

**COLLECTION SERVICES FOR RECEIVABLES OF THE
CITY OF MILWAUKEE**

CONTRACT

Contract by and between the City of Milwaukee (City), a municipal corporation organized and existing under the laws of the State of Wisconsin, and Kohn Law Firm, with principal offices at 312 East Wisconsin Avenue, Suite 501, Milwaukee, WI 53202-4305, (Contractor).

I.

DEFINITIONS

- A. "Court costs" means statutory filing fees, service fees, and commissioner fees.
- B. "Prejudgment collection" includes, but is not limited to, telephone contacts, collection letters, summons and complaints, trials, depositions, interrogatories, entry of judgment and prejudgment payment arrangements, and bankruptcy filings.
- C. "Post-judgment collection" includes, but is not limited to, garnishment, execution, body attachments, supplementary orders, contempt, proceedings and post-judgment payment arrangements, and bankruptcy filings.

II.

RECITALS

- A. City departments attempt to collect debts owed the City, with the amount of effort and methods of collection varying with the departments. After a billing attempt by the departments, the claims will be referred to the Contractor.

B. Both parties understand and acknowledge that it is the intent of this Contract to actively and diligently pursue collection of debts owed to the City. The City may periodically review the performance of the Contractor in accordance with performance benchmarks developed with the input of the contractor. As a result of such reviews, the City may utilize its rights under the termination provision, or seek renegotiation of this Contract to utilize other collection methods, including multiple contractors.

III.

SCOPE OF SERVICE

A. Various City departments shall refer accounts directly to the Contractor who shall report activities on accounts directly to the department making the referral.

B. Contractor agrees to accept accounts on a referral basis from City departments, for prejudgment collection, post-judgment collection, or both as specified by the City. Accounts include, but are not limited to:

1. Collection of delinquent City real and personal property taxes;
2. Collection of property damage claims;
3. Collection of judgments for the cost of razing condemned buildings;
4. Collection of delinquent home repair loans;
5. Collection of judgments against uninsured motorists;
6. Collection of judgments of various kinds which may be entered by the

City from time to time.

C. Contractor shall be responsible for administering collection efforts and reporting of individual accounts to departments in accordance with the Standard Operating Procedures

incorporated and made part of this Contract, as may be amended from time to time by the City, with input from the Contractor.

D. Contractor may not compromise claims for personal and real property taxes. On all other claims where the amount claimed is not more than \$5,000 over the proposed compromise, the City Attorney is currently authorized to approve a compromise. On all other claims where the amount of the claim is \$5,000 or more over the proposed compromise, the City's Common Council of the City is authorized to approve a compromise.

E. Contractor shall collect interest and penalties on personal and real property taxes in accordance with the statutory formula. Contractor shall have read-only access to City Treasurer's account data in order to obtain exact amounts due on a given date.

F. The obligations under this Contract shall not be assigned by the Contractor without approval.

G. The Request for Proposals, and the Standard Operating Procedures, except as inconsistent with this Contract, are incorporated and made a part of this Contract.

IV.

RECORD KEEPING

A. The Contractor shall maintain complete and accurate books and records of its operations in a form consistent with generally accepted accounting principles and practices. Such books and records shall be available for inspection by the City or its authorized agent at any time during reasonable business hours and shall be available for inspection for a period of no less than seven years from the end of the Contract year, or portion thereof in the event of termination.

B. All collection records made during the performance of the Contract shall be the exclusive property of the City and the City shall have the right to use the same for any purpose without permission of the Contractor or compensation to the Contractor. All collection records are strictly confidential and Contractor agrees that Contractor will not make them available to any other person without prior written approval from the City.

C. All records shall be maintained by the Contractor pursuant to the Standard Operating Procedures, and shall be retained for a period of seven years from the expiration of this Contract.

D. Contractor shall assist the City as necessary to comply with Wisconsin's Public Records Law. The City acknowledges that certain of Contractor's processes may be proprietary and agrees to consider them confidential, to the extent permitted by law.

V.

REPORTING

A. At the City's request, Contractor shall generate a listing of all active accounts with current balances due and payments to date. In any event, Contractor shall generate such reports for the City at the close of each calendar quarter.

B. At the request of the City, Contractor shall generate a report documenting collection activity with respect to any particular claim for collection.

