

**PRETRIAL RELEASE PROGRAM  
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is entered into by and between the **Superior Court of California, County of San Benito** ("Court"), and the **County of San Benito** acting through the **San Benito County Probation Department** ("County").

**WHEREAS**, the Legislature has enacted Senate Bill 129 (Stats. 2021, Ch. 69) ("SB 129"), amending the Budget Act of 2021 to provide funding for the implementation and operation of ongoing court programs and practices that promote the safe, efficient, fair, and timely pretrial release of individuals booked into jail.

**WHEREAS**, the Judicial Council of California ("Judicial Council") has allocated one-time and ongoing SB 129 funding to the Court;

**WHEREAS**, the Court and the County wish to establish the San Benito County Pretrial Services Program ("Program").

**WHEREAS** the goals of the Program are to (i) implement and operate programs and practices that promote the safe, efficient, fair, and timely pretrial release of individuals booked into jail, (ii) ensure due process for released individuals, (iii) secure the presence of released individuals at court proceedings, (iv) support the protection of victims, witnesses, and the community, and (v) allow released individuals to maintain employment, retain family and community ties, and reduce financial burden on families, while awaiting court proceedings.

**WHEREAS**, the Court desires to contract with the County for certain services related to the Program.

**NOW, THEREFORE**, the Court and the County mutually agree as follows:

**1. Services**

The County will perform the services described in Exhibit A ("Services"). The County will ensure that the Program is fully operational by June 30, 2022.

**2. Term and Termination**

**A. Term.** The initial term of this MOU ("Initial Term") shall begin on February 1, 2022 ("Effective Date") and end on June 30, 2023. This MOU shall be automatically extended for successive periods of one (1) year following the Initial Term (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either party notifies the other at least thirty (30) days in advance of the end of the then-current term in writing of its election to have this MOU expire.

**B. Termination.** Either party may terminate this MOU if the other party fails to meet or perform any of its duties under this MOU, and this failure is not cured within thirty (30) days following notice.

**C. Survival.** Termination or expiration of this MOU shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall

remain in effect after termination or expiration of this MOU, including any section of this MOU that states it shall survive such termination or expiration.

### **3. Payment Provisions**

**A. Monthly Payment.** The County will submit a monthly invoice in arrears to the Court for the performance of Services. For the first five (5) months of the Initial Term, the amount of the monthly invoice will be \$80,000. Thereafter, the monthly invoice will be \$16,666.66. Payment of an invoice by the Court is contingent upon the County's compliance with the requirements of this MOU.

**B. Availability of Funds.** The Court's payment obligations under this MOU are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this MOU. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this MOU. The Court may terminate this MOU upon notice to the County if expected or actual funding to compensate the County is withdrawn, reduced, or limited.

**C. Statutory Funding Restrictions.** In accordance with SB 129, the County may spend the funds paid by the Court ("Funds") only for costs associated with (i) judicial officer pretrial release decisions prior to or at arraignment; (ii) technology to facilitate information exchange and process automation between the Court and the County; (iii) implementation and improvement of court date reminder programs; (iv) assessments of defendants' ability to pay a financial condition in cases where the Court determines that such a condition is necessary to ensure public safety and return to Court; (v) providing services to and monitoring of individuals released pretrial; or (vi) other programs and practices related to pretrial decision-making that address public safety, appearance in court, and the efficient and fair administration of justice. The County will monitor spending to ensure compliance with this section and SB 129 generally.

### **4. Subcontracting**

The County is permitted to subcontract with community-based organizations to provide complementary or supportive services in furtherance of the Probation Department's pretrial release services, but only if the following six (6) conditions are satisfied:

- The contractor adheres to the same transparency, accountability, and outcome measure standards that apply to the Probation Department.
- The contractor has a proven record of providing culturally competent and responsive rehabilitative services.
- The contract will not result in the displacement of County employees or a reduction in the provision of services by Probation Department employees.
- The contractor pays wages and benefits to its non-supervisory employees that are commensurate with or greater than the wages and benefits paid to public employees in similar job classifications.
- The contractor does not pay wages and benefits to its most highly compensated executive and managerial employees that are significantly higher than the rates that would be paid to public employees performing similar job duties.

- The County has consulted with the Court prior to entering into a contract for the provision of these services.

## 5. Non-Supplantation

The County represents and warrants that the Funds (i) will not be used to supplant or replace already allocated funding for the salaries of any current Probation Department staff, (ii) will not supplant any nonfederal, state, or county funds, and (iii) will only be used for new or expanded services for which no funds have been previously identified.

## 6. Compliance with Laws

**A. General.** Each party agrees to comply in all material respects with all laws, rules, and regulations applicable to its activities related to this MOU.

