

**MEMORANDUM OF UNDERSTANDING
FOR
COLLECTION SERVICES**

This Memorandum of Understanding ("MOU") is between the County of Monterey (the "County") and the Superior Court of California, County of Monterey ("Court") (individually, a "Party"; collectively, the "Parties"). This MOU will become effective on the date of the last signature affixed hereto.

RECITALS

1. 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, traffic, and minor offense cases.
2. The Parties had a previous MOU dated April 27, 2005, establishing the County's responsibility to collect and distribute criminal fines, fees, forfeitures and assessments pursuant to California law. The Parties have now developed a collection program for the collection of delinquent fees, fines, forfeitures, penalties, and assessments arising from criminal, traffic and minor offense cases (the "Delinquent Collection Program"). Exhibit C of the MOU dated April 27, 2005 will be superseded by this MOU. For purposes of this MOU, delinquent payments are payments on accounts that have become past due and have been assessed a civil assessment.
3. The Parties have an arrangement whereby the County accepts and processes forthwith and current payments for fees, fines, forfeitures, penalties, and assessments arising from criminal cases (the "Forthwith-Current Collection Arrangement"). The Parties also have an arrangement whereby the County accepts and processes delinquent traffic and minor offense accounts.
4. The Parties want to set forth their respective rights and responsibilities under the Delinquent Collection Program and the Forthwith-Current Collection Arrangement.

AGREEMENT

NOW, THEREFORE, the Parties agree to the following:

1. PURPOSE

The purpose of this MOU is to establish the County Treasurer-Tax Collector, Revenue Division's responsibility for the collection of delinquent fees, fines, forfeitures, penalties and assessments arising from criminal, traffic and minor offense cases.

2. DEFINITIONS

- 2.1 Adjustment** – Any change in a debtor’s original fine, fee, forfeiture or assessment.
- 2.2 Assessment** – A charge established by Court that is not a fine, fee or forfeiture.
- 2.3 Collections** – The process used by the Revenue Division to facilitate County debt repayment.
- 2.4 Comprehensive Court Collection Program (“CCCP”)** – A broad program pursuant to Government Code Section 1463.007 that allows allowable costs of collections to be reimbursed to the collection agency.
- 2.5 Current Payment** - payments made on an installment plan.
- 2.6 Defendant** – The accused person or party in a civil or criminal action.
- 2.7 Fee** – a fixed charge established by Court, County or State.
- 2.8 Fine** – a punitive sum determined by the State or Court.
- 2.9 Forfeiture** – a sum imposed by the State or Court due to a breach of a legal obligation.
- 2.10 Forthwith Payment** - payments paid immediately upon sentencing.
- 2.11 Operating System** – An information system used by either the State or County, to carry out the data management functions required for the Comprehensive Collection Program.
- 2.12 State** – The State of California.

3. COURT RESPONSIBILITIES

The Court will:

- a. Transfer the following accounts to the County for collection services: 1) all criminal accounts, both forthwith and delinquent; and 2) all delinquent traffic and minor offense accounts with a balance due of \$10 or greater (collectively, “Transferred Accounts”).
- b. Transfer to County’s Treasurer-Tax Collector, Revenue Division (“Revenue Division”) all information stored on the Court’s case management system that is necessary to pursue billing and collection of the Transferred Accounts in an organized and efficient manner. Such transfer will be in an electronic medium that is mutually agreed upon. The electronic transfer of such data will be completed daily (excluding weekends and Court and County holidays).

c. Provide the County with clarification, reconciliation, and verification for amounts ordered for criminal cases never transferred, case discrepancies, and adjustments on all Transferred Accounts on a timely basis.

d. Accept payments on all Transferred Accounts in the Court's branch offices. Payments accepted by the Court will be forwarded within 5 Court business days to the Revenue Division with a transmittal form. The transmittal form will include, at a minimum, the defendant's name, the case number, the amount of the payment, and the date of the payment. If the payment is made by check, the checks will be batched with a transmittal form and sent to the Revenue Division. If payments are made by cash, the Court will deposit the cash payments, provide receipts for individual payments, and issue Court checks to the Revenue Division within 7 Court business days. Each Court check sent to the Revenue Division will include a transmittal form that will include, at a minimum, the defendant's name, the case number, the amount of the payment, and the date of the payment.

