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**DEBT COLLECTION SERVICES FOR BREVARD COUNTY CLERK OF COURT**  
**RFP# P-3-19-03**  
**December 11, 2018**  
**ADDENDUM 4**

**TO ALL PROSPECTIVE BIDDERS**

This is an Addendum to and shall be considered as part of the original request for proposal package for the above-mentioned RFP. Please include acknowledgement of Addenda issued and received in Tab 4 of proposal submittal.

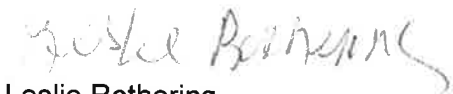
Please see attached clarifications to questions received from Clerk of the Circuit and County Court.

**PROPOSAL OPENING DATE AND TIME:**

The proposal opening date and time remains December 20, 2018 @ 2:00 PM.

All other terms and conditions remain unchanged.

Sincerely,



Leslie Rothering  
Brevard County Central Services Department  
Interim Director

Attachment: Pre-Proposal Sign-In Sheet

Cc: file  
Brevard County Clerk of Court

**END OF ADDENDUM NO. 4**



PRE-PROPOSAL  
SIGN IN SHEET

PROPOSAL TITLE: Debt Collection Services for Brevard County Clerk of Court

PROPOSAL NUMBER: P-3-19-03

MEETING DATE AND TIME: December 10, 2018 2:00 pm

MEETING LOCATION: Brevard Room located at 518 S. Palm Avenue, Titusville, FL 32780.

\*\*\*Please write legibly\*\*\*

PRINTED NAME	COMPANY/DEPT NAME	EMAIL ADDRESS	PHONE	SIGNATURE
Leslie Rothering	Brevard County/Purchasing Services	Leslie.Rothering@brevardfl.gov	(321) 617-7390	Leslie Rothering
Ben Fisher	IC SYSTEM	bfisher@ic-system.com	651-481-6315	Ben Fisher
Ashley Swafford	MSB	Ashley.Swofford@navicent.com		Ashley Swafford
Ryan Wilcox	Alliance One	Ryan.Wilcox@allianceone.com	732-731-9671	Ryan Wilcox
Kelly Burnett	Linebros	kelly.burnett@lgbcs.com	904-838-1127	Kelly Burnett
Cathy Harriman	LGBS, LLP	cathy.harriman@lgbcs.com	352-514-7771	Cathy Harriman
Jennifer York	LGBS, LLP	jennifer.york@lgbcs.com	941-258-2807	Jennifer York
Emily West	Patrick A. Carey, P.A.	ewest@patrickacarey.com	407-380-1333	Emily West
MICHAEL SANCHEZ	BEONARD CLERK			Michael Sanchez
Sam McDaniel	Brev Clerk	Samantha.McDaniel@brevardclerkus.com	321-637-5413	Sam McDaniel
Mike Williams	Court Collections	mike@courtcollectionsbrevard.com	850-228-2222	Mike Williams

Bureau Inc.  
Rebecca Lober  
Brevard Clerk  
rebecca.lob@brevardclerkus.com 321-637-5413  
Rebecca Lober



PRE-PROPOSAL  
SIGN IN SHEET

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PRINTED NAME	COMPANY/DEPT NAME	EMAIL ADDRESS	PHONE	SIGNATURE
Phil Menzies	Pen Credit	Phil's.menzies@pencredit.com	561-313-7216	
Phil Menzies	Pen Credit	Phil's.menzies@pencredit.com	561-313-7216	
Andrea Butler	Professional Recovery	andrea.butler@brevardcrcl.us	321-657-6504	
callers				
John Yanny	Alliance One	john.yanny@allianceone.com	414-331-4876	
Scott Maxam	Valley Collection Service	scott@valleycollectm.com	623-299-9111	
Patrick Miller	Professional Recovery	pmiller@prorecoveryinc.com	704-246-4417	
Ernest Danager	Pen Credit	*advised to use Phil Menzies contact information*		
Julianne Hudes	Reliant Capital Solutions	jhudes2@reliant-cap.com	614 452 6115	
Vince Lobianco	Harris & Harris	vllobianco@harriscollect.com	630 988 6948	
Bill Finkham	Frederickson Fielder	bfinkham@pbfm.com	846 359 3186	

