

COLLECTION AGENCY SERVICES AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2022

BETWEEN:

CITY OF BRANDON

(hereinafter called the “**City**”)
OF THE FIRST PART,

- and –

INSERT NAME

(hereinafter called the “**Contractor**”)
OF THE SECOND PART.

WHEREAS, the City is desirous of obtaining the services of an experienced, knowledgeable, and qualified firm to perform debt collection services in accordance with all applicable federal, provincial, and municipal laws, rules and regulations; and

WHEREAS, the provision of such services shall mutually benefit the parties hereto and the residents of Brandon, Manitoba

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1.0 The Contract Documents consists of all the documents listed as follows;

- a. This Agreement
- b. Specifications and Instructions (Schedule “A”)
- c. Contractor’s Response (Schedule “B”)

2.0 Scope of Work

2.1 The Request for Quotation (RFQ) document, any addenda, and the proposal submitted by the Contractor are hereby incorporated by reference into this Agreement. Unless modified by this Agreement or future amendments to this Agreement, the terms and conditions of those documents will be binding on the parties.

2.2 The Contractor shall furnish all labor, materials, equipment, machinery, tools, apparatus, and transportation as needed to perform the following services:

2.3 The Contractor shall undertake collection of delinquent accounts.

2.4 The Contractor shall have the ability and resources for collecting in the Province of Manitoba as well as out-of-province collections.

2.5 The Contractor shall perform collection activities including, but not limited to, formally demanding payment of each collection item and/or seeking an arrangement satisfactory to the City under which the collection item will be paid.

2.6 The Contractor shall have the ability to accept and update daily adjustments to amounts and/or due dates.

- 2.7 The Contractor shall have the ability to accept and update daily recall requests.
- 2.8 The Contractor shall have the ability to accept a previously recalled record back as an active account.
- 2.9 The Contractor shall provide the City a periodic listing of address updates on debtors when the Contractor locates and confirms validity of new addresses.
- 2.10 The Contractor shall be responsible for performing collection activities subject to all applicable federal, provincial, and municipal laws, rules, and regulations.
- 2.11 The Contractor shall provide prompt remittance of collections and all collection substantiating documentation to the City.
- 2.12 The Contractor shall provide maintenance of appropriate records, including financial records that can be audited.
- 2.13 The Contractor shall provide a summary of terms or abbreviations used on the Contractor's application to enable the City to decipher activity on accounts.
- 2.14 The Contractor shall not litigate or compromise any undisputed bill for less than its full value.
- 2.15 The Contractor shall submit any disputed amount to the City for review and research before continuing with the collection process.
- 2.16 The Contractor shall refer all debts it deems to be collectible through litigation to the City for authorization to pursue further collection efforts.
- 2.17 All payments shall be made directly to the Contractor. The Contractor will retain the collection fees and report the amounts with each transmittal of collections to the City.
- 2.18 The Contractor will describe forms of payment allowed for payment by debtors. If the Contractor allows payment by cheque, the Contractor will specify the period for cheque clearance and remittance to the City. The debtor will also be informed of this time period.
- 2.19 The Contractor shall be responsible for any insufficient funds accepted by the Contractor.

3.0 Collection Data

The City shall furnish or provide the Contractor with the following:

- 3.1 Provide name, case number(s), last known address, date of birth, mail forwarding information, if known, from the information currently available to the City.
- 3.2 Provide access to the Contractor, with proper notification, to all reports concerning any of the collection items.
- 3.3 Except as provided for by law or otherwise by this Agreement, the Contractor will keep strictly confidential any information supplied to, obtained by, or which comes to the knowledge of the Contractor as a result of the provision of the Services and this Agreement, and will not, without the prior express written consent of the City, publish, release, disclose or permit to be disclosed any such information to any person or corporation, either before, during or after termination of this Agreement, except as reasonably required to complete the Services.
- 3.4 The Contractor acknowledges that the City is subject to *The Freedom of Information and Protection of Privacy Act* (Manitoba) and agrees to any disclosure of information by the City required by law.
- 3.5 The Contractor agrees to return to the City all of the City's property at the completion of this Agreement, including any and all copies or originals of reports provided by the City.