**B. Public Contract Code.** Public Contract Code section 2010 and the Judicial Branch Contracting Manual require the inclusion of the following certification in Court contracts, including MOUs. The County certifies under penalty of perjury under the laws of the State of California that the following is true and correct: (i) the County is in compliance with Civil Code section 51 (the Unruh Civil Rights Act, or "UCRA") and Government Code section 12960 et seq. (the California Fair Employment and Housing Act or "CFEHA"); and (ii) the County does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including the nation and people of Israel, that is used to discriminate in violation of the UCRA or CFEHA.

## 7. Lobbying and Political Activities

**A. Lobbying.** The Funds shall not be used, indirectly or directly, to influence executive orders or similar promulgation by federal, state, or local agencies, or to influence the passage or defeat of any legislation by federal, state, or local legislative bodies.

**B. Political Activities.** The County shall not contribute or make available Funds to any political party or association, or the campaign of any candidate for public or party office. The County shall not use Funds in advocating or opposing a ballot measure, initiative, or referendum. The County and employees of the County shall not identify the Court with any partisan or nonpartisan political activity associated with a political party, association, or campaign, or any candidate for public or party office.

## 8. Reporting

The County will provide information required by the Court for reports to the Judicial Council or other entities, including quarterly progress reports. The County's reporting obligation extends to (i) additions to or alterations of reports known as of the Effective Date, and (ii) additional reports initially required after the Effective Date. The County will deliver the required information to the Court at least five (5) business days before the Court is required to submit its own report. The Court will inform the County from time to time regarding the information needed from the County for the reports, and the applicable deadlines.

## 9. Conditions of Funding

The County acknowledges that the funding for the Program is contingent upon conditions imposed by the State or California and the Judicial Council, including conditions that may be adopted or imposed subsequent to the Effective Date ("Conditions"). By way of example, the Judicial Council may adopt Conditions that include additional reporting requirements, limitations on expenditures, or the requirement to take certain actions. The County agrees

that the continuation of this MOU will be contingent upon (i) County's compliance with any such Conditions, and (ii) County's execution of an amendment to this MOU memorializing the Conditions (upon request by the Court). If the Court elects not to comply with one or more Conditions, or the County elects not to amend this MOU to memorialize one or more Conditions (if so requested by the Court), the Court may terminate this MOU upon notice to the County. Such termination shall be effective as the date any Condition comes into effect, as determined by the Court.

## **10. Audits**

**A. State Auditor.** This MOU is subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.

**B. Other.** The County must maintain all financial records, supporting documents, and all other records relating to expenses under the Program in accordance with state law. The County will permit the authorized representative of the Judicial Council or its designee to inspect or audit, at any reasonable time, any records related to the Funds or the Program. The County is responsible for responding to Judicial Council audit queries and providing all necessary information and documentation to address any concerns. The County agrees to pay to the Court (or the Court may withhold from future payments) the amount of the Court's liability to the Judicial Council or other entity that results from the County's failure to comply with this MOU, including any expenditure of the Funds on costs other than those listed in SB 129.

## **11. Authority**

Each party represents and warrants that (i) it has the authority to enter into and perform its obligations under this MOU, and (ii) its signatory has authority to bind that party to this MOU. The County will provide to the Court a resolution of the County's Board of Supervisors authorizing the County to enter into this MOU.

## **12. Independent Contractor**

Each party (and its agents, associates, and employees) is an independent contractor of the other party. Nothing in this MOU is intended to, or shall be construed to, create an employer-employee relationship, a joint venture relationship, or an agency relationship, or to allow a party to exercise direction or control over the manner in which the other party performs its obligations under this MOU.

The Court's agents, associates, and employees shall not be entitled to any of the benefits or rights accruing to a County officer or employee. The County's agents, associates, and employees shall not be entitled to any of the benefits or rights accruing to a Court officer or employee.

## **13. Liability**

The parties waive the pro rata (per capita) risk allocation provided by Government Code section 895.6. Each party shall defend, indemnify, and hold the other party harmless, to the maximum extent permitted by law, from claims, damages, expenses, or liabilities, including attorney fees and costs, that arise out of the indemnifying party's (i) performance of services, or (ii) negligence or willful misconduct relating to the performance of services. The foregoing does not apply to the extent a claim, damage, expense, or liability arises out of an indemnified party's failure to perform its obligations under this MOU, or an indemnified party's negligence or willful misconduct. The right to be indemnified extends to an indemnified party's officers, employees, representatives, and agents; in the case of County,

this right extends to the San Benito County Board of Supervisors, and in the case of Court, this right extends to Court's judicial officers, subordinate judicial officers, and the Judicial Council of California ("Judicial Council"), including its members, officers, employees, representatives, and agents.

#### 14. Notices

Any notice to be given under this MOU shall be in writing and shall be served by personal delivery or US mail, to the address specified below. Notices will be considered to have been given at the time of actual delivery in person, or three (3) days after deposit in the mail.