e. Provide the County with daily adjustments or "modification" reports on Transferred Accounts based on Court orders (excluding weekends and Court and County holidays). The modification report for accounts arising out of criminal, traffic, and minor offense cases will be in the form of the modification report that is currently being sent electronically to the County as of the effective date of this MOU.

f. Court will enter into a contract with GC Services Limited Partnership for collection services for traffic accounts that became delinquent prior to the execution of this MOU. Court will provide County with a copy of its agreement with GC Services Limited Partnership as soon as such agreement is executed and implemented.

g. Court will continue to provide to County Revenue continued access to the Court's Justice Partners' Automated Website (JPAW).

h. Court will delegate authority to the County authorizing the County to add civil assessments to all appropriate delinquent criminal cases as specified in the written judicial order Superior Court Directive 08-01.

4. COUNTY RESPONSIBILITIES

The County will:

a. Accept and process pursuant to applicable law forthwith payments received for fees, fines, forfeitures, penalties, and assessments arising from criminal cases.

b. Operate the Delinquent Collection 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. Specifically, County will operate the Delinquent Collection Program as a separate and distinct revenue collection activity.

c. Provide the Court with access to the County's operating system to enable the Court to view and print the payment history for all Transferred Accounts. The County will provide this access for at least five (5) query licenses. The County shall bear the costs for this access.

d. Provide the Court with a monthly report indicating the amount of revenue collected under the Delinquent Collection Program, in a format mutually agreed upon to enable the Court to meet its reporting requirements to the AOC. The monthly report will include the following:

- 1) the gross amount of revenue collected under the Delinquent Collection Program;
- 2) the number and balance of accounts transferred to the County;
- 3) the monthly amount the County has deducted as its allowable collection costs under California Penal Code Section 1463.007 (its "Allowable Costs"); and
- 4) the monthly net revenue to be distributed. This report will be provided to the Court's Chief Fiscal Officer no later than ten (10) calendar days after the end of each month.

e. Provide the Court with a weekly report, in a format mutually agreed upon, of each manual adjustment processed by the County for each account transferred under the Delinquent Collection Program. The weekly report, which will be sorted by case number, will include the following information:

- 1) case number;
- 2) the defendant's name;
- 3) reason for adjustment;
- 4) the original fee, fine, forfeiture, penalty, and assessment; and
- 5) the adjusted fee, fine, forfeiture, penalty, and assessment.

This report will be provided via email to the Court's Traffic, Court Services, and Finance Manager every Monday or as mutually agreed by the Parties.

f. Provide the Court with a monthly report indicating the amount of revenue collected under the Forthwith-Current Collection Arrangement, in a format mutually agreed upon, to enable Court to meet its reporting requirements to the AOC. The monthly report will also include the following:

- 1) the number of and beginning balance of all accounts, including adjustments, transferred from the Court to the County each month;

- 2) the total amount of gross revenue collected for all accounts with a forthwith-current collection status;
- 3) the total amount of gross revenue collected for all accounts with a delinquent status collection; and
- 4) the number of and remaining balance on all accounts (the ending inventory will exclude all accounts that have a balance that is less than or equal to zero)

This report will be provided to the Court's Chief Fiscal Officer no later than ten (10) calendar days after the end of each month.

- g. Adjust original amounts in Transferred Accounts on the County's collection operating system based on a court order.
- h. Notify Court of all accounts for which there is an outstanding balance not less than 36 months after it has become delinquent and the Revenue Division has exhausted all collection efforts. County will then meet with the Court to develop a mutually acceptable course of action for these accounts.
- i. Distribute the revenue collected under this MOU pursuant to applicable statute or law.
- j. Refrain from subcontracting any of its responsibilities under this MOU without the prior written approval of the Court.
- k. Submit monthly invoices for the actual costs of accepting and processing forthwith payments for fees, fines, forfeitures, penalties, and assessments arising from criminal cases received at the County's Salinas Office. The invoices will be based on timesheets for the actual salary and benefit costs for a County employee at the Senior Account Clerk classification.
- l. Pay for background investigations, including fingerprinting through the Sheriff's Office, for County's personnel who will perform the County's responsibilities under this MOU or otherwise have access to Court information.
- m. Provide the Court with drafts of all written collection notices proposed to be used by County and provide the procedure for reviewing and editing language of such notices. County will not use any collection notice that has not been previously approved by the Court.
- n. Will cooperate with Court to expedite the process for scheduling court appearances on those cases where the account has been transferred to the County. County will provide an account payment history for each case appearing in court or as needed. The account payment history will be populated through the County's CUBS System to the Court's case management system by an electronic interface process. An account payment history will include the following: a) Defendant's name and case number; b) the amount of fine referred, the amount applied to the fine, any balance remaining, and next payment due; and c) a chronological list of payments.

