



**LEGAL NOTICE**

**REQUEST FOR PROPOSALS**

The Town of Smyrna will accept proposals for Collection Agency Services for the Town Court Clerk's Office. Bidders shall submit sealed quotations in the format specified in the Request for Proposals no later than 2:30 p.m. June 19, 2018 at which time quotations will be publicly opened and read aloud. No proposal may be withdrawn after the scheduled closing time for a period of 90 days. Proposal documents may be obtained at Town Hall during regular business hours or [www.townofsmyrna.org](http://www.townofsmyrna.org). Quotations should be mailed or hand delivered to:

Rex S. Gaither  
Smyrna Town Hall  
**Sealed Proposal on Town Court Clerk's Collection Agency Services**  
**June 19, 2018 @ 2:30 p.m.**  
315 South Lowry Street  
Smyrna, Tennessee 37167

Verbal quotations or quotations received after the closing date will not be accepted. The Town of Smyrna reserves the right to reject any and all quotations, to waive technicalities or informalities and to accept any proposal deemed to be in the best interest of the Town.

The Town of Smyrna will not discriminate in the purchase of all goods and services on the basis of race, color, religion, sex, national origin, age, disability or any other lawfully protected classification.

SUBMITTED BY:            REX S. GAITHER  
                                     FINANCE DIRECTOR

TO BE RUN:                May 29, 2018

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## **SECTION I - GENERAL INFORMATION**

- A. The Town of Smyrna is seeking proposals from licensed collection agencies and/or attorneys to provide contract non-tax collection services for Courts of the Town government. While attempting to maximize the Town's collections, it is critical that this objective be achieved without negative exposure to the Town and with careful consideration of consumer's rights. The Town firmly believes in a positive approach in dealing with debtors. The Contractor shall conduct its collection business in a professional manner, which will preserve the dignity of the Town and its relationship with its citizens. Furthermore, the Town's commitment to a consumers-focused process must be honored throughout the collection cycle.

Smyrna Town Hall: 315 South Lowry Street, Smyrna, TN 37167, 615-459-2553

Questions should be directed to Brittany Stevens: phone (615) 355-5739 ext. 5026, or e-mail: [brittany.stevens@townofsmyrna.org](mailto:brittany.stevens@townofsmyrna.org).

- B. The Town of Smyrna reserves the right to reject any and all quotations, to waive technicalities or informalities and to accept any proposal deemed to be in the best interest of the Town. No proposal may be withdrawn after the scheduled closing time for a period of 90 days.
- C. The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully address the full intent and meaning of each aspect of the specifications.
- D. Sections IV, V, VI shall be completed and included as an integral part of each bidders proposal.
- E. Freight shall be paid by vendor and should be included in unit price proposal.
- F. The Town is a tax exempt organization.
- G. Mail is delivered after 11:00 a.m. Monday through Friday.
- H. The Town of Smyrna, in accordance with Title VI of the Civil Rights Act of 1964 and Title 49, Code of Federal Regulations, hereby notifies all Bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, handicap or national origin in consideration for an award.
- I. Bid quotations must be submitted on the Town's quotation page(s). No exceptions.
- J. By submission of this bid, each bidder/proposer and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106 Iran Divestment Act. For reference purposes, the list is currently available online at:

[https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List\\_of\\_persons\\_pursuant\\_to\\_Tenn.\\_Code\\_Ann.\\_12-12-106\\_Iran\\_Divestment\\_Act\\_updated\\_7.7.17.pdf](https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act_updated_7.7.17.pdf)

## **SECTION II - SPECIFICATIONS**

### **Expectations**

The Town's Court Clerk expects but does not guarantee, to regularly refer for collection action, delinquent accounts for which the Town Court Clerk is responsible for collecting. The accounts referred for collection shall be those accounts that the Town Court Clerk elects to refer for collection proceedings. It is the Town's intentions to refer all Court accounts considered delinquent, however the Town does not guarantee or make representations as to established minimums that it will refer for collection for any period of time.

Potential, but not guaranteed, referrals for collection may be miscellaneous court costs and fines that could range from \$50 or more.

It is anticipated that Town will begin referring collection matters to the selected Contractor as soon as possible.

Town expects the selected agency or firm to be a full range collection attorney or agency that is capable of handling either a small or a large volume of delinquent accounts receivable. A complete description of the required services is set forth in the Scope of Services section of this RFP.

### **Bid Specifications**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the bids be organized in the manner specified below. The items listed below shall be submitted with each bid and should be submitted in the order shown. Each section should be clearly labeled, with pages numbered and separated by tabs. Failure by a Bidder to include all listed items may result in the rejection of its bid.

1. **Management Summary:** Provide a cover letter, signed by an authorized officer of the firm, indicating the underlying philosophy of your firm in providing the service and your strengths in offering this service. State your firm's understanding of the service to be performed and make a positive commitment to provide the service as indicated in this RFP. Include the name(s), titles, address and telephone number(s) of the authorized contact person(s) concerning bid response. **A corporate officer or other individual who has the authority to bind the firm must sign the letter.**
2. **Business Plan:** Describe in detail for each service proposed how that service would be provided. Include:
  - a. Description of the proposed Contract team, and the role to be played by each member of the proposed team;
  - b. Detailed plan of approach (including major tasks and actions, dates and other milestones, and the nature and amount of required Town staff involvement); and,
  - c. Proposed service quality program (including equipment, personnel, procedures, and other elements).

3. Cost to Town: Any sums paid to bidder in consideration for performing their obligations to the Town shall not be deducted from the amounts due the Town. The Town reserves the right to pull back accounts that were sent in error without incurring any charges from Contractor.
  
4. Corporate Experience and Capacity:
  - a. Provide a detailed history of your firm, including ownership, mergers, acquisitions and capitalization;
  - b. Provide information that documents your firm's qualifications to produce the required outcomes, including its independence, ability, capacity, skill, financial strength, and number of years of experience in providing the required service or services;
  - c. List the names of ALL public entities for which your firm has provided the service or services proposed during the past three years. Provide this information regardless of the size or scope of each job or contract;
  - d. Within the past five (5) years, identify all service contracts terminated, the reasons for the termination, and the name and phone number of a contact person for the former contracting agency;
  - e. State how many contracts for this type of service you now maintain;
  - f. Provide information about your relationship with collection attorneys, credit reporting agencies, correspondent relationships and legal, technical and automated tracking resources;
  - g. Disclose your placement to collection percentage for your top five (5) customers, based on annual dollar amount placed, within one month, six (6) months, one year, three (3) years, five (5) years and ten (10) years then overall for these five (5) customers;
  - h. State the licenses held in the State of Tennessee;
  - i. Provide information about your agency's or firm's ability to perfect or validate the Town's claim prior to taking any actions against the credit of the debtor, establishing through the courts that the Town has a right to be paid, bringing the appropriate legal action as may be necessary to establish the Town's right to be paid;
  - j. State your agency's resources or firm's ability to collect from debtors out of state;
  - k. List any other information that relates directly to your organization's ability to perform the requested collection services. This statement must also include an affirmation that you either have, or shall have the ability to receive electronic transfer of data via email, CD-ROM, or Internet web-based technology; and,
  - l. State the average length of employment of your firm's personnel.
  
