

**MEMORANDUM OF UNDERSTANDING AND AGREEMENT
CALIFORNIA STATE ASSOCIATION OF COUNTIES – FINANCE CORPORATION
TAX REFUND EXCHANGE AND COMPLIANCE SYSTEM (CAL-TRECS)**

This **MEMORANDUM OF UNDERSTANDING AND AGREEMENT** ("Agreement") is entered into this ___ day of ___ September, year 2018 by and between the Governing Body of the Unit of Local Government of _____ ("Claimant Agency") and the California State Association of Counties – Finance Corporation ("CSAC-FC"), serving on behalf of the agency as a designated vendor as the California Local Government Debt Offset Clearinghouse ("Clearinghouse").

RECITALS

WHEREAS, the California Government Code 12419.2 - 12419.12, (the "Code"), authorizes the California State Controller (SCO), in conjunction with the California Franchise Tax Board ("FTB"), to offset any eligible amount due a city, county or special district tax refunds to satisfy, in whole or in part, a debt (as defined in the Code) owed to a Claimant Agency; and

WHEREAS, the Code provides that eligible amounts due a city, county or special district are:

- (1) Where the amount has been reduced to a judgment.
- (2) Where the amount is contained in an order of a court.
- (3) Where the amount is from a bench warrant for payment of any fine, penalty, or assessment.

(4) Where the amount is delinquent unsecured property taxes on which a certificate lien has been filed for record in the office of the county recorder pursuant to Section 2191.3 of the Revenue and Taxation Code; and

WHEREAS, the FTB 2018 Participation Guide (the "Guide") establishes the procedures by which a claimant agency may participate in the FTB Interagency Intercept Collection (IIC) program; and

WHEREAS, Clearinghouse offers a debt offset program ("Program") that: (1) complies with the FTB's secure data submission requirements for the offset of tax refunds under the Code and the Guide; (ii) acts as an agent on behalf of a Claimant Agency with respect to the FTB for purposes of the Code and the Guide; and (iii) submits Claimant Agency debts for the offset of tax refunds with the FTB on behalf of a Claimant Agency pursuant to the Code and the Guide; and

WHEREAS, Claimant Agency desires to enter into this Agreement with Clearinghouse in order to participate in the Program in order to increase the collection rate of debts owed to Claimant Agency; and

WHEREAS, Clearinghouse has agreed to submit debts on behalf of Claimant Agency pursuant to the Program:

NOW THEREFORE, in consideration of the mutual covenants and agreements, terms and conditions contained herein, Claimant Agency and Clearinghouse mutually agree as follows:

I. TERM/TERMINATION. This Agreement shall be become a legally binding agreement between Claimant Agency and Clearinghouse with full legal force and effect upon mutual execution by Claimant Agency and Clearinghouse. This Agreement shall remain and continue in full force and effect from year to year unless modified or terminated in writing by either party upon ninety (90) days written notice to the other party. Upon termination of this Agreement all sums due and owing from either party to the other shall remain a lawful obligation of the party and be due and payable. Clearinghouse will erase all claimant data files from its debt offset system upon termination.

II. REPRESENTATIONS AND OBLIGATIONS OF CLAIMANT AGENCY

- A. Claimant Agency hereby designates, appoints, and authorizes Clearinghouse to process delinquent debts to be submitted to FTB. For purposes of the Program, "Delinquent Debt" means:
- (i) a single account or monetary obligation which is at least ten dollars (\$10.00) owed by a debtor to Claimant Agency; or,
 - (ii) any group of accounts or monetary obligations, that, when combined, total at least ten dollars (\$10.00), owed by the same debtor to Claimant Agency.

Delinquent debts are defined in the Code as an amount: that has been reduced to a judgment; or contained in an order of a court; or is from a bench warrant for payment of any fine, penalty, or assessment; or is delinquent unsecured property taxes on which a certificate lien has been filed for record in the office of the county recorder pursuant to Section 2191.3 of the Revenue and Taxation Code.

To become a delinquent debt, Claimant Agency must have provided the debtor with the pre-intercept notice requirements as stipulated by the Guide. Pre-intercept notices must provide the Government Code Sections that authorize a local government claimant agency to submit debts for intercept, provide Claimant Agency's contact information where the debtor can dispute the liability, and allow debtors 30 days to resolve or dispute the debts, before submitting their debts to Clearinghouse.