o. Forward to the Court via the daily interface extract from the County's CUBS System to the Court's case management system, a record of payments taken each day to ensure failure to appear ("FTA") and failure to pay ("FTP") holds on defendants' drivers licenses are released by the Court in a timely manner.

p. For traffic and minor offense cases, in order for the Court to place a DMV FTP hold on a defendant's license, the County will after the 15th day, notify the Court if defendant has failed to pay. The County shall update their CUBS system by placing an agreed upon character in the FTP flag so that the interface will pick up the FTP information for the Court to proceed with the hold process. (This process is outlined in the FTA, FTP, and CUBS Functional Requirements document) The interface will update the Court's case management system so that the FTP hold will be picked up the next time the CDR tool is run. The FTP release will not be sent to DMV until the fine and civil assessment are paid in full.

q. For a FTA hold on a driver's license, County Revenue Division staff will advise the defendant that the FTA hold will be released within 24-48 of their first payment. For a FTP hold on a driver's license, County Revenue Division staff will advise the defendant that a release on the hold will not be sent to the DMV until the balance of the account is paid in full, at which point it may take between 24-48 hours for the relevant systems to be updated.

5. JOINT RESPONSIBILITIES

The Parties will:

a. 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. Parties will work co-operatively to effectuate the provisions and purposes of this MOU, which includes maximizing collection revenue, improving the flow of information, and improving customer service.

For traffic case specific questions, the County will contact the Traffic Division designee as identified by the Division Manager. For criminal case specific questions relating to fine/fees imposed or minute orders, the County shall submit requests to the Court Services Division through the Justice Partner Access Website (JPAW) "Helpdesk Ticket" system. Case specific questions relating to petitions to vacate civil assessment shall be submitted to the respective division designee in the Traffic or Criminal Division. 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 this MOU.

The County contact is Meryl Bryant, Finance Manager I, whose contact information is as follows:

Meryl Bryant
168 West Alisal Street, First Floor
Salinas, CA 93901
(831) 755-5143
bryantm@co.monterey.ca.us

- b. Receive, reply to and/or comply with any audit of an appropriate State audit agency that directly relates to the Delinquent Collection Program or revenue to be handled or disbursed under this MOU. Each Party will 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. Each Party 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.
- c. Safeguard as confidential all information as shared between the Parties to carry out the purpose of this MOU. 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 audits performed by the AOC, the SCO, or other legally authorized agency.
- d. Monitor and implement any changes or modifications to California state laws and/or regulations affecting the Delinquent Collection Program or the revenue collected under this MOU and notify the other Party of such changes.
- e. Jointly develop a cooperative plan and a manual of operational policies and procedures to implement Judicial Council guidelines governing the Delinquent Collection Program. Both Parties will also jointly report to the Judicial Council at least annually on the effectiveness of the Delinquent Collection Program, or as the Judicial Council may otherwise require.
- f. 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 Transferred 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.
- g. Bear their own costs for maintenance and any necessary programming or other IT services, to enable the data exchange with the other Party. With respect to the County, this cost includes reprogramming of County operating systems if and when the Court implements a new or different case management system.
- h. Cooperate in any performance audit initiated by the other Party. If the performance audit is not mutually agreed upon, the Party requesting the audit will pay for all costs related

the audit. If the Parties mutually agree on a performance audit, the costs will be shared. Each Party will permit authorized representatives of the other Party, 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. Each Party 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.

i. Notify the other Party immediately when there are technical errors or issues with the County's CUBS system or with the Court's case management system that may impact the day-to-day operations of the other Party.