5. Key Personnel
  - a. Provide information about your current collection staffing quantity and levels;
  - b. Attach resumes that detail the experience of all members of the Contractor's team that are to provide services to this account, including all principals or partners in your agency or firm;
  - c. Describe your firm's continuing education requirements for its employees;

- d. List continuing education courses taken and certifications awarded to members of the proposed team; and,
  - e. Identify your security policies to address FACTA “Red Flag” rule and PCI compliance.
6. Customer Listing
- a. Provide a listing of three (3) clients who have hired your firm during the past three (3) years to perform work similar in size and scope to the work you are seeking through your response to this RFP.
  - b. Information provided for each client shall include the following: client name, address, and current telephone number; description of services provided; time period of the project or Contract, and client’s contact reference name and current telephone number.
  - c. Failure to provide complete and accurate client information, as specified here, may result in the disqualification of your bid or cancellation of the Contract and your suspension or debarment from further business with the Town.
7. Acceptance of Conditions: Indicate any exceptions to the general terms and conditions of the RFP and to insurance requirements and any other requirements listed in the RFP. Such exceptions may be considered, but are not guaranteed acceptable by Town. An award of contract does not bind Town to Bidder’s exceptions.
8. Attach the following documents to your bid:
- a. A copy of your most recent financial statement to include a balance sheet, income statement and certified annual report (if no audited financial statement was prepared, attach a reviewed uncertified annual report);
  - b. A copy of your State of Tennessee license.
9. Bid for Delinquent Account Collections
- a. Include in this section a description of collection efforts used for the following:
    - 1) Accounts referred in the amount of less than \$50; \$50.01 - \$100.00; \$100.01 - \$500.00; over \$500.00.
    - 2) Accounts referred where the debtor resides outside the State of Tennessee.
  - b. Provide a copy of sample reports which you normally provide and which you propose to provide to the Town.
  - c. Provide copies of sample collection letters you propose to use.
  - d. Provide historical information on percentage of collection versus collection accounts accepted for each of the last three years on accounts you manage

which are in a similar scope and magnitude to that requested in the RFP. (Feel free to explain any aberrations).

- e. Provide the collection plan for accounts receivables for which there have been judicial proceedings affirming that the debt is due to the Town. It is not uncommon for a person to deny responsibility for debt. The bid should clearly address these collection issues for these situations where there may be a dispute as to the liability for debt. If the Contractor is not an attorney, such plan shall incorporate that the Contractor will contract with an attorney to establish legal liability before proceeding with collection efforts or any other effort that will affect the credit of the debtor. The plan presented should include minimum limits for litigation of a claim prior to pursuing collection efforts, additionally if the Contractor is an attorney, the plan shall describe the collection activities after the claims of the Town have been legally established for example turning them over to a credit agency, etc.
  - f. Provide the type of information desired from the Town for each delinquent account referred, i.e. name, account number, address or other information, supporting documentation, etc.
  - g. Disclosure of minimum debt amounts due to the Town for which collection efforts will be undertaken, i.e. is there a minimum amount for an outstanding debt under which your firm/agency will not undertake collection action?
10. Statement of Collection Plan Using a maximum of three (3) pages, state your designated strategy for your collectors to follow depending on the age, dollar amount, activities to establish legal liability of debtor to pay the Town, and perceived legal collectability of a referred delinquent account to include prescribed skip tracing techniques (those who "skip out" on their debts by moving and not leaving a forwarding address).
11. Absence of Potential Conflicts and Local Presence
- a. Provide any professional or ethical conflicts, which may interfere with handling this contract, including matters, and/or cases where the firm currently represents an individual or entity with interests adverse to Town.
  - b. Demonstrate the ability to have someone timely meet face-to-face with Town representatives after a request to do so.
12. Examples of Outstanding Accounts to Be Referred for Collection
- a. Miscellaneous receivables that could range from \$50 or more and other receivables of the general government as may be turned over for referral for collection by the Town Court Clerk.
  - b. Delinquent tickets issued by the Smyrna Police Department that could range from \$50 or more that have been adjudicated in Smyrna Town Court.
13. Collections Questionnaire  
In the bid, collection agencies are asked to respond to the following:

- Describe the agency’s process for collections.
- Detail the requirements the agency has for the Town.
- List all information required to begin the collections process for an individual account.
- List the minimum amount of a single claim the agency is willing to collect.
- Indicate acceptable formats and methods of data transfer to the collection agency: paper reports, excel spreadsheets, text files, disk, email attachment, etc.
- Describe the software the agency uses.
- Indicate whether the collection agency plans to accept payment. If so, when will payment be remitted to the Town?
- If the agency collects payment, what documentation will be presented to the Town with the funds?
- Is the collection agency a member of the national credit bureau service?
- Is the agency or its employees a member of any professional organizations?
- Does the agency follow the rules and procedures of the Tennessee Collections Service Board?
- Does the agency follow the rules and procedures of the Fair Debt Collection Practices Act?
- Are the agency and its members properly licensed in the State of Tennessee and the Town?

**Organization of Bid and Completeness**

Please submit an original plus two (2) copies of the bid to the Finance Director’s Office at the address set forth in 1.A above. All bids must be sealed and clearly marked with the bidder’s name and the words, “Collection Agency Services for Town Court Clerk’s Office, Bid Opening Date: 2:30p.m., June 19, 2018.” Failure to provide this information on the envelope may result in the bid not being considered. Bidders must allow sufficient time to ensure receipt of the bid. It shall be the sole responsibility of the bidder to have the bid delivered to the Town before the bid deadline.

**Project Timeline**

The provider selection process will follow the timeline shown below. All times will be Central Standard Time (CST). Estimated key milestone dates for the completion of the project are also included:

Distribution of Proposal:	May 29, 2018
Advertisement of Proposal:	May 29, 2018
Letter of Intent to Submit Proposal due:	June 5, 2018
Deadline for Submitting Questions:	June 5, 2018
Response to Questions posted:	June 12, 2018
Proposals Due and Opening of Proposals:	June 19, 2018
Selection Process:	June 19-21, 2018
Staff Recommendation to Town Council:	June 28, 2018
Award Contract by Town Council:	July 10, 2018

### **Notification of Intent to Submit Proposal**

All vendors that wish to submit a proposal must send a “letter of intent” (Exhibit A) on letterhead by 4:30 p.m. June 5, 2018 to:

Rex S. Gaither  
Town of Smyrna  
315 S. Lowry Street  
Smyrna, TN 37167  
rex.gaither@townofsmyrna.org

Correction and changes to the RFP, if any, will be distributed to vendors that have notified the Town.

The Town Court Clerk will provide the awarded bidder with current delinquent accounts when they have been past due a minimum of thirty (30) days.

