

**Memorandum of Understanding**  
**Between**  
**The Nevada County Probation Department**  
**And**  
**Superior Court of California, County of Nevada**  
**Regarding Pretrial Services Pilot Program**

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This Memorandum of Understanding (“MOU”) is entered into by and between the Nevada County Probation Department (“Probation”) and the Superior Court of California, County of Nevada (“Court”). This MOU sets forth each parties roles and responsibilities as they relate to the Pretrial Services Pilot Program, for the period August 9, 2019 through December 31, 2021.

**WHEREAS**, Court is to receive funding from the Judicial Council of California (“Judicial Council”) for the Pretrial Services Pilot Program (“Program”) under the terms and conditions of the Agreement No. 46553 between the Court and the Judicial Council (the “Contract”);

**WHEREAS**, Court desires to subcontract with Probation, subject to the authorization of the County of Nevada, for Probation to provide certain services necessary to complete the Program objectives as set forth in the Contract;

**WHEREAS**, the Judicial Council has consented to Court’s subcontracting with Probation for certain services necessary to complete the Program objectives as set forth in the Contract;

**WHEREAS**, it is the intent of the parties that such services be in conformity with the Contract and all applicable federal, state and local laws; and

**NOW, THEREFORE**, Court and Probation mutually agree as follows:

1. **Definitions:** If not otherwise defined in this MOU, the definitions of capitalized terms used in this MOU are as set forth in the Contract, included as attachment A.
2. **Scope of Services:** Consistent with the terms and conditions of the Contract and this MOU, Probation shall provide the following in furtherance of the Program objectives:
  - Two .5 FTE Probation Assistants to cover pretrial services in Nevada and Sierra County;
  - Review bookings of all individuals booked into Nevada County jail that have not posted bail or have been released by jail staff due to jail policies/procedures prior to probation staff’s reasonable effort to interview booked individuals;
  - Review bookings of all individuals booked into the Nevada County jail on behalf of Sierra County;
  - Risk Assessment tools for use in determining an offender’s pretrial risk;

- Pretrial risk assessment and recommendation report to both Sierra and Nevada County Court;
- Supervision of individuals released on supervised release for the Nevada County Courts;
- Pretrial Program services including drug testing, alcohol testing and electronic monitoring when ordered by the court;
- Administration and distribution of incentives and bus passes/fares;
- Data collection and reporting for statistical outcome measures to meet Contract requirements for the Program;
- Participation of Probation in meetings as required by Court to meet Contract requirements for the Program.

Probation warrants to Court that funds provided to Probation under the MOU will only be used for new or expanded services and that no ongoing or completed projects of Probation will duplicate or overlap any Work under the Contract consistent with the requirements outlined in the Contract.

3. **Term:** This MOU is effective August 9, 2019 through December 31, 2021. Beginning June 30, 2021 the Court and Probation will work together to transition program services and wrap up the final deliverables by the end of the MOU period, December 31, 2021. Either party may terminate this MOU earlier by providing written notice of intent to terminate to the other party at least sixty (60) days before the intended termination date. In addition, and upon sixty (60) days notice to Probation, Court may terminate this MOU, in whole or in part, without prejudice to any right or remedy of Court, if expected or actual funding is withdrawn, reduced, or limited in any way. Court may also terminate this MOU for deficient performance of Probation consistent with the requirements of Contract.
4. **Reporting:** Probation agrees to provide data relevant to the Deliverables in a timeline outlined by the Judicial Council. As practical and feasible, data shall be uploaded to the Judicial Council's secure site established for the Program and/or other FTPs as established by the Judicial Council. The Judicial Council's Quarterly Program Evaluation, Data and Data Collection Report as outlined in the Contract. Data collection requirements are subject to change by the Judicial Council or the Court Program Manager from time to time. Court commits to communicating any such changes to Probation in a timely manner.
5. **Compensation for Services:** The maximum amount Court may pay Probation Under this MOU is \$311,289 plus the cost for travel to the Pretrial Justice Institute and Pretrial Justice Follow-up Conferences required by the grant for the period August 9, 2019 through December 1, 2021, subject to the provisions of the Contract, including all fees and expenses. The budget, as agreed upon in the Contract between Court and the Judicial Council, is attached as Attachment B to this MOU.

**Fiscal Year 2019-2020 and Fiscal Year 2020-2021:** Requests for reimbursement, with proper financial documentation, should be submitted to Court monthly in arrears by no later than the 20<sup>th</sup> of the following month. Probation's final invoice must be received by Court no later than December 1, 2021. Invoices received by Court after December 1, 2021, will not be accepted.