6. FINANCIAL PROVISIONS

a. County will reimburse Court for the actual costs of accepting and processing delinquent payments on criminal, traffic, and minor offense cases in Court's branch offices located in Marina, Monterey, and King City up to a total of one (1) FTE. Court will submit monthly invoices based on timesheets for the actual salary and benefit costs incurred by Court, at the Deputy Court Clerk III classification, in accordance with direct billing by Court for collection activity.

b. Court will reimburse County for actual costs of accepting and processing forthwith payments made in the County Administrative Office located at 168 West Alisal Street in Salinas, California. County will submit monthly invoices based on timesheets for the actual salary and benefit costs at the Deputy Court Clerk III classification in accordance with direct billing by County Revenue Division.

7. DEDUCTIONS FOR ALLOWABLE COSTS.

a. Each Party may deduct from the monies collected under the Delinquent Collection Program its Allowable Costs prior to distributing such 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 Delinquent Collection Program.

8. 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 8b of this MOU.

b. Either Party may terminate this MOU by giving notice to the other Party in the manner specified in Section 10e 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 8, will become effective only upon the first day of the County's succeeding fiscal year.

c. Notwithstanding Section 8b, the Parties may terminate the provisions of this MOU that relate to the Forthwith-Current Collection Arrangement by giving 180 days prior notice in the manner specified in Section 10e below.

9. DISPUTE RESOLUTION

a. If the Parties disagree as to any matter governed by this MOU, the dispute resolution process discussed in this Section 9 will govern. If after thirty (30) days of negotiations between the employees designated in Section 5a, 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 Parties. If the mediation fails to resolve the disagreement, either Party may request binding arbitration by a third party mutually agreed upon by the Parties. Until the dispute is resolved, both Parties will continue to perform their respective responsibilities under this MOU.

10. 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: Monterey County Administrative Office
168 W. Alisal Street, Third Floor
Salinas, CA 93901
Attn: County Administrative Officer

If to Court: Superior Court of California, County of Monterey
240 Church Street
Salinas, CA 93901
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.

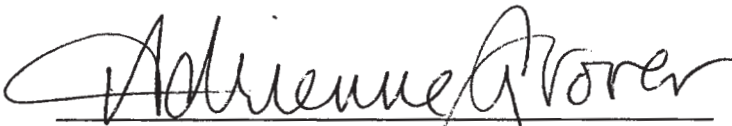
m. Independent Contractor. County will be, and is, an independent contractor, and is not an employee or agent of Court, and neither County nor any person engaged by County to perform County's responsibilities under this MOU is covered by any employee benefit plans provided to Court employees. County 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.

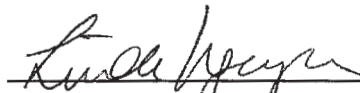
o. Indemnification by County. County shall indemnify and hold harmless and defend Court, its officers, agents and employees, from any and all liability, demands, damages, penalties, fines, interest, costs or expenses (including reasonable attorneys' fees) that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of County pursuant to this Memorandum, including any error or omission of County in performing such duties and obligations, except to the extent that such claims arise out of the negligence or willful misconduct of Court, its officers, agents or employees.

p. Indemnification by Court. Court shall indemnify and hold harmless and defend County, its officers, agents and employees, from any and all liability, demands, damages, penalties, fines, interests, costs or expenses (including reasonable attorneys' fees) that arise out of, or are alleged to arise out of or are in any way connected with or incident to the duties or obligations of Court pursuant to this Memorandum, including any error or omission of Court in performing such duties and obligations, except to the extent that such claims arise out of the negligence or willful misconduct of County, its officers, agents or employees.

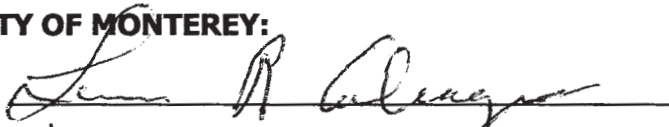
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY:

By: 
ADRIENNE GROVER, Presiding Judge
8/3/09, Date

Reviewed as to form by:

, Attorney, Administrative Office of the Courts, Office of
the General Counsel

COUNTY OF MONTEREY:

By: 
Louis R. Calcasio, President, Board of Supervisors
10/6/2009, Date

Reviewed as to form by:

, Assistant County Counsel, County of Monterey