### **SECTION III - TERMS AND CONDITIONS**

- A. The Town reserves the right to reject any and all proposals, and to waive minor irregularities in any proposal.
- B. The Town reserves the right to request clarification of information submitted, and to request additional information on any proposal.
- C. The Town reserves the right to award any contract to the next most qualified agency, if the successful agency does not execute a contract within 45 days of being notified of selection.
- D. Any proposal may be withdrawn up until the date and time set above for opening of the proposals. Any proposal not so timely withdrawn shall constitute an irrevocable offer, for a period of one hundred and twenty (120) days to sell to the Town the services described in the attached specifications, or until one or more of the proposals have been approved by the Town administration, whichever occurs first.
- E. The contract resulting from acceptance of a proposal by the Town shall be in a form supplied or approved by the Town, and shall reflect the specifications in this RFP. The Town reserves the right to reject any proposed agreement or contract that does not conform to the specifications contained in this RFP and which is not approved by the Town Attorney’s office.
- F. The Town shall not be responsible for any costs incurred by the agency in preparing, submitting or presenting its response to the RFP.
- G. The initial contract period will be for one (1) year from the start of the contract. The term of the contract may be extended in one (1) year increments for two (2) additional one-year periods for total contract duration of three (3) years, in accordance with the Town’s best interest and at the sole option of the Town.

### **SCOPE OF SERVICES**

## **Purpose**

The Town is soliciting innovative bid responses from interested and qualified bidders to provide collection services for the Town Court Clerk.

## **Background Information**

The Town is a municipal corporation government located in Middle Tennessee. The Town serves a population of approximately 50,000 individuals who live in the town limits.

Town is seeking to outsource the collections activities for delinquent accounts for the Town Court Clerk with an organization that can offer a best-practice solutions utilizing proven technology.

Town will have at least one person who manages the resulting contract(s) and will be the primary person to contact regarding any issues that need to be resolved.

Pursuant to Tennessee Code Annotated Section 40-24-105(d)(2) the amount paid to a collection agency as consideration for collecting Town Court fines and costs may not exceed 40% of the sums collected.

## **Project Roles and Responsibilities**

### Town's Role and Responsibility

- a. Coordinate overall project management.
- b. Provide Contractor with list of accounts receivable and all contact information held by Town.
- c. Provide Contractor with updated accounts receivable information as many times as necessary be it daily, weekly, bi-monthly or monthly.
- d. Right to Recall.  
The Town shall retain the right to recall any account at any time that it feels it is not in the best interest of the Town to pursue such account. The Town may recall all accounts that have been placed with the contractor if those accounts come under the jurisdiction of any bankruptcy court within the United States. Accounts that were sent in error will be recalled without impacting the customer's credit.
- e. Accounts in Bankruptcy.  
In any case where an account has been certified and assigned to the contractor and that account becomes the subject of a bankruptcy proceeding, the contractor shall immediately, on discovery, return the account to the Town and no fee will be generated on the remaining balance. All bankruptcy notification documents or information received by the contractor shall be forwarded along with the returned account to the Town.

## Contractor Role and Responsibility

- a. Contractor shall perform the collection services. Contractor shall not violate any local, state or federal law in the course of performing work on this project or on behalf of Town for this project.
- b. Contractor must act in a legal, ethical and professional manner adhering to the highest professional standards and ethics in providing the Town with a complete collection service capable of handling a large volume of delinquent accounts.
- c. Contractor shall receive delinquent accounts for collection from the Town and provide an immediate electronic or written acknowledgment of the receipt of those accounts to the sending Town department. The method of data transfer from the Town to Contractor will be by secure electronic email, secure FTP, CD-ROM, or Internet Web based technology of the data file. If for any reason, the Town is unable to provide electronic transfer of data, Contractor shall accept a hard-copy listing of referred accounts.
- d. The Contractor and any of its sub-contractors shall comply with the FACTA Red Flag rule and be Payment Card Industry (“PCI”) compliant, in the flow of collections where sensitive customer and payment information is stored, transmitted or updated.
- e. Contractor shall make its best effort on each and every delinquent account referred to it to collect the sums due and owing to the Town.
- f. Contractor shall within ten (10) calendar days of each month's end, using a form acceptable to the Town, furnish to the Town Court Clerk, a monthly accounting (as of the last day of the previous month) showing for each and every delinquent account from which money was collected during the month, the following information:
  - (1) names of the debtor and of the Town department that referred the delinquent account to the Contractor;
  - (2) amount collected that month;
  - (3) balance owing;
  - (4) contractor's commission amount to be included in the monthly collections report;
  - (5) customer account number, the amount and date originally referred to the Contractor, the amount collected to date; and
  - (6) upon request, and within a reasonable time, such other information and reports relating to its activities under this contract as the Administrator or a designated contact may reasonably require.
- g. Contractor shall with the monthly accounting remit all sums collected, less their fees for collection service, as of the report date.

- h. Contractor shall at any time during normal business hours and as often as the Town may deem necessary, make available for examination, by the Town, all of its records with respect to all matters covered by the contract.
- i. Contractor shall permit the Town to audit, examine and make copies of such records, and to make audits of all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by the contract. The Town may, at its option, permit the Contractor to submit its records to the Town in lieu of the retention requirements of this section.
- j. Upon request, the Contractor will provide a status report for Town Court Clerk summarizing collection activity during the preceding quarter, year or fiscal year. At a minimum, the report will include: 1) the Town account number; 2) the Debtor's name; 3) the amount and date referred; 4) the amount collected to date; and 5) date of last payment.
- k. Upon partial or complete termination of the contract, the Contractor shall return all of the affected collection matters previously referred to the Contractor, and shall render a final accounting upon such termination of the contract.
- l. Contractor shall be solely liable for any costs whatsoever incurred by it in the collection of sums referred to it for collection including but not necessarily limited to all costs, fees and charges for litigation involved with collection activities.
- m. Contractor shall establish and maintain a financial management system that establishes an account for Town Court.
- n. Contractor shall provide accurate, current, and complete disclosure of all financial transactions relating to the contract;
- o. Contractor shall effectively control and account for all municipal funds and contract property; and
- p. Contractor shall provide a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.
- q. At any time during normal Town business hours and at no charge or expense to the Town, the Contractor shall provide the status of any collection matters and be available for consultation and resolution of collection matters and any complaints that may be generated from the Contractor's collection activities or practices.
- r. Contractor may from time to time make recommendations concerning the Town's collection thresholds and establishing dollar thresholds and criteria for

collection actions and litigation, however, the final decision as to how to proceed shall be the decision of the Town.

