

MEMORANDUM OF UNDERSTANDING AND AGREEMENT
UTAH ASSOCIATION OF COUNTIES
TAX REFUND EXCHANGE AND COMPLIANCE SYSTEM
(U-TRECS)

This **MEMORANDUM OF UNDERSTANDING AND AGREEMENT** (“Agreement”) is entered into this 17th day of November, 2020 by and between the Governing Body of the Unit of Local Government of San Juan County (“Participating Political Subdivision”) and the Utah Association of Counties (“UAC”), serving on behalf of the Participating Political Subdivision as the Utah Association of Counties Debt Offset Local Agency Clearinghouse (“Local Agency Clearinghouse”).

RECITAL

WHEREAS, the Utah Government Code 63A-3-301,302,307,310 as last amended by Laws of Utah 2019, Chapter 84 (the “Code”), authorizes the Utah Division of Finance (“Division”), in conjunction with a non-profit entity (“Local Agency Clearinghouse”) organized by Participating Political Subdivisions, to offset any eligible amount due to a Participating Political Subdivision to satisfy, in whole or in part, a debt (as defined in the Code) owed to a Participating Political Subdivision; and

WHEREAS, the Code provides that eligible amounts due to a Participating Political Subdivision for collection are those:

- (1) Debts as defined as an account receivable under statute including any amount due as a result of judgement, citation, tax, or administrative order, or for which materials or services have been provided but not payments have been provided; and
- (2) Are debts that have been unpaid to the Participating Political Subdivision for 90-days or more

WHEREAS, the Division’s FINDER Incoming Debt Interface Developers Guide (“Guide”) establishes the procedures by which a Participating Political Subdivision may interface with Utah’s Debt Collection Offset Program; and

WHEREAS, Clearinghouse offers a debt offset program (“Program”) that: (1) complies with the Division’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 Participating Political Subdivisions with respect to the Division for purposes of the Code and the Guide; and (iii) submits Participating Political Subdivision debts for the offset of tax refunds with the Division on behalf of Participating Political Subdivisions pursuant to the Code and the Guide; and

WHEREAS, Participating Political Subdivision 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 the Participating Political Subdivision; and

WHEREAS, Clearinghouse has agreed to submit debts on behalf of Participating Political Subdivision pursuant to the Program:

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

I. TERM/TERMINATION. This Agreement shall become a legally binding agreement between Participating Political Subdivision and Clearinghouse with full legal force and effect upon mutual execution by Participating Political Subdivision 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 Participating Political Subdivision data files from its debt offset system upon termination.

II. REPRESENTATIONS AND OBLIGATIONS OF CLAIMANT AGENCY

A. Participating Political Subdivision hereby designates, appoints, and authorizes Clearinghouse to process delinquent debts to be submitted to the Division. 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 the Participating Political Subdivision; 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.

After Participating Political Subdivision submits file of delinquent records to Clearinghouse, Clearinghouse mails pre-intercept notice to debtor on counties' behalf.

B. Participating Political Subdivision shall comply with any and all applicable provisions of the Code and Division prior to the submission of a debt to Clearinghouse for offset, including the submission of required application and/or forms to the Division.

C. Participating Political Subdivision 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 Participating Political Subdivision. The debt offset coordinator shall be the designated local government employee authorized to receive notices and communication from Clearinghouse to ensure 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. Participating Political Subdivision shall use a file format specified by Clearinghouse to prepare debt files and adjustments to debt files the Participating Political Subdivision certifies to Clearinghouse are owed to Participating Political Subdivision and that desires to have Clearinghouse submit to Division. The Clearinghouse shall timely notify the Participating Political Subdivision of any changes to the file format and the Participating Political Subdivision 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. Participating Political Subdivision shall transmit a debt file to Clearinghouse in a method and format acceptable to the Clearinghouse. The Participating Political Subdivision shall make every effort to submit a file the week of October 1st.

- F. Participating Political Subdivision 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 Participating Political Subdivision 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, Participating Political Subdivision is responsible to refund any resulting fee that may be due to debtor. If Participating Political Subdivision erroneously submits a debt file or submits faulty records to the Clearinghouse, the Participating Political Subdivision is responsible for any fees charged the debtor by the Clearinghouse and Division.

