for production in a routine case and correspondingly longer if the matter is more extensive or complicated.

- C. When the DA's Office intends that a DTF employee actually appear in person to testify in response to a grand jury subpoena, the DA's Office, when serving the subpoena, shall provide separate written notice of that requirement.

VI. Referrals

- A. When DTF intends to refer a matter for investigation or prosecution by the DA's Office, then when feasible and appropriate, DTF will, before making an arrest in that matter:
 - 1. Make a referral of that matter to the DA's Office at least two weeks prior to arrest; provide relevant tax returns to the DA's Office; and make DTF staff available to meet with the DA's Office to provide further information and assistance. In determining the appropriateness and timing of prior referral, DTF may consider the simplicity of a matter, any urgency, the preferences of the DA's Office, and other factors. In more complex matters, DTF will seek to provide referrals further in advance. In some matters, such as "sweeps" of vendors selling goods subject to sales tax who do not have a certificate of authority, and routine excise tax enforcement (including arrests resulting from retail inspections, vehicle stops and street encounters), there is no presumption that there will be a referral prior to arrest.
 - 2. Consult with the DA's Office about how the arrests will be made, including which agency, or agencies jointly, should be responsible for making them. The parties recognize that circumstances can vary from case to case, and the availability of resources can vary from time to time, so there is no general presumption that arrests should be made by any one agency to the exclusion of others. In cases in which DTF ultimately determines that it will make an arrest, it will try to provide advance notice of such arrest to the DA's Office to the extent feasible and appropriate under the circumstances of the case.
 - 3. In good faith consider any general preferences that have been expressed by the DA's office as to procedures for referrals and arrests, and any concerns expressed by the DA's Office in the particular matter, including concerns as to factual or legal issues and concerns as to time limits under the Criminal Procedure Law.
- B. The DA's Office will timely communicate any decision to decline prosecution of any case referred by DTF, and upon request by DTF will provide the rationale of such decision so that DTF may explore alternative methods of enforcement. The DA's Office shall typically inform DTF within three months after a referral, or earlier, as to whether or not it intends to proceed with the referral. Proceeding with the referral means further investigating the facts by if necessary and prosecuting the case if appropriate.

VII. Assistance

- A. The DA's Office may, either before or after charges are filed in a particular tax matter, make requests for DTF assistance in that matter (including the designation of a DTF lawyer as a Special Assistant District Attorney) to the DTF liaison or to the relevant district office of the Criminal Investigations Division of DTF.

- B. When assistance is requested, DTF will try to make a prompt response as to whether it will provide the requested assistance.

VIII. Dispositions

In tax cases, DTF represents the victim of the crime and should receive the same consideration as other crime victims. Prior to resolving a tax case, the DA's Office shall confer with DTF and give DTF notice of any proposed resolution and an opportunity to express its view. This will help ensure that appropriate restitution is ordered, collected, and directed to the victim, and that there is appropriate consideration of global settlement (that is, of both the defendant's criminal and civil tax liabilities) and whether there should be additional settlement terms to insure future tax compliance. In addition, DTF shall be considered a "victim" as that term is defined in CPL section 380.50(2) and to the extent the terms of criminal dispositions involve the payment of restitution and monetary penalties, the DA's Office shall seek to maximize the recovery to the victim. The DA's Office recognizes that only DTF can settle the defendant's civil tax liability, and any disposition that purports to resolve the defendant's total tax liability requires the consent of DTF.

Unless there is a global settlement, the DA's Office will place language on the record and in any plea agreement specifically stating that the plea and sentence does not resolve the defendant's total tax liability and DTF may pursue other remedies including, in the case of Sales Tax matters, the suspension and/or revocation any Certificate of Authority.

In tax cases, the District Attorney's offices will endeavor to obtain a plea to a Tax Crime.

IX. Coordination

- A. Regular and open communication between the DA's Office and DTF is an essential component of this agreement. Signatories must honor reasonable requests to confer.
- B. To maximize a collaborative working relationship between DTF and the DA's Office, the parties will meet monthly or as otherwise agreed to discuss matters of mutual interest including cases referred by DTF to the DA's Office.
- C. Provide quarterly revenue collection documentation on eligible non-tax cases to DTF.

X. CARP

- A. The DA's Office will comply with all the conditions of the grant, including the work plan.
- B. The District Attorneys will assist DTF to develop and implement an effective enforcement strategy in order to detect, prosecute and deter revenue crimes.
- C. The District Attorneys will undertake appropriate investigations of allegations at the request of DTF.
- D. The District Attorneys will maintain effective coordination and cooperation with DTF in the investigations and prosecution of revenue crimes.

- E. The DA's Office will regularly communicate to DTF as to its efforts to investigate and prosecute tax crimes, and provide information as requested, to help DTF assess compliance with this MOU and the performance of the DA's Office under the grant.
- F. Performance under the grant will be measured by an assessment of a variety of factors reflecting efforts to investigate and prosecute revenue crimes during the grant period. The recovery of monetary restitution, while an important consideration, is only one factor to be considered.

XI. Public information

- A. The parties recognize the importance of deterring tax crimes, and other frauds against the government, through successful, appropriate and well-publicized prosecutions.
- B. Either party may issue news releases in any matter. The parties recognize that it is ordinarily the best practice for the parties to confer and cooperate as to whether releases should be issued, and by whom, or whether to join in a single release.

XII. Amendment

This MOU may be amended only in writing and by the agreement of both parties hereto. This MOU supersedes any prior MOU between the parties on the same subjects. The MOU shall continue in effect, as amended from time to time, until and unless a party hereto gives the other party written notice that the MOU shall be terminated on a specified date at least thirty days after the date of such notice.

District Attorney

County

Dated: _____

Michael Schmidt
Executive Deputy Commissioner
Department of Taxation and Finance

RESOLUTION NO. 96

AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION AND AN AGREEMENT WITH THE NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES REGARDING THE CRIMES AGAINST REVENUE PROGRAM

Introduced: 3/9/20

By Law Committee:

WHEREAS, The Albany County District Attorney has requested authorization to submit a grant application to and enter into an agreement with the New York State Division of Criminal Justice Services to accept Crimes Against Revenue program funding in the amount of \$299,710 for the term commencing January 1, 2020 and ending December 31, 2020, and

WHEREAS, The District Attorney has indicated that the funding will be used to facilitate the investigation and prosecution of those who commit crimes against State revenues, now, therefore be it

RESOLVED, By the Albany County Legislature that the County Executive is authorized to submit a grant application to and enter into an agreement with the New York State Division of Criminal Justice Services to accept Crimes Against Revenue program funding in the amount of \$299,710 for the term commencing January 1, 2020 and ending December 31, 2020, and, be it further

RESOLVED, That the County Attorney is authorized to approve said grant application and agreement as to form and content, and, be it further

RESOLVED, That the Clerk of the County Legislature is directed to forward certified copies of this resolution to the appropriate County Officials.

Adopted by unanimous vote - 3/9/20

State of New York
County of Albany

This is to certify that I, the undersigned, Clerk of the Albany County Legislature, have compared the foregoing copy of the resolution and/or local law with the original resolution and/or local law now on file in the office, and which was passed by the Legislature of said County on the 9th day of March, 2020, a majority of all members elected to the Legislature voting in favor thereof, and that the same is a correct and true transcript of such original resolution and/or local law and the whole thereof.



IN WITNESS THEREOF, I have hereunto set my hand and the official seal of the County Legislature this 11th day of March, 2020.



Clerk, Albany County Legislature