- s. Contractor shall not incur costs for which it will seek reimbursement from the Town on any Town accounts without prior written approval for such costs.
- t. The agreement to provide services is with the expressed intention, understanding and knowledge that the relationship between the Town and the Contractor is that of an independent contractor. The Contractor shall have no power or authorization to bind or otherwise obligate the Town on any matter whatsoever. If in the opinion of the Contractor, the most cost effective method of collecting a debt is through settlement, the Contractor must obtain the Town's authorization to engage in any settlement discussion.
- u. The Contractor shall secure written approval from the Town before any records, data or any other information relating to this agreement are released to anyone other than those requiring the information for the performance of work under this agreement.
- v. The Contractor shall not advertise, market, or disclose to any other party any information relating to the making of this agreement, nor commercially use the Town's name without express written consent of the Town.
- w. In order to receive the highest possible allowance for collections the following requirements must be met:
  - (1) payments must be reported on a separate remittance daily for Town Court debts,
  - (2) payment should be posted to the most aged account of an individual,
  - (3) Contractor shall disclose any reversed or returned payment within forty-eight (48) hours of notification. On the next inventory report, an update to these accounts should be included;
  - (4) Contractor must maintain documentation evidencing that a reasonable effort has been made to collect the account; and,
  - (5) agency shall not report a debt to a credit bureau unless the debt is collectively fifty dollars (\$50.00) or greater.
- x. Contractor shall add all of its fees to the amount owed to the Town Court. Contractor shall not deduct its fees from amounts collected on behalf of the Town Court.
- y. Contractor shall provide Town with reports in a format agreed upon by the Parties of the following:

- (1) active accounts showing the following: individual name, citation number, date of citation, original amount turned over to Contractor, total payment, balance due, and grand total of accounts on file, both dollars and numbers; commission due Contractor; total paid to Town – monthly for that month’s activity only; and,
  - (2) all activity, giving the number of accounts, dollar amount, adjustments, recalls, returned, paid in full, dollars collected and percentage collected – daily, monthly and annually for all accounts; list of accounts declared uncollectible.
- y. Contractor shall provide and maintain an experienced collection service in the category proposed.
  - z. Contractor shall provide services in a diligent and non-discriminatory manner.
  - aa. Contractor shall expeditiously and diligently provide collection services on all claims referred and received by employing lawful, ethical, and non-discriminatory means, methods, and procedures.
  - bb. Contractor shall return all accounts determined to be “uncollectible” to the Town after a period of time determined by the Town.
  - cc. Contractor shall maintain documentation for all work performed and charges to the Town for the current fiscal year (ending June 30th) plus the last three fiscal years, and longer if required by law or other audit authority. Contractor’s records shall include but not be limited to accounting records (hard copy as well as computer readable data), written policies and procedures, subcontractor records and files, correspondence, general ledger entries, logs, and other supporting evidence deemed necessary by Town to verify and substantiate transactions pertaining to Town accounts turned over to the Contractor and any other work the contractor performs on behalf of the Town, related to this contract.
  - dd. All records shall be open for inspection and subject to audit and/or reproduction by the Town or the Town’s agent or its authorized representative.
  - ee. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, recordings, agreements, subcontracts, notes, daily diaries, logs, management reports, receipts, bank records, vouchers and memoranda, and any and all agreements, sources of information and matters that may in the Town’s judgment have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the contract and the related contract documents.

- ff. Contractor shall provide Town employees, agents or its authorized representatives with access to the Contractor's facilities, and all necessary records.
- gg. Contractor shall permit Town employees, agents or its authorized representatives to interview any current or former employee of the Contractor who worked on or had knowledge of Town business.
- hh. Contractor shall provide Town employees, agents or its authorized representatives with adequate workspace in order to conduct audits in compliance with this provision.
- ii. If an audit or examination in accordance with this provision discloses overcharges (of any nature) or errors resulting in monies due Town or embezzlement, fraud, or dishonesty, the actual cost of Town's audit and related legal fees (if any) shall be reimbursed to the Town. Any adjustments and/or payments, which must be made as a result of such audit or inspection of the Contractor's records, shall be made to the Town within a reasonable amount of time (not to exceed ninety (90) days) from the time of presentation of the Town audit findings to the Contractor.
- jj. Contractor shall provide the Town with proof of an annual audit (opinion audit); complete with a certificate of compliance with generally accepted accounting practices, relative to the collection of Town accounts at the end of each year.
- kk. Contractor shall provide to the Town, personnel that have experience in performing the kind of assessment(s) required in the Description of Required Performance Objectives and Deliverables above.
- ll. Contractor shall provide the very best services in order to collect the highest amount of accounts receivable.

#### Requirements of Contractor Regarding Legal Representation/Litigation Support

- a. The Contractor, at the direction of the Town Attorney, may represent the Town in all litigation relative to collection efforts for delinquent accounts turned over to the Contractor, including bankruptcies and enforcement of judgments.
- b. Contractor will provide the Town Attorney's Office with copies of all documents served or filed.
- c. When the Contractor(s) determine that an account should proceed to litigation, the Contractor(s) shall provide the Town Attorney's Office and Court Clerk's Office with a request to proceed with preparation of the account for litigation. If authorization is given, the Contractor(s) shall notify the Town that the account is proceeding to litigation. Contractor(s) shall prepare the account for

litigation, including preparation and filing of summonses and complaints, obtaining service of process, preparation and service of subpoenas, collection and preparation of exhibits, including those evidencing the account and payments made or not made, bad checks, etc., and all other work required for litigation including representation of the Town in court. Bidders should describe thoroughly all litigation services that they propose to provide.

- d. Contractor(s) shall use due diligence to collect any judgments obtained in the event that Contractor deems that legal process is appropriate for enforcement of the judgment, including levies, garnishments, attachments and actions to enforce the judgment. The Contractor may represent the Town in any legal process, including levies, garnishments, attachments and actions to enforce judgment, should Contractor recommend legal process. Bidders should describe thoroughly all collection of judgment services that they propose to provide.
- e. Contractor(s) shall prepare and file all notices of claims for accounts wherein the debtor is in bankruptcy proceedings. Proposers should describe thoroughly all bankruptcy services that they propose to provide.
- f. In the event the Contractor is involved in litigation in an attempt to make a collection on behalf of the Town and a counterclaim or affirmative defense is raised concerning any municipal ordinance or regulation or any other reason, the Contractor shall within twenty-four (24) hours of said counterclaim or affirmative defense notify the Town Attorney in writing. The Town reserves the right to choose an attorney or to have the Town Attorney substitute, stop or intervene in said litigation.
- g. Prior to any actions that would adversely affect the credit of the debtor, all claims for damages will be adjudicated in the appropriate courts and a legal right to be paid or the establishing of a legal right of the Town to be repaid shall be established in the appropriate court.

#### **SECTION IV: EVALUATION PROCESS**

The Town Evaluation Panel will first examine bids to eliminate those that are clearly non-responsive to the stated requirements. Therefore, Bidders should exercise particular care in reviewing the Bid Format required for this RFP.

The Evaluation Panel shall then independently score all remaining bids based upon the evaluation factors detailed herein. Upon completion of the scoring, the Panel may recommend short-listing the bids that are rated the highest.

The detailed evaluation that follows the initial examination may result in more than one finalist. At this point, the Evaluation Panel may request presentations by Bidders, carry

out Contract negotiations for the purpose of obtaining best and final offers, and conduct detailed reference checks on the short listed Bidders.

The Town reserves the right to contact any and all references to obtain, without limitation, information regarding the Bidder's performance on current and on previous projects. A uniform sample of references will be checked for each short listed Bidder.

The Town reserves the right to request clarifications or corrections to bids, or to issue such clarifications, modifications, and/or amendments as it may deem appropriate.

The Town reserves the right to withdraw this RFP at any time and for any reason or to reject all bids and to issue such clarifications, modifications, and/or amendments as it may deem appropriate.

Receipt of a bid by the Town neither confers any rights upon the Bidder nor obligates the Town in any manner.