Collins & Moff

713-862

Elizabeth Wang

Pedrus Brandon Fielder  
Collins & Moff

eurehle@pbfm.com

1860



**Clerk of the Circuit and County Court      Brevard County, Florida**

**400 South Street, Suite 1-B, Titusville FL 32780-7683**

**PO Box 219, Titusville, FL 32781-0219**

**Phone: 321-637-5413 Fax: 321-264-5228**

**SCOTT ELLIS, CLERK**

**BREVARD COUNTY CLERK OF COURT  
REQUEST FOR PROPOSAL FOR DEBT COLLECTION SERVICES  
ADDENDUM  
QUESTION AND ANSWER SUMMARY  
PREPARED BY: ANDREA BUTLER  
DECEMBER 11, 2018**

**TO ALL PROSPECTIVE BIDDERS:**

This is an addendum to and shall be considered as part of the original proposal package for the above-mentioned proposal. Please submit this sheet with your proposal submittal as acknowledgement of the addendum. Some duplicate questions were posed by different vendors. In those instances, the question and answer is only addressed once in the document.

**QUESTIONS:**

**Q. Regarding General Conditions, Terms, and Provisions, 4. Proposal Opening on the first page 2 of the RFP: Proposers are advised that “Proposal must be submitted on forms provided by the Clerk” and “No other forms will be accepted.” Please confirm that other response content for which a form is not otherwise provided (such as for References) can be submitted on separate Proposer documents (such as Word or PDF) and is acceptable to the Clerk.**

**A. Confirmed.**

**Q. Regarding General Conditions, Terms, and Provisions, 7. Interpretation on the first page 2 of the RFP: How and where within a proposal does the Clerk want Proposers to acknowledge receipt of addenda? Can/should this be acknowledged within a Cover/Transmittal Letter?**

**A. Each addendum contains an opening paragraph directing all prospective bidders to submit a copy of each addendum with their proposal submittal as acknowledgement of the addenda.**

**Q. Regarding 1.2 Proposed Schedule on the second page 4 of the RFP: The last day to submit questions is Thursday, December 13 and the proposal is due one week later on Thursday, December 20. We are concerned that answers to questions will not be made available in a timely fashion within this tight window to be able to incorporate answers into our proposal and still get it shipped on time to the Clerk's office. Will the Clerk consider extending the due date or otherwise enlarging the window between the last day to submit questions and the due date?**

**A.** An initial answer to questions received was submitted by an Addendum on December 5, 2018. Any additional questions will be answered by an Addendum submitted no later than December 17, 2018. The proposal due date remains December 20, 2018, at 2:00 p.m.

**Q. Regarding 3.3 Proposal Format, 3.3.2 on page 7 of the RFP:**

**a. Please clarify what qualifies as an official "signing" of the original proposal. Would an original signature on a Cover/Transmittal letter included with the original qualify that edition as officially signed? Or does simply signing and including the Proposal Acknowledgment form qualify as an official signing?**

**b. Please confirm that the declaration of the proposal being valid for at least ninety days can be made in a Cover/Transmittal Letter.**

**i. Although it states here that it has to be valid for at least ninety days, later in the RFP under 9.0 Award on page 17, Proposers are advised that all proposals shall be valid for 120 days. Please clarify which is correct and if the declaration should in fact state 120 days instead of 90 days.**

**A.** (a) A signature on the Proposal Acknowledgement form as indicated in Section 4.4, Tab 4 – Authorized Signature, qualifies as an official signature.

(b) This is confirmed.

(i) The proposal is valid for 90 days.

**Q. Regarding 4.0 Proposal Preparation and Submission in general: If Proposers include a flysheet preceding each numbered tab to introduce the forthcoming content of a section, would the flysheet count against any assigned page limits of that section?**

**A.** Each tab should be labeled according to the specifications contained in the RFP. Additional pages, including a flysheet introducing the content, will count toward the assigned page limits of that section. As indicated in Section 4.0, any additional data that the Contractor deems pertinent should be included in an appendix at the end of the proposal. Any information contained in the appendix must be clear and succinct. The Contractor agrees that

the additional data is for understanding purposes only and may not be evaluated by the committee or considered by the Clerk.

**Q. Regarding 4.1, Tab 1 – Contractor Profile on page 12 of the RFP: Can Proposers include tabbed sections for a *Cover/Transmittal Letter* and/or a *Table of Contents* to precede Tab 1 – Contractor Profile? We would retain the Clerk’s naming conventions for subsequent tabs (e.g., calling Tab 1 – Contractor Profile as such, etc.).**

A. The content and organization of the RFP should follow the specifications contained in the RFP. Additional pages will count toward the assigned page limits of that section. As indicated in Section 4.0, any additional data that the Contractor deems pertinent should be included in an appendix at the end of the proposal. Any information contained in the appendix must be clear and succinct. The Contractor agrees that the additional data is for understanding purposes only and may not be evaluated by the committee or considered by the Clerk.

