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June 11, 2012

To the Honorable,  
Common Council of  
the City of Milwaukee  
Room 205 – City Hall

Attention: Mr. Jim Owczarski

Re: Contract for the Collection of Overdue Municipal Court Judgments

Dear Council Members:

Attached is a draft contract with Harris & Harris for the above procurement that has been revised in two ways:

1. Section II.C. indicates that Harris & Harris will agree to actually lease a location in downtown Milwaukee.
2. Section II.D. removes the parties' ability to extend the contract after five years without a new RFP.

Representatives of the office and the Municipal Court will be in the Common Council chambers on June 12, 2012, if the Council has questions regarding the procurement.

Very truly yours,

  
LINDA ULISS BURKE  
Deputy City Attorney

LUB:dms

c: Kristine Hinrichs  
Judge Derek Mosley

1049-2011-1608:181789

**CONTRACT FOR COLLECTION SERVICES FOR  
OVERDUE MUNICIPAL COURT JUDGMENTS  
OF THE CITY OF MILWAUKEE  
2012**

**AGREEMENT**

Agreement by and between the City of Milwaukee, a municipal corporation organized and existing under the laws of the State of Wisconsin, and Harris & Harris, LTD, 222 Merchandise Mart Plaza, Suite 1900, Chicago, IL 60654 (Contractor).

**I.**

**DEFINITIONS**

A. "Account" means a defendant who has one or more past due judgments assigned to the Contractor for collection services.

B. "Alternative Sentence" means a penalty imposed by the Court for failure to pay a fine, such as suspension of driving privileges or incarceration.

C. "Case" means a record created by the Court for a municipal ordinance violation.

D. "City" means City of Milwaukee, acting through the City Attorney's Office and Municipal Court.

E. "Contractor" means Harris & Harris.

F. "Court" means the Municipal Court of the City of Milwaukee.

G. "Court Costs" means statutory filing fees, service fees and commissioner fees.

H. "Defendant" means an individual charged with a municipal ordinance violation in Municipal Court. In this document, the term also applies to individuals found guilty and against whom a judgment has been rendered.

I. “Docketed Judgment” means a judgment that has been docketed with the Circuit Court for civil proceedings.

J. “Judgment” means a formal decision given by the Court, as a consequence of a finding of guilt or innocence. It is normally made in the form of a monetary forfeiture (fine) on a guilty finding.

K. “Open Judgment” means any unpaid fines owed to the Court where the alternative sentence has not been satisfied.

L. “Overdue Judgments” means any fine that is not paid on the date that the judge gave the defendant as the due date. The due date is normally 60 days after the date the judgment was rendered. Any unpaid judgment is considered overdue the day after the due date.

M. “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.

N. “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. The Municipal Court has exclusive jurisdiction over offenses against City ordinances. After the assessment of fines and forfeitures by the court, the cases will be referred to the Contractor.

B. Contractor specializes in commercial collections. Skip tracing is a standard operating procedure of the Contractor. Contractor has direct access to Trans Union. Contractor maintains large client and debtor data bases that permit cross-referencing accounts within Contractor's computer system.

C. 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. Contractor agrees to accept on a referral basis cases from the Municipal Court, City of Milwaukee, for collection, pursuant to the Standard Operating Procedures.

B. Contractor shall not compromise the cases.

C. The obligations under this Contract shall not be assigned by the Contractor without approval of the Common Council of the City of Milwaukee.

D. The Standard Operating Procedures as annexed hereto are incorporated and made a part of this contract. The Request for Proposals, except as inconsistent with this Contract and the Standard Operating Procedures, is 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 term, 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. Both parties understand that the City is bound by the Wisconsin Public Records Law, Wis. Stats. §§19.31-39 (“Public Records Law”), and as such, all terms of this Agreement are subject to and conditioned on that law. Under the Public Records Law, the City’s records (as they related to this Agreement) are subject to public disclosure unless there is a statutory, common law, or public policy reason for nondisclosure (e.g., trade secrets exception).

The Contractor acknowledges and agrees that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, specifically the production of records that are maintained by the Contractor, and that failure to do so shall constitute a material breach of this Agreement. Contractor agrees that it shall assist the City in complying with the Public Records Law and in defending actions under that law. In the event

the City receives a public records request for records relating to the Contract, any information designated by the Contractor as its confidential and proprietary information will be considered in conjunction with the City's response to the public records request. Decisions to withhold public disclosure of records subject to this law must be supported by a statement of the public-policy basis for denial. The Contractor agrees to cooperate with any reasonable request for assistance by the City and the Milwaukee City Attorney's Office to support nondisclosure decisions.

**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 month.

B. At the request of the City, Contractor shall generate a report documenting collection activity with respect to any particular claim for collection. The Contractor shall provide authorized City personnel with access to its electronic data base to view City accounts.

C. The Contractor shall generate monthly 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. The Contractor shall in all respects generate reports required pursuant to the Standard Operating Procedures.

E. The Contractor shall provide monthly, a report to the City Attorney including gross collections, net collections, costs, disbursements, and fees expended.

F. The Contractor shall provide yearly a report to the City Attorney including gross collections, net collections, costs, disbursements, and fees expended indicating totals for the calendar year.

G. Failure to submit reports required under this Contract and the Standard Operating Procedures may be considered a material breach of this Contract.