III. REPRESENTATIONS AND OBLIGATIONS OF CLEARINGHOUSE

- A. Clearinghouse shall, upon receipt of Participating Political Subdivision debt file, compile the information and submit the data to the Division.
- B. After Participating Political Subdivision submits file of delinquent records to Clearinghouse, Clearinghouse mails pre-intercept notice to debtor on Subdivision's behalf.
- C. After debtors are selected for garnishment, Clearinghouse sends out 21-day notice of garnishment letter that meets DoF requirements on Subdivision's behalf.
- D. Clearinghouse shall make access to Internet-based functionality available to Participating Political Subdivision through which Participating Political Subdivision shall submit debt files.
- E. Clearinghouse shall provide a social security number look-up service to match each debtor as submitted by Participating Political Subdivision to the best of its ability. Participating Political Subdivision acknowledges that the accuracy of the social security number look up is directly linked to the accuracy provided by the agency's input records and the Clearinghouse's third party look-up service.
- F. Clearinghouse shall provide Participating Political Subdivision 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.
- G. Clearinghouse shall provide a toll-free telephone number for use by Participating Political Subdivision to receive technical support and provide information on the use of the Clearinghouse internet-based functionality and the processing of debts for submission to the Division. Technical support and information shall be available from 8:00 a.m. until 5:00 p.m. (Mountain 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 Clearinghouse for preparation, acquisition of social security numbers, and ensuring file compliance with Division requirements, a local collection assistance fee of twenty-five dollars (\$25.00) is imposed by Participating Political Subdivision on each delinquent debt prior to submitting file to Clearinghouse. For any debts paid after the pre-intercept notice has been sent out and zeroed out from the file submitted to the Division, the Participating

Political Subdivision will be invoiced by the Clearinghouse for the local collection assistance fee during the following month. This fee will only be invoiced by the Clearinghouse for debts collected that exceed thirty dollars (\$30.00).

- B. For those debts that have not been settled prior to submittal to the Division, the Division will perform the offset against available refunds, and remit funds offset to the Clearinghouse. Clearinghouse will in turn remit funds to the Participating Political Subdivision less the local collection assistance fee of \$25.00 on those offsets that exceed thirty dollars (\$30.00).
- C. When multiple claims among local Participating Political Subdivisions are submitted for offset to Clearinghouse, the claims have priority based on the date and time each Participating Political Subdivisions 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.
- D. 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.
- E. In the event of partial payment of a delinquent debt, Participating Political Subdivision 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.
- F. Clearinghouse shall not accept a debt file that is not prepared as specified by Clearinghouse in compliance with DoF requirements. Clearinghouse agrees to submit delinquent debts to the Division; provided, however Participating Political Subdivision is solely responsible for complying with the Code and DoF requirements.
- G. Intercepted funds sent to the Clearinghouse will be disbursed to Participating Political Subdivisions at direction of Clearinghouse. The local collection assistance fee will be deducted prior to funds being sent to Participating Political Subdivisions. Participating Political Subdivision shall establish and maintain any necessary accounts to receive intercepted funds as directed by Clearinghouse. Clearinghouse shall timely direct Participating Political Subdivision to establish and maintain such necessary accounts.

V. COMPENSATION

- A. Clearinghouse shall receive as compensation for its services the twenty-five (\$25.00) local collection assistance fee added to each delinquent debt. This local collection assistance fee is invoiced by the Clearinghouse to the Participating Political Subdivision the month following the debt and local collection assistance fee being collected by the Participating Political Subdivision. It will only be invoiced for those debts collected in excess of \$30.00. For those debts that are submitted to the Division for intercept, the local collection assistance fee of twenty-five dollars (\$25.00) will only be collected upon a successful interception exceeding (\$30.00). "Successful Interception" occurs when the Division 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 Participating Political Subdivision.

- B. Participating Political Subdivision 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 the Division.

VI. INDEMNIFICATION; REIMBURSEMENT; DISCLAIMER. Participating Political Subdivision fully understands and warrants to Clearinghouse that by submission of any delinquent debt submitted to Clearinghouse for offset Participating Political Subdivision has complied with all of the provisions of this Agreement and all of the provisions of the Code and the Division that are required prior to submission of a debt for offset. Participating Political Subdivision 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 Participating Political Subdivision to so perform. Participating Political Subdivision 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.

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.

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 Participating Political Subdivision, 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. Participating Government Subdivision 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 Utah shall govern the terms and conditions of this Agreement.
- C. Participating Government Subdivision 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.

Participating Government Subdivision

Name of Governing Body of Unit of Local Government: San Juan County

Signature: _____

Name of Authorized Individual: _____

Title:

CLEARINGHOUSE

UTAH ASSOCIATION OF COUNTIES

Brandy Grace, CEO