**Q. Regarding 4.2, Tab 2 – References on pages 12-13 of the RFP:**

a. Proposers are advised to provide with each reference a “brief summary comparing the referenced system to this proposed system.” In that each Proposer is proposing collection services – not a system – and has provided references to attest to the successful past provision of collection services, can the Clerk remove or waive this specific requirement as not relevant?

b. Proposers are advised of a 3-page limit for their references. Is the signed waiver that is to be included in this section included in this page count, or is it considered a separate document not bound by and independent of the 3-page limit?

A. (a) The Contractor must compare the collection services/system in place for the reference to the proposed collection services/system outlined in their response to the Clerk’s RFP.

(b) The signed waiver is considered a separate document independent of the 3-page limit for references.

**Q. Regarding 4.3.2, Tab 3 – Is a Proposer’s response to 4.3.2 (providing the requested provision) counted against the 10-page limit for the work plan?**

A. No.

**Q. Regarding 4.8, Tab 8 – Index on page 15 of the RFP: Will the Clerk specify which sections of the RFP are required to be cross-referenced in the Index?**

A. The index must include the page numbers on which each of the items contained in Section A (4) Proposal Preparation and Submission and those in Section F.

**Q. Regarding Confirmation of E-Verify Participation Form Section E: Where within a proposal should Proposers include their signed version of this form? Can it be included as a document within Tab 4 – Authorized Signature?**

**A.** This form can be included as a document within Tab 4.

**Q. Regarding Proof of Registration to do Business in the State of Florida: Where within a proposal should Proposers include their signed version of this form? Can it be included as a document within Tab 4 – Authorized Signature?**

**A.** This form can be included as a document within Tab 4.

**Q. Regarding Addendum 2: Proposers are directed to acknowledge their receipt of Addendum 2 in the space provided on the Price Sheet. However, a Price Sheet was not provided with the RFP documents, nor was a completed Price Sheet indicated as a response document to be completed and returned. Can the Clerk provide this document or otherwise clarify this direction?**

**A.** Addendum 2 should be acknowledged using the same method as the RFP's other addenda. Please submit a copy of Addendum 2 with the proposal as acknowledgement of the addendum.

**Q. Regarding Addendum 3: Proposers are directed to indicate their acknowledgment of this addendum by including it ("submit this sheet") in Tab 4.**

**a.** Please confirm that this is the protocol for every addendum issued for this procurement.

**b.** Please clarify "submit this sheet:" Should Proposers return the entirety of each addendum as their acknowledgment, or just the first cover page of each addendum?

**A.** This is the protocol for every addendum issued for this procurement. The entirety of each addendum should be included in the proposal as acknowledgement of each addendum.

**Q. Reference Addendum 3 question: "Reference RFP Section A, Section 3.8.3, and Sample Contract for Services Section 16, pages 15 and 29-30: These sections both deal with the Clerk's termination for cause and notice requirements. Section 3.8.3 provides a 10-day cure period, while Section 16 provides a 30-day cure period. Please clarify whether the cure period is 10 or 30 days."**

**A.** The following is a correction to the answer originally submitted on Addendum 3 in response to this question. Attached please find a corrected sample Agreement for Debt Collection Services. Section 19 of the attached Agreement for Debt Collection Services outlines termination of the contract, which is as follows:



If the Contractor fails to properly perform the conditions of the Agreement within in the sole opinion of the Clerk, the Clerk shall communicate to the Contractor in writing the areas of concern that exist. The Contractor shall have at least thirty (30) calendar days to rectify the concerns to the Clerk's satisfaction. If further concerns persist, the Clerk reserves the right to immediately terminate this Agreement by advising the Contractor in writing.

Either party may terminate this Agreement without cause with a minimum thirty (30) days written notice. Termination of the Agreement shall not relieve the Contractor of any obligations for any deliverables entered into prior to the termination to the Agreement (i.e. reports, statements of accounts, etc. required and not received). Termination of the Agreement shall not relieve the Contractor of any obligations or liabilities resulting from acts committed by the Contractor prior to the termination of the Agreement.

Unless termination is a result of misconduct or as otherwise provided in this Agreement, upon any termination of this Agreement the Contractor will continue its collection efforts under the terms herein with respect to all accounts assigned by the Clerk prior to and existing on the date of termination for a period of thirty (30) days unless otherwise agreed to by the Clerk and the Contractor;

If termination is as a result of the Contractor's misconduct, including under section 11, the Contractor shall immediately suspend its collection efforts upon written notice from the Clerk and shall promptly return to the Clerk any and all referred accounts, regardless of status. Any account returned under this provision shall be accompanied by a report or documentation indicating the status of each returned account for the use by the Clerk.

