



Memorandum

To: City Council
From: Ben Cowan
Date: 4/13/2015
Re: State of Colorado Central Collection Services

Currently, the City has an agreement with Transworld Systems for collection of delinquent utility accounts. We provide initial in-house collection services for closed accounts by sending monthly statements and follow up letters. Finally, after approximately 60-90 days, delinquent accounts are turned over for collections. Each month, approximately 12-15 accounts at approximately \$200 each are sent to collections. Accounts not collected within 1 year are then written off to bad debt. Last year, \$23,141.97 was written off, for a total of 76% of all delinquent accounts. Transworld charges the City 50% of the balance collected. The collection fee and subsequent write off increases the cost of utilities to our current paying customers. Our contract with Transworld Collections will be expiring at the end of April and we are looking for an alternative solution.

During 2014, after the City was able to collect an initial \$3,529.49 from demand letters, Transworld was able to further collect \$3,560.30. The City had to pay Transworld a total of \$2,385.97 for their services, *so the City only netted \$1,174.33 from this arrangement.*

The State of Colorado Department of Personnel has statutory authority to collect the City's delinquent accounts. After some initial review, the Finance Department recommends setting up an account to begin using this service for collections. Here are some highlights of the reasons Finance is recommending switching to the use of the State's service:

- As far as cost, the State adds their fee (18%) on to any account, so when collected, the City would receive 100% of the principal amount. For instance a \$100 account would add \$18, the State would collect \$118 and send the City \$100 the following month.
- The accounts are included in the Offset programs, so the State can intercept consumers' Colorado State Tax Refunds, Lottery Winnings, Gaming Winnings and Vendor Offset payments if the State is paying out funds to the consumer.
- The State has five private collection agencies under contract, so if they're unable to collect within a certain period of time, they'll assign it to one of them to collect. They also have private attorneys under contract, so they have the ability, with the City's explicit authorization on an individual account to send to the attorneys to litigate in court, obtain a judgment and effect post judgment remedies such as wage garnishment or bank account garnishment to collect the funds.
- The City would have real time access to our accounts, so we can review individual accounts, access monthly reports, assign new accounts, submit adjustments, etc.
- The notices go out on State Letterhead, which tends to generate more significance when received.
- The State also has processes that review accounts for address updates, bankruptcy and deceased information.

Action Requested: A motion to authorize Mayor Drexel's signature on the State of Colorado Political Subdivisions & Special Districts Collections Agreement.

Central Collection Services Political Subdivisions & Special Districts Collections Agreement

City of Gunnison, a Colorado Home Rule Municipality

Agency Classification (Please Check One) Political Subdivision Special District

THIS AGREEMENT is made **April 28, 2015** between **the City of Gunnison**, a Political Subdivision of the State of Colorado, pursuant to Title 30 (“the Client”) or an existing Special District, pursuant to Title 32, C.R.S. (the “Client”), acting by and through the Department of Personnel & Administration, Division of Finance and Procurement, Office of Central Collection Services, (the “State”). The parties are referred to as the “parties”.

- **TERM:** This Agreement will commence on March 10, 2015 and will remain in effect until December 31, 2015 or as per the provisions in Section 5. This Agreement can be renewed for any term length upon written notification by the Client and the processing of an Option Letter by the State.

- **THE PARTIES AGREE AS FOLLOWS:**
 1. **COORDINATION AND LIAISON:** The State shall fully coordinate all services under the Agreement with the Finance Director of the Client (“Manager”) or, the Manager’s designee.
 2. **SERVICES TO BE PERFORMED:**
 - a. As the Manager directs, the State shall diligently undertake, perform, and complete all of the services and produce all the deliverables described as collection services, and more particularly set forth in the Scope of Work which is attached hereto and incorporated by reference herein as **Exhibit A (“Scope of Work”)**.
 - b. The State is ready, willing and able to provide the services required by this Agreement.
 - c. The State shall faithfully perform the services in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent individuals performing services of a similar nature to those described in the Agreement and in accordance with the terms of the Agreement.
 - d. This Agreement is non-exclusive, and the Client may use other vendors for the same or similar services described herein.
 - e. The State shall provide monthly reports to the Manager or his designee to document the services provided as specified in the Scope of Work.
 - f. The parties shall meet as needed to review the services provided under this Agreement to address any concerns, ensure quality of work product, review responsiveness to the Client’s needs under the Agreement, and address any other issues of note for the Client regarding the performance of this Agreement. The Client may include representatives of any Client agency or department as appropriate in such meetings.
 3. **COMPENSATION AND PAYMENT:**
 - a. **Collection Fee:** The State shall add a Collection Fee (as the term is defined in the Scope of Work) onto all accounts assigned to the State for collection pursuant to Section 8 of the