C. Contractor shall generate quarterly reports of all collection claims which Contractor has designated as uncollectible. Such reports shall indicate for each claim so designated collection activity to date together with an explanation of why a claim is considered uncollectible.

D. Contractor shall in all respects generate reports required pursuant to the Standard Operating Procedures.

E. Contractor shall provide monthly reports to the City Attorney including gross collections, net collections, costs, disbursements, and fees expended for each category of accounts referred and a year end summary for the same.

VI.

COLLECTIONS

Contractor shall post City collections daily. Such collections shall be deposited in a trust account for remittance to the City weekly or monthly pursuant to the Standard Operating Procedures and in any event when the balance held on behalf of the City exceeds \$100,000 for non-property damage claims and \$50,000 for property damage claims. Contractor shall provide billing and remittance statements of accounts monthly pursuant to the Standard Operating Procedures.

VII.

FEES

A. In consideration of its services under this Contract, Contractor shall be paid fees for claims referred under this Contract as follows:

1. Personal and real property taxes:
 - a. On all claims \$10,000 and less, 10% of the amount collected pre-lawsuit and 17% of the amount collected post-lawsuit.
 - b. On all claims over \$10,000, 7% of the amount collected pre-lawsuit and 13% of the amount collected post-lawsuit.

2. All other City receivables.
 - a. On all claims up to \$10,000, 15% of the amount collected pre-lawsuit and 25% of the amount collected post-lawsuit.
 - b. On all claims over \$10,000, 10% of the amount collected pre-lawsuit and 15% of the amount collected post-lawsuit.

B. Contractor shall be paid at the rate of 5% of the amount it collects for claims referred to it under this Contract through use of the State of Wisconsin Tax Refund Intercept Program (TRIP).

C. All court and other costs shall be initially advanced by the Contractor.

D. Fees specified above shall be deducted from payments received on accounts pursuant to the Standard Operating Procedures and shall be the exclusive means of compensating the Contractor. In the event of termination or expiration of this Agreement, Contractor shall not be entitled to any additional compensation.

VIII.

PERFORMANCE

A. The services to be performed by Contractor under the terms of this Contract shall commence upon written notice from the City to proceed.

B. Contractor agrees that performance of the Contractor's work, services and results therefrom pursuant to the terms and conditions and agreements of this Contract shall conform to the requirements of law and the professional standards as are prevalent in this field of endeavor.

C. This Contract shall extend for a period of five years from January 1, 2007 to December 31, 2012.

D. The City may terminate this Contract at any time by giving at least 60 days notice in writing from the City to the Contractor, unless the Contractor violates a material provision of this agreement, whereupon the City may terminate within 10 days notice to the Contractor.

E. Contractor agrees to comply with all requirements of all applicable federal, state, and local laws, as amended.

F. Contractor shall perform as an independent contractor, and not as an agent or employee of the City.

IX.

INDEMNIFICATION

A. In case any action in court or proceeding before an administrative agency is brought against the City or any of its officers, agents or employes arising out of, in whole or in part, the activities of the Contractor under this Contract, the Contractor shall indemnify and save harmless the City and its officers, agents and employes from any losses, damages, costs, expenses, judgments or decrees arising out of such action. The City shall tender the defense of any claim or action at law or in equity to the Contractor or Contractor's insurer and upon such tender; it shall be the duty of the Contractor and Contractor's insurer to defend such claim or action without costs or expenses to the City or its officers, agents or employes. The Contractor shall be solely responsible for the conduct and performance of the services required under the terms and conditions of this Contract and for the results therefrom, and agrees to indemnify the City irrespective of any applicable insurance.

B. Contractor agrees to indemnify and save harmless the City for any loss or damage the City sustains by reason of an unauthorized execution of a transaction by the Contractor on any of the City's computer systems.

X.