4.0 Term

- 4.1 This Agreement shall be for a term of five (5) years commencing on the _____ day of _____, 2022 ("Commencement Date") and expires on the _____ day of _____, 2027 ("Expiration Date").
- 4.2 This Agreement can only be renewed on similar conditions at the written request of the City and written acceptance of the Contractor.

5.0 Payments:

- 5.1 The Collection Agency agrees to charge _____ % commission rate based on dollar value recovered on each account plus 5% G.S.T or \$ _____ flat rate based on dollar value recovered on each account plus 5% G.S.T.
- 5.2 The Collection Agency shall provide apply a monthly penalty of 1.25% non-compounding interest on the first day of each month and paid to City of Brandon upon collection.
- 5.3 The Collection Agency shall provide a detailed service report for each of the account locations on a weekly basis and bill each location of account separately breaking out penalties.
- 5.4 The City reserves the right to deduct from any Contractor invoice, an amount for defective or non-conforming work, or for work not provided but invoiced.

5.0 Reports:

- 5.1 As full or partial payment of collection items are collected by the Contractor, each remittance shall be accompanied by a dated report. Each report shall detail each collection item included in the remittance and shall state the name of the person from whom collected, amount collected, amount remitted, unpaid balance of the collection item, and case or other identifying number or information.
- 5.2 The Contractor will provide monthly, a report stating the status of collection efforts to the City. Reports shall also detail the amounts collected.

6.0 Indemnification:

- 6.1 The Contractor shall indemnify, save and hold harmless the City and its employees from and against any and all claims, losses, liabilities, or damages, demands, and actions including payment of reasonable attorney's fees, arising out of or resulting from the negligent performance or failure of performance of the Contractor's obligations under this Agreement.
- 6.2 The Contractor shall not be liable for any claims, losses, liabilities, damages, demands, or actions to the extent caused by the negligence or willful misconduct of the City and its employees.
- 6.3 In no event will the Contractor be liable for lost profits/revenues from transferred accounts (unless such collections have been received by the Contractor and a loss is directly attributed to the Contractor's negligent actions or omissions), or liable to the City or third parties for any special, incidental or consequential damages, except as provided by law, or for the uncollectibility of any account under any circumstances. This Section shall survive the termination or expiration of the Agreement.

7.0 Modifications to Agreement:

- 7.1 This contract, together with any exhibits, task assignments, and schedules constitute the entire agreement between the City and the Contractor and supersedes all prior written or oral understandings. This Agreement and any exhibits, task assignments, and schedules may only be amended, supplemented, or cancelled by a written document duly signed by the parties hereto.

8.0 Insurance:

8.1 The Contractor, at its own expense, shall keep in force and at all times maintain during the term of this Agreement:

- a. *Professional Liability Insurance* (including Errors and Omissions) with minimum limits of \$1,000,000 per occurrence;
- b. *Commercial Liability Insurance* covering employee dishonesty and theft, disappearance and destruction of money and securities with minimum limits of \$2,000,000 per occurrence. With the City as an additional named insured.
- c. *Workers Compensation*, disability benefits and other similar employee benefit acts that are applicable to the Services performed and in conformance with the statutory requirements of the Province of Manitoba.

- i. The Contractor's Workers Compensation Number (____) must be kept in good standing.

8.2 Insurance Certificates: Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal, or any material change in coverage or limits, a notice thereof shall be given to the City.

8.3 The insurance company issuing the insurance policy, or policies, shall have no recourse against the City for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of the Contractor.

9.0 Duty of Continuing Disclosure of Legal Proceedings:

9.1 Commencing after the effective date of this Agreement, the Contractor must disclose any pending or prior civil or criminal litigation, investigations, arbitration, or proceedings including voluntary or involuntary bankruptcy, involving the Contractor (and each subcontractor) or any of its officers or directors, in a written statement to the City within 15 days of its occurrence. Details of settlements that are prevented from disclosure by the terms of the settlement may be annotated as such.

9.2 In the event that any such proceeding reported pursuant to this section or proceedings of which the City otherwise becomes aware, during the term of this Agreement, causes the City to be concerned about:

- a. The Contractor's (or subcontractor's) financial stability and ability to perform the contract in accordance with its terms and conditions; and
- b. Whether the Contractor (or subcontractor) in performing services for the City is engaged in conduct which is similar in nature to conduct alleged in such proceeding, which conduct would constitute a breach of this Agreement or a violation of Manitoba law, regulations, or public policy.

