



**Professional Finance Company, Inc.**

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THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between **THE CITY OF LAWRENCE** (Client), and **PROFESSIONAL FINANCE COMPANY, INC.** (Agency), a Colorado corporation, at 5754 W. 11<sup>th</sup> Street, Suite 100, Greeley CO 80634

WHEREAS, Client and Agency desire Agency to undertake the collection of Client's bad debt accounts as assigned.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises of the parties contained herein, the parties hereto do mutually agree as follows;

1. Services. Agency will assume responsibility for collecting and receiving all sums of money due or payable to Client (the "Services") on all bad debt accounts the Client assigns to Agency (the "Accounts").
  - a. Agency will use only ordinary and reasonable collection efforts and will comply with all applicable federal, state, and municipal laws and regulations in its performance of the Services.
  - b. Subject to any reimbursements that may be required under Section 5, Client shall have the right to recall any Account assigned to Agency. However, Accounts subject to a current payment arrangement established by Agency may only be recalled for good cause shown.
  - c. Agency will electronically deposit remittances into Client's designated bank account by the 10<sup>th</sup> of each month for all monies collected between the 1<sup>st</sup> and 31<sup>st</sup> of the previous month. Agency will email remittance statements to Client for reconciliation.
  - d. Agency shall have authority to receive payment in cash, check, money order, ACH/eCheck, and credit card, and shall have authority to endorse checks, drafts, money orders, and other negotiable instruments, which may be received in payment.
2. Client Obligations. Client will assign Accounts to Agency according to the parameters set forth in Exhibit A which is attached hereto and incorporated by reference, unless and until this Agreement is terminated pursuant to Section 8.
  - a. Client will provide Agency with accurate and up-to-date information regarding the balance due and delinquency date of the Accounts.
  - b. Client will provide to Agency all information regarding the Accounts necessary for Agency to perform the Services, including but not limited to: debtor name, address, telephone number, social security number, date of birth, and employment information.
  - c. Client will retain and provide to Agency within 30 days of Agency's request all supporting documentation regarding an Account, including itemized statements, consents, contracts and assignments.
  - d. Client will endeavor to notify Agency the same day of any (1) payments from any source received by Client on an Account, (2) bankruptcy notice or filings received by Client as to any debtor, (3) information that the debtor is represented by counsel, (4) notice that debtor disputes an Account, and (5) claim or threat of claim related to an Account.
  - e. Client will provide Agency information regarding Accounts on a regular basis for purposes of reconciling Accounts and identifying any disparities.
  - f. Client will promptly refer to Agency all communications, phone calls and correspondence received from debtor pertaining to an Account.
  - g. Client will only assign for collection the principal balance due on an Account. Client will not include in the principal balance any interest, fees, late charges, penalties, or other amounts.
3. Fees. Client will pay Agency the fees identified in Exhibit A for all payments received on an Account.
  - a. Client will pay all amounts due to Agency within 30 days of the due date stated on Agency's invoice.
    - i. Any amounts not paid within 30 days of the due date will be considered delinquent. Client will pay interest on such delinquent amounts at the rate of 1.5% per month.
    - ii. In the event Client fails to pay any invoice within 90 days of the due date stated on the invoice, Client hereby grants Agency an express lien and security interest on all payments received for the purpose of securing from Client the payment of all amounts unpaid within 90 days of the due date.

- b. This Agreement must comply with the applicable provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.* Client is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the Client's current budget year. In the event Client does not so budget and appropriate the funds, the parties acknowledge and agree that they shall be relieved from all obligations, without penalty, under this Agreement. To the extent that Client does so budget and appropriate funds for the purposes set forth in this Agreement, the obligations of the parties shall remain as provided herein.
4. Legal Action. As part of the initial assignment of each particular Account, and subject to Exhibit A, Client authorizes Agency to pursue legal action with respect to that Account and to retain the services of any attorney selected by Agency in connection with such legal action. Agency will only initiate legal action where (a) Agency has reason to believe there is a likelihood of recovery, (b) the assets or other non-exempt resources of debtor appear to demonstrate the potential for payment, and (c) debtor fails or refuses to cooperate in good faith with Agency. Notwithstanding the above, Agency will not initiate a lawsuit with respect to any particular Account unless and until Client has executed a Confirmation of Assignment verifying the accuracy of the Account information for each account to be litigated and authorized PFC to take legal action against the Account. Client will always have final approval for an account to go to legal.
- a. Client will furnish witnesses capable of testifying regarding the Account when requested.
5. Reimbursements.
- a. Client will reimburse any funds Agency has remitted to Client if Agency is later required to return the funds to debtor or bankruptcy trustee pursuant to any applicable law related to debtor's bankruptcy.
- b. Client will reimburse Agency for just the court costs that Agency has incurred if any of the following circumstances arise following Client's execution of a Confirmation of Assignment with respect to any Account: (1) Client fails to provide necessary supporting documentation or a witness for trial, (2) Client recalls or instructs Agency to discontinue legal action, or (3) Client error requires that Agency discontinue legal action and Agency has incurred costs up to the point of discontinuation.
6. Representations and Warranties. Client represents and warrants to Agency as follows:
- a. Each Account is a valid and enforceable debt owed by debtor to Client. The balance of each Account is accurate, due and owing as of the date it is assigned. All information provided to Agency regarding each Account and the debtor is accurate to the best of Client's knowledge.
- b. The Accounts are not currently (1) placed with any other collection Agency, (2) subject to any current or previous legal action, or (3) being credit-reported.
7. Indemnification. To the extent allowed by law, each party will protect, indemnify, defend and hold harmless the other party from and against any and all claims, loss, cost, expense (including, without limitation, reasonable attorney fees and court costs), demands, liabilities and damages arising from or related to any damage to a third person incurred by reason of any act, omission, or any breach with regard to any provision of this Agreement.
8. Term and Termination. This Agreement will become effective on execution, and will continue thereafter until either party gives notice to the other party in writing at least sixty (60) days prior to the date upon which the party giving notice intends to terminate this Agreement. Unless otherwise specified in Exhibit A, upon termination of this Agreement, Agency will be entitled to continue its collection efforts on all Accounts assigned prior to the date of termination, and Client will continue to make payment to Agency upon such Accounts in accordance with the terms of this Agreement.
9. Miscellaneous.
- a. Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior representations, understandings and agreements between the parties. Any amendments or modifications to this Agreement must be in writing signed by all the parties.
- b. Severability. The invalidity, illegality or enforceability of any provision of this Agreement will not affect the validity, legality or enforceability of any other provision of this Agreement, which will remain in full force and effect.
- c. Waiver. The waiver by either party of any breach of this Agreement by the other party will not waive any subsequent breaches of the same or different kind. The failure of either party to enforce any rights under this Agreement in any particular instance will not operate as a waiver of said party's right to enforce the