INSURANCE

A. The Contractor shall procure and maintain for the duration of this Agreement the following issuance:

1. Crime

Employee Dishonesty	per occurrence	Limit equal to the maximum amount of City funds the Contractor accumulates in its office or in an account in a depository.
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To Include:

Expanded definition of property to include City/Municipal Court owned property

2. General Liability

Bodily Injury/ Property Damage	per occurrence	\$1,000,000
	general aggregate	\$1,000,000
Personal Injury	products/completed operations aggregate	\$1,000,000
	aggregate	\$1,000,000

To Include:

Commercial General Liability Insuring Agreement

Independent Contractors protection

Personal Injury definition to address:

Libel

Slander

Harassment

Emotional distress

Mental anguish

False arrest, detention or imprisonment

Malicious prosecution

Wrongful entry, eviction or invasion of right of privacy

Discrimination

Contractual liability for risk assumed in this Agreement

3.	Automobile		
	Bodily Injury/ Property Damage	each accident	\$1,000,000
	<u>To Include:</u>		
	Liability for any owned, non-owned and hired vehicle		
4.	Umbrella		
	Bodily Injury/ Property Damage/ Personal Injury	each occurrence aggregate	\$5,000,000 \$5,000,000
5.	Workers' Compensation and Employers Liability		
	Workers' Compensation Employers Liability		Statutory
	Bodily Injury by Accident	each accident	\$100,000
	Bodily Injury by Disease	each employee policy limit	\$100,000 \$500,000
6.	Professional Liability		
	Wrongful Act	each claim aggregate	\$5,000,000 \$5,000,000

B. The Contractor shall furnish the City with current Certificates of Insurance setting forth the insurance policies in force along with coverage limits required for each coverage item listed above. The Certificates of Insurance shall also state any deductibles or self-insured retentions that apply on the policy.

C. The Contractor shall place insurance with insurers with a Best's rating no less than A, or equivalent, and a financial size no less than Class XIII. In the event of cancellation or non-renewal by the professional liability insurer, the Contractor shall either ensure that continuity of coverage will be maintained by preserving the retroactive date or shall notify the

City and at the option of the City exercise the extended reporting provision of the professional liability policy in order to ensure extension of coverage for one year beyond expiration of the policy for claims which occur between the date of execution of this Agreement and the date of the expiration of the policy which are made during the extended reporting term.

D. The City of Milwaukee is to be an additional insured on the policies referenced in Sections A.1, A.2, A.3, and A.4 above.

E. If any portion of the Contract requires the use of subcontractors, the Contractor must ensure that the subcontractor certifies to the identical insurance coverage types and amounts.

F. Certificates of insurance must be provided to the City Attorney prior to the effective date of the Contract.

G. All certificates of insurance are to stipulate that 60 days written notice of non-renewal/termination will be provided to the City.

H. Automobile coverage verification is required only if vehicles will be used by the Contractor in providing the required service to the City.

I. In the event of a change of professional liability carriers during the term of Contract, coverage is to be provided retroactive to the date of the Contract.

J. At the expiration or termination of the Contract, City is to be provided with options at its expense to purchase an extended discovery period of up to 24 months.

XI.

INDEPENDENT CONTRACTOR

The Contractor is an independent contractor. All collection activities on behalf of the City shall be conducted under the exclusive supervision and control of the Contractor. Contractor

represents that Contractor will secure at Contractor's own expense all personnel required in performing the services under this Contract. Contractor and all subcontractors, if any, shall provide to the City an affidavit or other satisfactory proof which the City may require evidencing the Contractor and all subcontractors that may be utilized under this Contract have obtained worker's compensation insurance for all persons performing work or service under the Contract or subcontract as is required by the Worker's Compensation Act of the State of Wisconsin.

XII.

DISCRIMINATION PROHIBITED

A. In all hiring or employment made possible by or resulting from this Contract there (1) will not be any discrimination against any employe or applicant for employment because of race, color, sex orientation, religion, sex or national origin, or ancestry, age, disability, lawful source of income, marital status, or familial status, and (2) affirmative action will be taken to ensure that applicants are employed and that employes are treated during employment without regard to their race, color, religion, sex orientation, sex, national origin, or ancestry, age, disability, lawful source of income, marital status, or familial status.

This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous places available to employes and applicants for employment, notices required or to be provided by federal or state agencies involved setting forth the provisions of the clause. All solicitations or advertisements for employes shall state that all qualified applicants will receive consideration for employment without regard to race,

color, religion, sex orientation, sex, national origin or ancestry, age, disability, lawful source of income, marital status, or familial status.

B. No person in the United States shall, on the ground of race, color, sex orientation, religion, sex, national origin or ancestry, age, disability, lawful source of income, marital status, or familial status be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Contract. The City and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964.