Scope of Work. The Collection Fee amount shall be determined by the State according to the annual rate review process, which is set forth in the Scope of Work.

- b. Legal Fees: Subject to Exhibit A, Section 1B, legal action requires written authorization by the Client prior to commencement of any legal activity. Any reasonable out of pocket expenses incurred by the State's contracted legal counsel, in the course of litigation of collections under this Agreement, such as process server fees or court filing fees, etc. shall be added to the balance due. These legal expenses will then be posted to the account at the time they are collected by the State from the debtor with the following monthly remittance to Client. If an account is cancelled prior to collection of such out of pocket expenses, client will be responsible and they will be deducted from next month's remittance.
 - c. Private Collection Agency Fees: For each account assigned to the State and for which the State utilizes a private collection agency, the State shall adjust the Collection Fee amount according to the contracted fee amount in place according to the State's contract with the private collection agency at the time of assignment of such account to the private collection agency.
4. **STATUS OF STATE:** The State is an independent contractor retained to perform collection services for the Term of this Agreement. Neither the State nor any of its employees are employees or officers of the Client or are entitled to workers' compensation benefits for the performance of the services described in this Agreement.
5. **TERMINATION:**
- a. Both the State and the Client have the right to terminate the Agreement with cause upon written notice to the other party, which shall be effective upon the other party's receipt of notice, and without cause upon thirty (30) days prior written notice to the other party. At that time Client and State shall determine if any accounts in the process of collection shall remain with State for continued collection efforts.
 - b. Notwithstanding the preceding paragraph, the Client may terminate the Agreement upon written notice to the State if the State or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kick backs, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with State's collection services business. Termination pursuant to this paragraph is effective upon the State's receipt of written notice.
 - c. Upon termination of the Agreement, with or without cause, the State shall have no claim against the Client by reason of, or arising out of, incidental or relating to termination, except for compensation for work duly requested and satisfactorily performed as described in the Agreement prior to the date of termination, nor shall the Client have any claim against the State by reason of, or arising out of, incidental or relating to termination.
 - d. If the Agreement is terminated, and the Client desires that all accounts assigned for collection shall be cancelled, the State shall thereby cancel all accounts in the system assigned by the Client and will refer all debtors back to Client upon contact. At the time of

termination, Client and State shall determine length of time necessary to cancel all accounts, including those assigned to private collection agencies and/or legal counsel under contract with State and how to handle any legal accounts under judgment.

6. **EXAMINATION OF RECORDS:** Any authorized agent of the Client, including the Client's Auditor or his or her representative, has the right to request information regarding any accounts assigned to the State by Client related to the Agreement until the latter of three (3) years after the final payment to the State under the Agreement or expiration of the applicable statute of limitations. Any such inspection is subject to the Fair Debt Collection Practices Act confidentiality requirements.
7. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event will any payment or other action by the Client constitute or be construed to be a waiver by the Client of any breach of covenant or default that may then exist on the part of the State. No payment, other action, or inaction by the Client when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of the Agreement constitutes a waiver of any other breach.
8. **INSURANCE:** The parties understand and agree that both are "public entities" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101 *et seq.*, as amended (the "Act") and that to the extent required or permitted by the Act both parties will at all times during the term of this Agreement maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act.
9. **CHARGES AND PENALTIES:** The State shall promptly pay when due, all applicable bills, debts and obligations it incurs while performing the services under the Agreement and shall not allow any lien, mortgage, judgment or execution to be filed against Client's property.
10. **ASSIGNMENT; SUBCONTRACTING:** Except as provided in this Section, the State shall not voluntarily or involuntarily assign any of its rights or obligations under this Agreement without obtaining the Manager's prior written consent. This Section shall not limit the State's ability to utilize private collection agencies under contract with the State to perform collection services and/or private counsel under contract with the State to perform collection and/or litigation on accounts assigned to the State in accordance with Section 4(b).
11. **INUREMENT:** The rights and obligations of the parties to the Agreement inure to the benefit of and shall be binding upon the parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of the Agreement.
12. **NO THIRD PARTY BENEFICIARY:** Enforcement of the terms of the Agreement and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in the Agreement gives or allows any claim or right of action to any third person or entity. Any person or entity other than the Client or the State receiving services or benefits pursuant to the Agreement is an incidental beneficiary only.
13. **NO AUTHORITY TO BIND CLIENT TO CONTRACTS:** Except as specifically authorized in Section 5 of the Scope of Work, the State lacks authority to bind the Client on any contractual matters. Except