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same or different rights in subsequent instances.

- d. Survival. All provisions set forth in this Agreement necessary to effectuate Agency's continued collection efforts and right to payment of its fees will survive any termination of this Agreement.
- e. Counterparts and Originals. This Agreement may be executed in counterparts. Each counterpart will have the same force and effect as the original. Any reproduction of the original signature (i.e. facsimile, electronic scan, photocopy) will be valid and effective as an original.
- f. Audit. Client and Agency agree that all of Agency's books, records, documents, contracts, and agreements, as may reasonably be necessary for an effective audit, shall, upon reasonable notice being given by Client, be opened to Client, including its duly authorized agents, auditors, and employees, for the purpose of verifying Agency's accounting. Client shall bear the cost of any such audit, unless the audit discloses that Agency owes Client money and has failed to use reasonable efforts in rendering its accounting. In that case, Agency shall be responsible to the City for the reasonable cost of the audit.

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

Scott I Raberge, Sr. VP, Marketing & Sales

Professional Finance Company, Inc.

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

Name: \_\_\_\_\_

City of Lawrence

**EXHIBIT A**

**CLIENT DETAIL & SERVICE FEES**

Collection Fees: Following the date of assignment, Client will pay Agency a collection fee on all monies collected from any source (including insurance payments), whether paid directly to Client or Agency, on all Accounts according to the following commission rates:

- Accounts assigned for collection are subject to a commission of 16% of the principal balance collected.
- Accounts serviced by Agency's Legal Department for heightened collection efforts are subject to a commission of 29% of the principal balance collected.

Collections on each Account will be applied in the following order: (1) to any legal costs and attorney's fees incurred, (2) to the principal balance of the Account, and (3) to any interest accrued on the Account after the date of assignment.

Returned Accounts: If an account is placed in error by Client for reasons such as the account was previously paid, account is to be written off or the account is that of a VIP or a Board Member then Client will be able to recall the account without any fee.

Statutory Interest: Client does authorize Agency to assess statutory interest on the principal balance of the Accounts beginning from the date of assignment. Agency will retain 100% of all statutory interest collected and shall have full settlement authority with respect to any interest accrued.

Remittance Basis: Agency will remit payments to Client on a NET REMIT basis.

In the event Client elects a GROSS REMIT basis, and Client fails to pay any invoice within 90 days of the due date stated on the invoice, in addition to the interest provided in Section 3(a) (i) of this Agreement, Agency will be entitled to remit all future payments to Client on a NET REMIT basis.

Credit Reporting: Agency will report information regarding the Accounts to credit reporting agencies only upon approval of Client at time of implementation. Client acknowledges and agrees that Agency is required to report accurate information to the credit bureaus based on accurate and timely Account balance and date of delinquency information provided by Client.

Legal Action: Subject to Section 4, Client does authorize Agency to pursue legal action on the Accounts.

Subject to the reimbursements identified in Section 5(b), in the event of legal action, all legal costs and attorneys' fees will be advanced by Agency and paid by Agency. Agency will retain 100% of all legal costs and attorneys' fees collected by Agency. Client authorizes Agency to continue with legal action to recover court costs incurred notwithstanding the resolution of all Accounts subject to the lawsuit where the belated resolution arises out of debtor's failure to timely communicate with Client or Agency (i.e. debtor's failure to respond timely to requests for information regarding financial assistance, insurance or Medicaid coverage) or other debtor negligence.