

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into on _____, between the CITY OF STOCKTON, a municipal corporation ("City"), and **C B Merchant Services** whose address is **217 N. San Joaquin Street, Stockton, CA 95202** and telephone number is **(209) 944-9001** ("Consultant").

RECITALS

A. Consultant is qualified to and experienced in providing debt collection services.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in **Exhibit A.** Consultant shall provide said services at that time, place and in the manner specified in **Exhibit A.**

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in **Exhibit A.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in **Exhibit A.**

3. **Term.** This Agreement shall commence **April 1, 2018,** and shall expire on **June 30, 2023.**

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit A.** Any fees or commissions payable to Consultant for their services are deducted from the debt they recover.

a. If a collection is initiated by Consultant on a City's customer and the City's customer remits payment directly to City, Consultant shall invoice City for collections fees due Consultant. Invoices submitted by Consultant to City shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

The total compensation City shall pay Consultant for services rendered under this Agreement term shall not exceed \$1,000,000. All compensation is based on collected debt amounts and is in accordance with the Consultant's fee schedule listed under **Exhibit B.**

5. **Sufficiency of Consultant's Work.** All reports and work product of Consultant shall be adequate and sufficient to meet the purposes for which they are prepared.

6. **Ownership of Work.** All reports, work product, and all other documents completed or partially completed by Consultant in the performance of this Agreement shall become the property of the City. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Consultant shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

12. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C** and shall otherwise comply with the other provisions of **Exhibit C.**

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

Consultant: Linda A. Guinn/CEO
C B Merchant Services
217 N. San Joaquin Street
Stockton, CA 95202

City: City Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

14. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. **Confidentiality.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Consultant's services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any

other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

21. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

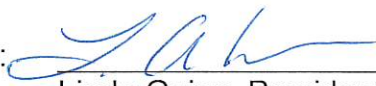
23. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

CONSULTANT

Kurt Wilson, City Manager

By: _____
Linda Guinn, President/CEO

ATTEST:

*[If Consultant is a corporation, signature(s)
must comply with Corporations Code§313.]*

Bret Hunter, City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT A
SCOPE OF SERVICES**

1. Consultant shall perform debt collection services that include but are not limited to the following:
 - A. Collect on accounts receivables and returned checks to pay for various City services such as:
 1. Administrative Citations
 2. Utilities (Water, Sewer, Stormwater, and Solid Waste)
 3. Code Enforcement
 4. Miscellaneous Receivables
 5. Subrogation against third parties that have caused damage to City property and/or injury to City employees.
 - B. Begin initial collections activity within 72 hours after accounts load. If Consultant receives no response during the initial collections activity, Consultant shall move the account to advanced collections activity.
 - C. Report, correct and/or delete credit bureau reporting and provide evidentiary documentation to the Administrative Services Department. The City retains the right to recall from the firm, without charge or penalty, any accounts assigned for collections. Upon recall by the City, no further collection efforts on recalled accounts will be undertaken. If the account being recalled has been reported to any credit bureau, it is expected to be immediately cleared from the customer's credit report and provide written confirmation of such upon request.
 - D. Comply with Federal and State regulations regarding fair debt collection practices. Collection shall be conducted through ethical and lawful means with the highest level of customer service.
 - E. Maintain separate files for each account for audit purposes. Auditing of any and all assigned records is at the discretion of the City.
 - F. Maintain confidentiality on all accounts assigned by the City.
 - G. Maintain a disaster recovery plan to protect the City's receivables and the confidentiality of the information contained therein.
 - H. Accept data from the City in both paper and electronic formats. The assignment will include the following information, if available, and any other relevant information in the City's possession at the time of referral as deemed

appropriate: name(s), address, type of account, unpaid balance, date of birth and driver's license (if on file), phone numbers, account numbers, and account start and stop dates.

- I. Immediate return of all accounts still pending upon termination of contract by any party.
- J. Accept and process credit card payments via telephone. Accept and process electronic payments from debtors. The Firm is responsible for all costs associated with this service, including but not limited to payment of the merchant's discount fee.
- K. Bear all expenses and costs incurred to effect collection of any account referred to them by the City, including but not limited to litigation and transportation.
- L. Remit monthly to the City all monies collected, less collection fees. Remittance shall include a breakdown by debtor and type of account; and shall be remitted in the format City specifies and sent to the address City specifies.
- M. If a collection is initiated by Consultant on a City's customer and the City's customer remits payment directly to City, Consultant shall invoice City for collections fees due Consultant.
- N. Provide monthly reports detailing:
 - 1. Status of each account with customer pertinent information
 - 2. Monthly status of accounts, including assigned and current balance
 - 3. Collection received during the month
 - 4. Percentage of recovery in comparison to the total dollar value of assigned accounts
 - 5. On as needed basis, ad hoc reports as requested including but not limited to collections, legal actions, adjustments, updated addresses and corrections
- O. Provide to the City an annual financial summary report as of June 30 (City's fiscal year end) including totals for receipts, net accounts receivable, total accounts receivable and collection percentage. This report should be submitted to the City no later than July 30th of each year.

EXHIBIT B FEE SCHEDULE

In accordance with this Agreement and Exhibit A, Consultant shall be compensated as follows:

Administrative Citations

Free	15-Day Letter Service
21.5%	Regular Collection
21.5%	Court Action, if required, no cost incurred by City
21.5%	Transfer of accounts to an out of area agency, no cost incurred by City

Utilities (Water, Sewer, Stormwater, and Solid Waste)

Free	15-Day Letter Service
21.5%	Regular Collection
21.5%	Court Action, if required, no cost incurred by City
21.5%	Transfer of accounts to an out of area agency, no cost incurred by City

Code Enforcement

Free	15-Day Letter Service
21.5%	Regular Collection
21.5%	Court Action, if required, no cost incurred by City
21.5%	Transfer of accounts to an out of area agency, no cost incurred by City

Returned Checks

Free	15-Day Letter Service
21.5%	Regular Collection
21.5%	Court Action, if required, no cost incurred by City
21.5%	Transfer of accounts to an out of area agency, no cost incurred by City

Miscellaneous Receipts

Free	15-Day Letter Service
21.5%	Regular Collection
21.5%	Court Action, if required, no cost incurred by City
21.5%	Transfer of accounts to an out of area agency, no cost incurred by City

Minimum balance accepted for collection is \$25.00.

**Excludes accounts previously assigned under prior contracted rates.

EXHIBIT C INSURANCE REQUIREMENTS FOR COLLECTION SERVICES

Vendor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Vendor, its agents, representatives, or employees. Vendor shall procure and maintain for the duration of the contract insurance against claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
(Not required if consultant provides written verification it has no employees)
4. **Cyber Liability** Insurance, with limits not less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If the Vendor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Vendor's insurance coverage shall be endorsed as primary** coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Vendor's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Vendor's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Vendor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Vendor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Stockton for all work performed by the Vendor, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Vendor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies (note – applicable only to Cyber liability)

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Vendor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

Verification of Coverage

Vendor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the

City of Stockton Risk Services before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Vendor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Vendor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its declarations page(s) and endorsement page(s) for each of the required policies.

Subcontractors

Vendor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Vendor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
400 E Main Street, 3rd Floor – HR
Attn: City Risk Services
Stockton, CA 95202