



## SERVICES OPERATIONS CONTRACT

### 406<sup>th</sup> JUDICIAL DISTRICT DRUG COURT PROGRAM

#### Drug Patch

This Operations Agreement (the “AGREEMENT”) is made and entered into by and between **Recovery Monitoring Solutions Corporation dba Recovery Healthcare Corporation (“Recovery”)** and

406<sup>th</sup> Judicial District Drug Court Program (“DEPARTMENT”)  
4101 Juarez Street  
Laredo, TX 78040  
Phone: (956) 523-4797

Appointment of Recovery. In accordance with the terms and conditions set forth herein, and in consideration of the payments hereinafter provided, **Recovery** is hereby appointed to provide to **Department**, and **Recovery** hereby agrees to furnish to **Department**, the Services provided for herein.

Term. This AGREEMENT shall become effective for a one (1) year period beginning on January 1, 2020 and ending on December 31, 2020 (unless terminated herein under the provisions below). The agreement shall automatically renew for another one (1) year term for a period not to exceed three (3) total years, unless either party provides notice to the other of its intent to terminate the agreement not less than thirty (30) days before the end of the then current term.

### ARTICLE I RATES, MINIMUM REQUIREMENTS, AND STATEMENT OF SERVICES

1.1 **Recovery** and the **Department** agree to the following rates for **Department** funded services:

DRUG PATCH	
EQUIPMENT ONLY PROGRAM	DEPARTMENT PAY
Drug Patch	\$55.00 (Per Patch)
Drug Patch Overlay Replacement Overlay for Same Patch	\$2.00 Each



1.2 **Certified Provider.** **Recovery** has been duly certified as a provider for GPS, SCRAM CAM Continuous Alcohol Monitoring System, and the SCRAM Remote Breath Alcohol Testing Device in the State of Texas.

1.3 **Services.** **Recovery** shall, in accordance with the terms of this AGREEMENT, provide all necessary personnel, equipment, materials, supplies, and services (except as may be furnished by the **Department** as specified in writing as part of this agreement) and do all things necessary for, or incidental to, the provision of the services.

1.4 **Court Testimony.** **Recovery** agrees to provide testimony in court, if required, at no additional cost to the **Department** with fourteen (14) calendar days' advance notice.

1.5 **Other: (Specific Requirements for Department Funded Program)**

I. **General Duties of Recovery:**

- (a) **Recovery** may offer, for no additional cost, webinar or on-site program training and assistance for the **Department's** staff to explain the procedures for application, replacement, removal, chain of custody and shipment of drug patch specimens;
- (b) **Recovery** (844) 909-8555 provides live technical support to assist **Department** staff with questions or issues that may arise with the Drug Patch program from 8:00 a.m. to 7:00 p.m., Monday through Saturday excluding holidays;
- (c) **Recovery** will pay the shipping costs for all equipment distributed to **Webb County** via standard three (3) day delivery service.

II. **General Duties of the 406<sup>th</sup> Judicial District Drug Court Program:**

- (a) The **Department** will provide the name, job title, and contact information (e-mail address and phone number) for the person or persons designated to receive billing invoices;
- (b) The **Department** will notify **Recovery** on or before the date that a different person(s) has been designated to receive the reports identified in paragraph (a) above or any revisions have been made to the existing individual's contact information;
- (c) The **Department** will abide sole responsibility for defendant/offender enrollment; program orientation; drug patch application, maintenance and removal;
- (d) The **Department** will provide a program orientation consisting of an explanation of program rules and the proper maintenance, care, and features of the drug patch equipment;
- (e) The **Department**, with the defendant/offender's cooperation, will make a good faith effort to schedule application of the drug patch in accordance with the manufacturer's recommended guidelines;
- (f) The **Department** staff will troubleshoot all tamper events.



### III. Limitations and Liabilities

- (a) **Recovery** expressly disclaims any warranty that its service or that its system is impervious to tampering. In no event shall **Recovery** be liable for any direct, indirect, special, consequential, or incidental damages in connection with or arising out of the performance or use of the products or services provided under this agreement or any orders hereunder. In no event shall **Recovery** assume or bear any responsibility or liability for acts that may be committed by a defendant/offender or persons subject to, using or monitoring the equipment;
- (b) **Recovery** shall not be liable for any failure or delay in performance of this agreement hereunder which is due in whole or in part to any cause beyond its control;
- (c) **Recovery** will maintain the right to conduct business development activities with other agencies, Courts, and service providers in **Webb County, Texas**.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

**Recovery** represents and warrants to and for the benefit of **DEPARTMENT** with the intent that **DEPARTMENT** rely thereon for the purposes hereof, the following:

2.1 Legal Status. **Recovery** (1) is a validly organized and constituted sole proprietorship or partnership in the jurisdiction in which it is formed and in good standing therein; or, is a corporation duly incorporated and validly existing under the laws of the jurisdiction in which it is incorporated and in good standing therein; (2) is duly qualified to conduct business in the State of Texas; and (3) has legal power and authority to own or lease its properties and conduct its business as presently conducted.

