

## CONTRACT FOR SERVICES

### I. INTRODUCTION.

This Agreement is between the City of Lincoln, Nebraska (City) and Cada, Froscheiser, Cada and Hoffman (Law Firm) for collection litigation to be performed in accordance with the following terms and conditions:

### II. SERVICES.

It is agreed that the Law Firm shall from time to time accept debt collection accounts from Lincoln Fire and Rescue and the City of Lincoln Risk Management forwarded directly from the City for collection litigation. The Law Firm must receive authority from the City of Lincoln prior to filing suit on any account placed with them for collection.

Within fifteen (15) days after the end of each month, the Law Firm shall remit to the City all sums collected on the accounts which are the subject of this agreement and shall provide a statement regarding all of said accounts. Law Firm shall withhold sums sufficient to pay its attorney fees for said collection and a mutually agreeable sum to cover costs of suit in future collection matters.

The City and Law Firm agree that should a cross-claim, cross petition, or other similar claim alleging malpractice or other issue of liability be brought against the City and/or its agents, servants, or employees as part of a collection matter forwarded directly from City to the Law Firm, the City, and/or their malpractice insurer shall hire additional legal counsel to represent the City and/or its agents, servants, or employees in regard to said malpractice claim or litigation issues.

### III. TERM.

This Agreement will be effective for four years from the date of its execution.

### IV. COMPENSATION.

The City and the Law Firm agree to the following terms for files forwarded by the City to the Law Firm for collection litigation:

**A. COMMISSION RATE:** For the majority of accounts forwarded to the Law Firm for collection litigation and unless otherwise agreed upon at the time of forwarding such accounts, the following percentage fee is agreed upon:

- 1) Direct Collection Files: 22% if collected within twenty-five (25) days after Law Firm mails a demand letter to debtor and 25% if collected thereafter.

**B. COURT COSTS:** Court costs shall be advanced by the City on all litigation accounts.

**V. TERMINATION FOR BREACH.**

Either party has the right to terminate this Agreement if the other party fails to perform as required in this Agreement. Termination rights under this section may be exercised only after the non-breaching party has given the breaching party thirty (30) days written notice of the failure to perform.

**VI. TERMINATION FOR CONVENIENCE.**

Either party has the right to terminate this Agreement for any reason at its own convenience. If either party terminates this Agreement for convenience, the terminating party shall provide the other party with thirty (30) days written notice of the termination.

**VII. TERMINATION FOR LACK OF FUNDING.**

The City may terminate this Agreement in whole or in part when funding is not lawfully available for expenditure or when sources of funding are terminated, suspended, reduced, or otherwise not forthcoming through no fault of City. In the event of unavailability of funds to pay any amounts due under this Agreement, City shall immediately notify the Law Firm in writing of said termination.

**VIII. NOTICE**

Any notice which may be required to be given under this Agreement shall be in writing and if delivered in person, shall be deemed to have been given when delivered to the address provided in this paragraph, and if mailed, shall be deemed to have been given three (3) days after mailing when mailed by United States mail, return receipt requested, postage prepaid, addressed as follows:

City of Lincoln:	Lincoln Fire and Rescue EMS Business Manager 1801 Q Street Lincoln, NE 68508	City of Lincoln Risk Management 555 S. 10 <sup>th</sup> St., Suite 302 Lincoln, NE 68508
Law Firm:	Edward F. Hoffman Cada, Froscheiser, Cada & Hoffman 1024 K Street Lincoln, NE 68508	

**IX. DUTIES GENERALLY.**

The Law Firm agrees as follows:

- A. To timely and professionally complete the services as described above, and to furnish their labor and pay all their own costs, including any taxes or similar charges required by any present or future federal, state, or other law to be paid with respect to any person employed by the Law Firm in the performance of this agreement.
- B. To furnish everything reasonably necessary to complete the services unless specifically provided otherwise in this Agreement.
- C. To comply with all applicable provisions of any law, the terms of which require review of the Law Firm's books, documents, and records to verify the nature and extent of the cost of services furnished under this agreement.

#### **X. INDEPENDENT CONTRACTOR.**

The Law Firm shall perform as an independent contractor and it is expressly understood that neither the Law Firm nor any of its staff are employees of City and, thus they are not entitled to any City benefits including, but not limited to, overtime, retirement benefits, workers' compensation, sick leave, or injury leave.

#### **XI. INSURANCE AND INDEMNIFICATION.**

- A. Law Firm shall maintain errors and omissions insurance of at least \$500,000 and general liability insurance coverage in the amount of at least \$2,000,000. Upon request, Law Firm agrees to provide City with a certificate of insurance stating the terms of such coverages. In addition to the foregoing insurance requirements, Law Firm agrees to defend, indemnify, and hold harmless the City, its employees, and officers, from and against any claims or actions relating to acts or omissions of the Law Firm under this Agreement wherein the cause of action relates to the Fair Debt Collection Practices Act and/or the Fair Credit Reporting Act.
- B. Law Firm shall provide reasonable insurance coverage for all Firm owned, hired, or leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- C. Law Firm shall maintain Workers' Compensation insurance so as to fully protect both Law Firm and the City from any and all claims under any Worker's Compensation Act or Employer's Liability Law.
- D. Law Firm is required to provide the City with thirty (30) days notice of cancellation, non-renewal, or any material reduction of insurance as required by this Agreement.