as specifically authorized in Section 5 of the Scope of Work, final approval of all contractual matters that purport to obligate the Client must be executed by the Client.

14. **SEVERABILITY:** If a court of competent jurisdiction finds any provision of the Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions of provisions will not be affected.
15. **CONFLICT OF INTEREST:** No employee of the Client shall have any personal or beneficial interest in the services or property described in the Agreement. The State shall not hire, or contract for services with, any employee or officer of the Client. The State shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. The State represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the State by placing the State's own interests, or the interests of any party with whom the State has a contractual arrangement, in conflict with those of the Client. The Client, in its sole discretion, will determine the existence of a conflict of interest, and may terminate the Agreement for cause if it determines a conflict exists, after it has given the State written notice describing the conflict.
16. **NOTICES:** All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, as follows:

If to the State:

**John Weber
Contracts Manager
Colorado Department of Personnel & Administration
State Purchasing Office
1525 Sherman Street
Denver CO 80203**

If to the Client:

**Ben Cowan
Finance Director
City of Gunnison
PO Box 239
Gunnison CO 81230**

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

17. **GOVERNING LAW; VENUE:** The Agreement will be construed and enforced in accordance with applicable federal law and the laws of the State of Colorado. Venue for any legal action relating to the Agreement will be in the City and County of Denver.
18. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the State may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age military status, sexual orientation, gender variance, marital status, or physical or mental disability.
19. **COMPLIANCE WITH ALL LAWS:** State shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States and of the State of Colorado.
20. **LEGAL AUTHORITY:** State represents and warrants that it possesses the legal authority, pursuant to proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of the State represents and warrants that he or she has been fully authorized by State to execute the Agreement on behalf of State and to validly and legally bind State to all the terms and provisions of the Agreement. The Client shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either State or the person signing the Agreement to enter into the Agreement.
21. **NO CONSTRUCTION AGAINST DRAFTING PARTY:** The parties and their respective counsel have had the opportunity to review the Agreement and its exhibits, and the Agreement and its exhibits will not be construed against any party merely because any provisions of the Agreement or its exhibits were prepared by a particular party.
22. **ORDER OF PRECEDENCE:** In the event of any conflicts between the language of the Agreement and the exhibits, the language of the Agreement controls.
23. **INTELLECTUAL PROPERTY RIGHTS:** The Client and State intend that all property rights to any and all materials, documents, correspondence, reports, etc. regarding the accounts assigned to State for collection pursuant to this Agreement are the property of Client. State agrees to keep all such information confidential and not to share with any third party or anyone except the debtor or their designee. While the State is required to provide public records under the Colorado Open Records Act ("CORA"), CRS §24-72-101, et seq., the confidentiality of debtor information precludes sharing information about specific debtors or their accounts. If State receives a public records request that implicates information provided by Client pursuant to this Agreement, State will give Client notice of the request so that Client can contest it, if Client determines that to be appropriate.
24. **SURVIVAL OF CERTAIN PROVISIONS:** The terms of the Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of the Agreement survive the Agreement and will continue to be enforceable. Without limiting the generality of this provision, the State's obligations

to provide insurance will survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

