

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (**MOU**) is entered into by and between the El Dorado County Department of Child Support Services' Revenue Recovery Division (hereinafter referred to as "**County**") and the Superior Court of California, County of El Dorado (hereinafter referred to as "**Court**") (collectively, the "**Parties**", as may be applicable.) This agreement shall become effective on the date of the last signature affixed hereto.

### RECITALS

**WHEREAS**, the Court wishes to obtain the services and benefits of a Comprehensive Collection Program pursuant to California Penal Code Section 1463.007; and

**WHEREAS**, the County wishes to operate the Comprehensive Collection Program ("**Program**") and provide other services necessary and appropriate to efficiently operate the Program, as further set forth below ("**Services Comprehensive Collection Program**"), in return for reimbursement of County's Allowable Costs incurred in providing the Services from monies it collects from operation of the Program;

**WHEREAS**, the Court wishes to obtain the services and benefits of Collections for civil filing fees and court ordered civil fees; in return for reimbursement at fourteen percent (14%) of the amount collected as further set forth below in ("**Services Collections for Civil Fees**").

**NOW, THEREFORE**, the parties hereto agree as follows:

### AGREEMENT

#### 1. DEFINITIONS

1.1 **Unless otherwise indicated**, capitalized terms shall have the meaning set forth for such terms in Exhibit A, section 2.

#### 2. SERVICES COMPREHENSIVE COLLECTION PROGRAM

2.1 **Scope of Services**. County shall operate a Comprehensive Collection Program pursuant to Penal Code Section 1463.007. The parties further agree that the scope of the Services shall include those services and responsibilities of the parties set forth in Exhibit A, "Comprehensive Collection Services," attached hereto and incorporated herein as though fully set forth. To the greatest extent possible the terms of the MOU and Exhibit A shall be interpreted to harmonize their terms. To the extent any inconsistency exists or is alleged between the terms of the MOU and Exhibit A, the terms of the MOU shall prevail.

a. Court will provide County all information necessary to pursue billing and collection of Qualifying Accounts in an organized and efficient manner.

Court will provide complete and accurate information regarding any accounts assigned for collection. County shall have no independent duty to verify the accuracy of any information provided by Court and is entitled to rely upon the completeness and accuracy of the information provided by Court.

b. Court represents and warrants that any and all Court-ordered debts assigned to County shall be valid and legally collectible obligations of the debtor.

c. Court will provide clarification, reconciliation and verification for amounts ordered, case discrepancies, and adjustments on all case types.

d. County warrants that it will operate the Program in compliance with Penal Code Sections 1463.007 and 1463.010, as well as the applicable guidelines and standards approved from time-to-time by the Judicial Council of California.

e. County will submit a monthly report to Court of amount collected which shall indicate gross amount collected, amount withheld by County for its Allowable Collection Costs (as defined below in section 2.2, and net amount forwarded to Court).

f. Both County and Court shall work co-operatively to maintain a two way electronic interface between their current respective software systems and to establish a two way electronic interface between respective new software systems. County shall 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.

g. County shall not knowingly accept full or partial payments on accounts Court has not referred. Individual payments received by County for accounts that have not been referred for collections shall be forwarded to the Court.

h. Except where the statute of limitations will expire within 60 days, undesignated payments received by County from a payee who owes both Court and other County debts will be applied equitably among the departments, including Court. If the payee has a case where the statute of limitations will expire within 60 days, the undesignated payment will be applied to that case.

i. County shall deposit all monies collected under the Program into the Revenue Recovery Comprehensive Court trust fund. County shall transfer monthly by journal entry its Allowable Collection Costs (including allocation for indirect and overhead costs) into a Revenue Recovery revenue account and transfer monthly by journal entry net collections to Court's trust account.

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**2.2 Compensation for Services Comprehensive Collections Program.**

In consideration for the Services provided by County, County shall be entitled to deduct from the funds collected under the Program its Allowable Collection Costs prior to remitting the net amount to the Court.

To calculate Allowable Collection Costs for the Program, two monthly reports are generated from the debt collection case management system. The first report compiles data to reflect all actions taken on all accounts in the prior month.