**Q. Please clarify where vendors should acknowledge receipt of addenda. Addendum 2 states to use the Pricing Form; however, a pricing form is not included as part of the RFP.**

A. The entirety of each addendum should be included in the proposal as acknowledgement of each addendum.

**Q. Please indicate where the e-Verify Affidavit and e-Verify Memorandum of Understanding should be included in the vendor's proposal response.**

A. This form should be included as a document within Tab 4.

**Q. Please clarify this requirement: Page 25, Scope of Work, (e): The Contractor shall have the ability to accept multiple interest bearing obligations with different due dates on a single account.**

A. The clerk does not currently accrue interest on Clerk accounts under existing law; however, if the Clerk's business practices change to accrue and collect interest under existing law, the Contractor must be able to accept multiple interest bearing obligations with different due dates on a single account. For example, if an account/case with multiple public defender



liens where the lien assessment dates and interest rates in effect differ, the Contractor must be able to accept both accounts and accurately calculate and collect interest on each.

**Q. When is the anticipated new contract's start date?**

A. April 10, 2019

**Q. Regarding Tab 1, is this a 7 page maximum for this section?**

A. Yes. If the information would be more pertinent to another area of the response, we suggest that the Contractor include that information in the more relevant section of the response.

**Q. Do you consider the content in Tab 1 the executive summary?**

A. Yes.

## **AGREEMENT FOR DEBT COLLECTION SERVICES**

**THIS AGREEMENT** is hereby made this \_\_\_\_\_ day of X, 2019 by and between the Brevard County Clerk of the Circuit Court (the "Clerk") having its primary place of business at 400 South Street, 2<sup>nd</sup> Floor East, Titusville, Florida 32780, and X having a business location at X (the "Contractor").

### **WITNESSETH**

**WHEREAS**, on X, the Clerk's current contracts for debt collection services shall terminate; and

**WHEREAS**, the Clerk is desirous to obtain the services, for one (1) year with the possibility of three (3) one-year extensions, of an experienced, knowledgeable, and qualified debt collection agency to perform debt collection services in accordance with all applicable federal, state, and local laws, rules and regulations; and

**WHEREAS**, the Clerk, in his sole discretion, has determined that the Contractor possesses such abilities; and

**WHEREAS**, the provision of such services shall mutually benefit the parties hereto and the residents of Brevard County, Florida; it is

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

#### **1. DEFINITIONS:**

The term "Clerk" shall refer to the Brevard County Clerk of the Circuit Court, his deputies, employees, assignees, and other entities authorized to conduct business on his behalf upon the Clerk's sole written consent.

The term "Contractor" shall refer to X, its employees, assignees, and other entities authorized to conduct business on its behalf.

The term "Second Contractor" shall refer to the second vendor that the Clerk may contract with to provide services alongside the Contractor who shall work independently of Contractor.

#### **2. SCOPE OF THE WORK:**

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

- a. The Contractor shall undertake collection of delinquent accounts assigned by the Clerk no less than ninety (90) days after the account's becoming

delinquent.

- b. The Contractor shall have the ability and resources to collect such debt in the State of Florida as well as the resources to effectuate out-of-state collections.
- c. 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 Clerk under which the collection item will be paid.
- d. The Contractor shall have the ability to calculate interest on interest bearing accounts, including allowing partial payments toward judgments and accurately calculating interest based upon previous interest accumulation dates and balance due on any principal amounts.
- e. The Contractor shall have the ability to accept multiple interest bearing obligations with different due dates for a single account.
- f. The Contractor shall have the ability to accept and update daily adjustments to any and all amounts and/or due dates.
- g. The Contractor shall have the ability to accept and update daily recall requests.
- h. The Contractor shall have the ability to accept from the Clerk a previously recalled record back to the Contractor as an active account.
- i. The Contractor shall provide the Clerk a periodic listing of address updates for debtors when the Contractor locates and confirms the validity of new addresses.
- j. The Contractor shall be responsible for performing collection activities subject to all applicable federal, state, and local laws, rules, and regulations.
- k. The Contractor shall provide electronic and prompt remittance of collections and all collection-substantiating documentation to the Clerk.
- l. The Contractor shall provide maintenance of appropriate records, including financial records that can be audited.
- m. The Contractor shall provide internet access to real-time account status by multiple Clerk staff simultaneously.
- n. The Contractor shall provide a summary of terms or abbreviations the Contractor uses on the Contractor's application/website to enable the Clerk to decipher activity of any and all accounts referred by the Clerk.

