

COLLECTION SERVICES AGREEMENT

Municipal Collections of America, Inc

This COLLECTION SERVICES AGREEMENT (Agreement), made this ___ day of _____, 2020 by and between Municipal Collections of America, Inc, (MCOA) an Illinois corporation, and the Village of Westmont, Illinois (hereinafter referred to as THE MUNICIPALITY).

WHEREAS, THE MUNICIPALITY is a non-home rule municipality in the State of Illinois possessing all powers granted by Illinois law in accordance with such status, including powers to impose fines and penalties for the violation of its ordinances and certain statutes and to charge fees for the use of services it provides; and any default in the payment of a fine, penalty, or fee or other amount of money due and owing to THE MUNICIPALITY is a debt that may be collected by THE MUNICIPALITY; and

WHEREAS, MCOA is a duly licensed collection agency in the State of Illinois; and

WHEREAS, MCOA possesses the personnel, experience, expertise, and equipment to effectively aid THE MUNICIPALITY in collecting debts owed it (hereinafter referred to as Debts) through an effective collection process; and

WHEREAS, THE MUNICIPALITY may wish to list certain Debts with MCOA for collection from time to time, and MCOA may wish to accept such Debts for collection, as provided herein.

MCOA and THE MUNICIPALITY do hereby agree as follows:

ARTICLE I

1.1 MCOA agrees to provide debt collection services for THE MUNICIPALITY with respect to Debts listed and accepted for collection pursuant to this Agreement in accordance with all the terms, conditions, and provisions in this Agreement.

1.2 THE MUNICIPALITY agrees that any Debts it chooses, in its discretion, to list for collection with MCOA will be collected and administered pursuant to all the terms and conditions in this Agreement.

1.3 All Debts THE MUNICIPALITY chooses to list for collection will be submitted to MCOA using the forms and procedures designated by MCOA.

1.4 MCOA retains the right to reject any Debt submitted for collection and will provide explanation for such action if taken.

1.5 MCOA will acknowledge receipt of any Debt submitted by THE MUNICIPALITY for collection within five (5) days thereof.

1.6 THE MUNICIPALITY will provide certified copies of any relevant documentation, deemed necessary by MCOA for use in its collection efforts, in a timely manner upon request of MCOA.

ARTICLE II

2.1 MCOA agrees to use its best efforts and any lawful means that, in its judgment and discretion, it believes will result in the collection of the Debts that are listed for collections.

2.2 Further, MCOA agrees that at all times while performing debt collection services for THE MUNICIPALITY it will: (A) maintain its good standing as a corporation with the Illinois Secretary of State; (B) maintain its collection agency license in good standing with the Illinois Department of Financial and Professional Regulation; (C) comply with all State and Federal laws and regulations applicable to debt collection.

ARTICLE III

3.1 No compensation will be payable to MCOA for services rendered under this Agreement unless money is collected on a listed Debt. Upon collection of a Debt by MCOA, MCOA shall be entitled to compensation for its services in collecting such Debt as follows:

3.1A With respect to Debts for which THE MUNICIPALITY may lawfully charge collection costs to the debtor, such as described in 65 ILCS 5/1-2-1 and other applicable provisions of State law, MCOA shall receive thirty-five percent (35%) of the balance, exclusive of any collection costs, collected on each such Debt (meaning that, in the event THE MUNICIPALITY has added a 35% collection cost to such a Debt before listing it with MCOA, MCOA's compensation shall be calculated on the balance paid net of the added collection costs).

3.1B With respect to Debts for which THE MUNICIPALITY may not lawfully charge collection costs to the debtor, MCOA shall receive twenty-five percent (25%) of the balance collected on each such Debt.

3.2 MCOA's collection of Debts through the Illinois Local Debt Recovery Program and the Illinois Debt Recovery Offset Portal (IDROP) shall be performed at no additional cost beyond the standard compensation detailed in Section 3.1 above.

3.3 MCOA shall deduct the compensation to which it is entitled pursuant to Section 3.1 above from the amounts collected on each Debt before remitting the balance of such amounts collected to THE MUNICIPALITY in accordance with Article IV below.

ARTICLE IV

4.1 Upon THE MUNICIPALITY submitting a Debt to MCOA for collection, and the acceptance of same by MCOA, MCOA shall have the exclusive right to collect the amounts owed on such Debt until such time as MCOA determines the Debt is uncollectable or THE MUNICIPALITY requests return of the Debt to THE MUNICIPALITY. Any inquiries concerning any Debt listed for collection by MCOA, including attempts to make payment, shall be referred at the earliest possible time to MCOA.

4.2 MCOA will deposit any moneys collected on Debts in THE MUNICIPALITY'S separate bank trust account established for that purpose.

4.3 After deduction of its compensation in accordance with Section 3.3 above, MCOA shall forward to THE MUNICIPALITY the balance of any amounts collected on Debts. Remittance to THE MUNICIPALITY will be made by the 15th of the month for any amounts collected by the last day of the preceding month.

4.4 In the event that any funds are paid directly to THE MUNICIPALITY in satisfaction of a Debt that has been listed for collection with MCOA, THE MUNICIPALITY will report such payment to MCOA as soon as practicable for accounting under this Article.

ARTICLE V

5.1 THE MUNICIPALITY hereby authorizes MCOA to accept a negotiated settlement on any Debt listed for collection. However, unless otherwise authorized by THE MUNICIPALITY in writing, any such settlement shall be for no less than 100% of the available balance of the Debt.