The second report reflects the number of actions taken on only criminal court cases.

To determine the percentage of Revenue Recovery's activity spent working court cases, the total of the second report (court activity) is divided by the total of the first report (all activity). The resulting percentage of this calculation, referred to as the productivity factor, is the percentage of Revenue Recovery's activities working on debt collection for court cases.

This productivity factor is then multiplied by the operating costs of the County agency.

Finally, to determine the total monthly allowable costs for the Program, indirect costs which are equal to ten percent of the direct salary and wage costs are added to the product of the productivity calculation. The net result is the monthly allowable cost for the Service.

**2.3** At the request of Court, County will contract with a Certified Public Accountant approved by Court for a Compliance Audit to review Allowable Collection Costs of the program under Penal Code 1463.007. Court will pre-pay (or transfer) all costs related to the audit. Such audit costs that qualify as Allowable Collection Costs will be reimbursed to Court and charged by County in equal installments from the monies collected under the Program as a component of the monthly cost of collection during the fiscal year incurred.

**2.4 Reimbursement from Program Funds.** County's right to reimbursement for Allowable Collection Costs shall apply solely against monies collected by County through the Program, and County agrees that it may look solely to such monies for its compensation hereunder. Court assumes no obligation, and County agrees that it shall have no right, to pay or reimburse County for any amounts or costs earned or incurred by County in providing the Services. If the net total of funds available for reimbursement under the Program is insufficient during any month to reimburse County for its Allowable Collection Costs, County shall be entitled to rollover such shortfall to the subsequent month(s) for reimbursement.

**2.5 Remittance of Funds.** Except for County's right to deduct Allowable Collection Costs in accordance with section 2.2, all monies collected by County in

performing the Services shall be remitted to Court in accordance with paragraph 2.1(i) of this section. Where Allowable Collection Costs are incurred by Court or any other agency of State in connection with a Qualifying Account, Court or such agency shall be entitled to reimbursement for such costs on an equitable basis from monies collected under the Program.

### 3. SERVICES COLLECTIONS FOR CIVIL FEES

**3.1 Scope of Services.** County shall operate a Collection Services to collect civil filings fees and court ordered civil fees.

a. Court will provide County all information necessary to pursue billing and collection of civil filing fees and court ordered civil fees in an organized and efficient manner. Court will provide complete and accurate information regarding any accounts assigned for collection. County shall have no independent duty to verify the accuracy of any information provided by Court and is entitled to rely upon the completeness and accuracy of the information provided by Court.

b. Court represents and warrants that any and all Court-ordered debts assigned to County shall be valid and legally collectible obligations of the debtor.

c. Court will provide clarification, reconciliation and verification for amounts ordered, case discrepancies, and adjustments on all case types.

d. County warrants that it will operate the collection services for civil fees in compliance with industry standards and applicable laws.

e. County will submit a monthly report to Court of amount collected which shall indicate gross amount collected, amount withheld by County for collection services and net amount forwarded to Court.

f. Except where the statute of limitations will expire within 60 days, undesignated payments received by County from a payee who owes both Court and other County debts will be applied equitably among the departments, including Court. If the payee has a case where the statute of limitations will expire within 60 days, the undesignated payment will be applied to that case.

g. County shall deposit all monies collected for civil filing fees or court ordered civil fees into the El Dorado Superior Court Transition Fund. County shall transfer monthly by journal entry its reimbursement amount into a Revenue Recovery revenue account and transfer monthly by journal entry net collections to Court's trust account.

**3.2 Compensation for Services Collection for Civil Fees.** In consideration for the Services for Collection for Civil Fees provided by County, County shall be entitled to deduct from the funds collected fourteen percent (14%).

#### **4. TERM/TERMINATION**

**4.1 Term.** This Memorandum shall be effective on December 6, 2016 and shall remain in effect until terminated by either Party in accordance with Section 4.2 of this Memorandum.