25. **ADVERTISING AND PUBLIC DISCLOSURE:** The State shall not include any reference to the Agreement or to services performed pursuant to the Agreement in any of the State's advertising or public relations materials without first obtaining the written approval of the Manager. Any oral presentation or written materials related to services performed under the Agreement by the State will be limited to services that have been accepted by the Client. The State shall notify the Manager in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to Client's officials.
26. **CLIENT EXECUTION OF AGREEMENT:** The Agreement will not be effective or binding on the Client until it has been fully executed by all signatories of both parties.
27. **AGREEMENT AS COMPLETE INTEGRATION – AMENDMENTS:** The Agreement is the complete integration of all understandings between the parties as to the subject matter of the Agreement. No prior, contemporaneous or subsequent addition, deletion, or other modification has any force or effect, unless embodied in the Agreement in writing. Modifications of this Agreement shall not be effective unless agreed to in writing by the parties in a written amendment to this Agreement, which is properly executed and approved in accordance with Colorado State law, State Fiscal Rules and the resolutions, rules and regulations of **[INSERT AGENCY NAME]**
28. **COUNTERPARTS OF THE AGREEMENT:** The Agreement may be executed in counterparts, each of which is an original and constitute the same instrument.
29. **ANNUAL APPROPRIATION:** Client's obligations hereunder are subject to the annual appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of Client.

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THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for Agency hereby swear and affirm that they are authorized to act on Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">CLIENT AGENCY</p> <p>Name of Agency: City of Gunnison</p> <p>By: _____ Title: Mayor</p> <p>Signature: _____</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John Hickenlooper, GOVERNOR Department of Personnel & Administration</p> <p style="text-align: center;">Kara Veitch, Interim Executive Director</p> <p>By: _____ Department of Personnel & Administration Kara Veitch</p> <p>Date: _____</p>
<p style="text-align: center;">Approved as to Form:</p> <p>By: _____</p> <p>_____</p> <p style="text-align: center;">Printed Name</p>	

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS 24-30-202 requires the State Controller to approve all State contracts.
This Agreement is not valid until signed and dated below by the State Controller or delegate.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p><input type="checkbox"/> Brent Voge or <input type="checkbox"/> Clark Bolser or <input type="checkbox"/> Tanya Olsen</p> <p>Date: _____</p>
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EXHIBIT A – SCOPE OF WORK

State shall provide collection services for past due debts on behalf of Client, including sending notices, making phone calls, skip tracing demographic information, utilization of private collection agencies for collection and/or private counsel for litigation. Pursuant to Section 7, State shall provide monthly reports to Client as well as a monthly remittance of appropriate proportion of amounts collected in the previous month.

1. COMPENSATION

The State shall add a collection fee to the balance of each account assigned to the State (each a "Collection Fee") and collect those Collection Fees from the debtor as compensation for work performed pursuant to this Agreement. The amount of the Collection Fee, which is 18% at the time of this Agreement's execution, is set annually as part of the State's annual rate setting process. If there is a change in the amount of the Collection Fee, the State shall send the Client written notice of such change which shall be effective upon Client's receipt of such notice. The Client is not required to pay State directly for collection services pursuant to this Agreement, other than legal fees as described below.

A. Collection Fees

As set forth in this Section 1, a portion of each payment will be retained by State as Collection Fees with the balance paid to Client in the form of a monthly remittance payment the month following collection of payment from the debtor.

B. Legal Fees

If State determines that litigation is the best means to collect an account, Client must first authorize in writing such litigation and provide documentation sufficient to prove the debt in a court of law. Any reasonable out of pocket expenses incurred by private counsel in the course of litigation of collections under this Agreement, such as process server fees or court filing fees, etc. will be added to the account balance. These legal expenses will then be posted to the account at the time they are collected by the State from the debtor with the following monthly remittance to the Client. If account is cancelled prior to collection of such out of pocket expenses, client will be responsible and they will be deducted from the next monthly remittance.

C. Interest

If Client is legally authorized, by law or statute or contract with debtor, for interest to be accrued on an account, any interest accrued prior to assignment may be assigned with account as "assigned interest" and subsequent interest will be accrued from time of assignment forward and added to account as "accrued interest" at the next transaction occurrence.