- o. The Contractor shall provide the Clerk periodic performance and management reports detailing individual account information in a timeframe agreed upon by and between the Clerk and the Contractor.
- p. The Contractor shall only refer an account or debtor to a credit agency upon the consent and approval of the Clerk.
- q. The Contractor shall not litigate or negotiate any undisputed bill for less than its full value without the expressed consent of the Clerk.
- r. The Contractor shall submit any disputed account to the Clerk for review and research before continuing with the collection process. Should the Clerk confirm the validity of the debt, the Contractor shall thereafter continue with the collection process forthwith.
- s. The Contractor shall refer any and all accounts it deems to be collectible through litigation to the Clerk for a determination by the Clerk. The Clerk may, at his discretion, ask the Contractor to initiate litigation or may initiate litigation of the debt in question through his own attorneys.
- t. The Clerk will review and have final approval of all printed formats of collection notices and telephone scripts used by the Contractor for collection of past due accounts, including any necessary changes in applicable law or rules governing the collection process.
- u. The Contractor shall provide the following reports electronically to the Clerk for each account assigned to the Contractor:
  - i. Acknowledgement Report – Number of files and dollar amount received from the Clerk upon receipt of electronic file: **Weekly**
  - ii. Collection Report – Number of accounts/Listing of accounts and amount remitted, and date of collection: **Daily**
  - iii. Cancel and Return Report Inventory Listing: **Weekly**
  - iv. Inventory Listing: **Weekly**
  - v. Credit Reporting Service Notification, if applicable: **Weekly**
  - vi. Other reports that may directly relate to the scope of services or other such reports mutually agreed upon may be requested as needed.
- x. The Contractor shall maintain a uniform collection fee for all accounts. The Contractor will retain the collection fee and report that amount with each

transmittal of collections to the Clerk.

- y. The Contractor will describe forms of payment allowed for payment by debtors. If the Contractor allows payment by check, the Contractor will specify the period for check clearance and remittance to the Clerk. The debtor will also be informed of this time period. The Contractor has agreed not to charge any debtor a convenience fee to process any payment remitted to Contractor beyond the allowed collection fee.
- z. The Contractor shall be responsible for any insufficient funds accepted by the Contractor. The Clerk shall be responsible for any insufficient funds accepted by the Clerk.

### **3. DISBURSEMENT OF ACCOUNTS TO CONTRACTORS**

As a means by which to increase efficiency and reduce disruption to the collection of delinquent debts, upon the commencement of this Agreement, the Contractor agrees to retain all accounts it has in its possession from its previous contract, terminated on April 5, 2015. The Contractor shall continue collection efforts on these accounts without delay.

On April 6, 2015 and thereafter for the term of the Agreement, the Clerk shall allocate, as nearly as practicable, fifty (50) percent of the accounts it has identified as delinquent to the Contractor via an agreed method between the Clerk and the Contractor. The remaining fifty (50) percent shall be allotted to the Clerk's second vendor.

It is the Clerk's intent to keep all accounts for a single debtor with one contractor for ease of collection purposes. The Contractor shall have no claim against the Clerk or the Clerk's second vendor in the event the percentage allocated to the Contractor does not equate to exactly fifty (50) percent.

This section shall not be construed to indicate that this Agreement with the Contractor is dependent on or otherwise a partner to any agreement with the Clerk's Second Contractor. Each agreement shall be separate and independent of the other.

### **4. COLLECTION DATA**

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

- a. The name, case number(s), last known address, date of birth, social security number, mail forwarding information, etc., if known, from the information currently available to the Clerk for all accounts referred to the Contractor. Contractor acknowledges that every account referred may not necessarily have each of these identifying pieces of information. The Clerk will, to the best of its ability, provide complete identifying information for each debtor on

each account referred for the ease of the Contractor.

- b. Provide the Contractor with access, upon request, to any and all reports concerning any of the accounts referred.
- c. Case information will be automated transmittal to the Contractor in a medium as agreed between the Clerk and the Contractor. The automated transmittal will assure both speed and accuracy of the information transfer.

