

Golden B. Ford
THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Treasurer-Tax Collector

BOARD AGENDA # *B-8

Urgent

Routine

AGENDA DATE October 29, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Authorize the Treasurer-Tax Collector to enter into a Memorandum of Understanding (MOU) with the Superior Court of Stanislaus County for Collection Services

STAFF RECOMMENDATIONS:

1. Authorize the Treasurer-Tax Collector to sign the MOU between the Superior Court of Stanislaus County and the Treasurer-Tax Collector Department.
2. Authorize the Chairman of the Board of Supervisors to sign the MOU between the Superior Court of Stanislaus County and the Treasurer-Tax Collector Department.

FISCAL IMPACT:

The Revenue Recovery Division processes an average of \$5.3 million of collections annually for the Superior Court of Stanislaus County.

BOARD ACTION AS FOLLOWS:

No. 2013-524

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien
and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:

Christine Ferraro
CHRISTINE FERRARO TALLMAN, Clerk

File No.

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DISCUSSION:

For many years, the Revenue Recovery Division of the Treasurer-Tax Collector Department has collected bills for the Courts and has been a major activity for Revenue Recovery.

Notwithstanding the implementation of the Trial Court Funding Act of 1997 (Assembly Bill 233) which transferred funding responsibility for the Superior Court from the individual counties to the State of California, the County has continued to provide collection services to the Courts. Neither the Courts nor the County felt that a formal understanding was necessary, however since the Courts were part of the State, they agreed to work together to formalize activities when it was necessary.

In 2004, legislation was enacted requiring the Judicial Council to establish a court-county working group on collections and to adopt guidelines for a comprehensive program to collect fees, fines, forfeitures, penalties and assessments imposed by the courts. (California Penal Code section 1463.010)

Since 2004, the Courts and County have had a working group on collections and have agreed on how the group operates. While the group has drafted an MOU, it has never been necessary to formalize the understanding.

The State has recently indicated a strong desire for the formalization of the collection process. A revision to Penal Code 1463.007 now requires an MOU be in place in order for a collection program to be eligible to recover costs. Furthermore, in the event we are audited and there is no MOU, it could be deemed that the County is ineligible for cost recovery. Consequently the working group has completed the development of the MOU.

The attached MOU encompasses the cooperative plan developed between the Superior Court of Stanislaus County and the Stanislaus County Treasurer-Tax Collector Revenue Recovery Division. It sets forth their respective rights and responsibilities regarding the collections program. The MOU has been reviewed by County Counsel and is now recommended for approval.

POLICY ISSUES:

Approval of this item supports the Board's priorities of Efficient Delivery of Public Services and Effective Partnerships by allowing the Treasurer-Tax Collector Revenue Recovery Division to continue to operate a comprehensive collection program and enhancing the partnership between the County and Courts.

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STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT PERSON:

Gordon B. Ford, Treasurer-Tax Collector. Telephone: (209) 525-4463

**MEMORANDUM OF UNDERSTANDING
FOR COLLECTION SERVICES,
COUNTY OF STANISLAUS, REVENUE RECOVERY DIVISION
AND
THE SUPERIOR COURT, COUNTY OF STANISLAUS**

This Memorandum of Understanding (“MOU”) is made as of July 1, 2013 (“Effective Date”) between the Revenue Recovery Division (R&R) of the County of Stanislaus (“County”), a political subdivision of the State of California and the Superior Court of California, County of Stanislaus (“Court”), an entity of the California Judicial Branch organized under Article VI of the California Constitution (individually, a “Party”; 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, Court and 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 hereto agree as follows:

A. COLLECTIONS PROGRAM

1. The County will operate the Program for the collection of all fees, fines, forfeitures, penalties, and assessments arising from criminal actions or proceedings, as well as any prior accounts (including traffic). The County will operate the Program for future assigned traffic cases as mutually agreed upon. The County 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 operate the Program for the collection of all fees, fines, forfeitures, penalties, and assessments arising from 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 traffic actions or proceedings.

3. The Court has engaged Municipal Services Bureau (MSB) (“Vendor”) to perform collection services on certain accounts under the terms and conditions set forth in the Master Agreement between the Judicial Council, Administrative Office of the Courts and Vendor. Both Parties agree to utilize Franchise Tax Board Court Ordered Debt and/or Tax Intercept as each Party deems appropriate.

4. Neither Party will knowingly accept full or partial payments on the other’s accounts under the Program. If such payments are inadvertently received, the Party will forward such payments to the other Party when discovered and/or mutually agree to adjust accounts accordingly. Each Party shall process payments within 60 days of notification from the other Party.

5. The Parties will provide reports as mutually agreed, but at a minimum level of the requirements of the Program.

6. The Court will, net of applicable deductions, deposit revenue collected under the Program with the County for distribution, according to California law and the regulations and guidelines of the AOC and State Controller’s Office (“SCO”). The County will distribute such revenue according to California law and the regulations and guidelines of the AOC and SCO.

7. 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 on a quarterly basis.

8. 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 third party collection vendor authorized by 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.

9. 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. The Court will, on or about 30 days prior to the annual reporting deadline (or as soon as possible from the date the template is available) send the reporting template to R&R.

10. 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 distribution and 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.

3. If the revenue collected under the Program during any month is insufficient to allow a Party to deduct all of its costs for that month, and subject to the regulations and guidelines promulgated by the AOC and the SCO, that Party may rollover such shortfall to the subsequent month(s) for deduction.

C. TERM/TERMINATION

1. The term of this MOU will begin on the Effective Date. This MOU will automatically renew annually on the anniversary of the Effective Date, 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 days' 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 the County Treasurer-Tax Collector or his/her delegate 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 Courts 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. 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 to this MOU.

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, which 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.

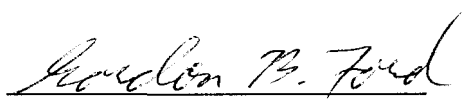
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IN WITNESS WHEREOF, the Parties have executed this MOU effective as of the date first written above.

**SUPERIOR COURT OF
CALIFORNIA, COUNTY
OF STANISLAUS**

COUNTY OF STANISLAUS

By: 
Name: Rebecca Fleming
Title: Court Executive Officer

By: 
Name: Gordon B. Ford
Title: Treasurer-Tax Collector

By: 
Name: VITO CHIESA
Title: Chairman, Board of Supervisors

ATTESTED:
Clerk of the Board of Supervisors,
County of Stanislaus

By: 
Deputy County Clerk

APPROVED AS TO FORM:
County Counsel

By: 
Deputy County Counsel