**4.2 Termination.** Either Party may terminate this Memorandum by giving notice to the other Party in the manner specified in Section 6.5 below; provided, however, such termination shall not be effective, and this Memorandum shall remain in full force and effect, unless and until County and Court execute a written memorandum setting forth their agreement on the operation of a subsequent comprehensive collection program as required by Penal Code Section 1463.010. Such notice shall be given at least sixty (60) days prior to the end of County's fiscal year and, subject to satisfying the requirements of this section 4.2, shall become effective only upon the first day of the succeeding fiscal year of County.

#### **5. DISPUTE RESOLUTION**

**5.1 Continuation of Services.** If County and Court disagree as to any matter governed by this Memorandum, the dispute resolution process discussed in this Section 5 shall govern. Until the dispute is resolved, County shall continue to operate the Program and provide the Services hereunder, and County shall be entitled to continue to deduct its Allowable Collection Costs for all amounts not specifically disputed.

**5.2 Request for Meeting.** If after thirty (30) days, Court and County cannot resolve any dispute; either Party may give the other Party a written request for a meeting between the Court Executive Officer and the Director for the purpose of resolving a disagreement between the Parties. If such meeting is requested, the meeting shall be held within ten (10) days of the receipt of such request. If the Court Executive Officer and the Director can not resolve the dispute, the issue shall be submitted to the County Auditor / Controller for non-binding resolution. If the meetings fail to occur or fail to resolve the disagreement, nothing in this Memorandum shall preclude the parties from exercising their legal remedies.

**5.3 Resolution of Disputes Concerning Costs Allocated to Court.** If a dispute between the parties regarding the interpretation or performance of this Memorandum is not resolved under Section 5.2, above, the dispute shall be submitted to non-binding mediation.

**5.4 Right of Court to Substitute Performance.** Except as otherwise provided in this Memorandum, if County fails to provide any Services for more than fifteen (15) days after written notice of default, demand for performance by Court and reasonable opportunity to cure said default, Court shall have the right to perform the Services, or retain an outside contractor to perform the Services, that County has allegedly failed to provide. In such case, Court shall be entitled to reimbursement of its Allowable Collections Costs, including fees paid to any outside contractor, from the monies collected under the Program. County shall reimburse Court within fifteen (15) days for all reasonable costs incurred by Court to obtain the services of an outside contractor to the extent County is unable to obtain reimbursement for such costs as an Allowable Collection Cost hereunder. County shall not be responsible for reimbursement of such additional costs if (a) County has made a reasonable effort at compliance and, through no fault of County, is prevented from performing the Services, or (b) financial situations or extenuating circumstances exist which are beyond County's control.

## **6. MISCELLANEOUS**

**6.1 Entire Agreement.** This Memorandum, 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 Memorandum.

**6.2 Amendment.** No addition to or alteration of the terms of this Memorandum shall 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 Memorandum, or their respective authorized designees.

**6.3 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 Memorandum.

**6.4 Time.** Time is of the essence of each and all of the provisions of this Memorandum.

**6.5 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: Department of Child of Support Services  
Revenue Recovery Division  
3883 Ponderosa Rd.  
Shingle Springs, CA 95682  
Attn: Director

If to Court: Superior Court Executive Officer  
2850 Fairlane Court, Building C  
Placerville, CA 95667  
Attn: Court Executive Officer

**6.6 Waiver.** Any waiver by either Party of the terms of this Memorandum must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same or other term of this Memorandum.

**6.7 Binding.** This Memorandum shall be binding upon the successors of Court and County.

**6.8 Counsel and Drafting.** Each Party, by its due execution of this Memorandum, represents to the other Party that it has reviewed each term of this Memorandum with their counsel, or has had the opportunity for such review with their counsel. No Party shall deny the validity of this Memorandum 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 Memorandum. The provisions and terms of this Memorandum shall be interpreted in accordance with the plain meaning thereof, and shall not be construed in favor or against either Party.

**6.9 Counterparts.** This Memorandum may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.

**6.10 Severability.** The provisions of this Memorandum are separate and severable. If any provision of this Memorandum 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 shall be enforced to the maximum extent possible so as to effect the reasonable intent of the parties hereto and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**6.11 Governing Law.** This Memorandum shall be construed under the laws of the State of California, without regard to its conflict of law provisions.