## **5. TERM**

The initial term of the Agreement shall commence on Monday, April 6, 2015 and shall continue through Sunday, April 10, 2016. The parties shall have the option to extend this Agreement for up to three (3) one year periods. The parties agree that each option to extend this Agreement shall be deemed to have been exercised without any further action required unless, at least sixty (60) days prior to the renewal date, either party hereto gives written notice to the other party of the intention not continue the Agreement into the next renewal period. Upon expiration and upon mutual agreement of the parties hereto, this Agreement may continue on a month-to-month basis until such time as the Clerk is able to negotiate a new agreement with the Contractor or to enter into an agreement with another contractor to provide the services described herein.

## **6. PAYMENTS**

In lieu of payment by the Clerk, for all payments the Contractor receives on accounts referred to it, the Contractor shall collect from the debtor a sum not to exceed twenty-five (25) percent (the "Contingency Fee") above the amount due the Clerk.

Where, under prior authorization from the Clerk, the Contractor provides legal services required in the collection of accounts, the Clerk shall pay the Contractor (in addition to the Contingency Fee the Contractor retains) any reasonable attorney's fees and costs as agreed upon in separate writing between the Clerk and the Contractor. Any legal fees or costs undertaken without the written consent of the Clerk shall be at the Contractor's expense.

The Contractor shall remit payment to the Clerk of any and all collected amounts, whether in full or in part, via wire transfer on a weekly basis to an account provided the Contractor by the Clerk. This weekly wire transfer shall involve funds collected less the Contractor's Contingency Fee. Any cost associated with the wire transfer shall be borne by the Contractor. If necessary, other methods of payment may be agreed upon by and between the Contractor and the Clerk. The Clerk reserves the right to deduct from any Contractor invoice an amount for defective or non-conforming work or for work not provided but invoiced upon written notice to the Contractor.

The Clerk may, in his sole discretion, decide to negotiate the total amount due and owing on any account. In the event a debtor requests the Contractor negotiate the

amount due and owing on any account, the Contractor shall not negotiate any debt without the prior written consent of the Clerk.

In the event a debtor makes payment directly to the Clerk for any account actively referred to the Contractor, the Clerk shall collect the total principal amount plus the Contractor's Contingency Fee and shall remit the same to the Contractor in an agreed upon manner. Any and all payments remitted by the Clerk to the Contractor shall be in compliance with the Florida Prompt Payment Act.

## **7. RECALL**

The Clerk retains the sole discretion to remove any account from the Contractor's possession for any reason, without recourse and regardless of whether an account is in a payment plan or litigation. The account shall no longer be considered referred to the Contractor, and the Contractor shall immediately cease all collections efforts on any such account recalled and shall not be entitled to a Contingency Fee on these accounts.

## **8. REPORTS**

As full and/or partial payment of any account is received by the Contractor, the Contractor shall transmit a daily report referencing the same. Each remittance shall be accompanied by a dated report that shall detail each account item included in the remittance and shall state the name of the person from whom collected, the amount collected, the amount remitted, the unpaid balance of the account, if any, and the case or other identifying number or information so that the Clerk may properly post said payment. The Contractor shall provide a monthly status report briefly stating the status of collection efforts on the Clerk's behalf to the Clerk. Reports shall also detail any and all amounts collected, including the Contingency Fee collected and retained by the Contractor.

## **9. INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the Clerk and his 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.

The Contractor shall not be liable for any claims, losses, liabilities, damages, demands, or actions to the extent the same are caused by the negligence or willful misconduct of the Clerk or his employees. It is the intent of the parties that, where the negligence or willful misconduct of the Clerk or its employees is determined to have been contributory, the principals of comparative negligence as applied in the State of Florida shall be followed and each party shall bear the proportionate cost attributable to its own negligence or willful misconduct.



In no event will the Contractor be liable for lost profits/revenues from transferred accounts, unless such amounts have been received by the Contractor and a loss is directly attributed to the Contractor's negligent actions or omissions, or liable to the Clerk or third parties for any special, incidental or consequential damages, except as provided by law, or for the non-collectability of any account under any circumstances. The Clerk and the Contractor agree that this indemnification shall survive the termination of this Agreement.

## **10. MODIFICATIONS TO AGREEMENT**

This Agreement constitutes the entire agreement between the Clerk and the Contractor and supersedes all prior written or oral understandings as well as any previous contracts. This Agreement may only be amended, supplemented, or terminated by express written consent by and between the Clerk and the Contractor. Any amendments, supplements, or terminations of specific paragraphs or duties by either party shall be considered addenda to this Agreement.