2.2 Authorization. The making and performance of this AGREEMENT has been duly authorized by all necessary action and will not violate any provision of current law or **Recovery's** charter or by-laws. The AGREEMENT has been duly executed and delivered by **Recovery** and, assuming due execution and delivery by **DEPARTMENT**, constitutes a legal, valid, and binding AGREEMENT enforceable against **Recovery** in accordance with its terms.

2.3 Taxes. **Recovery** has filed all necessary federal, state, and foreign income and franchise tax returns and has paid all taxes as shown to be due thereon, including penalties and interest, or provided adequate reserves for payment thereof, except to the extent that same have become due and payable but are not yet delinquent, and except for any taxes and assessments of which the amount applicability or validity is currently being contested in good faith by appropriate proceedings.

2.4 No Child Support Owning. In accordance with 231.006 of the Texas Family Code, no person who is the sole proprietor, a partner, a shareholder, or an owner of twenty-five percent (25%) or more of **Recovery** and who is now more than thirty (30) days delinquent in paying court ordered approved child support may receive payment from state funds under a contract. Under 231.006, Family Code, **Recovery** certifies that it is not ineligible to receive the Payments and acknowledges that this AGREEMENT may be terminated and Payments may be withheld if this certification is inaccurate.

2.5 Use of Payments. No part of the Payments made to **Recovery** will be expended for any consultant fees, honorariums, or any other compensation to any employee of **DEPARTMENT** or for unallowable costs as defined by the **DEPARTMENT**. **Recovery** shall expend Payments made hereunder solely for providing direct services and for reasonable and allowable expenses directly related to the provision of Services.



2.6 Non-Discrimination. In the performance hereof, **Recovery** warrants that it shall not discriminate against any employee, subcontractor, or defendant/offender on account of race, color, disability, religion, sex, national origin, age, or those who have or are perceived to have a disability because of AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. **Recovery** shall include the provisions of this paragraph regarding non-discrimination in each of its contracts with subcontractors so that such provisions will be binding upon each subcontractor.

2.7 Non-Collusion. **Recovery** warrants that no Person, other than a bona fide employee, has been employed to solicit or secure this AGREEMENT with **DEPARTMENT**, and **Recovery** has not paid or agreed to pay any Person, other than a bona fide employee, any fee, commission, percentage, or brokerage fee, gift, or any other consideration, contingent upon or resulting from the execution hereof. For breach or violation of this provision, **DEPARTMENT** shall have the right to terminate this AGREEMENT without liability, or at its discretion to deduct from Payments, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift, or contingency fee.

### ARTICLE III GENERAL CONDITIONS

3.1 Duties and Obligations. **Recovery** shall provide the Services in compliance with applicable federal and state law, including all constitutional, legal and court ordered requirements, whether now in effect or hereafter affected or implemented.

3.2 Visitation by State Employees. **Recovery** shall at all times allow employees/agents of the Governor, members of the Legislature and all other members of the Executive and Judicial branches of the State of Texas, the Contract Monitor, and any other persons designated by the **DEPARTMENT** to monitor the delivery of Services and contract compliance of the **Recovery**.

3.3 No Subcontractors. No subcontractor may be utilized by **Recovery** unless **DEPARTMENT** has furnished prior written approval.

3.4 Confidentiality. When applicable, records of identity, diagnosis, prognosis, or treatment of any defendant/offender through this AGREEMENT shall be confidential and may be disclosed only in accordance with applicable laws. No information may be released without the defendant/offender's written consent as documented by a signed information release form. **Recovery** shall notify **DEPARTMENT** in writing if any legal process requires disclosure of a defendant/offender's record and shall obtain written acknowledgement of same from **DEPARTMENT'S** Authorized Representative.

3.5 Termination at Will. Either party may terminate this AGREEMENT for any reason whatsoever, without cause and at any time, by furnishing to the other party thirty (30) days prior written notice. **DEPARTMENT'S** only obligation for terminating the AGREEMENT pursuant to this section shall be the payment to **Recovery** of Payments earned hereunder up to the date of termination. **Recovery's** only obligation for terminating this AGREEMENT pursuant to this section shall be to provide Services until the date of termination. Neither **Recovery** nor **DEPARTMENT** shall thereafter be entitled to any other compensation.

3.6 Record Retention. All records shall be the property of **DEPARTMENT**. All records (electronic or paper) pertinent to the provisions of Services hereunder shall be retained by the **Recovery** for a period of five years with the following qualification: If any audit, litigation or claim is started before the expiration of the five-year period, the records shall be retained until all audits, litigation, claims, or other findings involving the records have been resolved. The retention period for all records begins after **DEPARTMENT** has made the final Payment in accordance with this AGREEMENT. At the end of the five-year period, **Recovery** will request disposition instructions from **DEPARTMENT**.