- B. Claimant Agency shall comply with any and all applicable provisions of the Code and the Guide prior to the submission of a debt to Clearinghouse for offset, including the submission of required forms to the SCO and FTB.
- C. Claimant Agency shall, upon execution of this Agreement, file a participation form with Clearinghouse designating a debt offset coordinator and a debt offset contact. Such participation form shall be updated on an annual basis and at any time there is a change in the information provided thereon. Clearinghouse shall administratively provide participation forms, as needed, for use by Claimant Agency. The debt offset coordinator shall be the designated local government employee authorized to receive notices and communication from Clearinghouse to insure that the requirements of this Agreement and the requirements of the Code and the Guide are met. The debt offset coordinator shall supply Clearinghouse with any and all information that in the opinion of Clearinghouse is necessary for the proper implementation of this Agreement. The debt offset contact will receive all referrals from debtors.
- D. Claimant Agency shall use a file format specified by Clearinghouse to prepare debt files and adjustments to debt files that Claimant Agency certifies to Clearinghouse are owed to Claimant Agency and that Claimant Agency desires to have Clearinghouse submit to FTB. The Clearinghouse shall timely notify the Claimant Agency of any changes to the file format and the Claimant Agency covenants and agrees that it shall immediately implement any changes required by Clearinghouse. Clearinghouse will establish capability of date and time stamping submitted debt files for priority setting.
- E. Claimant Agency shall transmit a debt file to Clearinghouse in a method and format acceptable to the Clearinghouse. The Claimant agency shall make every effort to submit a file the week of November 15.

- F. Claimant Agency shall comply with the pre-intercept notice requirements set forth in the Guide prior to the submission of a debt file to Clearinghouse.
- G. Claimant Agency shall, after a debt file has been submitted to Clearinghouse, advise Clearinghouse of any debtor repayment or protests and instructions to delete or reduce a delinquent debt by submitting a new debt file. If Claimant Agency accepts full or partial payment against a debt file that has been submitted to Clearinghouse and sufficient notice is not provided to Clearinghouse to make a timely change to debt file reflecting the payment, Claimant Agency is responsible to refund any resulting fee that may be due to debtor. If claimant agency erroneously submits a debt file to the Clearinghouse, the claimant agency is responsible for any fees charged the debtor by the Clearinghouse or FTB.

III. REPRESENTATIONS AND OBLIGATIONS OF CLEARINGHOUSE

- A. Clearinghouse shall, upon receipt of Claimant Agency's debt file, compile the information and submit the data to the FTB.
- B. Clearinghouse shall make access to Internet-based functionality available to Claimant Agency through which Claimant Agency shall submit debt files.
- C. Clearinghouse shall provide a social security number look up service to match each debtor as submitted by Claimant Agency to the best of its ability.
- D. Clearinghouse will provide Claimant Agency an accounting of funds collected which will include the name of the debtor and the amount of the debt offset by debt unique identification number.
- E. Clearinghouse will provide a toll-free telephone number for use by Claimant Agency to receive technical support and provide information on the use of the Clearinghouse internet-based functionality and the processing of debts for submission to FTB. Technical support and information shall be available from 8:00 a.m. until 5:00 p.m. (Pacific Time), Monday through Friday, excluding holidays. Voicemail and e-mail access shall also be provided as a part of the support/information response system.

IV. UNDERSTANDING OF PARTIES

- A. To recover the costs incurred by SCO and FTB in collecting debts, the Code authorizes SCO to charge Claimant Agency a fee on each successful offset that FTB collects for a claimant agency. The 2018 fee is established at two dollars (\$2.00) per successful offset. Clearinghouse will add this fee to each debt for payment by the debtor prior to its submission to FTB. SCO bills Claimant Agency in April or May for each successful offset collected during the previous calendar year.
- B. To recover the costs incurred by Clearinghouse in submitting debts for collection, a local collection assistance fee of twenty-five dollars (\$25.00) is imposed by Claimant Agency on each delinquent debt submitted to FTB and collected through offset. This fee may be assessed as part of California Government Code GOV Code § 54985(a). On behalf of Claimant Agency, Clearinghouse will add this fee to each debt for payment by the debtor prior to its submission to FTB. Claimant Agency will remit the local collection assistance fee upon monthly billing by Clearinghouse for each successful offset collected during the previous month.

