

PARTICIPATION AGREEMENT FOR COLLECTION SERVICES

COUNTY OF MONTEREY AND GILA LLC, dba MUNICIPAL SERVICES BUREAU

THIS PARTICIPATING AGREEMENT (“Agreement”), is made and entered into as of the 1st day of January 2019, by and between the COUNTY OF MONTEREY, by and through its TREASURER-TAX COLLECTOR-Revenue Division, 168 West Alisal Street, 1st Floor, Salinas, CA 93901 (jointly referred herein as “County”), and Gila LLC dba: Municipal Services Bureau (“Contractor”), with offices at 8325 Tuscany Way, Austin, TX 78754.

WHEREAS, Contractor and the Judicial Council of California, for the benefit of the Judicial Branch Entities, (as defined in Appendix D), the California State Bar, the superior courts, Supreme Court, the Courts of Appeal, the 58 Counties of the State of California, and other governmental or regulatory entities identified for inclusion by the Judicial Council. are parties to that Master Agreement No. MA-2018-15 74-2605908 (“Master Agreement”) for collections services effective January 1, 2019;

WHEREAS, the Master Agreement sets forth the terms and conditions upon which Contractor will provide collections services to the Superior Courts, counties, and certain other designated entities in the State of California, should any such party desire to engage Contractor for such services;

WHEREAS, County pursues non-forthwith collection efforts on court ordered debt established by the Monterey County Superior Court for unpaid fees, fines, forfeitures, penalties and assessments arising from criminal and traffic actions or proceedings;

WHEREAS, County desires to engage Contractor to perform collection services (“Services”) in accordance with the Master Agreement on selected accounts established by the County and not fully paid 30 or more days from the date of their assessment or imposition, or on which an installment payment is not fully paid within 30 days of the date such payment was due under an installment payment plan (“Accounts”).

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Participation of County/Employment of Contractor. County engages Contractor to perform additional collection services on accounts transferred to Contractor by County according to **Appendix A** hereto, excepting Sections 2.2 On-Site Personnel and 2.3 FTB Transfer Services. Contractor will provide such services to County, on the same terms and conditions and as if such services were provided by Contractor under the Master Agreement, except where specifically stated herein. Terms defined in the Master Agreement will have the same meaning when used herein.

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2. Scope of Services. Accounts transferred to Contractor for collection services under this Agreement will qualify for Services:

Collection Services. Contractor will perform collections activities on the Accounts transferred to it as set forth in Appendix A of the Master Agreement.

3. Contacts. Each of the County and the Contractor will appoint a Project Manager, who will be authorized to make day-to-day decisions related to the implementation of this Agreement that do not substantially limit rights or expand the responsibilities of the County or the Contractor, subject to paragraph 12 below. The respective Project Managers and their contact information are as follows:

County Project Manager

Name: Kathleen Mauzey

Title: Finance Manager

Address:
168 West Alisal St., 1st Floor
Salinas, CA 93901

Phone: (831) 755-5142

Email: mauzeyk@co.monterey.ca.us

Contractor Project Manager

Name: Bruce Cummings

Title: CEO

Address: 8325 Tuscany Way

Phone: (512) 323-4231

Email: Bruce.Cummings@GilaCorp.com

4. Payment and Pricing Structure: Contractor shall remit to the County weekly all revenue collected on behalf of the County, less Commission Fees charged for collection services under this Agreement in accordance with the Master Agreement Appendix B Fee Schedule. Commission Fees shall be calculated each period on the total funds collected during that period on all Accounts transferred to Contractor under this Agreement. A detailed account payment data file shall also be transmitted to the County with each remittance reflecting 100% of the payments collected from each Debtor for that period, the amount of the Commission Fees retained by MSB and the net balance remitted to the County. This process will mirror of the FTB COD process that is currently in place at the County.

5. On-site personnel. Contractor is not required to perform services under this Agreement on-site at County locations at this time.

