



MEMORANDUM

TO: CIS

FROM: Cynthia Ward, Legal Department

DATE: January 11, 2010

SUBJECT: Agreement for Collection and Litigation Services

Enclosed please find (1) signed original Agreement for Collections and Litigation Services between the Illinois State Toll Highway Authority and NCO Financial Systems, Inc. A duplicate signed original has been sent to NCO for their records.

Encl.

Cc: Procurement – Barb Quan (via email)
Finance Department – Leslie Savickas (via email)
Legal Department – Victor Azar (via email)

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

AND

NCO FINANCIAL SYSTEMS, INC.

AGREEMENT FOR COLLECTIONS AND LITIGATION SERVICES

This Agreement made and entered into this ^{JANUARY 2010} ~~7~~ th day of ~~December, 2009~~ by and between NCO Financial Systems, Inc. ("NCO"), with offices at 507 Prudential Road, Horsham, Pennsylvania 19044 and local offices at 600 Holiday Plaza Drive, Suite 300, Matteson, Illinois 60443 and The Illinois State Toll Highway Authority ("Tollway") with offices at 2700 Ogden Avenue, Downers Grove, Illinois 60515.

WITNESSETH:

WHEREAS, on September 24, 2009 the Board of Directors of the Tollway, an instrumentality and administrative agency of the State of Illinois, passed a resolution, number 18860, pursuant Section of 30 ILCS 500/1-10(b)(7) and 44 Ill. Adm. Code sec. 1.10(d)(7) authorizing the Tollway to retain NCO Financial Systems, Inc., for collections and litigation services; and

WHEREAS, NCO Financial Systems, Inc. was one of two (2) collection firms selected, based upon a combined scoring of technical specifications and pricing, to perform collection and litigation services. The Tollway and NCO have successfully negotiated this Agreement for collection and litigation services for unpaid accounts that the Tollway may desire NCO to provide, including litigation to collect on unpaid accounts.

NOW, THEREFORE, for and in consideration of the above recitals and the terms and conditions contained in the parties' Agreement (as defined below), the parties agree as follows:

1. Attached hereto are the following documents that together comprise the Parties' Collection and Litigation Services Agreement:

- A. This Tollway – NCO “Agreement for Collection and Litigation Services”;
- B. The Standard Terms and Conditions (Exhibit 1);
- C. Tollway’s Request for Proposal for Collection and Litigation Services RFP # 09-0065;
- D. NCO’s Proposal for Collection and Litigation Services RFP # 09-0065;
- E. Settlement Guidelines (Exhibit 2).

The aforementioned documents shall have the order of precedence listed. Together they comprise the entire Agreement between the parties. In the event of a conflict the first named document shall take precedence over the subsequent named document – except in those instances where the parties have negotiated changes and clarifications that are detailed in this or subsequent Agreements. Terms that are undefined in this Agreement may be defined in the RFP and the Standard Terms and Conditions.

2. NCO understands that no attorney may represent the Tollway unless and until the individual attorney has been appointed a Special Assistant Attorney General by the Illinois Attorney General. Attorneys appointed as Special Assistant Attorney General shall comply with the terms of the Illinois Attorney General’s Litigation Manual in all matters in which they represent the Tollway. NCO shall promptly advise the Tollway if any of its attorneys working on Tollway matters has become subject to any professional disciplinary proceeding or is otherwise charged with misconduct that might lead to loss or suspension of an attorney’s law license.

3. NCO agrees to undertake the collection and litigation of such accounts as the Tollway refers to NCO and to use due diligence and employ such lawful means, methods, and procedures as in its judgment, discretion, and experience it believes will best effect the collection of

such accounts. The Tollway may from time to time provide NCO with guidelines for settling claims and NCO agrees to follow such guidelines.

4. The Tollway must give its prior written approval, unless otherwise approved in the RFP process, before work is assigned to a subcontractor and has the right in its commercially reasonable discretion to reject a subcontractor proposed to do work on behalf of the Tollway or to direct that a subcontractor be relieved from doing such work. Any subcontractor must comply with the applicable terms of this Agreement. NCO will be responsible for any and all subcontractor actions with respect to work being done on behalf of the Tollway pursuant to this contract.

5. NCO shall not make phone calls to debtors except during the hours of Monday – Thursday, 8:00 a.m. to – 9:00 p.m.; Friday 8:00 a.m. -6:00 p.m. Saturday 8:00 a.m. – 1:00 p.m.

6. The Tollway will not be liable for any expense incurred by NCO incidental to the settlement or the realization of accounts placed with NCO for collection except as herein provided. NCO shall reimburse the Tollway for any expenses assessed to the Tollway by it or its electronic toll collection vendor as a result of any errors or omissions in data transmission or other actions that require the Tollway to expend funds to correct. NCO will be responsible for the costs of integrating its system to the Tollway's, including those costs passed onto the Tollway by the Tollway's electronic toll collection vendor.