The Contractor shall be required to provide the City all reasonable assurances requested by the City to demonstrate that:

- i. The Contractor (and/or its Subcontractor) will be able to perform the contract in accordance with its terms and conditions; and
- ii. The Contractor (and/or its Subcontractor) has not and will not engage in conduct in performing services for the City which is similar in nature to the conduct alleged in any such proceeding.

10. Attorney's Fees:

10.1 In the event of any legal action to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

11. Governing Law

11.1 This Agreement shall be governed, interpreted and construed according to the laws of the Province of Manitoba.

12.0 Compliance with Statutes

12.1 It shall be the Contractor's responsibility to be aware of and comply with all federal, provincial and municipal laws.

13.0 Venue

13.1 The Venue for any legal action by any party to this Agreement to interpret, construe, or enforce this Agreement shall be in a court of competent jurisdiction in and for the Province of Manitoba.

14.0 Assignment

14.1 This Agreement, or any interest therein, including, but not limited to, any claim for monies due or to become due with respect thereto, shall not be assigned or delegated, or both, by the Contractor, without the prior written approval of the City, which approval shall not be unreasonably withheld.

15.0 Termination

15.1 If the Contractor fails to properly perform the conditions of this Agreement, in the sole opinion of the City, the City will communicate to the Contractor in writing the problem(s) that exist. The Contractor shall have up to thirty (30) calendar days to rectify the problem(s).

15.1 If the same or other problems persist or recur, the City may immediately cancel this Agreement by advising the Contractor in writing. The City reserves the right to cancel this Agreement without cause with a minimum thirty (30) days written notice.

15.2 Termination or cancellation of this Agreement shall not relieve the contractor of any obligations for any deliverables entered into prior to the termination to this Agreement (i.e. reports, statements of accounts, required and not received). Termination or cancellation of this Agreement shall not relieve the Contractor of any obligations or liabilities resulting from acts committed by the Contractor prior to the termination of this Agreement. Unless termination is a result of misconduct, upon any termination of this Agreement:

- a. Contractor will continue its collection efforts with respect to the accounts assigned prior to and existing on the date of termination for a period of ninety (90) days;
- b. The Contractor will continue its collection efforts with respect to all accounts that have been referred by the Contractor to an attorney for the commencement of a lawsuit for collection and all accounts where payment arrangements are being met according to agreed-upon terms, until the conclusion of such lawsuit or payment arrangement; and
- c. The City will pay Contractor the fee with respect to the collections referenced in (a) and (b) above, regardless of when the collections are received and whether received by the City or Contractor including litigation.

If termination is due to misconduct, all accounts shall be immediately returned to the City and no more payments will be due to the Contractor.

16.0 Independent Contractor

16.1 The Contractor shall perform the services under this agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to

constitute the Contractor or any of its agents or employees to be the agent, employee, or representative of the City.

17.0 Right to Audit Records

17.1 In the performance of this Agreement, the Contractor shall keep books, records, and accounts of all activities related to the Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by the Contractor in conjunction with the Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the City and shall be retained by the Contractor for a period of three (3) years after termination of this Agreement, unless such records are exempt.

18.0 Notice

18.1 For the purpose of this Agreement, any notice to the City by the Contractor shall be addressed to:

Accounting Manager
Finance Department
410 – 9th Street
Brandon, MB R7A 6A2

And any notice to the Contractor shall be addressed to:

19.0 Force Majeure

19.1 Notwithstanding anything to the contrary in this Agreement, no party shall have any liability to the other hereunder by reason of delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by Force Majeure, meaning (but not limited to) any Acts of God, storm, war, civil commotion, terrorism, labor disputes or strikes, fire, flood, or other casualty, governmental actions or inactions, priorities, or regulations; or any cause beyond the parties' direct and immediate control. The parties shall have such additional time within which to perform as may be reasonably necessary should any such event occur.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

CONTRACTOR

"I am authorized to bind the contractor."

Name:
Position:
Date:

THE CITY OF BRANDON

"I am authorized to bind the City"

Name:
Position:
Date: