

**MEMORANDUM OF UNDERSTANDING  
FOR COLLECTION SERVICES,  
COUNTY OF CONTRA COSTA AND  
THE SUPERIOR COURT, COUNTY OF CONTRA COSTA**

This Memorandum of Understanding (“MOU”) is made as of October 1, 2017 (“Effective Date”) between the COUNTY OF CONTRA COSTA (“County”), a political subdivision of the State of California and the SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA (“Court”), an entity of the California Judicial Branch organized under Article VI of the California Constitution (individually, a “Party” and, collectively, the “Parties”).

WHEREAS, California Penal Code Section 1463.010 requires the Court and the County to develop a cooperative plan to implement a collection program for the collection of fees, fines, forfeitures, penalties, and assessments incurred by a defendant in a criminal or traffic action or proceeding; and

WHEREAS, the Court and the County have developed such a collection program (“Program”) and desire to clarify their respective rights and responsibilities regarding the Program, including enhanced collection services, by entering into this MOU.

**AGREEMENT**

NOW THEREFORE, the Parties agree as follows:

**A. COLLECTIONS PROGRAM**

1. The Court will operate the Program for the collection of all fees, fines, forfeitures, penalties, and assessments arising from criminal or traffic actions or proceedings. The Court will also implement and operate the Program as a comprehensive collection program, as that term is defined in Penal Code Section 1463.007, for the collection of all delinquent fees, fines, forfeitures, penalties, and assessments arising from criminal or traffic actions or proceedings.

2. The Court will engage, with County’s consent, which consent will not be unreasonably withheld, one or more collections vendors (each, a “Vendor”) who have entered into a master agreement with the Judicial Council of California to perform collection services on certain accounts under the terms and conditions set forth in a master agreement between the Judicial Council and the Vendor (“Master Agreement”). The Court will provide the County with a copy of the Master Agreement and any other agreements and related amendments that the Court enters into with a Vendor.

3. The Court has entered into an agreement with the Franchise Tax Board to participate in its Court-Ordered Debt Collection program, and participates in the Interagency Intercept Collections program. The Court will provide the County a copy of the agreement

between the Court and Franchise Tax Board for the Court-Ordered Debt Collection program, and if applicable, the annual Intent to Participate Form for the Interagency Intercept Collections program.

4. The County will not knowingly accept full or partial payments on any accounts under the Program. If such payments are inadvertently received, the County will forward such payments to the Court when discovered.

5. The Court will provide the County with a monthly report indicating the amount of money collected under the Program during each month, in the format used by Court to meet its reporting requirements to the Judicial Council. The report will include (i) the gross amount of revenue collected, (ii) the gross amount of revenue attributable to delinquent, non-delinquent and victim restitutions collections, (iii) the amount Court has deducted as its allowable collection costs under Penal Code Section 1463.007, and (iv) the net amount of revenue to be distributed by the County. The Court will provide the report to the County no later than 45 calendar days after the end of the month for which the report is made.

6. The Court will deposit revenue collected under the Program, net of applicable deductions, with the County for distribution, according to California law and the regulations and guidelines of the Judicial Council and State Controller's Office ("SCO"). The County will provide the agency fund and/or account numbers for revenue to be deposited, and the Court will report the amounts to be distributed to the various State and local agencies based on the fund and/or account numbers provided by the County and according to California law and the regulation and distribution guidelines of the Judicial Council and SCO. The County will then distribute revenue collected under the Program according to the distribution report provided by the Court.

7. The Court will collect and directly distribute victim restitution payments to victims and to the State Victim Compensation and Government Claims Board.

8. By August 1 of each year during which this MOU is in effect, the Court will provide to the County a report showing victim restitution payments deposited in the Court's bank account in the prior calendar year that remain unclaimed.

9. Within 45 days of receipt of a monthly invoice, the County will reimburse the Court for (i) direct and indirect costs related to collection services for non-delinquent accounts receivable and installment plan accounts, (ii) direct and indirect costs related to collection and disbursement of victim restitution payments, (iii) mutually approved capital expenditures made from the Program, and (iv) the cost of all other collection activities performed by the Court on behalf of the County that are not allowable under Penal Code Section 1463.007 or California Rule of Court 10.810. None of these costs may be deducted from Program revenues.

10. When discharging court-ordered debt, the Court will comply with Government Code sections 25259.7 – 25259.95 and the Judicial Council guidelines. By August 1 of each year during which this MOU is in effect, the Court will provide the County a written report showing the accounts and amounts, if any, discharged in the prior fiscal year.

11. Each Party will provide the other with view-only access to its case management system on request and only as necessary for administrative purposes related to the implementation and continued operation of the Program. Each Party will bear its own costs for this access and each Party may deduct the costs of this access as permitted by Penal Code Section 1463.007.

12. The Parties will work cooperatively to maximize revenue collections and the quality of customer service being provided. The Parties will each designate an employee to act as the contact person for each Party to facilitate the exchange of information and resolve any day-to-day issues. Additionally, the Parties will conduct management level meetings as needed.