The Town reserves the right to waive minor irregularities in bids, provided that such action is in the best interest of the Town.

Any such waiver shall not modify any remaining RFP requirements or excuse the Bidder from full compliance with the RFP specifications and other Contract requirements if the Bidder is awarded the Contract.

The Town reserves the right to award the contract to the highest ranked firm without further discussion who, in the opinion of the Town Evaluation Panel, has made the best overall bid that it is in the best interest of the Town to accept. The decision to award the contract may be based solely on the basis of written bids or the decision to reject any and all bids may be based solely on the basis of written bids if the Town Evaluation Panel determines that it is in the best interests of the Town to do so. The decision of the Town Evaluation Panel is final, there is no appeal.

The Town reserves the right to request oral presentations and interviews at any time prior to recommendation of award. Oral presentations are not mandatory for the awarding of the contract.

The Town reserves the right to contact and request additional information relating to or the clarification of the bids submitted.

### **1. Bid Evaluation Committee and Evaluation Factors**

A committee appointed by the Town will evaluate bids. Other agencies and consultants of the Town also may examine submitted documents. The factors to be considered in the evaluation of bids are listed below. The Town believes all these items to be of importance:

1. The Town will evaluate bids for compliance, completeness, responsiveness and feasibility of proposed business plan, considering

overall philosophy to providing the service, detailed plan of approach (including major tasks, subtasks and timeline), proposed service quality program, and Town's analysis of the risks posed by Bidder's proposed solution.

2. The Town will evaluate the overall experience of the Bidder and contract team, organizational structure, and the evaluations of Bidder's past and current performance with other clients. Please disclose your average client total debt referred for collection and your collection percentages.
3. The Town will evaluate the proposed schedule for compliance with the RFP. The bid shall state whether or not existing contractual commitments of similar scope and priority are likely to have a negative impact on the Bidder's ability to service this contract.
4. The Town will evaluate the cost to the Town, including guaranteed minimum net recovery and advantageousness to the Town of the Contractor's plan for charging for services rendered. Additionally, the Town will evaluate whether the proposed costs and terms are, in the Town's judgment, consistent with current market pricing, appropriate for the services provided, and commensurate with the level of quality expected.
5. The Town will evaluate the character, integrity, reputation, experience and efficiency of the Bidder, as well as, the ability, capacity, and financial strength of the Bidder to provide the service.
6. The Town will evaluate the previous and existing compliance by the Bidder with laws and ordinances relating to the contract or service.
7. The Town will evaluate the terms and conditions stated in the bid.
8. Furthermore, the Town will evaluate any other information that the Town deems relevant and material in evaluating the Bidders.

**It is estimated that the Town evaluation will result in a recommendation of an award of contract to the Town Council within sixty (60) days.**

### **Evaluation of Bids**

Bids will be evaluated using the criteria listed below to ascertain which bid best meets the needs of the Town. The items to be considered during the evaluation and the associated point values are as follows:

<u><b>Criteria</b></u>	<u><b>Maximum Points</b></u>
a. Firm's Overall Experience/Capabilities/Performance	40

b. Client References-Municipal Government preferred	25
c. Statement of Collection Plan	15
d. Absence of Potential Conflicts and Local Presence	5
e. Percentages to be charged to debtors	<u>15</u>
<b>TOTAL POSSIBLE SCORE</b>	<b>100</b>

**Evaluation Process**

A committee, as may be chosen by the Town Manager, of employees representing the Town, will evaluate the bids. The committee will rank the bids as submitted. The Town reserves the right to award a contract solely on the written bid.

At the discretion of the Town Manager, the Municipality reserves the right to request oral interviews with the highest ranked firms (short list); however oral interviews are not required to award this contract. The purpose of the interviews with the highest ranked firms would be to allow expansion upon the written responses. If interviews are conducted, up to a maximum of three (3) firms will be short-listed. A second score sheet will be used to score those firms interviewed. The final selection will be based on the total of all evaluators' scores achieved on the second rating. The same categories and point ranges will be used during the second evaluation as for the first. The highest ranked Bidder after the second scoring, if oral presentations are required, **may be invited to enter into final negotiations** with the Town for the purposes of awarding the contract.

**The Bidder with the highest total evaluation points may be invited to enter into contract negotiations with the Town. If an agreement cannot be reached, the second highest total evaluation Bidder may be contacted for negotiations.** This process may continue until successful negotiations are achieved. However, the Town reserves the right to terminate negotiations with any Bidder should it be in the Town's best interest. The Town reserves the right to reject any and all bids submitted.

**INSURANCE REQUIREMENTS**

The Contractor shall purchase and maintain for the duration of the contract insurance against claims which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

**A. MINIMUM SCOPE AND LIMITS OF INSURANCE**

**1. Workers Compensation**

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of Tennessee. Employers Liability is included with a minimum limit of \$500,000 per accident/per disease/per employee.

**2. Commercial General Liability**

Commercial General Liability insurance shall have a minimum limit per occurrence of \$2,000,000 and a minimum general aggregate of \$4,000,000.

**3. Automobile Liability**

Automobile Liability Insurance shall have a minimum combined single limit per occurrence of \$1,000,000. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles. It shall also include coverage for loading and unloading hazards.

**4. Cyber Liability**

Cyber Risk Liability shall be maintained to cover claims from real or alleged errors, omissions or negligent acts committed in the performance of professional services under this contract with limits of \$5,000,000. These limits may be met by a combination of primary and excess coverage.

**5. Errors and Omissions Liability**

Errors and Omissions Liability shall be maintained and have a minimum limit of \$5,000,000. This limit may be met by a combination of primary and excess coverage.

**6. Commercial Crime**

Commercial Crime (including Employee Dishonesty) shall be maintained and have a minimum limit of \$2,000,000.

**B. DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Any deductibles or self-insured retentions must be declared to the Town of Smyrna. The Contractor shall be responsible for all deductibles and self-insured retentions.

**C. OTHER INSURANCE PROVISIONS**

The policies are to contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability Coverages**

- a. The Town, its elected and appointed officials, agents, employees and volunteers shall be named as an additional insured as regards negligence by the Agency.
- b. The Agency's insurance shall be primary as respects the Town, its elected and appointed officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the Town of Smyrna shall be excess and non-contributory of the Agency's insurance.

**2. Workers Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the Town, its elected and appointed officials, agents, employees and volunteers for losses arising from work performed by the Contractor for the Town of Smyrna.

**3. All Coverages**

- a. Coverage shall not be canceled, suspended, or voided by either party (the Contractor or the insurer) or reduced in coverage or in limits except after 30 days written notice has been given to the Town of Smyrna. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy.
- b. Neither the acceptance of the completed work nor the payment thereof shall release the Contractor from the obligations of the insurance requirements or indemnification agreement.
- c. The insurance companies issuing the policies shall have no recourse against the Town of Smyrna for payment of premiums or for assessments under any form of the policies.
- d. Replacement certificates, policies or endorsements shall be provided to the Town for any such insurance expiring prior to the completion of services.
- e. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the Town, its elected and appointed officials, agents, employees and volunteers.

