

CONTRACT FOR DEBT COLLECTION

This Contract for legal services to the City of Columbus relating to the collection of public monies due the City, is entered into by and between **Capital Recovery Systems, Inc.**, (herein referred to as "Contractor"), and the City of Columbus, acting by and through Richard C. Pfeiffer, Jr., Columbus City Attorney (herein referred to as "City").

WITNESSETH

WHEREAS, the City has a need for professional service for the collection of public monies due the City; and

WHEREAS, the Contractor has the necessary experience and expertise to provide said service; and

WHEREAS, this Contract is authorized by Ordinance No. 0645-2014; and

NOW, THEREFORE, in consideration of the mutual promises as hereinafter set forth, the parties agree as follows:

ENTIRE AGREEMENT

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof. Understandings, agreements, representations, or warranties not contained in this Contract, or as written amendment hereto, shall not be binding on either party. Except as provided herein, no alteration of any terms, conditions, delivery, price, quality, or specifications of this Contract shall be binding on either party without the written consent of both parties.

1. Contract Term

The term of this Contract shall be from **April 1, 2014 to March 31, 2015**. This Contract shall not automatically renew.

2. Maximum Obligation

The maximum amount to be paid under any purchase order associated with this Contract shall not exceed **Three Hundred Sixty Thousand Dollars (\$360,000.00)** unless additional funds are appropriated and authorized.

3. Pricing and Scope of Services

The Contractor agrees to perform and invoice the Scope of Services as set forth ON THE ATTACHED EXHIBIT A and EXHIBIT B*, which are expressly incorporated herein.

*Contract is NOT valid if the Scope of Services is NOT attached. No other costs, rates, or fees shall be payable to the Contractor for services performed hereunder. The terms and conditions specified in this Contract constitute the entire contract governing the purchase of services by the City from the Contractor, and shall supersede any terms and conditions that may accompany Contractor's invoice/bid/estimate. Any and all verbal representations are superseded by this Contract. The terms of this Contract shall prevail

over any conflicting or deficient terms or conditions listed in any attachments from Contractor.

4. **Equal Opportunity Clause**

Contractor agrees to abide by all of the terms, conditions and requirements set forth in Columbus City Code Section 3909.01, Equal Opportunity Clause. Failure or refusal of a Contractor or Subcontractor to comply with the provisions of Article I, Title 39, may result in cancellation of this Contract.

5. **Taxes**

Federal or State taxes are not to be included on invoices for the described services. Contractor will be provided an exemption certificate, if needed.

6. **City's Contract Administrator/Contract Administration**

Nancy Weidman will manage the Contract on behalf of the City and will be the principal point of contact for the City concerning the Contractor's performance under this Contract.

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall only be effective if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Services as first-class certified mail, postage prepaid and return receipt requested, to the parties at the following addresses:

To the City: Nancy Weidman, Chief
Claims Section
Columbus City Attorney's Office
77 N. Front Street, 4th Floor
Columbus, OH 43215

To Contractor: Craig Klein, President
Capital Recovery Systems, Inc.
750 Cross Pointe Road, Suite S
Columbus, OH 43230

7. **Contractor as an Independent Contractor**

The Contractor shall be and shall remain an Independent Contractor with respect to all services performed hereunder and he/she/it agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, unemployment insurance or old age retirement benefits, pensions or annuities now or hereafter imposed under any state or federal law which are measured by the wages, salaries or other remunerations paid to the Contractor or persons employed by the Contractor for work performed under the terms of this Agreement and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now, or hereafter may be, issued or promulgated under said respective laws.

8. **Applicable Law, Remedies**

This Agreement shall be governed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Contractor arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.

9. **Payment/Invoice Submittal**

Fees shall be paid for services rendered following: (1) the City's receipt of a correct invoice, which designates the specific applicable charges, and (2) issuance of a certified purchase order. The City will not be subject to any late payment charges. Rates shall be firm during the term of this Contract. The City will process correctly documented invoices for payment and Contractor should receive payment for such invoice within thirty (30) days from receipt and approval by the City.

Invoices: All invoices shall be submitted to:

Nancy Weidman, Chief
Claims Section
Columbus City Attorney's Office
77 N. Front Street, 4th Floor
Columbus, OH 43215

10. **Modifications**

No modification, amendment, alteration, addition or waiver of any section or condition of this Contract shall be effective or binding unless it is in writing and signed by an authorized representative of the City and the Contractor and approved by the appropriate City authorities.

11. **Contract Termination**

If either the City or the Contractor violates any material term or condition of this Contract or fails to fulfill in a timely and proper manner its obligations under this Contract, then the aggrieved party shall give the other party (the "responsible party") written notice of such failure or violation. The responsible party will correct the violation or failure within thirty (30) calendar days or as otherwise mutually agreed. If the failure or violation is not corrected, this Contract may be terminated immediately by written notice from the aggrieved party. The option to terminate shall be at the sole discretion of the aggrieved party.