6. Reporting Requirements. Notwithstanding the required reports and schedule of reports set forth in Appendix A, Section 2.1 and 2.5, of the Master Agreement, the parties hereto agree that Contractor will provide reports on the following schedule:

Contractor shall provide quarterly reports no later than 15 days after the close of the month. Contractor shall also provide additional reports upon request by County.

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7. Term. The term of this Participation Agreement shall be from January 1, 2019 through December 31, 2021, unless subject to early termination pursuant to the terms of this Participation Agreement or the Master Agreement. Any extension of the Participation Agreement shall require a written amendment signed by both parties to document that fact. The respective duties and obligations of the parties hereto shall commence on the date first written above. Notwithstanding the foregoing, either party may terminate all or any of the services under this Agreement by giving ninety (90) days written notice to the other party. In addition, this Agreement is expressly conditioned upon the ability of the County under currently applicable California state law and policy to pay Contractor for services hereunder from revenue collected by Contractor on the Accounts. If any applicable law or policy is amended or enacted such that the revenue under this Agreement may not be applied to County's obligations under this Agreement, the County may, by written notice, terminate this Agreement on the effective date of such amended or enacted law or policy.

9. Independent Contractor. Contractor is, for all purposes, an independent contractor and shall not be deemed an employee of the County.

- a. The Contractor specifically acknowledges that it controls the manner and means by which the product is accomplished, agrees to hold itself out as an independent contractor, and waives any rights to claim that it is an employee of the County under the common-law agency test, the economic realities test, or any other legal test.
- b. It is expressly understood and agreed that the Contractor shall in no event, as a result of this contract or any work performed under this contract, be entitled to any benefits to which County employees are entitled, including but not limited to overtime or other pay differentials, retirement benefits, social security benefits, disability insurance benefits, unemployment compensation or insurance, workers' compensation benefits, and injury, vacation, sick, or other leave or employment benefits. The Contractor expressly agrees that all legal recourse for performance and severance of the relationship between it and the County is set forth in this Agreement, and not in any statutes or case law relating to rights of employees.
- c. The Contractor agrees to notify its own employees that they are not employees of the County and are not entitled to any benefits to which County employees are entitled, as set forth above. The Contractor furthermore agrees to indemnify, defend and hold harmless the County, its judges, subordinate judicial officers, officers and employees, from any such claims made by employees of the Contractor.

10. Indemnification. Contractor shall indemnify and save harmless County and its

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respective judges, subordinate judicial officers, officers, agents and employees from and against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by County or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on County, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of County and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

11. Entire Agreement. This Agreement and the incorporated documents constitute the entire understanding between the parties and supersede any and all prior understandings and agreements, oral or written, relating to the subject matter of this Agreement. Each party acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not included in this Agreement, and no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

12. Amendment. No alteration or amendment to the terms of this Agreement shall be valid unless it is made in writing and is signed by the parties, and no oral understanding or agreement shall be binding on the parties.

13. Assignment. Inasmuch as this Agreement is intended to secure the specialized services of Contractor, Contractor may not assign, transfer, delegate or sublet any interest herein without the prior written consent of County.

14. Governing Law. This Agreement will be construed under the laws of the state of California, without regard to its conflict of law provisions.

15. Waiver. Any waiver by either party of a breach of any of the terms of this Agreement will not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.

16. 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 to effectuate the provisions and purposes of this Agreement.

17. Severability. If any part of this Agreement is held unenforceable, all other parts remain enforceable.

18. Time. Time is of the essence in the performance of services under this

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Agreement.

19. Counterparts. This Agreement may be executed in counterparts, each of which is considered an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

COUNTY OF MONTEREY

CONTRACTOR

Contracts/Purchasing Officer

Contractor's Business Name

Date: _____

Signature of Chair, President, or Vice-
President

Treasurer-Tax Collector

Printed Name and Title

Date: _____

Date: _____

Approved as to Form:

Signature of Secretary, Asst. Secretary,
CFO, Treasurer or Asst. Treasurer*

Deputy County Counsel

Printed Name and Title

Date: _____

Approved as to Fiscal Provisions:

Date: _____

Auditor-Controller

Date: _____

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