

SECOND AMENDMENT TO THE AGREEMENT FOR DEBT COLLECTION SERVICES WITH C B MERCHANT SERVICES

This Second Amendment to the Services Agreement between C B Merchant Services, a corporation, and City of Stockton ("City") is entered into on _____, 2016.

Recitals

- A. C B Merchant Services and City entered into a Services Agreement with an execution date of January 6, 2000 (the "Agreement") pursuant to which C B Merchant Services agreed to provide City certain third party collection services.
- B. An addendum to the original agreement was executed by C B Merchant Services on June 26, 2009 that reduced the base fee for collection of third party debt to 25% of recovery on claims assigned thereafter, from the original 30% rate for fee collection.
- C. The First Amendment to the original agreement was executed by the City on October 10, 2014, for the purpose of updating the scope of services, establishing a finite agreement period, and revising the Fee Schedule.

The parties now wish to amend the Agreement to extend the agreement period.

Now, therefore, in consideration of the mutual promises and covenants contained herein, the parties agree to:

- 1. The Agreement is hereby amended as follows:
 - A. Section 18 shall be changed to read: This agreement will be effective from date of execution through September 30, 2017 after which date it will terminate. Prior to this termination date, this agreement may be terminated by either party upon giving the other party one hundred eighty (180) days written notice, however, that terms and conditions of this agreement shall continue in full force and effect as to claims assigned prior to such termination.
 - B. Section 20 shall be added as follows: CB Merchant Services shall comply with the insurance requirements set forth in Exhibit A, attached to this Agreement and incorporated by reference. In addition, CB Merchant Services, in accordance with the provisions of Section 3700 of the California Labor Code, shall secure at its own expense and maintain during the life of this Agreement, Workers' Compensation coverage for its employees as necessary to protect CB Merchant Services and its employees under the Workers' Compensation Insurance and Safety Act. Such insurance shall be in a standard form and shall relieve City of all responsibility for such claims and or liability. CB Merchant Services shall, prior to undertaking the work contemplated herein, supply City with a certificate of insurance evidencing that said insurance coverage is in full effect.

- C. Section 21 shall be added as follows: With the exception that this section shall in no event be construed to require indemnification by CB Merchant Services to a greater extent than permitted under the public policy of the State of California, CB Merchant Services shall, indemnify, protect, defend with counsel approved by City and at CB Merchant Services' sole cost and expense, and hold harmless City, its Mayor, Council, officials, representatives, agents employees and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and CB Merchant Services fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, state, or municipal law or ordinance, or City Policy, by CB Merchant Services or CB Merchant Services' officers, agents, employees, volunteers or subcontractors. CB Merchant Services shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of CB Merchant Services to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by CB Merchant Services under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by CB Merchant Services to a greater extent than permitted under the public policy of the State of California, the parties agree that CB Merchant Services' duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by CB Merchant Services or CB Merchant Services' officers, agents, employees, volunteers or subcontractors. CB Merchant Services' duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined. CB Merchant Services shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert CB Merchant Services and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse CB Merchant Services for amounts paid in excess of CB Merchant Services' proportionate share of responsibility for the damages within 30 days after CB Merchant Services provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures CB Merchant Services is not obligated to defend or indemnify City in

an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by CB Merchant Services to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, CB Merchant Services shall indemnify, defend, and hold harmless City its Mayor, Council, officials, representatives, agents employees and volunteers from and against all claims, losses, expenses, and costs including but not limited to attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of CB Merchant Services, regardless of whether such claim may be covered by any applicable workers compensation insurance. CB Merchant Services' indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CB Merchant Services under workers' compensation acts, disability acts, or other employee benefit acts.

2. All other terms and conditions of the Agreement shall remain in full force and effect.
3. This Amendment is effective upon execution.

[illegible]

IN WITNESS THEREOF, the parties have executed this Amendment to the Services Agreement as of the date hereinabove set forth.

CITY OF STOCKTON

C B MERCHANT SERVICES

BY _____
KURT WILSON
CITY MANAGER

BY _____
LINDA A. GUINN
PRESIDENT

ATTEST:

BY _____
BONNIE L. PAIGE
CLERK OF THE CITY OF STOCKTON

APPROVED AS TO FORM:

BY _____
JOHN LUEBBERKE
CITY ATTORNEY

Exhibit A:
Insurance Requirements for Professional Services

CB Merchant Services 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 CB Merchant Services, its agents, representatives, or employees.

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 **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location 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 CB Merchant Services 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 CB Merchant Services provides written verification it has no employees)***
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to CB Merchant Services' profession, with limit no less than **\$1,000,000** per occurrence or claim, \$1,000,000 aggregate. (If Claims-made, see below.)

If CB Merchant Services maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by CB Merchant Services. 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 Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of CB Merchant Services 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

CB Merchant Services' insurance (**at least as broad as** ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, **CB Merchant Services' insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of CB Merchant Services' insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting CB Merchant Services' 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

CB Merchant Services hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of CB Merchant Services may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. CB Merchant Services 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.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require CB Merchant Services to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

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. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

CB Merchant Services shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive CB Merchant Services' 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, for any reason or no reason.

CB Merchant Services shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

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

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, CB Merchant Services fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

CB Merchant Services shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CB Merchant Services 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.