

ORDINANCE NO. _____

BILL NO. 156 (2022)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE
DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAII,
FOR THE CAREER CRIMINAL PROSECUTION PROGRAM GRANT 23-CCP-01

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The Department of the Attorney General, State of Hawaii ("Agency"), has awarded a Career Criminal Prosecution Program grant, number 23-CCP-01, to the Department of the Prosecuting Attorney, County of Maui, as reflected in a proposed intergovernmental grant agreement (the "Agreement") that is attached hereto and incorporated herein by reference as Exhibit "1," in the amount of ONE HUNDRED FORTY-FOUR THOUSAND SEVEN HUNDRED THIRTY-SIX AND 00/100 DOLLARS (\$144,736.00), which was provided in an amendment to Appendix A, Part I of the Fiscal Year 2023 Budget for the Department of the Prosecuting Attorney. The funds will be used to cover the salary and fringe benefits for one deputy prosecuting attorney for the Career Criminal Prosecution Program.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, reading "Daniel J. Kunkel", written over a horizontal line.

DANIEL J. KUNKEL
Deputy Corporation Counsel
County of Maui
LF 2022-1534

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee", written over a horizontal line.

ALICE L. LEE

EXHIBIT "1"

AGREEMENT

by and between the

DEPARTMENT OF THE ATTORNEY GENERAL

and the

COUNTY OF MAUI

Relating to Project No. 23-CCP-01

This Agreement ("Agreement") is effective as of July 1, 2022 ("Effective Date"), by and between the Department of the Attorney General, State of Hawaii ("Agency") and the County of Maui, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Hawaii 96793 ("Grantee"), for the benefit of the Department of the Prosecuting Attorney, which is identified as the applicant in Part I of Exhibit "A" attached hereto (collectively, "the Parties").

RECITALS

WHEREAS, Chapter 845, Hawaii Revised Statutes, establishes a career criminal prosecution program and authorizes Agency to administer the program, develop a plan of financial and technical assistance for prosecuting attorneys' offices, direct the program, and allocate and award funds to counties in which career criminal prosecution units are established in substantial compliance with the policies and criteria established by Agency;

WHEREAS, Agency has developed such a program entitled the "Hawaii Career Criminal Prosecution Program" (HCCPP);

WHEREAS, by Act 248 (Session Laws of Hawaii 2022), the Hawaii State Legislature has provided to Agency an appropriation of \$1,233,922 for the HCCPP for Fiscal Year 2023;

WHEREAS, Grantee is qualified to receive funds available to Agency under HCCPP and has submitted an application to Agency for receipt of the same as a subgrantee, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Agency has reviewed Grantee's application for funds, and is satisfied that Grantee has demonstrated that it is ready, willing and able to perform the services described herein, and that Grantee is capable of using the requested state funds appropriately.

EXHIBIT "1"

AGREEMENT

NOW THEREFORE, the Parties, for and in consideration of the covenants, conditions, agreements, and stipulations set forth herein, the receipt of which is hereby acknowledged, agree as follows:

1. SCOPE OF SERVICES

Grantee shall, in a timely and satisfactory manner, as determined by Agency, and in accordance with the terms and conditions of this Agreement, the provisions of Chapter 845, Hawaii Revised Statutes, and the Policies and Criteria of the Hawaii Career Criminal Prosecution Program (hereinafter, "Policies and Criteria"), attached hereto as Exhibit "B" and incorporated by reference herein, furnish all labor, materials, and equipment necessary to satisfactorily perform the services (hereinafter, "Scope of Services") described in Parts II and III of Exhibit "A," attached hereto and incorporated by reference herein.

2. PROJECT PERIOD

Grantee shall perform the Scope of Services within the project period ("Project Period") specified in Part I of Exhibit "A."

3. TERM OF AGREEMENT

The term ("Term") of this Agreement shall commence on the Effective Date and shall terminate on the date Agency accepts the final financial reports (Request for Funds and Cash Balance Report ("RFF") and Project Expenditures and Obligations Report ("PEO")) from Grantee under this Agreement ("Termination Date"), unless sooner terminated as provided herein or as otherwise agreed to in writing by the Parties.

4. PERFORMANCE REQUIREMENTS

(a) Grantee shall comply with the performance and reporting requirements set forth in the Policies and Criteria.

(b) Upon request of the Agency, representatives of the Grantee shall meet with representatives of the Agency to discuss the services performed hereunder.

(c) Grantee shall maintain accounting procedures and practices in accordance with generally accepted governmental accounting principles and shall maintain books, records, documents and other evidence which sufficiently and properly reflect all Grantee's performance under this Agreement. The books, records, and documents shall be subject at all reasonable times to inspection, review, or audit by the Agency, or by any duly authorized agent or representative of the Agency.

(d) Grantee shall retain for a minimum period of three years and permit the Agency, or any duly authorized agent or representative of the Agency, to inspect and have access to any

documents, papers, books, records, and other evidence which are pertinent to this Agreement and which are necessary to enable the Agency, or any duly authorized agent or representative of the Agency, to conduct surveys, audits, and examinations of the Grantee's performance under this Agreement.

(e) No funds provided under this Agreement shall be used to pay for any construction costs without the prior written approval of Agency.

(f) All nonexpendable personal property purchased with grant funds shall be used solely for HCCPP purposes, unless otherwise approved by Agency.

(g) In the event that Grantee obtains any of the goods or services described in the budget, which is part of the Application for Grant, at no cost, or at a reduced cost, or achieves other cost savings during the term of this Agreement, Grantee shall report such savings to Agency and expend such savings solely for HCCPP purposes, in a manner approved in writing by Agency.

(h) Grantee shall submit financial reports to Agency:

(i) A monthly RFF for costs it incurs in performing the Scope of Services under this Agreement within fifteen (15) calendar days after the end of each calendar month. Grantee shall submit to Agency its final RFF drawdown within thirty (30) calendar days after the end of the Project Period; and

Grantee shall submit to Agency its final RFF within sixty (60) calendar days after the end of the Project Period.

(ii) A quarterly PEO within fifteen (15) calendar days after the end of each calendar quarter as follows:

(A) For the January 1st through March 31st calendar quarter, the PEO is due April 15th;

(B) For the April 1st through June 30th calendar quarter, the PEO is due July 15th;

(C) For the July 1st through September 30th calendar quarter, the PEO is due October 15th; and

(D) For the October 1st through December 31st calendar quarter, the PEO is due January 15th.

Grantee shall submit to Agency its final PEO within sixty (60) calendar days after the end of the Project Period.

Grantee expressly acknowledges that non-adherence to the above deadlines may result in the withholding of funds. Grantee shall continue to perform the Scope of Services during the period that payment is being withheld.

(i) If Agency determines that a RFF or PEO requires clarification and/or revision, Agency will notify Grantee and Grantee shall respond with the requested clarification and/or revised RFF or PEO within the time specified by the Agency. Grantee expressly acknowledges and agrees that Agency may withhold payment unless and until such time Agency determines that Grantee has adequately responded to Agency's request for clarification and/or revision.

(j) If, at any time after payment is issued to Grantee under this Agreement, Agency determines that certain costs paid by Agency to Grantee were inappropriate or unallowable, Agency may either require that Grantee return an equivalent amount of monies to Agency or withhold an equivalent amount from any payments due and owing to Grantee.

(k) If, for any reason, Grantee is in possession of any funds provided to Grantee under this Agreement which were not encumbered by Grantee during the Project Period, all such funds shall be returned to Agency within ten (10) calendar days after the end of the Project Period.

(l) If, for any reason, Grantee is in possession of any funds provided to Grantee under this Agreement which Grantee encumbered during the Project Period, but which Grantee did not disburse within sixty (60) days after the end of the Project Period, all such funds shall be returned to Agency within ten (10) calendar days.

(m) If, at any time during the Term, Agency determines that Grantee is not complying with the conditions of this Agreement or satisfactorily fulfilling its obligations under this Agreement, Agency may withhold payments due and owing to Grantee until such time Agency reasonably determines that payment can be issued. Grantee shall continue to perform the Scope of Services during the period that payment is being withheld.

(n) If at any time during the term of this Agreement, Agency discovers that the Grantee has expended funds received under this Agreement for purposes or services that are not allowed under this Agreement, Agency shall request that Grantee use other funds for said purposes or services. In the event that Grantee refuses to comply with said request, Agency may deduct an amount equivalent to the unallowable expenses from the next payable installment or may withhold payment of the amount of moneys equivalent to the questioned expenditure until later resolution of the discrepancy by audit or other means, or, if payment of the last installment has already been made, require that an equivalent amount of moneys be refunded to Agency.

5. COMPENSATION

Subject to availability of funds, Grantee shall be reimbursed for all actual, allowable, allocable, and reasonable costs it incurs in performing the Scope of Services under this Agreement in an amount not-to-exceed one hundred forty-four thousand, seven hundred thirty-six and 00/100 dollars (\$144,736.00) (hereinafter, "NTE Amount"). Grantee acknowledges and agrees that it will not be reimbursed for any costs it incurs in excess of the NTE Amount in performing the Scope of Services under this Agreement.

It is understood by Grantee that the funds appropriated to Agency for purposes of this Agreement are subject to the allotment system contained in Chapter 37, Hawaii Revised Statutes,

and consequently may be reduced or restricted by the State Director of Finance in the event of a shortfall in state revenues.

Payments shall be made in accordance with and subject to Chapter 40, Hawaii Revised Statutes, which specifies the accounting procedures and controls applicable to payments out of the treasury of the State of Hawaii.

Payments to the Grantee shall be made in accordance with and subject to the following provision: Upon request by Grantee in a form acceptable to Agency, payment shall be made in four installments per year. Grantee shall request twenty-five percent (25%) of available funds, each quarter, as scheduled by Agency.

6. CONFIDENTIAL MATERIAL

All parties agree to comply with all applicable federal, state, or county laws or rules governing confidentiality of material prepared or assembled under this Agreement.

7. COPYRIGHT AND PATENT

Agency shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by Grantee pursuant to this Agreement, and all such material shall be considered "works made for hire." No summary, report, map, chart, graph, table, study or other documents or discovery, invention, or development produced in whole or in part with funds made available under this Agreement shall be the subject of an application for copyright or patent by or on behalf of Grantee, its officers, agents, or its employees, or its subcontractors without prior written authorization from Agency. To the extent that any material, summary, report, map, chart, graph, table, study, or other documents, or discovery, invention, or development under this Agreement is not recognized as a "work made for hire" as a matter of law, Grantee hereby assigns to the Agency any and all copyrights in and to the material.

8. CONFLICT OF INTEREST

Grantee expressly represents that at the time this Agreement is executed, it presently has no interest, either direct or indirect, that would conflict or adversely affect, in any manner or degree, its ability to satisfactorily perform the Scope of Services under this Agreement. Grantee covenants that this representation will remain true throughout the Term, including any extensions thereof.

9. COOPERATION WITH DATA COLLECTION; ASSESSMENTS

Grantee expressly acknowledges and agrees that, if requested by Agency, Grantee shall cooperate with, participate in, and/or support any data collection efforts, assessments, or information requests involving or relating to Grantee's performance of the Scope of Services under this Agreement. Grantee's obligations under this section shall survive the expiration or termination of this Agreement.

10. SUBCONTRACTING; ASSIGNMENT

Grantee shall not subcontract or assign any portion of the Scope of Services under this Agreement without first obtaining the prior written approval of Agency. If Grantee obtains Agency's approval to enter into a subcontract, Grantee shall ensure that the subcontract is in writing signed by both parties, includes all required provisions, and that the term of the subcontract does not exceed the Project Period of this Agreement. Grantee shall also ensure that the subcontractor has complied with all applicable requirements and conditions before any funds are disbursed to the subcontractor.

11. INDEPENDENT CONTRACTOR

In the performance of the Scope of Services under this Agreement, Grantee shall be an independent contractor with the authority to control and direct the performance and details of the Scope of Services; however, Agency shall have a general right to inspect Grantee's work to determine whether, in Agency's opinion, Grantee is performing the Scope of Services in accordance with the terms and provisions of this Agreement. Grantee's employees and agents are not employees or agents of the Agency by reason of this Agreement, and Grantee's employees and agents shall not be entitled to claim or receive from Agency any vacation, sick leave, retirement, or other benefits directly afforded to employees of Agency. Grantee shall be responsible for the accuracy, completeness, and adequacy of Grantee's performance under this Agreement. Grantee shall be responsible for payment of any federal, state, and county fees which may become due and owing by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments and taxes and (iii) general excise taxes. Grantee shall also be responsible for obtaining any licenses, permits and certificates that may be required in order to perform the Scope of Services under this Agreement.

12. INDEMNIFICATION

To the extent permitted by law and as approved by the Maui County Council, the Grantee shall indemnify and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against any and all liability, loss, damage, cost, expense, including all attorneys' fees, claims, suits, and demands arising out of or in connection with the acts or omissions of the Grantee or the Grantee's employees, officers, agents, or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.

13. MODIFICATION OF CONTRACT

(a) Modification by Mutual Agreement. At any time during the Project Period of this Agreement, the Parties may make modifications within the general scope of this Agreement by a written amendment signed by both Parties.

(b) Unilateral Modification by Agency. At any time during the Project Period, but no later than 45 days prior to the end of the Project Period, the Administrator of the Crime Prevention and Justice Assistance Division ("CPJA Administrator"), as the authorized designee of the

Attorney General, may issue a unilateral written project grant modification notice which directs Grantee to make the following changes effective as of the date specified in the written notice, or if no date is specified, as of the date the written notice is approved (hereinafter, "Modification Notice"):

- (i) Changes in the Scope of Services within the scope of the Agreement;
- (ii) Changes in the Project Period that do not alter the scope of the Agreement;
or
- (iii) Changes in Project Director or Financial Officer.

All Modification Notices issued by the CPJA Administrator shall be incorporated in and made a part of the Agreement. If the Parties agree that a Modification Notice increases or decreases Grantee's cost of performance of the Scope of Services under this Agreement, an adjustment to the NTE Amount shall be made by written amendment to the Agreement. If Grantee believes that it is entitled to an adjustment of the NTE Amount as a result of a Modification Notice, Grantee shall file a written claim within fourteen (14) calendar days after receipt of the Modification Notice or prior to final payment under this Agreement, whichever is shorter; provided, however, that the CPJA Administrator may extend such period for filing. The requirement for filing a timely written claim for an adjustment of the NTE Amount cannot be waived and shall be a condition precedent to the assertion of a claim. Failure of the Parties to agree to an adjustment of the NTE Amount shall not excuse Grantee from proceeding with the Agreement as changed by the Modification Notice. The right of Grantee to dispute the NTE Amount shall not be waived by its performance, provided Grantee timely files a written claim.

14. TERMINATION FOR CAUSE; CONVENIENCE

(a) Termination for Cause. If Grantee breaches any of its promises or fails to satisfactorily perform or fulfill its obligations under this Agreement, Agency may notify Grantee in writing of Grantee's breach or nonperformance under this Agreement (hereinafter, "Notice of Default"). If the breach or nonperformance is not cured within ten (10) calendar days of the Notice of Default, or within some other time as may be specified by Agency, Agency may terminate Grantee's right to proceed with this Agreement or portion thereof by providing Grantee with a written notice of termination (hereinafter, "Notice of Termination for Cause"). The Notice of Termination for Cause shall be effective as of the date of such notice unless otherwise specified. The Grantee shall continue performance of the Agreement to the extent it is not terminated. Notwithstanding any other provisions to the contrary, Grantee shall not be relieved of liability to Agency for damages sustained by Agency because of Grantee's breach or nonperformance under this Agreement.

(b) Termination for Convenience. Agency may terminate this Agreement, in whole or in part, at any time when the interests of the Agency so require by giving written notice of such termination to Grantee (hereinafter, "Notice of Termination for Convenience"). The Notice of Termination for Convenience shall be effective as of the date of such notice unless otherwise specified. The Grantee shall continue performance of the Agreement to the extent it is not terminated.

(c) Grantee shall be entitled to be reimbursed for all allowable, allocable, and reasonable costs actually incurred up to and including the date of Grantee's receipt of the Notice of Termination for Cause or Notice of Termination for Convenience, whichever is applicable. Any costs incurred by Grantee after Grantee's receipt of such notice will be eligible for reimbursement only if they represent unavoidable or reasonable wind-down costs as determined by Agency in Agency's sole discretion.

(d) Notwithstanding the termination of this Agreement, and subject to any directions from Agency, Grantee shall take all timely, reasonable steps necessary to protect and preserve property in the possession of Grantee in which Agency has an interest.

(e) In the event of termination of this Agreement, all finished or unfinished documents, reports, summaries, lists, charts, graphs, maps, or other written material developed or prepared by Grantee under this Agreement shall, at the option of Agency, become Agency's property and, together with all information, data, reports, records, maps, and other materials (if any) provided to Grantee by Agency, shall be delivered and surrendered to Agency within such time specified by Agency.

15. NONDISCRIMINATION

Grantee will comply with the non-discrimination requirements: Title VI of the Civil Rights Act of 1964 (with respect to race, sex, religion, creed, national origin), Title VII of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 (handicap), as amended, Title IX of the Education Amendments of 1972 (race, sex, religion, creed, national origin), the Age Discrimination Act of 1975 (age), Executive Order 12138, 44 C.F.R. 29637 (affirmative action for women's business), the United States Department of Justice Non-Discrimination Regulations, 28 C.F.R., Part 42, Subparts C, D, E and G, the Americans with Disabilities Act of 1990 42 U.S.C. §§ 12101 et seq., and the Hawaii State Fair Employment Practices Act, Chapter 378, Hawaii Revised Statutes.

16. WAIVER

The failure of Agency to insist upon strict compliance with any term, provision, or condition of this Agreement shall not constitute a waiver or relinquishment of Agency's right to enforce the same in accordance with this Agreement. In the event Agency is determined to have waived a term, provision, or condition of this Agreement, it is expressly understood and agreed that such waiver shall not constitute a waiver or relinquishment of Agency's right to enforce the same as to any other or further violation.

17. DISPUTES

Any dispute arising under this Agreement which is not disposed of by mutual agreement of the Parties within fifteen (15) calendar days shall be decided by the Attorney General, or the Attorney General's duly designated representative, who shall reduce the decision to writing and mail or otherwise furnish a copy of the decision to Grantee. The decision of such person shall be final and conclusive. Pending final decision of such dispute, Grantee shall proceed diligently with

the performance of this Agreement unless otherwise directed by Agency.

18. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.

19. SEVERABILITY

Should any provision of this Agreement be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or unenforceable, such provision shall be deemed severable from this Agreement.

20. ENTIRE AGREEMENT

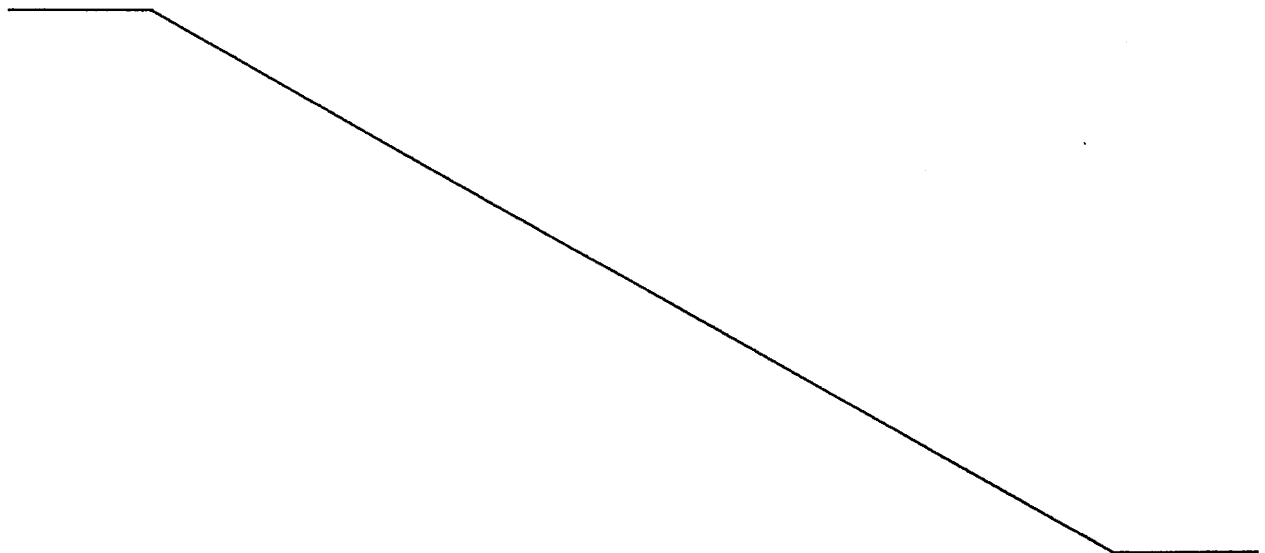
This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between Agency and Grantee relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect.

21. AUTHORITY TO ENTER INTO AGREEMENT

Each Party represents and warrants to the other that it is duly authorized to enter into this Agreement and to fully perform its obligations hereunder.

22. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same agreement.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

"Agency"

DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAII

APPROVED AS TO FORM:

Deputy Attorney General

By: Valerie M. Kato
Its: First Deputy Attorney General

Date: _____

"Grantee"

APPROVED AS TO FORM AND
LEGALITY:

DEPARTMENT OF THE PROSECUTING
ATTORNEY, COUNTY OF MAUI

Deputy Corporation Counsel

By: Michael P. Victorino
Its: Mayor
Date: _____

APPROVAL RECOMMENDED:

Budget Director

By: _____
Its: Director of Finance
Date: _____

APPROVAL RECOMMENDED:

Prosecuting Attorney

DEPARTMENT OF THE ATTORNEY GENERAL
CRIME PREVENTION AND JUSTICE ASSISTANCE DIVISION
235 South Beretania Street, Suite 401
Honolulu, Hawaii 96813

APPLICATION FOR
CAREER CRIMINAL PROSECUTION PROGRAM GRANT

PART I. TITLE PAGE

A. PROJECT TITLE County of Maui Career Criminal Prosecution Program

B. APPLICANT AGENCY County of Maui

Department of the Prosecuting Attorney

C. ADDRESS 150 S. High Street

Wailuku, Maui, Hawaii 96793

D. PROJECT PERIOD From: 07/01/2022 To: 06/30/2023

E. TOTAL PROJECT COST \$ 144,736

F. PROJECT DIRECTOR

Name: Andrew H. Martin

Title: Prosecuting Attorney

Telephone: (808) 270-7777

E-mail: andrew.martin@co.maui.hi.us

G. FINANCIAL OFFICER

Name: John Moses

Title: Account Clerk III

Telephone: (808) 270-7655

E-mail: john.moses@co.maui.hi.us

FOR CPJAD USE	
Date received: <u>7/15/22; Rev. 8/11/22</u>	Project Number: <u>23-CCP-01</u>