- C. If Claimant Agency is due a refund of more than ten dollars (\$10.00), Clearinghouse will request on behalf of Claimant Agency the tax refund offset in the amount of the delinquent debt plus the FTB fee and the local collection assistance fee. If FTB is able to collect only part of a debt through offset, its fee has priority over the local collection assistance fee and over the remainder of the delinquent debt. The local collection assistance fee has priority over the remainder of the delinquent debt.
- D. When multiple claims among local claimant agencies are submitted for offset to Clearinghouse, the claims have priority based on the date and time each claimant agency requested Clearinghouse to submit debts on its behalf. The date and time of submission of the debt file shall constitute the date and time to establish the priority. Clearinghouse shall use submission receipt date and time of original file for priority date and time of specific debt. Additions to a delinquent debt through accrued interest and/or penalties will not change the priority date. Any new delinquent debt for same local claimant agency will have a new submission date and time, including new debts for a previously submitted debtor.
- E. Existing submitted delinquent debts may be adjusted upwards for interest and fees and will retain their original priority order. A later new delinquent debt, even if from the same debtor shall be date stamped by Clearinghouse with the later submission date.
- F. In the event of partial payment of a delinquent debt, Claimant Agency may continue to submit the balance of the debt, if ten dollars (\$10.00) or more, as a part of subsequent data files. If the delinquent debt is reduced to an amount of less than ten dollars (\$10.00), it may be combined with a future delinquent debt submission for the same debtor and will be treated as a part of the new delinquent debt for purposes of priority and imposition of the local collection assistance fee.
- G. Claimant Agency acknowledges that Claimant Agency is responsible for the pre-intercept notice requirements of the Guide. Clearinghouse shall not accept a debt file that is not prepared as specified by Clearinghouse and that has not been certified by Clearinghouse as having complied with the pre-intercept notice procedures as set forth in the Guide. Clearinghouse agrees to submit delinquent debts to FTB; provided, however Claimant Agency is solely responsible for complying with the Guide, specifically including the pre-intercept notice provisions and other requirements of the Guide.
- H. Intercepted funds will be disbursed by FTB to Claimant Agency at the direction of Clearinghouse. Claimant Agency shall establish and maintain any necessary accounts to receive intercepted funds as directed by Clearinghouse. Clearinghouse shall timely direct Claimant Agency to establish and maintain such necessary accounts.

V. COMPENSATION

- A. Clearinghouse shall receive as compensation for its services the twenty-five dollars (\$25.00) local collection assistance fee added to each delinquent debt that is submitted by Clearinghouse and collected through a successful interception. "Successful Interception" occurs when FTB matches all or a portion of a debt submitted by Clearinghouse against a State tax refund or other State payment for interception and payment towards a delinquent debt owed to Claimant Agency.
- B. Clearinghouse will bill Claimant Agency monthly the local collection assistance fee collected on each successful offset occurring in the previous month.

C. Claimant Agency agrees that Clearinghouse shall retain the local collection assistance fee collected by it in the event Claimant Agency is required, by statute or otherwise, to return to a debtor funds that have been offset by FTB.

VI. INDEMNIFICATION; REIMBURSEMENT; DISCLAIMER. Claimant Agency fully understands and warrants to Clearinghouse that by submission of any delinquent debt submitted to Clearinghouse for offset Claimant Agency has complied with all of the provisions of this Agreement and all of the provisions of the Code and the Guide that are required prior to submission of a debt for offset. Claimant Agency shall hold Clearinghouse free and harmless and shall indemnify Clearinghouse against any and all damages, claims, of action, injuries, actions, liability, or proceedings arising from the failure of Claimant Agency to so perform. Claimant Agency shall be responsible for the repayment of any sums received by it, including interest, penalties and court costs, to a debtor in the event a court of competent jurisdiction rules that said repayment is due to a debtor or debtors. Except as expressly stated in this Agreement, Clearinghouse disclaims any representations and warranties that might otherwise be implied in connection with this Agreement and Clearinghouse's services, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, date accuracy, system integration, and non-infringement.

