

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the County of Marin Child Support Services and Probation departments (hereinafter referred to as the “County”) and the Superior Court of California, County of Marin (“Court”) (collectively, the “Parties”, as may be applicable.) This MOU will become effective on the date of the last signature affixed hereto.

RECITALS

WHEREAS, California Penal Code Section 1463.010 requires the Court and County to develop a cooperative plan to implement a collection program for the collection of delinquent fees, fines, forfeitures, penalties, and assessments arising from criminal cases (“Fees”); and

WHEREAS, the Parties have developed such a collection program (the “Program”) and wish to set forth their respective rights and responsibilities under the Program.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. COURT RESPONSIBILITIES

The Court will:

- a. Transfer all accounts in which payment on Fees are delinquent (“Qualifying Accounts”) to the County for collection. Court will not be obligated to transfer a Qualifying Account until the civil assessment imposed on that account has become effective under California Penal Code Section 1214.1.
- b. Transfer to County all information stored on the Court’s case management system that is necessary to pursue billing and collection of Qualifying Accounts in an organized and efficient manner. Such transfer will be in an electronic medium that is mutually agreed upon in writing by both parties. The electronic transfer of such data will be completed daily (excluding weekends and Court and County holidays).
- c. Allow the County to have on-going access to the Court’s case management system. Access will be provided as necessary only for administrative purposes related to the implementation and continued operation of the Program. The County will bear the cost of this access.
- d. Provide the County with clarification, reconciliation and verification for amounts ordered, case discrepancies, and adjustments on all case types.
- e. Collect Fees in the Court’s branch offices on behalf of the County. Such collections made by the Court will be deposited in a fund mutually agreed to by County and Court.

- f. Provide the County with daily adjustments or exception reports on Fees based on Court orders (excluding weekends and Court and County holidays).
- g. Except for the revenue allocated for victim restitution, distribute the revenue collected under the Program according to state law and Administrative Office of the Courts (“AOC”) and State Controller Office (“SCO”) regulations and guidelines.

2. COUNTY RESPONSIBILITIES

The County will:

- a. Collect the outstanding balances for all Qualifying Accounts transferred to it by Court.
- b. Implement and operate the Program as a comprehensive collections program as that term is defined in California Penal Code Section 1463.007 and applicable guidelines and standards approved from time-to-time by the Judicial Council of California.
- c. Operate the Program as a separate and distinct revenue collection activity. To satisfy this requirement the Program must have the ability to identify and collect revenue of Qualifying Accounts and to document the related costs of collection in connection with the Qualifying Accounts.
- d. Provide the Court with access to the County’s operating system to enable Court to view and print the payment history for all Qualifying Accounts. The costs for this access will be borne by the County.
- e. Provide the Court with a monthly report indicating the amount of revenue collected under the Program, in a format mutually agreed upon in writing, to enable Court to meet its reporting requirements to the AOC. The monthly report will also include the following: 1) the gross amount of revenue collected under the Program; 2) the number and balance of Qualifying Accounts transferred to the County, including any adjustments; 3) the gross revenue collected for each Qualifying Account; 4) the monthly amount the County has deducted as its allowable collection costs under California Penal Code Section 1463.007 (its “Allowable Costs”); and 5) the monthly net revenue to be distributed. This report will be provided no later than ten (10) calendar days after the end of each month.
- f. Have the capability to adjust original Fees on the County’s collection operating system based on a court order.
- g. Maintain and preserve all records related to the Program for the minimum period required by law according to California Government Code Section 26202, and as necessary to comply with State audit requirements and the guidelines and standards of the Judicial Council.
- h. Return any Qualifying Account for which there is an outstanding balance to the Court in accordance with policy set by the Court.

- i. Deposit all revenue collected under the Program into Agency Fund 80154, or as otherwise agreed to in writing by the Parties.
- j. Distribute the revenue collected under the Program and allocated for victim restitution pursuant to statute.
- k. Refrain from subcontracting any of its responsibilities under this MOU without the prior written approval of the Court.
- l. Implement and follow the requirements set forth in the Information Practices Act of 1977 (California Civil Code section 1798 et seq.) in respect of any and all personal and confidential information accessed through Court's computer systems

3. JOINT RESPONSIBILITIES

The Parties will:

- a. 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. Parties will work co-operatively to effectuate the provisions and purposes of this MOU. The Parties will also meet together monthly or as otherwise agreed to discuss issues of mutual interest and concern that may arise in connection with the Program.
- b. Deposit into a fund mutually agreed to by both Parties all revenue received for accounts that should have gone to the other Party, and forward the receipts to the correct Party.
- c. Receive, reply to and/or comply with any audit of an appropriate State audit agency that directly relates to the Program or revenue to be handled or disbursed hereunder.
- d. Safeguard all confidential information shared between the Parties to carry out the purpose of the Program. Neither party will disclose the information shared between the parties to a third party of the information without the prior written consent of the other party, with the exception of audits performed by the AOC, the SCO, or other legally authorized agency.
- e. Evaluate potential for the County to assume responsibility for additional types of collection in the future.
- f. Monitor and implement any changes or modifications to State laws and/or regulations affecting the Program and notify the other Party of such changes.
- g. Jointly develop a cooperative plan and a manual of operational policies and procedures to implement Judicial Council guidelines governing the Program. Both Parties will also jointly report to the Judicial Council at least annually on the effectiveness of the Program, or as the Judicial Council may otherwise require.

h. Maintain all records and documentation related to the performance of 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 (5) years after a Qualifying Account is completely paid or until after final audit has been resolved, whichever is later. Each Party will adequately protect all records against fire or other damage.

i. Permit authorized representatives of the other Party, the AOC, the SCO and/or their designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of this MOU, including records related to billings and other financial records. County will allow the auditor(s) access to such records during normal business hours and will allow the auditor(s) to interview any employees or others who might reasonably have information related to such records.