13. The Parties will safeguard as confidential all information shared between the Parties to carry out the purpose of this MOU. Except as necessary under a collection agreement with a Vendor and as set forth herein, neither Party will disclose the information shared between the Parties to a third party without the prior written consent of the other Party, with the exception of (i) audits performed by the Judicial Council, the SCO, or other legally authorized agency, and (ii) requests made under the California Public Records Act (California Government Code section 6250, et seq.) or California Rule of Court 10.500.

14. The Parties will comply with the guidelines and standards approved from time to time by the Judicial Council of California in the operation of the Program. The Parties will develop a cooperative plan and a manual of operational policies and procedures as necessary to implement these guidelines and standards. The Parties will cooperate as necessary to complete reports to the Judicial Council on their collections program, on the schedule and in the form required by the Judicial Council.

15. The Parties will monitor and implement any changes or modifications to state laws and/or regulations affecting the Program and notify the other party of such change.

## **B. ALLOWABLE DEDUCTIONS**

1. Each Party may deduct from the revenue collected under the Program its allowable costs as provided in Penal Code Section 1463.007. The Court may deduct its allowable costs prior to its deposit of revenue with the County. The County may deduct its allowable costs prior to its distribution of such revenue.

2. Each Party's obligations for collection efforts under the Program remain in effect notwithstanding that Party's inability to deduct its costs related to the Program for any reason. Neither Party has any obligation to pay or reimburse the other party for any costs incurred by it in performing its obligations under this MOU without the prior agreement of both Parties.

3. If the operating costs for a given month exceed revenue collected, the excess costs may be carried forward within the same fiscal year, subject to guidelines promulgated by the Judicial Council and the SCO, until eligible revenues are available to fully recover the eligible costs.

### **C. TERM/TERMINATION**

1. The term of this MOU will be for one year beginning on the Effective Date. This MOU will automatically renew for successive one year terms unless terminated by either Party in accordance with Section C.2 below.

2. Either Party may terminate this MOU by giving at least 90 calendar day notice to the other Party; provided, however, such termination will not be effective, and this MOU will remain in full force and effect, unless and until the Parties execute a new memorandum of understanding or other document setting forth their agreement on the operation of a subsequent collections program as required by Penal Code Section 1463.010.

### **D. DISPUTE RESOLUTION**

If, after thirty (30) calendar days of negotiations, the Court and the County cannot resolve a dispute regarding the interpretation or performance of this MOU or cannot agree on a new collections program, either Party may request a meeting between the Court Executive Officer and County Administrator or designee for the purpose of resolving the dispute. If such meeting is requested, the meeting will be held within ten (10) days of the receipt of such request. If the meeting fails to occur or fails to resolve the dispute, the dispute will be submitted for non-binding mediation. If the mediation fails to resolve the dispute, either Party may request binding arbitration by a third party mutually agreed upon by the Administrative Director of the Judicial Council and the California State Association of Counties. Until the dispute is resolved, the Parties will continue to operate the Program as set forth in this MOU and perform and observe their respective responsibilities and rights hereunder.

### **E. COMPLIANCE WITH AUDITS; RECORDS RETENTION REQUIREMENTS**

1. The Parties will receive, reply to, and/or comply with any audit by an appropriate state audit agency that directly relates to this MOU or to funds to be handled or disbursed hereunder. The Parties will each maintain an accounting system and supporting fiscal records to comply with state audit requirements related to this MOU. The County will implement and follow the requirements set forth in the Information Practices Act of 1977 (California Civil Code section 1798 et seq.) with respect to all personal and confidential information accessed through the Court's computer systems.

2. The Parties will maintain and preserve all records and documentation related to this MOU, including records related to billings and other financial records, in an accessible location and condition for a period of not less than five years after an account has been completely paid or until after an audit involving an account has been resolved, whichever is later. Each Party will adequately protect all records against fire or other damage.

### **F. GENERAL PROVISIONS**

1. Entire Agreement. This MOU 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.

2. Amendment. No addition to or alteration of the terms of this MOU will be valid unless made in the form of a written amendment that is formally approved and executed by the governing bodies of each of the Parties, or their respective authorized designees.

3. 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.

4. 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.

5. 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.

6. Independent Contractor. Each Party will be, and is, an independent contractor, and is not an employee or agent of the other Party, and neither Party nor any person engaged by a Party to perform the services described herein is covered by any employee benefit plans provided to the employee of the other Party. Each Party is liable for the acts and omissions of itself, its employees, its subcontractors 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. Each Party 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.

7. 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 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.

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

IN WITNESS WHEREOF, the Parties are executing this MOU as of the date first written above.

**SUPERIOR COURT OF  
CALIFORNIA, COUNTY  
OF CONTRA COSTA**

**COUNTY OF CONTRA COSTA**

By: \_\_\_\_\_  
Jill Fannin  
Presiding Judge

By: \_\_\_\_\_  
David Twa  
County Administrator

APPROVED AS TO FORM:

SHARON L. ANDERSON,  
County Counsel

By: \_\_\_\_\_  
Deputy County Counsel