7. NCO agrees to remit daily to the Tollway the full amount of all monies, collected on accounts placed by the Tollway with NCO for collection. NCO will invoice the Tollway on a monthly basis for the commissions calculated at a rate of:

- a. Fourteen percent (14 %) of gross dollars collected, less commissions already invoiced on returned payments each month for Collection Services as defined in the Standard Terms and Conditions;

- b. Twenty-one percent (21%) of gross dollars collected, less commissions already invoiced on returned payments each month for Litigation Services as defined in the Standard Terms and Conditions;
- c. No charge (0%) of gross dollars collected, less commissions already invoiced on returned payments each month for any Administrative Services as defined in the Standard Terms and Conditions.
- d. Commissions shall not exceed \$3,500,000 during the initial Contract term. This is the upper limit of compensation according to the terms and conditions of the RFP 09-00065. The Tollway's Board of Directors, may in their sole discretion, increase the upper limit of compensation and such increase shall not be deemed a change to this Contract as set forth in paragraph 20 below.

8. NCO agrees to post payments received to the appropriate customer's account within 24 hours of receipt.

9. NCO will provide the Tollway a nightly interface of all transactions processed through its tracking system for that day. This is necessary in order for driver's license and plate suspensions to be released timely. The Tollway will provide NCO with a daily interface of transactions processed directly to/by the Tollway.

10. If credit cards will be used as a method of paying Tollway debts, NCO must provide proof of its compliance with PCI DSS requirements.

11. NCO understands that in the event the Tollway applies a payment to an amount owed on an account assigned to NCO as a result of federal or state offset or refund, Tollway sponsored amnesty program or Tollway initiated billing or adjusted payments, the Tollway shall notify NCO of such payment applied. NCO shall not be entitled to a fee based on such payment

unless NCO can show that its collection effort was responsible for the customer to make the payment to the Tollway.

12. The Tollway may at any reasonable time examine NCO's records pertaining to accounts referred to NCO under this Agreement. The Tollway, the Illinois Office of the Executive Inspector General, and/or the Inspector General of the Illinois Attorney General shall have the authority to conduct audits and investigations and NCO will give its full cooperation to said investigations, including providing any access to all information and personnel necessary to conduct those investigations.

13. This Agreement shall run for a period of approximately three (3) years until the earlier of September 30, 2012 or termination for convenience of the Agreement by the Tollway. The Tollway may renew the Contract for a total of two (2) years in one of the following manners: a) One renewal covering the entire renewal allowance; b) individual one-year renewals up to including the entire renewal allowance; and (c) any combination of full or partial year renewals up to and including the entire renewal allowance. The Tollway will provide NCO at least thirty (30) days advance written notice of the termination of this Agreement for convenience. The Tollway may terminate the Agreement at any time for convenience for any reason.

14. Upon the expiration of this Agreement or the Tollway's termination of this Agreement for convenience, NCO shall return all Tollway accounts and associated records to the Tollway within 15 days. NCO will be entitled to receive commissions on any amounts collected on those transferred files for 30 days after the date of transfer unless such collection resulted from post-transfer collection efforts by the Tollway. However, upon the termination of the agreement for convenience, NCO may, retain for collection in accordance with the terms hereof the following categories of accounts: (i) any accounts upon which a partial payment has been made within the

three (3) months immediately prior to expiration or termination, (ii) any accounts that have been referred to NCO within 30 days or less before the date of contract expiration or termination for convenience and (iii) any accounts that NCO has placed in litigation for collection in accordance with the terms unless directed otherwise by the Tollway. As to those accounts that fall within categories described in (i), (ii) and (iii) list above only, NCO will return to the Tollway at the end of 90 days, unless the termination for convenience is exercised less than 90 days prior to the ending of a contract extension, in which case NCO shall return the files 15 days prior to the expiration of the contract extension, for Contract wind down from the effective date of the expiration or termination of this Agreement all remaining accounts. The Tollway will pay NCO for commissions earned through the end of the period including all commissions earned through September 30, 2012 or if the contract extensions are exercised the end date of the extensions but under no circumstances shall commissions be paid for collections received beyond September 30, 2014.

15. A recommendation for no further action on claims exceeding \$1,000 must include a certification that the debt is uncollectible in accordance with the Attorney General's requirements (30 ILCS 205/2). NCO shall provide the information on a form provided by the Tollway which conforms to the Attorney General's specifications.

16. Nothing herein contained shall be construed as obligating to the Tollway to place accounts with NCO for collection or litigation.

17. This Agreement shall be subject to and governed by the laws of the State of Illinois.

18. The Tollway may conduct reviews of NCO's performance under this Agreement. NCO shall cooperate with the Tollway in such reviews, which may require that NCO provide records of its performance and billing within 7 days of the Tollway's request.