EXHIBIT A

AG/CPJAD CCP Application for Grant (06/2022) (356057_1)

**DEPARTMENT OF THE ATTORNEY GENERAL/CPJAD
APPLICATION FOR GRANT**

PART II. DESCRIPTION OF PROJECT

A. Services of Program for the Past Twelve Months

The primary function of the CCP Program is to identify, expeditiously prosecute, and convict persons who are career criminals. The maximum possible sentence is sought, thereby providing a measure of public safety in Maui County. The assigned DPA will handle CCP cases in order to ensure continuity in prosecution that will benefit the department, victims, witnesses, and lead to more effective prosecutions. Due to the high volume of cases and staff shortages, only one DPA will be assigned. This will necessitate that CCP are also assigned to other, experienced DPA's as well.

In FY 2022, there were 664 CCP cases referred and screened. Of those cases that were screened, 187 cases were charged and 359 cases were declined or rejected. During this same time period, 149 CCP defendants were convicted, 148 by plea and one (1) after trial. Of those defendants who were convicted, 132 were incarcerated as a part of their sentence, including 72 who were sentenced to indeterminate terms of imprisonment.

B. How the Requested Funds Will be Used to Carry Out the Purposes of Chapter 845, HRS

The Maui CCP program will have one assigned Deputy Prosecuting Attorney for FY 2023. Requested funds of \$144,736 for the FY 2023, will be used to pay a significant portion of salary and associated fringe benefits.

C. Program Organization & Management

Management of the Program will be monitored by Prosecuting Attorney Andrew H. Martin. The Financial Officer for the project will be Account Clerk III, John Moses. Daily supervision of the assigned DPA will be the responsibility of the Supervising Deputy for Circuit Court, Shelly Miyashiro.

D. Personnel & Brief Resumes

Senior Deputy Prosecuting Attorney Carson Tani will be assigned to the CCP Program. Mr. Tani's brief resume is attached.

E. Evaluation Methodology

Data will be collected through the Department's case management system. Data entry will be completed by the department law technicians, and will be analyzed utilizing pre-set reports that have already been established within the CMS.

Periodic meetings involving the Prosecuting Attorney, Account Clerk, Supervising Deputy and assigned DPA will provide regular overall assessment.

**DEPARTMENT OF THE ATTORNEY GENERAL/CPJAD
APPLICATION FOR GRANT**

PART III. BUDGET DETAIL AND EXPLANATION

BUDGET DETAIL:

COST ELEMENT					AMOUNT
A. Salaries and Wages					
Position Title	No. of Positions	Monthly rate	Subtotal		
DPA @ 7.7 months	1	\$11235	\$86833		
		\$	\$		
		\$	\$		
Position Title	No. of Positions	Standby Hourly Rate	No. of Hours	Subtotal	
		\$		\$	
		\$		\$	
Total Salaries and Wages					\$86833
B. Fringe Benefits					
Employee Benefits @66.56%					
Position Title	No. of Positions	Monthly Rate	Subtotal		
DPA @ 7.7 months	1	\$7478	\$57903		
		\$	\$		
Position Title	No. of Positions	Hourly Rate	No. of Hours	Subtotal	
		\$		\$	
		\$		\$	
Total Fringe Benefits					\$57903
C. Consultant Services/Contracts					
Scope of Consultant Service/Contract	Estimated Cost	Length of Consultant/Contract Service	Select as Appropriate		
	\$		<input type="checkbox"/> Consultant	<input type="checkbox"/> Contract	
	\$		<input type="checkbox"/> Consultant	<input type="checkbox"/> Contract	
Itemize for mainland/interisland airfare, ground transportation, rental car, per diem	Unit Cost	No. of Travelers as applicable	No. of Days	Subtotal	
	\$			\$	
	\$			\$	
Total Consultant Services/Contracts					\$

COST ELEMENT					AMOUNT
D. Transportation and Subsistence					
Itemize for mainland/interisland airfare, ground transportation, rental car, per diem	Unit Cost	No. of Travelers as applicable	No. of Days	Subtotal	
	\$			\$	
	\$			\$	
	\$			\$	
Total Transportation and Subsistence					\$
E. Supplies					
Itemize supplies and related costs such as printing, paper, binders, etc.	Quantity	Cost by Unit		Subtotal	
		\$		\$	
		\$		\$	
		\$		\$	
Total Supplies					\$
F. Equipment					
Specify equipment that will be purchased, leased, or rented.	Quantity	Cost by Unit		Subtotal	
		\$		\$	
		\$		\$	
		\$		\$	
Total Equipment					\$
G. Other Costs	Quantity	Cost by Unit		Subtotal	
		\$		\$	
		\$		\$	
		\$		\$	
Total Other Costs					\$
TOTAL PROJECT COST \$144736					

BUDGET EXPLANATION:

- A. Salaries and Wages
\$86,833 which amounts to salary for the assigned DPA for approximately 7.7 months will be funded under this grant. Total salary for the assigned DPA is \$134,823. The remaining shortfall will be covered by County of Maui funds.
- B. Fringe Benefits
The composite fringe benefit rate is at 66.56% for 1 (list positions). The rate consists of the following fringe benefit items and computed rates:

Employee Retirement, Social Security, and Medicare (31.65%); Unemployment (.10%); Workers Compensation (1.72%); Medical, Drug, Dental, Vision, Life (23.43%); Other Post Employment Benefits (9.66%). Total fringe to be paid by the grant is \$57,903 for approximately 7.7 months. Total fringe for the assigned DPA is \$89,738. The remaining shortfall will be covered by County of Maui funds.
- C. Consultant Services/Contracts
- D. Transportation and Subsistence
- E. Supplies
- F. Equipment
- G. Other Costs

DEPARTMENT OF THE ATTORNEY GENERAL

PART IV. ACCEPTANCE OF CONDITIONS

The undersigned agrees, on behalf of the applicant agency, that:

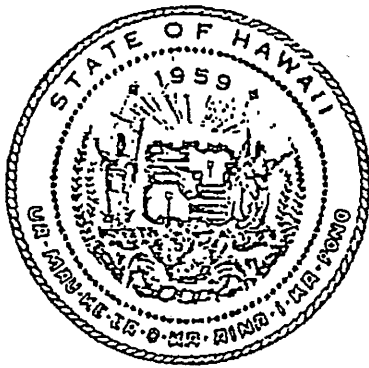
1. Any grant awarded pursuant to this application shall be subject to and will be administered in conformity with (i) Chapter 845 Hawaii Revised Statutes; (ii) Policies and Criteria of the Hawaii Career Criminal Prosecution Program; (iii) any special conditions contained in the grant award; (iv) general and fiscal regulations of the Department of the Attorney General.
2. Any grant received as a result of this application may be terminated, or fund payment may be discontinued, by the Department of the Attorney General when it finds a substantial failure to comply with the foregoing provisions, the application obligations or for non-availability of funds.

SUBMITTED BY:

SIGNATURE _____ DATE _____

NAME Andrew Martin TITLE Prosecuting Attorney

AGENCY: County of Maui, Department of the Prosecuting Attorney



Adopted by the Attorney General and the County Prosecuting Attorneys of the State of Hawaii, pursuant to chapter 845, Hawaii Revised Statutes, and revised October 1980 and October 1985.

EXHIBIT B

**POLICIES AND CRITERIA
HAWAII CAREER CRIMINAL PROSECUTION PROGRAM**

**I
ESTABLISHMENT OF
HAWAII CAREER CRIMINAL PROSECUTION PROGRAM (HCCPP)**

Chapter 845, Hawaii Revised Statutes, established a statewide career criminal prosecution program, “whose purpose shall be the investigation and prosecution of those persons identified as habitual or career criminals.” The Department of the Attorney General is responsible, by the statutory provision, for administering the program and developing a plan of financial and technical assistance for prosecuting attorneys’ offices. Further, the Attorney General is responsible for directing the program and may allocate and award funds to counties in which career criminal prosecution units are established, in substantial compliance with the Policies and Criteria established by the Attorney General.

**II
CONCEPT**

The purpose of these Policies and Criteria for the HCCPP is to establish guidelines from which each county prosecuting attorney can implement a career criminal prosecution unit. The HCCPP is conceptually based upon the establishment of a highly skilled prosecutorial unit within each county prosecuting attorney’s office. The HCCPP unit shall focus its efforts on investigating and prosecuting those persons who are identified as career criminals. Criteria established by Chapter 845, Hawaii Revised Statutes, shall serve to identify the career criminal. Once a determination is made that the unit will undertake a case, the HCCPP unit will handle all matters relating to the case, e.g., bail hearings, preliminary hearings, grand jury, arraignments, all

pretrial motions, trial, appeals, and, finally, sentencing hearings. The foregoing method assures a continuity and quality of effort now perhaps lacking in most prosecutorial offices because of existing caseload. Another desirable feature of the program is the envisioned close coordination between and among agencies within the criminal justice system.

These special units will consist of experienced prosecutors who are willing to expend the long hours and hard work necessary to successfully prosecute the career criminal. It will be necessary to compensate members of these units adequately, not only to attract talented people, but also to engender reasonable periods of tenure for the development of expertise and continuity of effort.

The Department of the Attorney General shall administer the program and has developed a plan of financial and technical assistance for prosecuting attorneys' offices. Further, the Attorney General shall monitor the expenditure of funds to counties in which career criminal prosecution units are established to assure compliance with Section 845, Hawaii Revised Statutes, and with the policies and program plan established by the Attorney General.

III OPERATIONS

The HCCPP shall be operated with a view towards quickly identifying, prosecuting, and convicting those persons who make a career of crime, and, moreover, to seek sentences of these career criminals which will meaningfully guarantee members of the community their right of security and protection. The right of the people to be secure is no less important than any other rights guaranteed by our Constitution, and we in law enforcement must strive to provide the people of our communities with the safety they deserve.

The prosecutors' focus, therefore, is on the offender and not simply the crime. Career criminals do not distinguish between the types of crimes they commit.

As indicated, once the offender has been identified as a career criminal, his case is prosecuted by the same attorney from arrest to disposition. This is often referred to as vertical, as opposed to horizontal, prosecution. The same prosecutor represents the State at pretrial proceedings, trial, sentencing, appeal and even at all post-conviction hearings. Vertical representation will provide swift and effective prosecution of the career criminal. Personal contact between the same deputy prosecuting attorney and victims and witnesses throughout the various stages of prosecution will create a good working relationship and will greatly enhance prosecution effectiveness. The deputy is aware, at all times, of all facets of the case, including witness, victim, or evidence problems, and everything that has happened in the case from arrest to disposition. Vertical prosecution will also allow great success in the handling of appeals. Again, the prosecuting attorney knows of problems that occurred during the trial, knows the reasoning of the trial court for its ruling, and is better able to provide to the appellate court insight into the problems of the case and the reasons for the rulings at the trial level.