## **11. INSURANCE**

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

- a. Professional Liability Insurance (including Errors and Omissions) with a minimum limit of one million dollars (\$1,000,000.00) per occurrence, if occurrence form is available; or claims made form with "tail coverage" extending three (3) years beyond completion and acceptance of this Agreement with proof of "tail coverage." The Contractor shall submit to the Clerk a current Certificate of Insurance proving claims made insurance remains in force throughout the period of the contract.
- b. Comprehensive Insurance covering employee dishonesty and theft, disappearance and destruction of money and securities with a minimum limit of two hundred fifty thousand dollars (\$250,000.00) per occurrence.
- c. Workers' Compensation Coverage (including full and complete Workers' Compensation Coverage) as required by Florida law, shall be provided for the Contractor's employees.
- d. Insurance Certificates: Each policy shall require thirty (30) days written notice prior to expiration, cancellation, non-renewal, or any material change in coverage or limits. A notice thereof shall be given to the Clerk by certified mail to the Contract Manager, Compliance & Collections Department, P. O. Box 219, Titusville, Florida 32781-0219. The Contractor shall also notify the Clerk, in a like fashion, within twenty-four (24) hours after receipt of any notices of expiration, cancellation, non-renewal, or material change in coverage received by said Contractor from

its insurer; and nothing contained herein shall absolve the Contractor of this requirement to provide notice.

Any company issuing an insurance policy or policies shall have no recourse against the Clerk for payment of premiums or assessments for any deductibles which are the sole responsibility and done at the risk of the Contractor.

The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by the Clerk to any such future coverage.

If the Contractor fails to comply with the insurance requirements of this Agreement and/or fails to timely provide the Clerk written notice of policy renewals, the same shall be grounds for immediate termination of this Agreement.

## **12. DUTY OF CONTINUING DISCLOSURE OF LEGAL PROCEEDINGS**

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

In the event that any such Proceeding reported by the Contractor to the Clerk during the term of this Agreement causes the Clerk to call into question the following:

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

The Contractor shall be required to provide the Clerk all reasonable assurances requested by the Clerk to demonstrate to the Clerk's satisfaction:

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

### **13. ON-SITE INSPECTION**

The Clerk reserves the right to conduct on-site inspection of all collection locations maintained by the Contractor prior to the awarding of this Agreement and, upon reasonable written notice, at any point in time during the term of this Agreement to ensure and verify the Contractor's ability to perform the services required under the Agreement.

### **14. ATTORNEY'S FEES**

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

### **15. GOVERNING LAW**

This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida unless a portion hereof is otherwise preempted by or subject to an applicable federal law governing debt collections.

### **16. COMPLIANCE WITH STATUTES**

It shall be the Contractor's responsibility to be aware of and comply with all federal, state, and local laws and any changes thereto during the term of this Agreement.

### **17. VENUE**

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 Brevard County, Florida and in the event of any federal claims, the Middle District of Florida. Any trial, if requested, shall be non-jury.

### **18. ASSIGNMENTS**

This Agreement, or any interest or portion herein, 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 Clerk, which approval shall not be unreasonably withheld.

This section shall also apply to the Contractor's use of any subcontractor to otherwise perform any section or requirement of this Agreement on behalf of the Contractor.

### **19. TERMINATION**

If the Contractor fails to properly perform the conditions of the Agreement within

in the sole opinion of the Clerk, the Clerk shall communicate to the Contractor in writing the areas of concern that exist. The Contractor shall have at least thirty (30) calendar days to rectify the concerns to the Clerk's satisfaction. If further concerns persist, the Clerk reserves the right to immediately terminate this Agreement by advising the Contractor in writing.

Either party may terminate this Agreement without cause with a minimum thirty (30) days written notice. Termination of the Agreement shall not relieve the Contractor of any obligations for any deliverables entered into prior to the termination to the Agreement (i.e. reports, statements of accounts, etc. required and not received). Termination of the Agreement shall not relieve the Contractor of any obligations or liabilities resulting from acts committed by the Contractor prior to the termination of the Agreement.

Unless termination is a result of misconduct or as otherwise provided in this Agreement, upon any termination of this Agreement the Contractor will continue its collection efforts under the terms herein with respect to all accounts assigned by the Clerk prior to and existing on the date of termination for a period of thirty (30) days unless otherwise agreed to by the Clerk and the Contractor;

If termination is as a result of the Contractor's misconduct, including under section 11, the Contractor shall immediately suspend its collection efforts upon written notice from the Clerk and shall promptly return to the Clerk any and all referred accounts, regardless of status. Any account returned under this provision shall be accompanied by a report or documentation indicating the status of each returned account for the use by the Clerk.

## **20. INDEPENDENT CONTRACTOR**

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 Clerk nor shall the Contractor inherit any rights granted employees or deputies of the Clerk by virtue of this Contract unless otherwise specified in writing.