#### **D. ACCEPTABILITY OF INSURERS**

All required insurance shall be provided by a company or companies licensed to conduct business in the State of Tennessee. All insurance shall be underwritten by insurers with an A.M. Best Company ratings of no less than an A.

#### **E. VERIFICATION OF COVERAGE**

The Contractor shall furnish the Town with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. **The Certificates are to be received and approved by the Town before work commences and upon any contract renewal thereafter.**

Upon failure of the Contractor to furnish, deliver and maintain such insurance as requested, this contract, at the election of the Town, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

The Certificate of Insurance naming the "Town of Smyrna" as **Additional Insured** shall be addressed to the attention of:

Town of Smyrna  
Department of Safety & Risk Management  
ATTN: Kay Charles  
315 S Lowry St  
Smyrna, TN 37167

The Certificate of Insurance may also be submitted electronically to [kay.charles@townofsmyrna.org](mailto:kay.charles@townofsmyrna.org).

The Town reserves the right to request complete certified copies of all required insurance policies at any time.

## **F. SUBCONTRACTORS**

Agency shall include all subcontractors as insureds under its policies **OR** shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The Town of Smyrna reserves the right to request copies of subcontractor's Certificates at any time.

## **G. WORKERS' COMPENSATION INDEMNITY**

In the event the Contractor is not required to provide or is exempt from providing workers' compensation coverage, the parties hereby agree that the Contractor, its owners, agents and employees will have no cause of action against, and will not assert a claim against the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers, under any circumstances. The parties also hereby agree that the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers shall in no circumstance be, or considered as, the employer or statutory employer of the Contractor, its owners, agents and employees. The parties further agree that the Contractor is a wholly independent Contractor and is exclusively responsible for its employees, owners, and agents. Contractor hereby agrees to protect, defend, indemnify and hold the Town of Smyrna, its elected and appointed officials, agents, employees and volunteers harmless from any such assertion or claim that may arise from the performance of this contract.

## **HOLD HARMLESS AND INDEMNITY REQUIREMENT:**

Contractor shall indemnify and hold harmless, to the maximum extent permitted by law, the Town of Smyrna and its officers, agents, employees, volunteers, from and against any and all liability, damages, losses, (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), and costs (including reasonable attorney's fees, litigation, arbitration, mediation, appeal expenses) which in whole or in part are caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed by or utilized by the Contractor in Contractor's performance of this Agreement.

The contractor further agrees to protect, defend, and save the Town, its elected and appointed officials, agents, employees and volunteers while working in the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind of character, including the cost of their defense, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts of omissions of the contractor and/or its agents, employees, subcontractors, representative of the Town under this agreement.

Pursuant to Tennessee Attorney General Opinion 93-01, the Town will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.

**APPLICABLE LAW:** Any contract resulting from this RFP shall be governed by and construed under the laws of the State of Tennessee.

**BID FORM**

**Collection Agency Services for Town Court Clerk’s Office**

All prices must include all costs. Costs included in the bid prices shall include services rendered and labor, accessories and any other standard equipment necessary to provide this service. Pricing shall be effective for one (1) year from the date of bid award. The Town is not subject to sales tax.

In compliance with this RFP, and subject to all conditions thereof, the undersigned agrees that if this bid response is accepted within ninety (90) days from the date of award, to furnish any or all of the services upon which price(s) are quoted, at the price set opposite each item unless otherwise specified.

THIS RESPONSE SHALL BE REJECTED IF NOT SIGNED WHERE INDICATED.

Name of Firm: \_\_\_\_\_

Form of Business: \_\_\_\_\_

Authorized Signature and Date:

\_\_\_\_\_

Name Printed and Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Compensation; Method of Payment**

- A. Contractor shall be compensated based on monies actually collected on all accounts referred based on the schedule submitted for collection services in this bid.
- B. After a delinquent account has been referred to the Contractor and it is subsequently determined by the Town that the account was not delinquent at the time it was referred or if no contact has been made or that it is in the best interest of the Town to not refer the account over to the contractor, the Contractor shall return the account immediately and at no cost to Town.
- C. After the Contractor has made contact with a debtor, Town may not recall that account from the Contractor (other than as allowed under the termination sections) unless Town receives a direct payment from the debtor as a result of new charge or debt or a payment on

an account where the Contractor has not collected any money in ninety (90) days, Town may recall that account and Contractor shall not be entitled to any compensation on that account.

D. Contractor shall remit to Town all monies collected on accounts during the preceding month, by the tenth (10<sup>th</sup>) day of the succeeding month.

E. The Contractor is not entitled to any compensation other than is expressly provided for in this contract.

2. **Taxes** Town shall not be responsible for any taxes that are imposed on Contractor. Furthermore, Contractor understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to Town.

3. **Copyright, Trademark, Service Mark, or Patent Infringement**

A. Contractor shall, at its own expense, be entitled to and shall have the duty to defend any suit which may be brought against Town to the extent that it is based on a claim that the products or services furnished infringe a copyright, Trademark, Service Mark, or patent. Contractor shall further indemnify and hold harmless Town against any award of damages and costs made against Town by a final judgment of a court of last resort in any such suit. Town shall provide Contractor immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable Contractor to do so. No costs or expenses shall be incurred for the account of Contractor without its written consent. Town reserves the right to participate in the defense of any such action. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon Town unless approved by the Town Attorney and, where required, the Town Council.

B. If the products or services furnished under this contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing Contractor's obligation to satisfy the final award, Contractor may at its option and expense:

- i) Procure for Town the right to continue using the products or services.
- ii) Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to Town, so that they become non-infringing.
- iii) Remove the products or discontinue the services and cancel any future charges pertaining thereto.
- iv) Provided, however, that Contractor will not exercise option b.iii. until Contractor and Town have determined that options B.i. and B.ii. are impractical.

C. Contractor shall have no liability to Town, however, if any such infringement or claim thereof is based upon or arises out of:

- i) The use of the products or services in combination with apparatus or devices not supplied or else approved by Contractor.
- ii) The use of the products or services in a manner for which the products or services were neither designated nor contemplated.
- iii) The claimed infringement in which Town has any direct or indirect interest by license or otherwise, separate from that granted herein.

#### **4. Termination of the Contractor's Services**

The Contractor's services may be terminated in whole or in part:

- A. By mutual consent of the parties.
- B. For the convenience of Town, provided that Town notifies the Contractor in writing of its intent to terminate under this paragraph at least thirty (30) days prior to the effective date of the termination.
- C. For the convenience of Contractor, provided that Contractor notifies the Town in writing of its intent to terminate under this paragraph at least thirty (30) days prior to the effective date of the termination and surrenders all documentation relating to collection actions initiated. No fee will be due on collections received after the termination date regardless of when collection process is initiated and all collections received by the Contractor after the termination date will be turned over to the Town by the tenth (10<sup>th</sup>) of the month following the month in which they are collected or were received.
- D. For cause, by either party where the other party fails in any material way to perform its obligations under this contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specificity the grounds therefore, and the other party fails to remedy the problem within fifteen (15) days after receiving the notice.
- E. For failure to remit monies due to the Town by the dates specified within this contract.
- F. Failure to provide an adequate accounting for monies collected.
- G. Should Contractor fail to fulfill in a timely and proper manner its obligations under this contract or if it should violate any of the terms of this contract, Town shall have the right to immediately terminate the contract. Such termination shall not relieve Contractor of any liability to Town for damages sustained by virtue of any breach by Contractor.
- H. Should funding for this contract be discontinued, Town shall have the right to terminate the contract immediately upon written notice to Contractor.
- I. Town may terminate this contract at any time upon thirty (30) days written notice to Contractor.

