

537-M1711

**Memorandum of Understanding
Between
The El Dorado County Public Defender
And
Superior Court of California,
County of El Dorado
Regarding Recidivism Reduction Fund Court Grant Program (RRF)
Pretrial Supervision Program**

This Memorandum of Understanding 534-M1711# (“MOU”) is entered into by and between the El Dorado County Public Defender (hereinafter referred to as “Public Defender”) and the Superior Court of California, County of El Dorado (hereinafter referred to as “Court”). This MOU sets forth each party’s roles and responsibilities as they relate to the Recidivism Reduction Fund Court Grant Program for Pretrial Supervision Program, for the grant period April 1, 2015 through April 30, 2017 and for the additional year extension May 1, 2017 through April 30, 2018.

WHEREAS, Court received funding from the Judicial Council of California (“Judicial Council”) for the original term of the Recidivism Reduction Fund Court Grant Program (“Program”) April 30, 2015 through April 30, 2017 under the terms and conditions of Agreement No. 1030020, attachment “D” between Court and the Judicial Council (the “Contract”);

WHEREAS, Court received additional funding from the Judicial Council for an additional one year period of May 1, 2017 through April 30, 2018 and intends to continue to subcontract with Public Defender, subject to the authorization of the County of El Dorado, for Public Defender 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 the Public Defender 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 Public Defender 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.

2. **Scope of Services:** Consistent with the terms and conditions of the Contract and this MOU, Public Defender shall provide the following in furtherance of the Program objections:

- .5% full-time employee (FTE) Deputy Public Defender with the Project Management Team, planning and implementation of a Pretrial Supervision Program (PSP);
- .5% full-time employee (FTE) Legal Secretary with the Project Management Team, responsible for the preparation, research and collection of court related materials
- Representation of the offenders at pretrial supervision hearings;
- Participation in meetings as required by Court to meet the Contract requirements for the Program.

Public Defender warrants to Court that funds provided to Public Defender under this MOU will only be used for new or expanded services and that no ongoing or completed projects of Public Defender will duplicate or overlap any Work under the Contract, consistent with the requirements in Exhibit B, Sections 12 and 13 of the Contract.

3. **Term:** This MOU is effective May 1, 2017 through April 30, 2018. Either party may terminate this MOU earlier by providing written notice of intent to terminate to the other party at least thirty (30) days before the intended termination date. In addition and upon notice to Public Defender, 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 Public Defender consistent with the requirements of Exhibit B, Section 7 of the Contract.

4. **Reporting:** Public Defender agrees to provide data relevant to the deliverables in a timely manner but no less than fifteen (15) business days prior to the Due Date as outlined in Court's Contract with the Judicial Council for the Program. The Judicial Council's Quarterly Program Evaluation, Data and Data Collection Report is attached as Attachment "A" to this MOU for information purposes only. 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 Public Defender in a timely manner.

5. **Compensation for Services:**

The maximum amount Court may pay Public Defender under this MOU is **\$12,820** for the period **May 1, 2017** through **April 30, 2018**, subject to the provisions of this Section 5. This maximum amount includes 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 2016–2017 and Fiscal Year 2017–2018: Requests for reimbursement, with proper financial documentation, should be submitted to Court monthly in arrears by no later than the 10th of the following month. Public Defender’s final invoice must be received by Court no later than May 1, 2018. **Invoices received by Court after May 1, 2018, will not be accepted.**

Public Defender shall submit 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 Public Defender Personnel Salaries and Fringe Benefits paid to .5% FTE Deputy Public Defender(s) and .5% Legal Secretary under this MOU;
- b. Adequate backup documentation as deemed necessary by Court to substantiate expenses claimed; and
- c. Such additional information as Court may require from Public Defender to comply with the terms of the Contract.

Subject to compliance with the requirements of the Contract that are applicable to Public Defender’s role as a Subcontractor and this MOU, Court shall reimburse Public Defender for actual costs incurred following (i) Court’s receipt of Grant funds from the Judicial Council and (ii) submission to and acceptance by the Judicial Council of required reports identified in the Contract and Attachment “C” – Deliverables of this MOU.

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

6. General Provisions

- a. Entire Agreement. This MOU, including those portions of the Contract applicable to the services of Public Defender 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 effect 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. The Public Defender and the employees and agents of the Public Defender in the performance of this MOU shall act in an independent capacity and not as officers, employees or agents of Court or the Judicial Council. Neither the Public Defender nor any person engaged by the Public Defender 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 this MOU, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting the respective party. The Public Defender 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 Allocation. 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: El Dorado County Public Defender
3976 Durock Road, Suite 104
Shingle Springs, CA 95682-8567
Attn: Public Defender

Court: Superior Court Executive Officer
2850 Fairlane Court, Ste. 110
Placerville, CA 95667
Attn: Court Executive Officer

- j. Retention of Records; Audit. Public Defender 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 the Public Defender's final payment request. The Public Defender shall permit all records related to performance and billing under this MOU to be inspected and/or audited, at any reasonable time, by an authorized representative of Court or 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. Limitation on Publication. Public Defender 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. Third Party Beneficiary. The Judicial Council is a third party beneficiary of this MOU.

IN WITNESS WHEREOF, Court and Public Defender executed this MOU #537-M1711 on the date or dates indicated below:

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chairman
Board of Supervisors
"County"

ATTEST:

_____, Clerk
of the Board of Supervisors

By: _____ Dated: _____

Deputy Clerk

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**Superior Court of California,
County of El Dorado**

By: _____

Suzanne N. Kingsbury
Presiding Judge of the Superior Court
of California, County of El Dorado

By: _____

Tania Ugrin-Capobianco
Court Executive Officer

El Dorado County Public Defender

By: _____

Teri Monterosso
Public Defender
Contract Administrator

ATTACHMENT “A”

Quarterly Program Evaluation, Data and Data Collection Report

Reporting will be consistent with the requirements of Exhibit D, Section 8.2.2 of the Contract.

The list of required data elements, information/instructions and the tool to be used for reporting this data may be accessed by Public Defender at the following location:

<http://www.courts.ca.gov/RecidivismReduction.htm>

ATTACHMENT “B”

**Itemized Budget
(From Court’s Budget Detail and Narrative/Justification in Contract)***

***Exhibit E, Attachment 1 REVISED – APRIL 2017 of Contract #1030020
(Attachment “D”)**

ATTACHMENT “C”

Deliverables

Deliverables -Year 3/Second Option Term

No.	Description	Period of Performance	Due Date
Y3-Q1	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	July 1, 2016 - September 30, 2016	October 31, 2016
Y3-Q2	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	October 1, 2016 - December 31, 2016	January 31, 2017
Y3-Q3	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	January 1, 2017 - March 31, 2017	April 30, 2017
Y3-Q4	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	April 1, 2017 - June 30, 2017	July 31, 2017

EY-Q1	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	July 1, 2017 - September 30, 2017	October 31, 2017
EY-Q2	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	October 1, 2017 - December 31, 2017	January 31, 2018
EY-Q3	<ul style="list-style-type: none"> • Quarterly Grant Administration & Tracking Report • Quarterly Program Evaluation, Data and Data Collection Report 	January 1, 2018 – April 30, 2018	May 31, 2018

Attachment “D”

Agreement No. 1030020 between Court and the Judicial Council, 67 pages