4. DEDUCTIONS FOR ALLOWABLE COSTS.

a. Each Party may deduct from the monies collected under the Program its Allowable Costs prior to distributing said monies. Allowable Costs, either direct or indirect, will be reimbursed in the amount and manner set forth in the guidelines and regulations established by the AOC and the SCO.

b. Each Party's responsibilities under this MOU are independent of any right to deduct its Allowable Costs. The Parties agree that neither Party has an obligation to pay or reimburse the other Party for any amounts or costs incurred by the other Party in performing its responsibilities under the Program.

5. TERM/TERMINATION

a. This MOU shall be effective on the date of the last signature affixed hereto and shall remain in effect until terminated by either Party in accordance with Section 5b of this MOU.

b. Either Party may terminate this MOU by giving notice to the other Party in the manner specified in Section 7e below; provided, however, such termination shall not be effective, and this MOU shall remain in full force and effect, unless and until the County and the Court execute a written memorandum setting forth their agreement on the operation of a subsequent collection program as required by Penal Code Section 1463.010. Such notice will be given at least sixty (60) days prior to the end of the County's fiscal year and, subject to satisfying the requirements of this Section 5, will become effective only upon the first day of the County's succeeding fiscal year.

6. DISPUTE RESOLUTION

a. If the Parties disagree as to any matter governed by this MOU, the dispute resolution process discussed in this Section 6 will govern. If after thirty (30) days of negotiations between the employees designated in Section 3a, the Parties cannot resolve a 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 a disagreement between the Parties. If such meeting is requested, the meeting will be held within ten (10) days of the receipt of such request.

b. If the meeting between the Court Executive Officer and the County Administrative Officer fails to occur or fails to resolve the disagreement, the dispute will be submitted for non-binding mediation by a third party mutually agreed upon by the Administrative Director of the Courts and the California Association of Counties. If the mediation fails to resolve the disagreement, either Party may request binding arbitration by a third party mutually agreed upon by the Administrative Director of the Courts and the California Association of Counties. Until the dispute is resolved, both Parties will continue to perform their respective responsibilities under this MOU.

7. MISCELLANEOUS

a. Entire Agreement. This MOU, and all exhibits hereto, 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 of 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 of this MOU, or their respective authorized designees.

c. Further Assurances. Each Party hereto 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.

d. Time. Time is of the essence of each and all of the provisions of this MOU.

e. Notices. Any notices required or permitted hereunder shall be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service; addressed as follows or to such other place as each Party may designate by subsequent written notice to the other Party:

If to County: Enhanced Court Collections Program
7655 Redwood Blvd.,
Novato, CA 94945
Attn: Director of Child Support Services

If to Court: Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913-4988
Attn: Court Executive Officer

f. 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.

g. Counsel and Drafting. Each Party, by its due execution of this MOU, represents to the other Party that it has reviewed each term of this MOU with their counsel, or has had the opportunity for such review with their counsel. No Party will deny the validity of this MOU on the ground that such Party did not have the advice of counsel. Each Party has had the opportunity to participate in drafting and preparation of this MOU. The provisions and terms of this MOU will be interpreted in accordance with the plain meaning thereof, and will not be construed in favor or against either Party.

h. Counterparts. This MOU may be executed in one or more counterparts, all of which together will constitute one and the same agreement.

i. Severability. The provisions of this MOU are separate and severable. If any provision of this MOU is held by a court of competent jurisdiction or arbitration to be invalid, void or unenforceable, then (i) the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way; and (ii) such provision will be enforced to the maximum extent possible so as to effect the reasonable intent of the parties hereto and will be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

j. Governing Law. This MOU will be construed under the laws of the State of California, without regard to its conflict of law provisions.

k. Authority to Execute this MOU. County and Court certify that the individual(s) signing below on behalf of the Party has authority to execute this MOU on behalf of the Party, and may *legally bind the Party to the terms and conditions of this MOU, and any attachments hereto.*

l. Legislative Changes. This MOU is subject to any future legislation that may alter or amend any provision contained herein.

m. Independent Contractor. County will be, and is, an independent contractor, and is not an employee or agent of Court, and neither County nor any person engaged by County to perform County's responsibilities under this MOU is covered by any employee benefit plans provided to Court employees. County 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 Court and County. County will determine the method, details and means of performing County's responsibilities under this MOU, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting County. County 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.

n. Risk Allocation. It is the intention of both parties that neither of the parties shall 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.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first below written.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN:

By: _____
_____, Presiding Judge
_____, Date

COUNTY OF MARIN:

By: _____
_____, President, Board of Supervisors
_____, Date