County: San Benito County Administrative Office  
County Administration Building  
481 4th St., 1st Floor  
Hollister, CA 95023-3840

*With a copy to:*

San Benito County Probation Department  
400 Monterey St  
Hollister, CA 95023

Court: Superior Court of California, County of San Benito  
ATTN: Court Executive Officer  
450 Fourth Street  
Hollister, CA 95023

#### 15. Dispute Resolution

**A. Continuation of Services.** Whenever the County and the Court disagree as to any matter governed by this MOU, the dispute resolution process discussed in this section shall govern. Until the dispute is resolved, the County shall continue to provide Services and the Court shall continue to make payment for the non-disputed portion of each invoice.

**B. Request for Meeting.** If after thirty (30) days, the Court and the County cannot resolve any dispute, either party may give the other party a written request for a meeting between the Court Executive Officer and the County Administrative Officer for the purpose of resolving the dispute. If such meeting is requested, the meeting shall be held within ten (10) business days of the receipt of such request.

**C. Resolution of Disputes.** If the dispute is not resolved under section 15.B, the dispute shall be submitted to non-binding mediation in the City of Hollister. If the dispute is not resolved by non-binding mediation within thirty (30) days after such submission, either party may bring legal action to interpret or enforce this MOU provided the party bringing such legal action has first given at least thirty (30) days' written notice to the other party of the intent to bring such legal action.

#### 16. Miscellaneous

This MOU may be executed in counterparts, each of which is considered an original. This MOU may be modified or amended only by a written amendment entered into between the parties, which is signed by both parties. A waiver or failure to enforce any provision of this MOU on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Each party will maintain the confidential information of the other party in strict trust and confidence, and disclose such information only in accordance

with law. This MOU constitutes the entire and final understanding of the parties regarding this matter and supersedes any and all prior or contemporaneous related negotiations, representations, understandings, discussions, offers, or proposals between the parties. This MOU shall be subject to and construed in accordance with the laws of the State of California. If any terms or provision of this MOU is found to be illegal or unenforceable, this MOU shall remain in full force and effect and that term or provision shall be deemed stricken. All headings are for reference purposes only and do not affect the interpretation of this MOU. The word "including" means "including, without limitation."

The parties, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN BENITO:**

By: \_\_\_\_\_  
J. Omar Rodriguez  
Presiding Judge

By: \_\_\_\_\_  
Edgar Nolasco  
Court Executive Officer

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

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

**COUNTY OF SAN BENITO:**

By: \_\_\_\_\_  
Bea Gonzales  
Chair, Board of Supervisors

By: \_\_\_\_\_  
Jennifer Frechette  
Clerk of the Board

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

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Barbara Thompson  
County Counsel

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

## **EXHIBIT A SERVICES**

### **Provision of Information**

The Probation Department will provide the Court with timely information that supports judicial officers in making pretrial release decisions. This information will support judicial officers in making pretrial release decisions that impose the least restrictive conditions.

Without limiting the foregoing, the Probation Department will:

- Upon receipt of a referral from a judicial officer, complete a validated assessment on the arrested individual.
- For each referral of an arrested individual, verify that individual's personal information, review the Individual's criminal history, and assess any prior failures by the individual to appear before a court.
- For each referral of an arrested individual, utilize the Public Safety Assessment (PSA) tool to assess the individual for likelihood of failure to appear, risk of new criminal activity, and recommended monitoring level while pending court proceedings.
- For each referral of an arrested individual, provide to the Court summarized information and a recommendation regarding release and recommended level of monitoring in a written report.

The Probation Department will work with the San Benito County Sheriff's Office, Custody Division, if the arrested individual is detained at the local county jail.

The Probation Department will take steps to facilitate the exchange of information with the Court. Such steps will include the purchase and implementation of the eProbation system, and the integration of eProbation with the Court's eCourt system.

### **Monitoring**

The Probation Department will monitor released individuals as directed by a judicial officer, in accordance with the levels described below.

- Level 1: Basic monitoring: reminders of upcoming court dates.
- Level 2: Enhanced Pretrial Monitoring: reminders of upcoming court dates; and periodic check-in with the Probation Department.
- Level 3: Intensive Pretrial Monitoring: reminders of upcoming court dates; weekly check-in with the Probation Department; monthly reporting to the Probation Department; case management services; drug testing, if ordered; placement on GPS, if ordered; and field contacts by Probation Department personnel as needed.

In addition, the Probation Department will monitor compliance with any additional terms and conditions added by the judicial officer to the pretrial release order (e.g., no contact order, chemical testing, weapons restrictions).

The monitoring levels above are considered minimum standards for contact with the released individual, and may be increased if risk/needs, or community functioning factors dictate the need for a more intensive monitoring level. Increases in monitoring level may be adjusted to be consistent with public safety, court appearance, and needs of the released individual.

When applicable, the Probation Department will provide released individuals with referrals to appropriate services. If a released individual is not compliant, the Probation Department may have the individual return to Court for review of pre-trial release amenability.

### **Staffing**

The Probation Department will hire and train a full-time Deputy Probation Officer in FY 21-22 in order to implement the pre-trial service program and performing associated tasks.

Probation Department staff will attend any required training provided by the Judicial Council.

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