**5. Duties Upon Termination or Expiration of Contract**

A. If Town terminates the Contractor's services in whole or in part for convenience, Town may, at its option, recall any or all delinquent accounts which are covered by such termination except those accounts currently involved in litigation, or that have been reduced to judgment, or those accounts where payment arrangements have been made and the Contractor shall deliver to Town all such recalled delinquent accounts within ten (10) days of receipt of the recall notice. After the delinquent accounts are (or should have been) returned to Town, the Contractor shall have no further right to any monies collected from, or on those accounts.

B. The provisions of this contract will remain in full force and effect with respect to those accounts retained by the Contractor until those retained accounts are paid in full or satisfied.

C. If the Contractor's services are terminated in whole or in part for cause, the Contractor shall, within ten (10) days of the receipt of the termination notice, return any terminated delinquent accounts to the Administrator, immediately cease all collection activities on the affected delinquent accounts and shall have no further right to any monies collected from, or on those accounts after the accounts have (or should have) been returned to the Town Court Clerk.

D. If Contractor receives payment exceeding the amount to which it is entitled under subsection A or C of this section, he shall remit the excess to the Town within thirty (30) days.

E. If the Contractor's services are terminated, for whatever reason, the Contractor shall receive no compensation under this contract, other than that explicitly allowed under this section.

F. If after termination, a final certified audit has not been performed, Town may, at its option, have one conducted at Contractor's sole expense.

**6. Compliance with Laws** Contractor agrees to comply with any applicable federal, state and local laws and regulations.

**7. Notices and Designation of Agent for Service of Process**

A. Notice of assignment of any rights to money due to Contractor under this contract must be mailed or hand delivered to the attention of Town Attorney, Town of Smyrna 315 S. Lowry Street, Smyrna, TN 37167.

B. Notices to Contractor shall be mailed or hand delivered to:

**Contractor:**

**Attn:**

**Address:**

- C. Contractor designates the following as the Contractor's agent for service of process and will waive any objection to service of process if process is served upon this agent:

**Designated Agent:**

**Attn:**

**Address:**

**8. Ownership; Publication, Reproduction and Use of Material**

Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this contract shall be the property of Town, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents or other materials. Upon termination, the Contractor shall, within 30 days, deliver to the Town all delinquent accounts, documents, records, work product, and other materials relating to this contract.

**9. Town's Rights and Obligations**

- A. Town does not guarantee the Contractor either a certain number or a certain total dollar value of collection referrals during the term of this contract. Also, Town retains sole discretion in determining what delinquent accounts shall be "collection agency matters". Town does agree that once it determines a delinquent account to be a "collection agency matter" that such delinquent account shall, for the life of this contract, be referred only to the Contractor. **Specifically excluded from this contract are delinquent property, business, and other taxes that may be administered and collected by the Town.**
- B. Other than as is explicitly set forth in this contract, Town shall not be obligated to provide the Contractor with any other monies, goods, or services.
- C. Prior to any contact being made with the debtor by the Contractor, the Town may give notice to the Contractor recalling a delinquent account and such delinquent account shall be returned to Town within seven (7) days of such notice being received. After receipt of a notice of recall, the Contractor shall have no right to any monies collected from, or on the delinquent account (s), nor shall Contractor receive any other compensation from Town for the delinquent account recalled.
- D. In the event Contractor is involved in litigation in an attempt make a collection hereunder and a counterclaim or affirmative defense is raised concerning any municipal ordinance or regulation or any other reason, the Contractor shall within 24 hours of said counterclaim or affirmative defense notify the Town Attorney in writing. Town reserves the right to choose an attorney or to have the Municipal Attorney substitute or intervene in said litigation.
- E. Prior to any actions that would adversely affect the credit of the debtor, all claims for damages will be adjudicated in the appropriate courts and a legal right to be paid or the establishing of a legal right of the Town to be repaid shall be established in the appropriate court.

10. **Permits, Laws and Taxes** The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this contract. All actions taken by the Contractor under this contract shall comply with all applicable federal and state statutes (to include the Fair Debt Collection Practices Act, 15 U.S.C. 1692), ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this contract.
11. **Maintenance of Records** Contractor shall maintain documentation for all charges against Town. The books, records, and documents of Contractor, insofar as they relate to work performed or money received under the contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by Town or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
12. **Confidentiality of NCIC Driver License & Registration Information** Contractor shall maintain the confidentiality of all driver license and registration information obtained from the Town through NCIC and shall not disclose such information to any third party.
13. **Monitoring** The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by Town, or their duly appointed representatives.
14. **Town Property** Any Town property, including but not limited to books, records and equipment, that is in Contractor's possession shall be maintained by Contractor in good condition and repair, and shall be returned to Town by Contractor upon termination of the contract. All goods, documents, records, and other work product and property produced during the performance of this contract are deemed to be Town property.
15. **Modification of Contract** This contract may be modified only by written amendment executed by all parties and their signatories hereto.
16. **Partnership/Joint Venture** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.
17. **Waiver** No waiver of any provision of this contract shall affect the right of any party thereafter to enforce such provision or to exercise any right or remedy available to it in the event of any other default.
18. **Employment** Contractor shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

**19. Non-Discrimination** It is the policy of the Town not to discriminate on the basis of age, race, sex, color, national origin, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities. With regard to all aspects of this contract, Contractor certifies and warrants it will comply with this policy. No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in Town's contracted programs or activities, on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with Town or in the employment practices of Town's Contractors. Accordingly, all proposers entering into contracts with Town shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

**20. Insurance** During the term of this Contract, Contractor shall maintain comprehensive general liability insurance with limits of not less than one million dollars, as well as professional liability, commercial crime policy, automotive and workers' compensation insurance policies. A certificate of insurance, evidencing said coverage shall be provided to Town prior to commencement of performance of this Contract. Throughout the term of this contract, Contractor shall provide an updated certificate of insurance upon expiration of the current certificate.

**21. Gratuities and Kickbacks** It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or bid therefore. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Town contracts.