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

**6.13 Discharge of Accountability.** Ultimate responsibility for collections will remain with the Court. The Court Executive Committee and the County Board of Supervisors will have responsibility for authorizing discharge of accountability in accordance with the requirements of Government Code sections 25257 & 25258.

**6.14 Legislative Changes.** This Memorandum is subject to any future legislation that may alter or amend any provision contained herein.

**6.15 Independent Contractor.** County shall 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 the Services 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 Memorandum shall be construed as creating an employment or agency relationship between Court and County. County will determine the method, details and means of performing the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting County in the performance of the Services. County shall 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. .

**6.16 Audit and Retention of Records.** County shall permit authorized representatives of Court and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of this Memorandum, including records related to billings and other financial records. County shall allow the auditor(s) access to such records during normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, County agrees to include a similar right of Court to audit records and interview staff of any subcontractor related to performance of this Memorandum. County shall maintain all records and documentation related to the performance of this Memorandum, including records related to billings and other financial records, in an accessible location and condition for a period of not less than three (3) years after final payment is received pursuant to this Memorandum or until after final audit has been resolved, whichever is later. County shall adequately protect all records against fire or other damage. The State of California, or any other public agency or entity having an interest in the subject of this Memorandum, including the California Administrative Office of Courts, shall have the same rights conferred upon Court by this Section 6.16.



**6.17 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 Agreement 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 Agreement.

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

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF EL DORADO:**

By: \_\_\_\_\_  
\_\_\_\_\_, Presiding Judge  
\_\_\_\_\_, Date

**COUNTY OF EL DORADO:**

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman, Board of Supervisors  
\_\_\_\_\_, Date

**COMPREHENSIVE COLLECTION SERVICES**

**1. PURPOSE**

**1.1** The purpose of this Exhibit A is to establish a procedure to assist Court and El Dorado County Department of Child Support Services' Revenue Recovery Division ("**Revenue Recovery Division**") in the transition of the responsibility for case collection. The goals of this Exhibit A include, but are not limited to the following:

a. County's having responsibility to collect Fines, Forfeitures, Assessments and Fees, as defined below, pursuant to California Penal Code Section 1463.010.

**2. DEFINITIONS**

**2.1 Adjustment** – Any change in a debtor's original fine, fee, forfeiture or assessment.

**2.2 Allowable Collection Costs** – Those costs of collection for which reimbursement is permitted under California Penal Code 1463.007.

**2.3 Assessment** – A charge established by a court, statute, or local ordinance that is not a fine, fee or forfeiture.

**2.4 Collections** – The process used by the Revenue Recovery Division to facilitate debt repayment.

**2.5 Comprehensive Collection Program ("CCP")** – Shall mean the Program, as defined below.

**2.6 Debtor** – The party subject to the court-ordered Fine, Fee, Forfeiture or Assessment.

**2.7 Delinquent Account** – An account which falls into one of the following categories:

- Non-forthwith collection; or
- Installment payment account which has not met the agreed-upon terms and conditions of the installment agreement.

**2.8 Direct Costs** – Actual costs and expenses directly incurred in connection with the establishment and operation of the Program and evidenced in writing. Direct Costs incurred in connection with any services or resources jointly used for the Program and for any other purpose shall be included within the definition of Allowable Collection Costs only in proportion to the time or amount such resources are used for the Program.

**2.9 Distribution** – The act or process of dividing collected dollars and apportioning them to agencies as appropriate.

**2.10 Fee** – a fixed charge established by a Court, County or the State.

**2.11 Fine** – a punitive sum determined by the State or Court.

**2.12 Forfeiture** – a sum imposed by the State or Court due to a breach of a legal obligation.

**2.13 Indirect Costs** – Costs which by their nature cannot be readily associated with a specific organizational unit (cost center), program or project, as further specified in FIN 15.02, of the Trial Court Financial Policies and Procedures.

**2.14 Information Technology Department** – An El Dorado County Department responsible for information network design and maintenance.

**2.15 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.

**2.16 Program** – A comprehensive collection program which is operated in accordance with Government Code Section 1463.007, as well as the applicable guidelines and standards approved from time-to-time by the Judicial Council of California, as further described in the MOU.