## **21. RIGHT TO AUDIT RECORDS AND CUSTODY OF PUBLIC RECORDS**

In the performance of this Agreement, the Contractor shall keep and maintain any and all books, records, and accounts of activities related to the Agreement in compliance with generally accepted accounting procedures which shall be subject to audit by the Clerk.

The Contractor shall comply with Section 119.0701, Florida Statutes without limitation and is considered a custodian of public records with regard to any and all

records relative to this Agreement. 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 Clerk or upon reasonable request of any member of the public and shall be retained by the Contractor for a minimum period of three (3) years after termination of this Agreement, unless such records are exempt from Article I, Section 24(a), Florida Constitution and/or Section 119.071, Florida Statutes.

At the termination of this Agreement in any fashion, the Contractor shall arrange, at no cost to the Clerk, the transfer of all public records to the Clerk. Records stored in an electronic format shall be provided in a format compatible with the Clerk's systems.

## **22. UNAUTHORIZED ALIEN WORKERS**

The Clerk will not intentionally award contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act). The Clerk shall consider the Contractor's intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

## **23. FEDERAL TAX ID NUMBER**

The Contractor shall provide to the Clerk its Federal Tax ID Number.

## **24. EMPLOYMENT**

The Contractor shall not engage the services of any person or persons employed by the Clerk, including any department, contractor, board or commission thereof, to provide services relating to this Agreement without written consent of the Clerk.

## **25. PUBLIC ENTITY CRIMES**

Any person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

## **26. USE BY OTHER GOVERNMENTAL ORGANIZATIONS**

Should another governmental organization in the State of Florida desire one or

more of the herein described services through the cooperative use of this Agreement, the Contractor may provide such service(s) to such organization for the same Contingency Fee outlined in this Agreement. Notwithstanding any provision to the contrary, the Clerk shall not be responsible for the provision of staff or the costs of such services. Any other governmental organization shall be responsible for execution of its own requirements with the Contractor. Such cooperative use of this Agreement by another governmental agency shall not be entered into without written consent of the Clerk.

## **27. CONSTRUCTION OF AGREEMENT**

The parties hereby acknowledge that they fully reviewed this Agreement and have had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed as against any party as if they were the drafter of this Agreement.

## **28. NOTICE**

Notice under this Agreement shall be given by certified mail or hand delivery to either party as follows:

Brevard County Clerk of the Circuit Court  
Compliance & Collections Department  
P. O. Box 219  
400 South Street, 2<sup>nd</sup> Floor West  
Titusville, Florida 32781-0219

X

With copy to:

X

## **29. CONTRACT MANAGERS**

The Clerk's Contract Manager shall be Andrea Butler or her designee. The Contractor's Contract Manager shall be x or his/her designee. Each Contract Manager shall have the ability to address day-to-day concerns with the other party and shall be the main contact for each party during the term of this Agreement. Any change to either Contract Manager shall be made in writing to the opposite party.

## **30. FORCE MAJEURE**

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.

### **31. LIABILITY**

Except for collection revenue collected by the Contractor but not turned over under this program, Contractor's total and aggregate liability whether in contract (including, but not limited to, indemnification liability), tort, or other event shall not exceed two hundred thousand dollars (\$200,000.00).

### **32. REPRESENTATIONS**

The Contractor shall take all precautions that are reasonable, customary, and commercially practical to avoid providing the Clerk with any transmission, report, or other application that contains or introduces a virus which contaminates or damages the Clerk's equipment or its mainframe, network, personal computing or other operating environments, hardware (including the hardware or software of any third party authorized to be connected to the Clerk's computing environments).

The Clerk shall take all precautions that are reasonable, customary, and commercially practical to avoid providing the Contractor with any transmission, report, or other application that contains or introduces a virus which contaminates or damages the Contractor's equipment or its mainframe, network, personal computing or other operating environments, hardware (including the hardware or software of any third party authorized to be connected to the Contractor's computing environments).

### **33. SEVERABILITY**

In the event any section(s) of this Agreement are deemed to be ineffective or otherwise void, the remaining portions of this Agreement shall survive.

### **34. EXECUTION OF AGREEMENT**

The parties agree that this Agreement may be executed in as many versions as may be necessary and that the versions shall collectively make the original.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and caused the same to be executed the date and year first indicated above.



**BREVARD COUNTY CLERK OF THE  
CIRCUIT COURT**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Scott Ellis, Clerk  
\_\_\_\_\_  
Name & Title  
**X COMPANY**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name & Title