When it is in the best interest of the City, the City may terminate this Contract, in whole or in part by providing seven (7) calendar days written notice to the Contractor prior to the effective date of termination. If this Contract is so terminated, Contractor shall be paid the agreed fee for all debts due the City of Columbus lawfully collected by Contractor prior to termination.

12. **Nonexclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under the law.

13. **Survivorship**

All services executed pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Contract, or any extension thereof. Further, the terms, conditions, and warranties contained in this Contract that by their sense in context are intended to survive this completion of the performance, cancellation or termination of this Contract, shall so survive.

14. **Save Harmless**

Contractor shall protect, indemnify and save the City harmless from and against any damage, cost, or liability, including reasonable attorneys' fees, resulting from claims for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, agents, or Subcontractors.

15. **Severability**

If any term or condition of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications that can be given effect without the invalid term, condition, or application; to this end, the terms and conditions for the Contract are declared severable.

16. **Assignment**

This Contract may not be assigned or otherwise transferred to others by the Contractor without the prior written consent of the City. Contractor may not delegate work to another collection agency or firm with which Contractor is affiliated. No such attempted delegation of duties by Contractor will relieve Contractor of any responsibility under this agreement.

17. **Authority to Bind**

The signatories to this Contract represent that they have the authority to bind themselves and their respective organizations to this Contract.

18. **Campaign Contributions**

Contractor hereby certifies the following: that it is familiar with Ohio Revised Code ("O.R.C.") Section 3517.13; that it is in full compliance with Divisions (I) and (J) of that Section; that it is eligible for this contract under the law and will remain in compliance with O.R.C. Section 3517.13 for the duration of this contract and for one year thereafter.

19. **Audits and Inspections**

At any time during normal business hours and as often as City may deem necessary, there shall be made available to City and/or their representatives for examination all of the records of the Contractor with respect to all matters covered by this agreement. This will require Contractor to provide an actual business/home address.

21. City Income Taxes

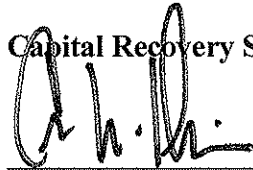
Contractor hereby further agrees to withhold and pay all city income taxes due or payable under the provisions of Chapter 361, Columbus City Codes, for wages, salaries and commissions paid to its employees and further agrees that any of its subcontractors shall be required to agree to withhold and pay any such city income taxes due under said chapter for services performed under this Contract. If it has been determined by the Columbus Income Tax Division that Contractor, or any of its subcontractors, owes city income taxes, the Contractor agrees that the City may withhold the amount due to the City from any amount due to the Contractor for services performed under this Contract notwithstanding paragraph 9 hereinabove.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year written below.

EXHIBIT A – Scope of Services and EXHIBIT B – Calculating Fees, MUST BE ATTACHED HERETO.

AGREED:

Capital Recovery Systems, Inc.



Craig Klein, President

4-3-2014

Date

CITY OF COLUMBUS, OH



RICHARD C. PFEIFFER, JR.
Columbus City Attorney

04/08/14

Date

EXHIBIT A - SCOPE OF SERVICES

The Contractor shall do, perform, and carry out in a manner satisfactory to the City the following:

- **Contractor** shall conduct any and all collection work, including any legal action necessary, assigned by the City Attorney. Both parties recognize that the appointment of **Contractor** is personal in nature and does not extend to any law firm that **Contractor** is associated with, is a partner of, or for which **Contractor** serves as "of counsel".
- **Contractor** shall be compensated only in accordance with the express written provisions of this agreement. **Contractor** shall not be compensated by any other party, nor shall **Contractor** be compensated in excess of the amount expressed within this agreement.
- Any material commissioned or gathered by **Contractor** or in **Contractor's** possession that fulfills an obligation of the agreement, including names and addresses of potential witnesses, shall be considered the property of the City of Columbus. **Contractor** agrees to adhere to Ohio Revised Code § 149.43 and Columbus City Codes Chapter 151 and maintain all public records accordingly. All responses to public records requests require the prior approval of the City Attorney.
- If **Contractor** is removed from any case or matter, then **Contractor** agrees to effectuate a speedy and efficient transfer of the work and to cooperate with the City Attorney. **Contractor** agrees to protect the client's interests in any transfer of work. The City of Columbus may withhold final payment to **Contractor** if **Contractor** fails to transfer all files, documents, and materials when so requested by the City Attorney.
- **Contractor** agrees to abide by all policies and procedures promulgated by the City Attorney relating to collection of claims.
- For the purposes of this agreement, a claim is a debt due the City for a sum certain and due for a specified period of time. Each claim assignment to **Contractor** is for a one (1) year period. In the event that the City of Columbus is contacted for the purpose of making arrangements to pay or otherwise settle a claim which has been assigned to **Contractor** for collection, upon written notice from the City Attorney, said claim shall be returned to the City Attorney by **Contractor**, along with any and all materials relating to such claim, and all rights to said claim shall be relinquished.
- **Contractor** agrees not to forgive, reduce, waive, or otherwise compromise any portion of the principal, penalty, late charges or interest due on any City income tax or other claim assigned for collection without express written authorization pursuant to Columbus City Code § 361.30 on tax claims, and, from the City Attorney on all other types of claims.
- **Contractor** will be compensated for services through payment of a fee in an amount approved by the City Attorney or his designee. The standard fee shall be thirty percent (30%) of the first thirty-thousand dollars (\$30,000.00) collected and ten percent (10%) of