Probation shall submit all invoices to Court in arrears monthly with documentation acceptable to Court to support actual costs billed. Such documentation to be provided to Court monthly includes:

- a. Documentation of salaries and fringe benefits paid by Probation to two .5 FTE Probation Assistants;
- b. Copies of vendor invoices detailing services and for costs associated with risk assessment tools, drug and alcohol testing, electronic monitoring, continuous alcohol monitoring devices, electronic reminder system;
- c. Adequate backup documentation as deemed necessary by Court to substantiate expenses claimed; and
- d. Such additional information as Court may require from Probation to comply with the terms of the Contract.

Subject to compliance with the requirements of the Contract that are applicable to Probation's role as a Subcontractor and this MOU, Court shall reimburse Probation for actual costs incurred following (i) Court's receipt of pilot (grant) funds from the Judicial Council and (ii) submission to and acceptance by the Judicial Council of required reports identified in the Contract.

If Probation receives payment from Court for a service or reimbursement that is later disallowed, Probation shall promptly refund the disallowed amount upon request. Court may offset the amount disallowed from any payment due or to become due to Probation under this MOU or any other agreement with Probation or the County of Nevada.

## **6. General Provisions**

- a. Entire Agreement. This MOU, including those portions of the Contract applicable to Probation's services as a Subcontractor of Court, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties to this MOU.
- b. Amendment. NO addition to or alteration of the terms of this MOU will be valid unless made in the form of a written amendment, which is formally approved and executed by the governing bodies of each of the parties, or their respective authorized designees.
- c. Further Assurances. Each party agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this MOU. Time is of the essence in the performance of this MOU.
- d. Waiver. Any waiver by either party of the terms of this MOU must be in writing and executed by an authorized representative of the waiving party and will not be construed as a waiver of any succeeding breach of the same or other term of this MOU.
- e. Severability. The provisions of this MOU are separate and severable. If any provision of this MOU shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. Any such provision will be enforced to the maximum extent possible so as to affect the reasonable intent of the parties and will be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- f. Relationship of Parties. Probation and the employees and agents of Probation in the performance of this MOU shall act in an independent capacity and not as officers,

employees or agents of the Court or the Judicial Council. Neither Probation nor any person engaged by Probation to perform the services described herein is covered by any employee benefit plans provided to the employees of Court. Each party is liable for the acts and omissions of itself, its employees and its agents. Nothing in this MOU will be construed as creating an employment or agency relationship between the parties. Each party will determine the method, details, and means of performing its obligations under the MOU, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting the respective party. Probation will be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding any and all employee benefits, and all regulations governing such matters.

- g. Risk Allegations. It is the intention of both parties that neither will be responsible for the negligent and/or intentional acts and/or omissions of the other, or its judges, subordinate judicial officers, directors, officers, agents and employees. The parties therefore disclaim in its entirety the pro rata risk allocation that could otherwise apply to this MOU pursuant to Government Code section 895.6. Instead, pursuant to Government Code section 895.4, the parties agree to use principles of comparative fault when apportioning any and all losses that may arise out of the performance of this MOU.

- h. Counterparts. This MOU may be executed in counterparts, each of which is considered an original but all of which together shall constitute one instrument.

- i. Notices. Any notices required to be given pursuant to the terms and provisions of the MOU shall be in writing and shall be delivered to:

County:

Nevada County Probation Department  
109 ½ North Pine St.  
Nevada City, CA 95959  
Attn: Michael Ertola  
Chief Probation Officer

Court:

Superior Court of California,  
County of Nevada  
201 Church St.  
Nevada City, CA 95959  
Attn: Jason B. Galkin,  
Court Executive Officer

- j. Retention of Records; Audit. Probation shall maintain all financial data, supporting documents, and all other records related to performance and billing under this MOU for a period in accordance with state and federal law, a minimum retention period being no less than four (4) years. The retention period starts from the date of submission of Probation's final payment request. Probation shall permit all records related to performance and billing under the MOU to be inspected and/or audited, at any reasonable time, by an authorized representative of Court of the Judicial Council. This MOU is subject to examination and audit by the State Auditor for a period of three (3) years after final payment.

- k. Limitations on Publication. Probation shall not publish or broadcast any article, press release, advertisement, or other writing that references the Judicial Council unless previously approved in writing by the Judicial Council.
- l. Interpretation. The provisions and terms of this MOU shall be interpreted in accordance with the plain meaning thereof, and shall not be construed in favor or against any party.
- m. Third-Party Beneficiary. The Judicial Council is a third-party beneficiary of this MOU.

IN WITNESS WHEREOF, Court and Probation executed this MOU on the date(s) indicate below;

**Superior Court of California,  
County of Nevada**

By: \_\_\_\_\_

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

Hon. Linda J. Sloven, Presiding Judge

Nevada County Probation Department

By: \_\_\_\_\_

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

Michael Ertola, Chief Probation Officer

The County of Nevada has authorized Probation to enter into this Memorandum of Understanding.

- - COUNTY OF NEVADA - -

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

By: \_\_\_\_\_

Chairman, Board of Supervisors

ATTEST:

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

By: \_\_\_\_\_

Clerk of the Board of Supervisors