## **VI.**

### **COLLECTIONS**

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

## **VII.**

### **FEES**

1. In consideration of its services under this Contract, Contractor shall be paid fees at the rate of 14.95% of the amount it collects for claims referred to it under this Contract, with the exception of amounts it collects through the State of Wisconsin Tax Refund Intercept Program (TRIP), for which the Contractor shall be paid 4.9% of the amounts collected.
2. The Contractor shall pay any TRIP fee imposed on the Court by the State of Wisconsin.
3. The Contractor shall pay all attorney fees incurred as a result of its referral of judgments for legal action pursuant to the Standard Operating Procedures. The Contractor shall be paid 21.95% of the amount collected as a result of non-litigation legal services, and 25% of the amount collected as a result of litigation.

## **VIII.**

### **PERFORMANCE**

A. The services to be performed by the 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. Contractor shall lease a location in downtown Milwaukee where in-person payments can be made and collected.

D. This Contract shall extend for a period of five years from July 1, 2012 to June 30, 2017.

E. 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 Contract, whereupon the City may terminate with 10 days notice to the Contractor.

F. Contractor agrees to comply with the requirements of all applicable federal, state, and local laws, as may be amended from time-to-time.

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

H. Venue for any disputes, judicial or administrative, shall be the State of Wisconsin.



## **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 employees arising out of the activities of the Contractor under this Contract in whole or in part, the Contractor shall indemnify and save harmless the City and its officers, agents and employees 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 employees. 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 is to confirm that it has the types and amounts of insurance protection as required by the contract, for the duration of this agreement.

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. |
|---------------------|----------------|----------------------------------------------------------------------------------------------------------------------------|

To Include:

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

2. General Liability

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

To Include:

Commercial General Liability Insurance Agreement  
Independent Contractors protection  
Contractual liability for risk assumed in this Agreement, including  
Personal Injury  
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

|    |                                                       |                               |                            |
|----|-------------------------------------------------------|-------------------------------|----------------------------|
| 3. | Automobile                                            |                               |                            |
|    | Bodily Injury/<br>Property Damage                     | each accident                 | \$1,000,000                |
|    | <u>To Include:</u>                                    |                               |                            |
|    | Liability for any owned, non-owned and hired vehicle  |                               |                            |
| 4. | Umbrella                                              |                               |                            |
|    | Bodily Injury/<br>Property Damage/<br>Personal Injury | each occurrence<br>aggregate  | \$5,000,000<br>\$5,000,000 |
| 5. | Workers' Compensation and Employers Liability         |                               |                            |
|    | Workers' Compensation<br>Employers Liability          |                               | Statutory                  |
|    | Bodily Injury by Accident                             | each accident                 | \$100,000                  |
|    | Bodily Injury by Disease                              | each employee<br>policy limit | \$100,000<br>\$500,000     |
| 6. | Professional Liability                                |                               |                            |
|    | Wrongful Act                                          | each claim<br>aggregate       | \$5,000,000<br>\$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.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 30 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 employee or applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories, and (2) affirmative action will be taken to ensure that applicants are employed and that employees are treated during employment without regard to their sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

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 employees 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 employees shall state that all qualified applicants will receive consideration for employment without regard to sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories.

B. No person in the United States shall, on the ground of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories, 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, employee 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 he 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 of the collection activity applicable to the Contractor's performance under this Contract, in accordance with the requirements established by the City Comptroller. The audit report shall include at a minimum a statement of collector activity, summary of financial policies, notes to the financial statement, an independent auditor's report, and recommendations. 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 City Comptroller and the City Attorney.

#### **XV.**

##### **SMALL BUSINESS ENTERPRISE REQUIREMENT**

1. The Contractor agrees to assign 25% of the claims referred by the City to the Contractor to a small business enterprise, either through subcontracts or by utilizing collection personnel supplied by an SBE agency, in satisfaction of the small business enterprise participation goals described in Chapter 370, Milwaukee Code of Ordinances.

2. During the course of this contract, upon request of the City, the Contractor will contact City-certified small business enterprises that provide legal and/or paralegal services, in



order to assist the Contractor to increase its small business enterprise participation. The Contractor is aware that the goal of this contract is 18% small 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:

Harris & Harris, LTD  
222 Merchandise Mart Plaza, Suite. 1900  
Chicago, IL 60654

Attn: Arnold S. Harris

and to the City at:

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

Attn: 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**

A. It is the City’s policy to pay all invoices within 30 days. If the City does not make payment within 45 days after receipt of a properly completed invoice supporting payment

and other required documentation, the City shall pay simple interest beginning with the 31<sup>st</sup> calendar day at the rate of 1% per month, (unless the amount is subject to a good-faith dispute, and before the 45<sup>th</sup> day after receipt of such invoice, notice of the dispute is sent to the Contractor in accordance with the notice provisions in the contract). If there are subcontractors, consistent with sec. 66.0135(5), Wis. Stats., the prime contractor must pay the subcontractors for satisfactory work within seven days of the prime contractor's receipt of payment from the city, or seven days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the prime contractor fails to make timely payment to a subcontractor, the prime contractor shall pay interest at the rate of 12% per year, compounded monthly, beginning with the eighth calendar day. Reference Common Council File No. 101137, adopted January 2011.

B. All contractors awarded a contract valued at \$25,000.00 or more are required to participate in training on the City of Milwaukee's contract compliance software. Contractors must complete the training no later than 30 days after the date of contract award. Throughout the contract term, contractors are required to regularly provide timely payment information in the City's contract compliance software. Please contact the Office of Small Business Development (OSBD) at 414-286-5553 should you have any questions or concerns regarding the training process.

CITY OF MILWAUKEE

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

COUNTERSIGNED:

\_\_\_\_\_  
Comptroller

Date: \_\_\_\_\_

\_\_\_\_\_  
HARRIS & HARRIS, LTD

Date: \_\_\_\_\_

LUB:bl  
4/10/12

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