any additional amounts collected on specific claim. The City Attorney maintains the authority to modify the standard fee paid. The total amount paid to **Contractor** shall not exceed thirty percent (30%) of the funds collected on a specific claim. Legislation 0130-2009 provided that from April 1, 2009 forward, the fee for collection services would be collected from the debtor for any new cases assigned to **Contractor**. An example of how that fee will be calculated is attached hereto as Exhibit B, and incorporated herein by reference.

- All monies collected by **Contractor** on claims assigned by the City Attorney shall be by check made payable to the City Treasurer and deposited with the City Treasurer on a weekly basis or by electronic transfer as agreed by the parties. **Contractor** shall prepare a report detailing the amounts collected on each claim, the remaining outstanding balance, the dates of the collections, the amount of fees due **Contractor** on the collections, the division or entity of City government on whose behalf the monies were collected, and any other additional information which the City Attorney and/or City Auditor may require. **Contractor** shall submit said report to the City Attorney on a weekly basis. **Contractor** shall submit an invoice for fees due from collections to the City Attorney each month. The City Attorney shall review said invoice, then prepare and submit a voucher to the City Auditor requesting payment of fees be made to **Contractor** for the month in question.
- **Contractor** agrees to provide access to all financial records and documents related to the collection of claims assigned by the City Attorney within one week of receiving written notice by the City Attorney or City Auditor requesting to review and/or audit said financial records and documents.
- At the request of the City Attorney and/or City Auditor, **Contractor** shall submit status reports on each claim. The status report shall describe the current status of each claim, the events that have transpired since the prior status report and a projection of events for the next sixty (60) days or the remainder of the assignment, whichever occurs first.
- **Contractor** agrees to install and maintain a terminal within the claims section of the office of the City Attorney. The terminal will provide access to up-to-date collection activity, account status, and payment information on each and every claim assigned by the City Attorney.
- **Contractor** agrees to maintain the confidentiality of, and not otherwise disclose any tax information provided by the City Attorney in connection with the collection of outstanding income tax, except as authorized in Columbus City Codes Section 361.29.
- The parties agree that neither **Contractor**, nor any partner, associate, employee or any other person assisting with the legal work contemplated by this agreement shall speak to any representative of a television station, radio station, newspaper, magazine, or any other media outlet concerning the work outlined or contemplated by the agreement without first obtaining approval of the City Attorney or his designee. This agreement specifically excludes any right or ability on the part of **Contractor** to speak on behalf of the City Attorney to any member of the news media.

- **Contractor** will additionally provide collection services under this contract for the City of Columbus' Department of Public Utilities (Division of Power and Water), Department of Safety (Divisions of Licensing and Fire), and any other Department or Division thereof, who may contact them hereafter to establish a collection account. Each additional Department or Division will be treated as a separate account under this Agreement. **Contractor** will communicate directly with the Department or Division on issues regarding their accounts receivable, send payments collected directly to the Department, and directly invoice the Department for fees associated with the collection of that Department's debt.

EXHIBIT B - Calculating Fees

In determining the fee for each installment collected from the debtor and remitted to the City, the Contractor will multiply the installment by the percentage of the fee relative to the total amount owed (including fee) so as not to exceed a maximum 30%. Please see sample below:

Principal Owed	\$100.00
Interest Owed	10.00
Fee	<u>33.00</u>
Total Amount Owed	\$143.00
Percentage of Fee to Total (used to calc fee on installment payments)	23.08% (\$33.00/\$143.00)

<u>Payments Received</u>	<u>Amount to Apply to Debt</u>	<u>Amount to Apply to Fee</u>	<u>Fee Calculation</u>
\$55.00	\$42.31	\$ 12.69	(\$55.00*23.08%)
40.00	30.77	9.23	(\$40.00*23.08%)
<u>48.00</u>	<u>36.92</u>	<u>11.08</u>	(\$48.00*23.08%)
\$143.00	\$110.00	\$33.00	

The Contractor will remit all payments to the City in the gross amount received from the debtor (debt plus collection fee). The Contractor will provide statements with each remittance itemizing the dollar amount owed to the City and the amount to which the Contractor is entitled. The City will then pay the fee to the Contractor upon receipt of a valid invoice.