## ARTICLE IV ADMINISTRATION AND FISCAL SYSTEM

4.1 Administrative Controls. **Recovery** shall establish, document and maintain adequate administrative, financial, and internal controls to ensure that only allowable and reasonable costs are expended under this AGREEMENT.

4.2 Governing Board Responsibility. The appropriate governing board or entity of **Recovery** shall bear full responsibility for the integrity of the services provided, including compliance with applicable federal and state laws and regulations. Ignorance of any AGREEMENT provisions or other requirements contained herein shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

4.3 Conflict of Interest. **Recovery** shall not refer defendants/offenders for additional services without prior written approval of the **DEPARTMENT**. **Recovery** shall develop and implement written internal policies that may be reviewed by the **DEPARTMENT** to ensure that members of the governing board, contractual personnel, consultants, volunteers, and employees do not use their positions with **Recovery** for a purpose that is, or gives the appearance of being, motivated by a desire for personal gain or gain by a family member.

4.4 Remuneration. Staff of **Recovery** shall not pay or receive any commission, consideration, or benefit of any kind related to the referral of a defendant/offender for treatment or engage in fee-splitting with other professionals.

4.5 Audits. **Recovery** agrees to furnish **DEPARTMENT** with such information as may be required relating to the Services rendered hereunder. **Recovery** shall permit **DEPARTMENT** to audit and inspect records and reports and to evaluate the performance of Services at any time. **Recovery** shall provide reasonable access to all records, books, reports, and other necessary data and information needed to accomplish review of program activities, services, and expenditures, including cooperation with **DEPARTMENT** in its performance of random or routine audits to determine the accuracy of **Recovery** reports.

4.6 Disclosure. **Recovery** is required to immediately or timely, as the case may be, disclose to **DEPARTMENT** the following:

- (a) If any Person who is an employee or director of **Recovery** is required to register as a lobbyist under Texas Government Code Chapter 305, at any time during the term hereof, **Recovery** shall provide to **DEPARTMENT** timely copies of all reports filed with the Texas Ethics Commission as required by Chapter 305;
- (b) If any Person who is an employee, subcontractor, or director of **Recovery** is or becomes an elected official (i.e., an elected or appointed state official or member of the judiciary, or a United States congressman or senator), during the term hereof;
- (c) Report any actions or citations by federal, state, or local governmental agencies that may affect **Recovery's** licensure status or its ability to provide Services hereunder.

4.7 Withhold Payments. The **DEPARTMENT** may withhold payments for any ineligible claims including inadequate or untimely monthly invoices until such time as the ineligible, inadequate or untimely claim is resubmitted and/or corrected by **Recovery**. **Recovery** agrees to return any unearned amounts paid by the **DEPARTMENT** within (30) days following the final date of the contract period, or at the **DEPARTMENT'S** option, within thirty (30) days following the **DEPARTMENT'S** delivery to **Recovery** a notice that amounts paid are to be returned to the **DEPARTMENT**.



4.8 Accounting Records. **Recovery** agrees to maintain a separate accounting or bookkeeping system specifically isolating the revenue and expenditures associated with this AGREEMENT in accordance with fund accounting principles.

4.9 Payments to Recovery. **Recovery** shall submit Monthly Invoices (in writing or electronically) as required herein and shall receive payments from **DEPARTMENT** based thereon, subject to the provisions in this AGREEMENT. **Recovery** will provide an itemized list of Services performed during the invoice period, including the names of all defendants/offenders served, the service provided, and the amount of time rendered with each. **DEPARTMENT** agrees to pay **Recovery** within thirty (30) days after receipt of the Monthly Invoice.

4.10 Specific Measures. All terms of this AGREEMENT are subject to monitoring and verification; however, **Recovery** must have available for the **DEPARTMENT'S** inspection records to support performance of those measures outlined in Article I herein.

4.11 Misspent Funds. **Recovery** will refund expenditures of **Recovery** that are contrary to this AGREEMENT and deemed inappropriate by the **DEPARTMENT** or designee.