The criteria to determine career criminals shall be submitted to the police to permit early identification. This permits the prosecutor to complete his evaluation while the details are still fresh in the minds of the witnesses and police. It enables the prosecutor to immediately prepare those cases which can be prosecuted as career criminal and to quickly refer to normal procedures those cases which cannot. Once identified as a career criminal, or where several individuals are involved and one of them is identified as a career criminal, the intake prosecutor transmits the case to the career criminal prosecution unit where a career criminal prosecutor is assigned the

case as soon as possible. That prosecutor will immediately begin handling the case through every phase of the proceeding.¹

IV GOAL

Conviction and incarceration of those designated career criminals.

V OBJECTIVES

A. Operational

1. Incarceration of the career criminal at all stages of the criminal justice progress.
2. Conviction on the most serious charge, whether by plea or trial.
3. Expedited processing of cases in the criminal justice system.
4. Maximum incarceration of convicted career criminals.

B. Administrative

1. Establishment of training programs for members of the units.
2. Establishment of procedural manuals that are to be maintained and reviewed yearly.
3. Establishment of periodic meetings and procedures to exchange ideas, techniques, and names of targeted individuals among the units.
4. Development of a computer-based system of tracking and identifying career criminals.

¹ Where an individual is identified as a career criminal at a later stage of the process, the case would then be transmitted to the career criminal prosecution unit for assignment to a career criminal prosecutor.

5. Establishment of periodic and uniform compilation of unit statistics.

VI POLICIES

- A. Vertical prosecution will be utilized to process career criminal cases.
- B. Cooperation with police and other law enforcement agencies.
- C. Use of experienced prosecutors and investigators whenever possible.
- D. Statewide cooperation between criminal units.
- E. Independence of career criminal units to allow flexibility to meet individual county needs.
- F. Limited plea bargaining when the end of justice will be served.
- G. Expedited case processing.
 - 1. Early identification of the career criminal.
 - 2. Reduced caseloads per prosecutor.
- H. Opposition to parole, probation, and pretrial release where there is a realistic chance of success.
- I. Increased sentencing efforts to incarcerate the career criminal.
- J. Strong legislative lobbying efforts.
- K. Public education of the efforts of the career criminal units.

VII UNIFORM CRITERIA FOR IDENTIFYING THE CAREER CRIMINAL

Time saved at the front end of a case usually means a speedier disposition. It follows, therefore, that early identification by the police and prosecutor of the career criminal is important. The measure of a defendant's proclivity to crime can best be attested to by the history of his arrests and convictions.

Chapter 845, Hawaii Revised Statutes, adopts the criteria for the determination of career criminals. Section 845-3, Hawaii Revised Statutes, as amended by Act 166, 1980 Hawaii Sess. Laws 275, provides as follows:

§ 845-3 Persons subject to career criminal prosecution efforts. (a) An individual shall be the subject of career criminal prosecution efforts if he falls into categories 1, 2, or 3 in subsection (b) and may be the subject of career criminal prosecution efforts if he falls into any other category of subsection (b).

(b) Subject to the restrictions in subsection (a), career criminal prosecution applies to an individual who:

- (1) Has had two or more felony convictions within the last five years.
- (2) Has had one or more felony and two or more misdemeanor convictions and/or arrests within the last three years. Misdemeanors will be limited to prostitution, theft II and place to keep firearm.
- (3) Is convicted and/or arrested for the offense of "felon in possession of a firearm" within the last five years.
- (4) Is on parole.
- (5) Is on probation.
- (6) Is on bond awaiting an appeal.
- (7) Is on bond awaiting trial.

- (8) Is known or suspected to be an associate of organized crime.
- (9) Is known or suspected of recurring or ongoing criminal activity.
- (10) Has no adult record but who has as extensive juvenile record.
- (11) Is a juvenile with an extensive record who has been waived to the Circuit Court for trial.

VIII ORGANIZATION AND PERSONNEL

The State of Hawaii is divided into four judicial circuits with each county comprising one circuit and each county having a prosecuting attorney with authority to prosecute crimes committed within his jurisdiction. The Attorney General has statewide authority to prosecute offenders against the laws of the State.

To establish career criminal prosecution units outside the office of each county prosecutor would prove wasteful as each county has an existing organization and office procedures which can, with the assistance of state funding, absorb the special unit into the existing system. Therefore, the Attorney General will monitor and evaluate the expenditure of state funds granted under this program. It will be the primary responsibility of each county prosecutor to implement, in accordance with program guidelines, a career criminal prosecution unit within the prosecutor's office and successfully prosecute the career criminal.

The Hawaii Prosecuting Attorneys Association, which meets regularly, will exchange ideas and discuss the efforts of all county, state, and federal officials in combating crime, and, in particular, the career criminal.

This program envisions the cooperation between county, state, and federal governments in accomplishing the HCCPP goals of the successful prosecution of the career criminal.

IX FUNDING OF UNITS

Funding for financial and technical assistance for the implementation of HCCPP units established by the prosecuting attorneys' offices shall be contingent upon annual legislative appropriations to the Department of the Attorney General for said purposes.

Requests for state funding under this program shall be submitted by each county on an HCCPP Application for Grant form. Upon approval of the application, a contract will be entered into between the Attorney General and the county. Funding will be released in a semi-annual basis.

X REPORTING REQUIREMENTS

Each county program shall submit to the Attorney General, on a semi-annual basis, information and statistical data relative to HCCPP activities engaged in during the six-month reporting period. Such information and data shall include but not be limited to: number of pending cases at the start of each reporting period; number of career criminal cases opened; number of indictments returned, preliminary hearings held, and complaints filed; total caseload; total cases disposed of and nature of disposition; total cases dismissed by prosecution, by court before trial, and by acquittal; total cases in which a defendant was convicted as charged by plea and after trial; total cases in which a defendant was convicted by plea or trial to a lesser offense;

percentage of trials won; dispositions of convictions (number of incarcerations, percentage of incarcerations to total, number of incarcerations to community correctional facilities; number of cases sentenced to prison terms; number of cases sentenced to regular terms, extended terms, and probations; number of cases allowed to enter a deferred-acceptance-of-guilty plea; total number of pending cases at the end of the reporting period; and total number of warrants outstanding.