5.2 Should THE MUNICIPALITY make any settlement or otherwise takes any action in derogation of MCOA's exclusive right to collect on any Debt listed for collection, then MCOA shall be entitled to receive its full compensation, as delineated in Article III hereof, based on the full amount of the Debt as listed. Any such compensation which may become due to MCOA under this Section 5.2 may be deducted by MCOA from its next remittance to THE MUNICIPALITY under Article IV.

ARTICLE VI

6.1 MCOA agrees to indemnify and hold THE MUNICIPALITY, its elected officials, officers, and employees harmless against any and all liability, costs and expenses including attorneys' fees, occasioned by claims or suits for loss or damages arising out of the acts of MCOA and its agents, servants or employees during the term of this Agreement. MCOA shall defend and indemnify THE MUNICIPALITY from any claim or action arising out of MCOA's performance or non-performance of its obligations under this Agreement, including but not limited to any violation of the Federal "Fair Debt Collection Practices Act," any law dealing with the credit rating of any individual, and other applicable laws arising out of the acts or omissions of MCOA or its agents or employees.

6.2 THE MUNICIPALITY warrants and represents to MCOA that any Debt listed for collection will be a legal and valid debt owed to THE MUNICIPALITY; and THE MUNICIPALITY agrees to indemnify and hold MCOA harmless against any and all liability, costs, and expenses including attorneys' fees occasioned by claims or suits under the Federal "Fair Debt Collection Practices Act" arising out of THE MUNICIPALITY'S breach of these warranties and representations.

ARTICLE VII

7.1 Until terminated in accordance with Section 7.2 below, this Agreement shall be effective for an initial period of twenty-four (24) months from the date first above written, and shall thereafter automatically renew, under the same terms and conditions, for successive periods of twelve (12) months each.

7.2 This Agreement may be terminated by either party, for any reason, by notice given in writing to the other party, at least sixty (60) days prior to termination.

7.3 However, in the event of termination of the Agreement by either party, THE MUNICIPALITY shall have the option of requesting MCOA to continue any outstanding collection efforts on Debts until the Debt is either collected in full or determined to be uncollectible under the terms of this Agreement.

7.4 Notwithstanding anything to the contrary herein, the provisions set forth above in Article VI shall survive termination or expiration of this Agreement.

ARTICLE VIII

8.1 At least once per year, MCOA will return to THE MUNICIPALITY such Debts that MCOA determines, in its sole judgment and discretion, to be uncollectible.

ARTICLE IX

9.1 Any notices to be given pursuant to this Agreement shall be deemed as served when placed in the United States Mail, with postage prepaid, sent by certified mail, return receipt requested, to the address designated, in writing, by either party. Until such time as a different address is designated, notices shall be sent as follows:

If to MCOA,

Municipal Collections of America, Inc.
3348 Ridge Road

Lansing, Illinois 60438

If to THE MUNICIPALITY, Village of Westmont
31 W. Quincy Avenue
Westmont, IL 60559
Attn: Finance Director

ARTICLE X

10.1 This Agreement contains the entire agreement between the parties hereto and supersedes any prior agreements or understandings between the parties. This Agreement may only be altered or modified by written instrument signed by both parties.

10.2 MCOA acknowledges and agrees that the relationship of the parties hereunder shall be that of independent contractor and that neither MCOA nor its employees shall be deemed to be an employee of THE MUNICIPALITY for any reason whatsoever. Neither MCOA nor MCOA's employees shall be entitled to any employment rights or benefits from THE MUNICIPALITY whatsoever. Nothing in this Agreement should be construed to create a partnership, joint venture, or employer-employee relationship. Except as may be set forth in this Agreement, neither party has authority to bind the other party to any contract or obligation of any kind.

10.3 Notwithstanding anything to the contrary herein, any and all payments by THE MUNICIPALITY are subject to the Local Government Prompt Payment Act, 50 ILCS 505/1, *et seq.* (Act), and no payment will be made other than in accordance with that Act. Nothing in this Agreement shall be deemed a waiver by any party of the Act, and to the extent that any portion of this Agreement conflicts with the Act, the provisions of the Act control.

10.4 The interpretation and enforcement of this Agreement shall be governed by the internal laws of the State of Illinois, without regard to its choice-of-law rules.

10.5 The parties agree that any dispute arising out of or related to this Agreement shall be brought in Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, and the parties hereby consent to the jurisdiction of that Court.

10.6 No waiver of any term, provision or condition of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition, or of any other term, provision or condition of this Agreement.

10.7 If any clause, term or provision of this Agreement, or the application thereof to any individual, entity or circumstance, shall to any extent be deemed by a court of competent jurisdiction to be invalid or unenforceable, then the remainder of this Agreement and the application of such clause, term or provision to individuals, entities or circumstances other than those in respect of which it is invalid and unenforceable, shall not be affected thereby, and shall be valid and be enforced to the fullest extent permitted by law.

10.8 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instruments. For purposes of this Agreement, facsimile and email scanned signatures shall be considered the same as original signatures and shall be treated as valid and binding upon the parties hereto.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement of the date first above written.

Municipal Collections of America, Inc.

BY: _____

TITLE: _____

THE MUNICIPALITY

BY: _____

TITLE: _____

DATE: _____