**22. Indemnification and Hold Harmless** Contractor shall indemnify and hold harmless Town, its officers, agents and employees from:

- A. Any claims, damages, costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of contractor, its officers, employees and/or agents, including its sub or independent contractors, in connection with the performance of the contract, and,

- B. Any claims, damages, penalties, costs and attorney fees arising from any failure of Contractor, its officers, employees and/or agents, including it sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. Contractor shall pay Town any expenses incurred as a result of Contractor's failure to fulfill any obligation in a professional and timely manner under this Contract.
23. **Attorney General Opinion 93-01** Pursuant to Tennessee Attorney General Opinion 93-01, Town will not indemnify, defend or hold harmless in any fashion the Contractor from any claims arising from any failure, regardless of any language in any attachment or other document that the Contractor may provide.
24. **Attorney Fees** Contractor agrees that, in the event either party deems it necessary to take legal action to enforce any provision of the contract, and in the event Town prevails, Contractor shall pay all expenses of such action including Town's attorney fees, expenses, and costs at all stages of the litigation and dispute resolution.
25. **Assignment--Consent Required** The provisions of this contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to Contractor under this contract, neither this contract nor any of the rights and obligations of Contractor hereunder shall be assigned or transferred in whole or in part without the prior written consent of Town. Any such assignment or transfer shall not release Contractor from its obligations hereunder. NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF TOWN ATTORNEY, TOWN OF SMYRNA, 315 S. LOWRY STREET, SMYRNA, TN 37167
26. **Entire Agreement** This contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.
27. **Force Majeure** No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, or other cause of similar or dissimilar nature beyond its control.
28. **Governing Law** The validity, construction and effect of this contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that the Contractor may provide.
29. **Venue** Any action between the parties arising from this agreement shall be maintained in the courts of Rutherford County, Tennessee.

**30. Severability** Should any provision of this contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this contract.

**31. Effective Date** This contract shall not be binding upon the parties until it has been signed first by the Contractor and then by the authorized representatives of the Town. When it has been so signed, this contract shall be effective as of the date first written above.



## AGREEMENT

This Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_, (the “Bidder”) and the Town of Smyrna, Tennessee, a Tennessee municipal corporation (the “Town”) for the purpose of \_\_\_\_\_.

**WHEREAS**, the Bidder has submitted a quotation for the provision of certain products and/or services to the Town, all in accordance with the terms of the Request for Proposals attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit A (the “RFP”), and which Quotation from the Bidder is attached hereto and incorporated herein by reference as if set forth at length verbatim as Exhibit B (the “Quotation”); the RFP and the Quotation, together with any and all ancillary documents thereto, shall be collectively referred to herein as the “Bid Documents”); and

**WHEREAS**, the Town now desires to accept the Bidder’s quotation, in accordance with the terms set forth in such Bid Documents.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby agree as follows:

1. Acceptance of Bid Documents. The terms of the Bid Documents, as incorporated herein by reference, are hereby accepted by the parties hereto. The Bidder hereby agrees to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein. The Town hereby accepts the Bidder’s quotation to provide the goods and/or services contemplated by such Bid Documents in accordance with the terms set forth therein.

2. Entire Agreement. This Agreement, including the exhibits and any other documents referred to herein or therein, which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, agreements, promises, warranties, covenants or undertakings other than those expressly set forth herein or therein. This Agreement supersedes all prior written or oral agreements and understandings between the parties with respect to its subject matter and may not be altered, modified or amended, in whole or in part, except by the express written authorization and consent of the parties hereto.

3. Severability. This agreement constitutes the product of negotiations of the parties hereto and any enforcement of hereof will be interpreted in a neutral manner and not more strongly against any party based upon the source of the draftsmanship of this Agreement. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions hereof shall continue to be fully effective.

4. Limitation of Liability. The Town of Smyrna shall not be liable for any loss, claim, expense or damage caused by, contributed to by or arising out of the acts or omission of Bidder or third parties, whether negligent or otherwise.

5. Warranties. The Bidder warrants to the Town that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects, suitable for the purpose for which the materials and equipment are furnished, and in conformance with the Agreement. All work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

6. Indemnification. The parties hereto agree that Vendor shall indemnify The Town for any and all claims of negligence, tortious conduct or otherwise unlawful acts committed by Vendor in the performance of their obligations under the terms of the original agreement or this addendum to agreement and Vendor agrees to pay any and all costs associated with the enforcement of the terms of this indemnity agreement by The Town, including but not limited to court costs, civil judgments, assessments or any other reasonable fees associated therewith. This clause shall survive the expiration or termination of the original contract or this addendum to agreement and shall remain in full force and effect until the expiration of any applicable statute of limitation. In addition, The Town is prohibited by Tennessee law, as a political subdivision of the State of Tennessee, to agree to indemnify any private or public Vendor or contracting party and all reference to the local government providing indemnification shall be null and void by attaching signature to this addendum.

7. Attorney Fees. The parties hereto agree that The Town shall be in no event liable for any attorney's fees which Vendor may incur due to breach of the original agreement or this addendum agreement by either party; and further, The Town shall not acquiesce to any term of the original contract/agreement that indicates or infers The Town may or shall be responsible for the fees of another party or the Vendor's attorney fees.

8. Mediation. The Town may, at its option, require the attempted resolution of any dispute arising under the original contract or this addendum to agreement by mediation prior to the filing of any lawsuit or other claim. Should any dispute arise, Vendor shall provide the Town notice of any intent to file suit by certified mail. The Town shall notify the Vendor of its intent to exercise its right to mediation within thirty (30) days of receiving such notice. If the Town does not exercise its right to mediation, Vendor may file suit. Any mediator selected under this clause shall be agreed upon by the parties and the costs of such mediation shall be divided and paid equally between the parties.

9. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of Tennessee, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee.

10. Applicable Law / Choice of Forum and Venue. The parties' choice of forum and venue shall be exclusively in the courts of Rutherford County, Tennessee. Any provision of the Agreement held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the date set forth above.

BIDDER:

\_\_\_\_\_

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

Title: \_\_\_\_\_

ATTEST:

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TOWN OF SMYRNA, TENNESSEE

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

Name: Mary Esther Reed

Title: Mayor

ATTEST:

\_\_\_\_\_  
Dianne Waldron, Town Clerk

**SECTION VI - SPECIFICATION COMPLIANCE**

Unless otherwise noted, all quotations for the courts collection agency services shall be in complete accordance with the specifications detailed herein.

Proposers shall note in the space provided below any exceptions or deviations in any way from the specifications of any section of this RFP. Quotations should provide complete detail of exceptions or deviations.

**Proposal Exceptions**

Section	Brief Description
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By signature below, proposer acknowledges any submittal to be in full compliance with all aspects of each section of the RFP not noted above. The undersigned hereby declares that no person or party other than the undersigned has any interest whatever in this proposal, that it is without any connection or collusion with any person or persons making or having made any proposal for the same work and without any previous understanding with such person or persons as to relative prices, obviating competition, and that it is made in good faith.

\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
REPRESENTATIVE NAME & TITLE

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
E-MAIL ADDRESS

(This form is due by June 5, 2018)

EXHIBIT A

**LETTER OF INTENT TO SUBMIT PROPOSAL**

{Letterhead}

Mr. Rex S. Gaither  
Town of Smyrna  
315 South Lowry  
Smyrna, TN 37167

Dear Rex,

It is the intent of this Agency to deliver a proposal for Courts Collection Agency Services to the Town of Smyrna. The proposal is to be publicly opened on June 19, 2018 at 2:30p.m. CST.

Sincerely,

{Officer}

**The contact person for our Agency will be:**

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

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Date: \_\_\_\_\_

**You may email your “Letter of Intent to Submit Proposal” to:**

**[rex.gaither@townofsmyrna.org](mailto:rex.gaither@townofsmyrna.org)**