HAWAII CAREER CRIMINAL PROSECUTION PROGRAM STATISTICS

Period: _____, 20____ to _____, 20____

	<u>Defendants</u>	<u>Counts</u>
Pending (from the last reporting period)	_____	_____
Cases referred and screened	_____	_____
Total cases rejected	_____	_____
Total cases opened during period by:		
Complaint	_____	_____
Preliminary hearing	_____	_____
Indictment	_____	_____
Total Dispositions	_____	_____
Total dismissed		
by prosecution	_____	_____
partial dismissals		_____
by court, prior to trial	_____	_____
partial dismissals		_____
Total acquitted	_____	_____
partial acquittals		_____
Total convicted	_____	_____
by plea	_____	_____
as charged*		_____
to lesser charge*		_____
by trial	_____	_____
as charged*		_____
of lesser charge*		_____
Dispositions of Convictions		
Probation with jail term	_____	
Probation with no incarceration	_____	
Prison – regular term	_____	
Prison – enhanced term	_____	
DAG/DANC	_____	
Total Probation Revocations Filed	_____	
Revoked	_____	
Denied/withdrawn	_____	
Total Pending at end of period	_____	_____
Outstanding warrants	_____	_____
Pending indictment	_____	_____
Pending Trial	_____	_____
Pending sentencing	_____	_____
Total cases on appeal	_____	

*For Dept. of AG use only

AG/CPJA 9/2013

CAREER CRIMINAL PROSECUTION PROGRAM STATISTICS

Definitions

Period (of reporting)

Report periods are January 1 through June 30 and July 1 through December 31.
Statistical reports due to CPJAD by 2nd week at the close of the period.

Defendants

The individuals accused/charged with felonies and related misdemeanor offenses.

Counts

The number of offenses an individual is charged with.

Pending from the last reporting period

The number of cases with no dispositions reported from the last statistical report (pending at end of the period).

Cases referred and screened

The number of police reports reviewed by the Career Criminal unit during the period.

Cases rejected

Police reports reviewed and rejected during the period; also those cases rejected after a case is opened but prior to the commencement of prosecution.

Total cases opened during the period

Complaint – complaints filed; includes waiver of indictment after indictment and preliminary hearing
Preliminary hearing – self-explanatory
Indictment – self-explanatory

Total dispositions

Disposition of cases carried over from previous reporting period and those opened during the current reporting period. The total should reflect the dispositions of those dismissed, acquitted, and convicted.

Total dismissed by prosecution

Number of individuals whose cases were totally dismissed, and number of counts dismissed by the government after prosecution commenced.

Total dismissed by prosecution, partial dismissal

Number of counts which were dismissed (for cases which not all counts were dismissed by prosecution).

Total dismissed by court, prior to trial

Number of individuals whose cases were totally dismissed; includes Grand Jury indictments, and the number of counts dismissed by the court after prosecution.

Total dismissed by court prior to trial, partial dismissal

Number of counts which were dismissed (for cases which not all counts were dismissed by court).

Total acquitted

Number of individuals whose cases were totally acquitted, and the number of counts resulting in acquittal.

Total acquitted, partial acquittal

Number of counts which were acquitted (for cases which not all counts were acquitted).

Total convicted – self-explanatory

By plea – self-explanatory

By trial – self-explanatory

As charged – self-explanatory; counts only

Of lesser charge – self-explanatory; counts only

Dispositions of Convictions (individuals only)

Probation with no incarceration – includes adverse modifications to probation

Probation with jail term – probation with a jail term of 12 months or less

Prison, regular term – self-explanatory

Prison, enhanced term – includes mandatory minimum and extended term, and consecutive term

DAG/DANC – DAG and DANC pleas, with or without incarceration

Revocations of Probation Filed

Revoked – probation revoked

Denied/Withdrawal – includes both instances when probation revocation is denied or withdrawn

Total Pending at end of period – the number of defendants/counts with no disposition at end of the reporting period

Outstanding warrants – self-explanatory

Pending trial – self-explanatory

Pending sentencing – self-explanatory

Pending indictment – includes screening of cases

Total cases on appeal – self-explanatory

NOTE: Only felony and misdemeanors related to the felony cases are to be reported on this sheet. Misdemeanor cases (district court) are to be reported separately.

AG CPJA 9/2013

DIGEST

ORDINANCE NO. _____
BILL NO. 156 (2022)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE
DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAII,
FOR THE CAREER CRIMINAL PROSECUTION PROGRAM GRANT 23-CCP-01

This bill proposes to authorize the Mayor to enter into an intergovernmental agreement with the Department of the Attorney General, State of Hawaii, for funds related to the Career Criminal Prosecution Program Grant, in the amount of \$144,736.

I, JAMES G.M. KRUEGER, Deputy County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 156 (2022) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 21st day of October, 2022, by the following vote:

AYES: Councilmembers Gabriel Johnson, Kelly T. King, Michael J. Molina, Tamara A. M. Paltin, Shane M. Sinenci, Yuki Lei K. Sugimura, Vice-Chair Keani N. W. Rawlins-Fernandez, and Chair Alice L. Lee.

NOES: None.

EXCUSED: Councilmember Natalie A. Kama.

DATED at Wailuku, Maui, Hawaii, this 25th of October, 2022.



JAMES G.M. KRUEGER, DEPUTY COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.