**2.17 Qualifying Account** – A court-ordered Fee, Fine, or Forfeiture, or any related penalty assessments or surcharges, or an Assessment, which qualifies as a Delinquent Account and is forwarded to County for collection.

**2.18 State** – The State of California.

**2.19 Trust Account** – An account set up to hold collection proceeds for future distribution.

### **3. RESPONSIBILITIES**

#### **3.1 COURT RESPONSIBILITIES**

Court shall:

- a. Transfer Debtor information stored on Court's case management system to the Revenue Recovery Division Operating System in an electronic medium that is mutually agreed upon in writing by both parties. The electronic transfer of such data shall be completed daily (excluding weekends and Court and County holidays).
- b. Provide the Revenue Recovery Division on-going access to Court's case management system subject to County executing an agreement in a form acceptable to Court.
- c. Collect Fines, Fees and Assessments in Court's branch offices on behalf of the Revenue Recovery Division. Such collection made by the Court shall be deposited and applied to the case with a receipt for the individual making the payment. Within five (5) Court business days the Court will issue a notice of payment to the Revenue Recovery Division manually or by electronic interface. The notice of payment, at a minimum, shall include the Debtor's name, case number, amount collected, and date collected.
- d. Provide Revenue Recovery Division with daily adjustment or exception reports on Fines, Fees and Assessments based on Court orders (excluding weekends and Court and County holidays).
- e.. Distribute restitution payments to Probation for distribution to victims or distribute payments to victims directly.
- f. Maintain any and all records necessary to comply with State audit requirements for all distributions.
- g. Distribute funds according to State law, Administrative Office of the Courts, and State Controller Office regulations and guidelines.

#### **3.2 COUNTY RESPONSIBILITIES**

County shall:

- a. Assume responsibility for the collection of all Qualifying Accounts.
- b. Implement the Program in compliance with California Penal Code Section 1463.007, as well as the applicable guidelines and standards approved from time-to-time by the Judicial Council of California.

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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 Court with access to the Revenue Recovery Division's operating system to enable Court to view and print the payment history for all Qualifying Accounts. Any costs for this access shall be borne equally by County and Court and each party shall be entitled to reimbursement as an Allowable Collection Cost.

e. Provide Court with a monthly report indicating the amount of Fines, Forfeitures, Fees, Assessments and restitution collected, in a format mutually agreed upon, to enable Court to meet its reporting requirements to the Judicial Council of California. This report shall be provided no later than fifteen (15) calendar days after the end of each month.

f. Have the capability to adjust original Fine, Fees and Assessments on the Revenue Recovery Division Operating System based on a court order.

g. Maintain and preserve all records related to this Exhibit A 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.

### **3.3 JOINT RESPONSIBILITIES**

Court and County agree to:

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.

b. Meet together monthly or as otherwise agreed to discuss issues of mutual interest and concern that may arise in connection with the purpose of the Comprehensive Collection Program Exhibit A.

c. Accept responsibility for receiving, replying to and/or complying with any audit of an appropriate State audit agency that directly relates to the services to be performed under this Exhibit A or to funds to be handled or disbursed hereunder.

d. Maintain all records and documentation in accordance with State law governing criminal case Collections.

e. Safeguard all confidential information shared between Court and County to carry out the purpose of the Comprehensive Collection Program according to State and federal law.

f. Evaluate potential for Revenue Recovery Division to assume responsibility for additional types of collection in the future.

g. Monitor and implement any changes or modifications to State laws and/or regulations affecting Collection and/or payment distribution activities and notify the other Party of such changes.

h. Jointly develop a cooperative plan and a manual of operational policies and procedures to implement Judicial Council guidelines governing the Program.

i. Jointly report to the Judicial Council at least annually on the effectiveness of the Program, or as the Judicial Council may otherwise require.

#### **4. FINANCIAL PROVISIONS**

**4.1** Court and County shall maintain an accounting system and supporting fiscal records to comply with State audit requirements related to the services to be performed under the Comprehensive Collection Program.

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