D. Client Collection Costs

If Client is legally authorized, by law or statute or contract with debtor, to add their collection costs to an account in addition to Collection Fees added by State, those will be included with account as "collection costs" at the time of assignment.

E. Negatives on Monthly Remittance

There may be instances when a "negative" occurs on the monthly remittance to Client. If a personal check is written by debtor and subsequently does not clear the bank, the amount of such debtor check which was previously paid to Client shall be deducted from the following monthly remittance to Client to recoup those funds. Upon a check being dishonored, a \$20 State NSF fee amount shall be added to the account. Other adjustments to the monthly remittance may be made by the State for an improper posting that is subsequently corrected or for Commission Fees on accounts assigned to the State which are subsequently paid by debtor through paydirects, which are payments accepted directly by Client from debtor or negatives could occur for other similar circumstances.

2. CANCELLATION

Client has the right to cancel any account at any time, other than Client agrees not to cancel accounts solely to disallow State from receiving Collection Fees. Client shall provide State with prompt notice of any account assigned in error, any account not valid, or any account unable to be proven as valid in a court of law, which shall be cancelled by the State upon the State's receipt of such notice. Cancellation will bring the account's balance to \$0 in State's system. Cancellations shall be done using the State's on-line cancellation form.

3. ADJUSTMENTS

Client will notify State in writing of any adjustments necessary on accounts as soon as they are identified. State will make appropriate adjustment to such account, including to Collection Fees and interest, as appropriate. Adjustments shall be done using the State's on-line adjustment form.

4. PAYDIRECTS

Client may accept payments for accounts assigned to State to collect on its behalf, and will notify State via a paydirect form. Client agrees that State is entitled to Collection Fees out of amounts collected by Client for such accounts, which shall be deducted by the State from the monthly remittance to Client following State's receipt of such paydirect form. Client shall check with State for accurate account balances including, but not limited to, Collection Fees and interest due on such account prior to accepting payment in full on an account. Paydirects shall be done using the State's on-line paydirect form.

5. SETTLEMENT/FORGIVENESS/COMPROMISE

Client must review any settlement/forgiveness/compromise request received by State. If accepted by Client in writing, State shall accept such payment and adjust the account balance accordingly, including Collection Fees and interest, as appropriate. Client agrees that State is entitled to proportionate Collection Fees out of settlement amounts.

6. CREDIT BUREAU REPORTING

All accounts assigned to State will be eligible for reporting to the credit bureaus after 30 days after assignment. Client agrees not to report any account to credit bureaus that have been or will be assigned to State so accounts are not reported twice. Client may direct State in writing not to report any specific account to the credit bureaus at its discretion. Client may allow State to not report any specific account to the credit bureaus.

7. REPORTING - NOTIFICATION

After the Agreement is executed, State will setup Client in State system and provide logon and password access information to Client to be able to log-in to State system to obtain reports and/or access forms to submit information to State. The following reports will be available to Client each month through on-line access:

A. Monthly Statements

State shall provide a monthly remittance payment to Client each month. Client shall have on-line access to a monthly "statement" providing detail of such remittance payment.

B. Cancellation Report

State shall provide a monthly report of any accounts cancelled.

C. Adjustment Report

State shall provide a monthly report of any accounts adjusted.

D. Legal Report

State shall provide a monthly report of any accounts in litigation.

8. ASSIGNMENTS

Client may assign accounts to State in different ways, including:

- A. Individually, filling in the information in the on-line new account assignment form on the State's website.
- B. Batch mode using a State provided flat Ascii file format or customized spreadsheet.

9. SECURITY

All information regarding accounts must be transmitted securely. State has a secure ftp site to be used for secure file transference. Care should be taken regarding any communication transmitted by fax or e-mail to ensure confidential information is protected.

10. CLIENT RECORDS

A. Maintenance

Client agrees to retain account information, including information necessary to prove the debt in a court of law for a period of up to three years after collection in full or cancellation of account with State. Client agrees to provide such information upon request by State in order to provide to debtor upon request.

B. Confidentiality

State shall keep all Client records and information confidential at all times and comply with all applicable laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information shall be immediately forwarded to State.