## ARTICLE V DEFAULT AND TERMINATION

5.1 Default by Recovery Monitoring Solutions Corporation. Each of the following shall constitute an Event of Default on the part of the **Recovery**:

- a. A material failure to keep, observe, perform, meet, or comply with any covenant, term, or provision hereof, which failure continues for a period of twenty (20) days after receipt of **Recovery** of written notification thereof;
- b.
  - (1) Admit in writing its inability to pay its debts;
  - (2) make a general assignment for the benefit of creditors;
  - (3) suffer a decree or order appointing a receiver or trustee for it or substantially all of its property, and, if entered without its consent, same is not stayed or discharged within sixty (60) days of such decree or order,
  - (4) suffer filing under any law relating to bankruptcy, insolvency, or the reorganization for relief of debtors by or against it and, if contested by it, not to be dismissed or stayed within sixty (60) days of such filing; or
  - (5) suffer any judgment, writ of attachment or execution, or any similar process issued or levied against a substantial part of its property that is not released, stayed, bonded, or vacated with sixty (60) days after such issuance or levy, and
- c. The discovery by **DEPARTMENT** that any statement, representation of warranty in this AGREEMENT is false, misleading, or erroneous in any material respect.

5.2 Remedy of DEPARTMENT. Upon the occurrence of an Event of Default by **Recovery**, **DEPARTMENT** shall notify **Recovery** of such Event of Default, and subject to the time provisions of Section 5.1 hereof, **DEPARTMENT** shall have the right to pursue any remedy it may have at law or in equity, including, but not limited to, (a) suspend referral of defendant/offender; (b) suspend payment; (c) taking action to cure the Event of Default, in which case **DEPARTMENT** may offset against any Payments owed to **Recovery** all reasonable costs incurred by **DEPARTMENT** in connection with its efforts to cure such Event of Default; and (d) termination and removal of **Recovery** as provider of Services. In the event of **Recovery's** removal due to an Event of Default, **DEPARTMENT** shall have no further obligations to **Recovery** after such removal and in such event, **Recovery** agrees to cooperate with **DEPARTMENT** regarding a transition to new provider of Services.



5.3 Default by DEPARTMENT. The following shall constitute an Event of Default on the part of DEPARTMENT: failure by DEPARTMENT to pay within thirty (30) days after Payment is due any Payment required to be paid pursuant to the terms hereof.

5.4 Remedy of Recovery. Upon an Event of Default by DEPARTMENT, Recovery's sole remedy shall be to terminate this AGREEMENT. Upon such termination, Recovery shall be entitled to receive Payment from DEPARTMENT for all Services satisfactorily furnished hereunder up to and including the date of termination.

5.5 AGREEMENT Subject to Availability of Funds. This AGREEMENT will be subject to the availability of funds. If such funds become reduced or unavailable, this AGREEMENT shall be subject to immediate modification, reduction or termination.

## ARTICLE VI INDEPENDENT CONTRACTOR

Recovery is associated with DEPARTMENT only for the purposes and to the extent set forth herein, and with respect to the performance of Services hereunder, Recovery is and shall be an independent contractor and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationships of an employer-employee or principle-agent, or to otherwise create any liability for DEPARTMENT, the State of Texas and its offices, agents, and employees (hereafter, collectively referred to as the "State") whatsoever with respect to the indebtedness, liabilities, and obligations of Recovery or any other party. Recovery shall be solely responsible for (and DEPARTMENT shall have no obligation with respect to) payment of all Federal Income, F.I.C.A., and other taxes owed or claimed to be owed by Recovery, arising out of Recovery's association with DEPARTMENT pursuant hereto, and Recovery shall indemnify and hold DEPARTMENT harmless from and against any and all liability from all losses, damages, claims, costs, penalties, liabilities, and expenses howsoever arising or incurred because of, incident to, or otherwise with respect to any such taxes.

## ARTICLE VII MISCELLANEOUS PROVISIONS

7.1 Inconsistencies. Where there exists any inconsistency between this AGREEMENT and other provisions of collateral contractual Agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

7.2 Severability. Each paragraph and provision hereof is severable from the entire AGREEMENT and if any provision is declared invalid, the remaining provisions shall nevertheless remain in effect.

7.3 Prohibition Against Assignment. There shall be no assignment or transfer of this AGREEMENT without the prior written consent of both parties.

7.4 Law of Texas. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of Texas and shall be enforced in the county of the applicable judicial district in which this agreement was entered.

7.5 Notices. All notices called for or contemplated hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or forty-eight (48) hours after mailed to each party by certified mail, return receipt requested, postage paid.



7.6 Entire. This AGREEMENT incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written AGREEMENT. No other prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless attached hereto and/or embodied herein.

7.7 Amendment. No changes to this AGREEMENT shall be made except upon written agreement of both parties.

7.8 Headings. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.

7.9 Counterparts. This AGREEMENT may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

7.10 Terminology and Definitions. All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT including the Exhibits attached hereto and incorporated herein by reference to be executed as of the date first above written.

\_\_\_\_\_  
Terry Fain  
President/General Manager  
Recovery Monitoring Solutions Corp.

\_\_\_\_\_  
Honorable Oscar J. Hale, Jr.  
Presiding Judge  
406<sup>th</sup> Judicial District Court  
Adult Drug Court Program

\_\_\_\_\_  
Tano Tijerina  
Webb County Judge

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_