C. The Contractor will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

D. Contractor agrees that it will comply with all applicable requirements of the Americans With Disability Act of 1990, 42 U.S.C. § 12101, *et seq.*

XIII.

CONFLICTS OF INTEREST

A. Interest in Contract. No officer, employe or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Contract pertains shall have any personal interest, direct or indirect, in this Contract.

B. Interest of Other Local Public Officials. No member of the governing body of a locality and no other public official of such locality who exercises any functions or

responsibilities in the review or approval of the carrying out of this Contract shall have any personal interest, direct or indirect, in this Contract.

C. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services under this Contract. Any conflict of interest on the part of the Contractor shall be disclosed to the City. In the event the Contractor has a conflict of interest which does not permit Contractor to represent the City in connection with any claim for collection, Contractor shall notify the City and shall provide the City with all records and reports relating to same.

D. Contractor shall, in the event of a conflict of interest, subcontract the City's claim and the Contractor and the subcontractor shall be responsible under the same terms and conditions of this Contract and the Standard Operating Procedures.

E. Contractor covenants that Contractor shall not undertake representation of any person in connection with any claim, proceeding, lawsuit or other matter against the City during the term of this Agreement.

XIV.

AUDITS AND INSPECTIONS

A. At any time during normal business hours and as often as the City may deem necessary, there shall be made to the City for examination all of Contractor's records with respect to all matters covered by this Contract. Contractor will permit representatives of the City's Comptroller to audit, examine and make excerpts or transcripts from such records and to make audits of all data relating to matters covered by this Contract.

B. The Contractor shall commission an annual independent audit in accordance with the requirements established by the City Comptroller. The City shall share on an equal basis

annual audit costs in excess of \$25,000.00 to a maximum of \$12,500.00. If the Contractor subcontracts, the audit shall include the subcontractor. Copies of all audits shall be provided by the Contractor to the City Comptroller and the City Attorney.

XV.

EMERGING BUSINESS ENTERPRISE REQUIREMENT

1. The Contractor agrees to assign 25% of the claims referred by the City to the Contractor to an emerging business enterprise, either through subcontracts or by utilizing collection personnel supplied by an EBE agency, in satisfaction of the emerging business enterprise participation goals described in sec. 360-06, Milwaukee Code of Ordinances.

2. During the course of this contract, upon request of the City, the Contractor will contact City-certified emerging business enterprises that provide legal and/or paralegal services, in order to assist the Contractor to increase its emerging business enterprise participation. The Contractor is aware that the goal of this contract is 18% emerging business enterprise participation and will use its best efforts to obtain the target participation goal.

XVI.

NOTICES, APPROVALS AND REFERENCES

A. Any and all notices shall be in writing and deemed served upon depositing the same with the United States Postal Services as "Certified Mail, Return Receipt Requested," addressed to the Contractor at:

Kohn Law Firm
312 East Wisconsin Avenue
Suite 501
Milwaukee, WI 53202-4305

Attn: Robert E. Potrzebowski, Jr.

and to the City at:

City of Milwaukee
Office of the City Attorney
800 City Hall
200 East Wells Street
Milwaukee, WI 53202

Attn: Deputy City Attorney Linda Uliss Burke

All other correspondence shall be addressed as above, but may be sent "Regular Mail" and deemed delivered upon receipt by the addressee.

B. Except as otherwise specifically stated herein, all notices, approvals and references on behalf of the City shall be given by the Office of the City Attorney.

XVII.

PROMPT PAYMENT

The City strives to make timely payment on all invoices. Payment to the Contractor will be deemed timely if the payment is mailed, delivered, or transferred within 60 calendar days after receipt of a properly completed invoice or receipt and acceptance of the property or service under the order or Contract, whichever is later. If the City does not make payment by the 60th calendar day, the City shall pay simple interest beginning with the 31st calendar day at the rate of one percent (1%) per month (unless the City disputes the amount of the invoice). Reference Common Council File No. 9008589 adopted October 16, 1990.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2006.

IN THE PRESENCE OF:

CITY OF MILWAUKEE

Mayor

City Clerk

COUNTERSIGNED:

Comptroller

KOHN LAW FIRM

IN THE PRESENCE OF:

LUB:bl
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