19. NCO shall be solely responsible for the negligent acts and omissions of its agents, employees and subcontractor in their performance of NCO's duties under this Agreement. NCO represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the Tollway determines that any individual performing services for NCO does not meet this standard of performance the Tollway shall be entitled to demand that the individual be relieved from handling Tollway-related matters.

20. This Agreement, including any attachments or amendments, or documents referred to herein, constitutes the entire agreement between the Tollway and NCO concerning the subject matter of this Agreement. Modifications and waivers must be in writing and signed by authorized representatives of the parties. This Agreement and all documents incorporated by reference or attached hereto represent the entire Agreement between the parties. Neither party has relied on any representations made by the other that have not been incorporated into this Agreement.

21. Any provision of this Agreement officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this Agreement shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination of this Agreement, including without limitation provisions relating to confidentiality, warranty, ownership and liability.

22. NCO shall be required to pay the full amount of tolls, if any, incurred by it during the duration of the Agreement. The Illinois Tollway will not refund said tolls. Furthermore, in the event that a final determination is made by the Tollway that NCO has failed to pay any required tolls and associated fines, the Tollway is authorized to take steps necessary to withhold the amounts of the unpaid tolls and fines from any payment due NCO by the Tollway.

23. NCO warrants that it shall comply with all Federal, State, and local laws, statutes, ordinances, rules and regulations including: The Illinois Toll Highway Act; Workers' Compensation Laws; Minimum Salary and Wage Statutes; and Fair Debt Collection Act.

24. The Tollway can terminate this agreement at any time for cause if NCO fails to comply with any term of this agreement. In the case of termination for cause, NCO shall transfer all files and account to the Tollway within 15 days of the Notice of Default, unless the Tollway directs otherwise. In the case of termination for cause, NCO shall be paid the agreed upon contingent fee of 14 % for moneys received due to collection efforts prior to litigation and 21 % for moneys received due to collection efforts under litigation services which were collected by the Tollway for which NCO was responsible for causing the customer to make payments for a period not to exceed 30 days after the effective date of the termination.

25. NCO shall indemnify and hold harmless the Tollway, its officers, directors, agents and employees from any and all claims, suits, actions and fees of every nature of description, arising from, growing out of or connected with the work to be performed under the Agreement or on account of or in consequence of any neglect in safeguarding said work; or on account or in consequences of using unacceptable materials in performing said work; or because of any act or omission, neglect or misconduct of NCO and his subcontractor(s); or because of any claims or amount recovered by reason of any infringement of any patent, trademark or copyright; or by reason of the violation of any law, ordinance, order or decree. Such indemnity shall not be limited by reason of the enumeration of any insurance coverage provided by NCO. Nothing herein contained shall be construed as prohibiting the Tollway, its officers, directors, agents or employees from retaining their own legal counsel and defending any actions or suits brought against them and,

in such event, NCO shall also be liable for all costs and fees incurred in defense of any such claim, demand or suit.

26. NCO has identified Brilljent, LLC as a subcontract in order to meet the voluntary BEP goal of ten percent (10%). NCO will strive to exceed this stated goal and follow the notification and reporting requirements to document BEP participation in this contract Brilljent, LLC is hereby approved as a subcontractor. NCO agrees to notify the Tollway in the event this subcontractor is no longer contracted by NCO to perform the stated services or is no longer a certified BEP. NCO will use its best efforts to replace this subcontractor with a qualified BEP subcontractor in the event the subcontractor is no longer contracted or no longer certified as a BEP. NCO shall provide the Tollway quarterly reports on BEP participation on forms or format provided by the Tollway.

27. NCO must submit a Type 2 SAS70 report within 18 months of contract execution and annually thereafter.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate by duly authorized representatives thereof on the date first above written.

Illinois State Toll Highway Authority

NCO Financial Systems, Inc.

BY: Michael T. K 1/7/10

BY: [Signature] 12/18/09

TITLE: Acting Executive Director

TITLE: elf

Approved as to Form and Constitutionality

BY: Michael F. Cohen, AAG
Michael F. Cohen 1/7/10

TITLE: Chief of Finance

BY: [Signature] 1/7/10

TITLE: General Counsel

“EXHIBIT B”

Exhibit will be attached upon approval.”



*The Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, Illinois 60515-1703
630/241-6800
Fax: 630/241-6100
T.D.D. 630/241-6898
Road Conditions: 1-800-TOLL-FYI
www.illinoistollway.com*

January 11, 2010

NCO Financial Systems, Inc.,
Legal Department/Contracts
507 Prudential Road
Horsham, PA 19044

Re: Agreement for Collection and Litigation Services

To Whom It May Concern:

Enclosed please find a signed original Agreement for Collections and Litigation Services between the Illinois State Toll Highway Authority and NCO Financial Systems, Inc. This copy is for your records. Thank you.

Sincerely,

A handwritten signature in cursive script that reads 'Cynthia Ward'.

Cynthia Ward, Executive Secretary
Legal Department

Encl.