VII. NOTICE. Any notice required to be given under this Agreement shall be sent by certified or registered mail postage prepaid to:

_____ (Clearinghouse);
_____ (debt offset coordinator)
_____ (local agency)
_____ (local agency address);

VIII. ASSIGNMENT; SUBCONTRACTING. This Agreement is not assignable by either party. To facilitate efficient administration of the Program, Clearinghouse may utilize the services of contractors in connection with Clearinghouse's obligations under this Agreement, provided that Clearinghouse shall remain responsible for any such contractor's acts and omissions in connection with this Agreement as if such acts and omissions were conducted by Clearinghouse's own personnel. Any contractor personnel authorized to request or receive information relating the Clearinghouse's exchange of date with FTB or Claimant Agency for purposes of administering the Program shall be designated, in writing, to Claimant Agency as contemplated herein.

IX. CONFIDENTIAL INFORMATION; OWNERSHIP RIGHTS.

A. In the course of performance of this Agreement, the parties may find it necessary to disclose to the other party certain confidential information ("Confidential Information"). Confidential Information includes, but is not limited to, information relating to the parties' employees, trade secrets, customers, vendors, finances, operations, products, and other business information. Except as otherwise provided by law, the following terms apply to Confidential Information: (i) the receiving party shall treat as confidential and use the same degree of care as it employs in the protection of its own similar confidential information, but in no event less than a reasonable degree of care; and, (ii) the receiving party will only use the information in connection with its business dealings with the disclosing party, and shall disclose information only to employees or contractors having a need to know and who agree to be bound by the terms of this Section, unless otherwise authorized in writing by the disclosing party. Information shall not be subject to these terms if: (i) it is in the public domain at the time of

disclosure, or enters the public domain without breach of this Agreement; (ii) it is known to the receiving party prior to the disclosure, or it is independently developed by the receiving party; or (iii) it is obtained by receiving party in good faith from a third party not under obligation of secrecy to the disclosing party. Receiving party will be permitted to disclose that portion of Confidential Information which is the subject of a court or government agency order to disclose, provided the receiving party gives prompt notice to the disclosing party to allow the disclosing party to contest such order. The obligations set forth in this Section survive termination, rescission, non-renewal or expiration of this Agreement

- B. All information, including but not limited to printed, written, oral or computer-formatted information, which Clearinghouse may gain access to during the course of the performance of this Agreement shall be the property of Claimant Agency, shall be held in the strictest confidence, and shall be used solely for the business purposes that are the subject of this Agreement. Clearinghouse shall maintain confidentiality of such information not only during the course of the performance of this Agreement, but following its termination.
- C. Claimant Agency acknowledges that, as between the parties, Clearinghouse owns and retains title to all intellectual property rights embodied in, or practiced by, Clearinghouse in connection with the Program and the proprietary methods utilized by Clearinghouse in performance of its services under this Agreement, and no licenses of such intellectual property rights to Claimant Agency are granted or implied by this Agreement.

X. MISCELLANEOUS

- A. This Agreement represents the full and final understanding of the parties with respect to the subject matter described herein and supersedes any and all prior agreements or understandings, written or oral, express or implied. This Agreement may be modified or amended only by a written statement signed by both parties.
- B. The laws of the State of California shall govern the terms and conditions of this Agreement.
- C. Claimant Agency shall enter into no other contract for similar tax return intercept services with any other entity so long as this Agreement remains in effect.
- D. This Agreement is subject to appropriation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and date first above written, all by authority of their respective governing bodies.

CLAIMANT AGENCY

Name of Governing Body of Unit of Local Government: _____

Signature: _____
Name of Authorized Individual: _____
Title: _____

Signature: _____
Name of Authorized Individual: _____
Title: _____

Signature: _____
Name of Authorized Individual: _____
Title: _____

CLEARINGHOUSE

CALIFORNIA STATE ASSOCIATION OF
COUNTIES – FINANCE CORPORATION

Alan Fernandes, Executive Director

ATTEST:

Jim Manker, Program Administrator