To the fullest extent permitted by law, Law Firm shall indemnify, defend, and hold harmless the City, its officers, agents, and employees from and against claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the

intentional or negligent act or omission of Law Firm, or anyone for whose acts it may be liable. This section will not require Law Firm to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law. This section survives any termination of this Agreement.

## **XII. AUDIT PROVISION.**

The Law Firm shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

## **XIII. FAIR EMPLOYMENT.**

The Law Firm shall not discriminate against any employee (or applicant for employment) with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and *Neb. Rev. Stat.* § 48-1122, as amended.

## **XIV. FAIR LABOR STANDARDS.**

The Law Firm shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

## **XV. LIVING WAGE.**

If the compensation for services provided pursuant to this Agreement is equal to or exceeds \$25,000, this Agreement is subject to the Living Wage Ordinance of the Lincoln Municipal Code Chapter 2.81. The Ordinance requires that, unless specific exemptions apply or a waiver is granted, the Law Firm shall provide payment of a minimum living wage to employees providing services pursuant to this Agreement. Under the provisions of the Lincoln Living Wage Ordinance, the City shall have the authority to terminate this Agreement and to seek other remedies for violations of the ordinance.

## **XVI. FEDERAL IMMIGRATION VERIFICATION**

The Law Firm agrees that in accordance with Neb. Rev. Stat. Sections 4-108 through 4-114, the Law Firm shall register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency

authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. The Law Firm shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b.

**XVII. HIPAA AND BUSINESS ASSOCIATE AGREEMENT**

The Law Firm and the City shall conduct all business in a manner consistent with HIPAA, and said parties shall enter into a Business Associate Agreement (Attachment A) to set forth in detail the terms of their association as required under HIPAA.

**XVIII. NEBRASKA LAW**

This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

**XIX. INTEGRATION, AMENDMENTS, ASSIGNMENT.**

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties. This Agreement may not be assigned without the prior written consent of the other party.

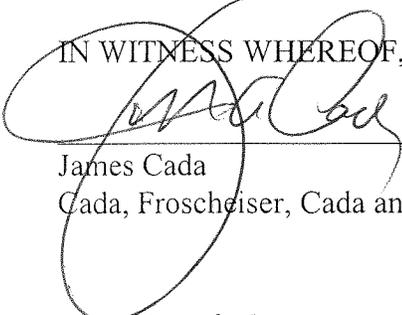
**XX. SEVERABILITY & SAVINGS CLAUSE.**

Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

**XXI. CAPACITY.**

The undersigned person representing the Law Firm does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind the Law Firm to this Agreement.

IN WITNESS WHEREOF, the Law Firm and City do hereby execute this Agreement.

  
\_\_\_\_\_  
James Cada  
Cada, Froscheiser, Cada and Hoffman

1 Oct 11  
Date of Signature

\_\_\_\_\_  
Chris Beutler  
Mayor of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

\_\_\_\_\_  
Date of Execution

**ATTACHMENT A  
BUSINESS ASSOCIATE AGREEMENT**

**HIPAA Business Associate Assurances.**

A. Privacy Rule

- 1) Cada, Froscheiser, Cada, and Hoffman, in its capacity as a Business Associate, shall carry out its obligations under this Agreement in compliance with the privacy regulations pursuant to the Health Insurance Portability and Accountability Act of 1996, (HIPAA) and the American Recovery and Reinvestment Act of 2009 (ARRA), to protect the privacy of any personally identifiable protected health information (“PHI”) that is collected, processed, or learned as a result of the Services provided hereunder. In conformity therewith, Cada, Froscheiser, Cada, and Hoffman agrees that it will:
  - (a) Not use or further disclose PHI except as permitted under this Agreement or required by law;
  - (b) Use appropriate safeguards to prevent use or disclosure of PHI except as permitted by this Agreement;
  - (c) To mitigate, to the extent practicable, any harmful effect that is known to Cada, Froscheiser, Cada, and Hoffman of a use or disclosure of PHI by Cada, Froscheiser, Cada, and Hoffman in violation of this Agreement.
  - (d) Report to the relevant City agency any use or disclosure of PHI not provided for by this Agreement of which Cada, Froscheiser, Cada, and Hoffman becomes aware;
  - (e) Ensure that any agents or subcontractors to whom Cada, Froscheiser, Cada, and Hoffman provides PHI, or who have access to PHI, agree to the same restrictions and conditions that apply to Cada, Froscheiser, Cada, and Hoffman with respect to such PHI;
  - (f) Make PHI available to the applicable City agency upon the request of an individual who has a right of access as required under HIPAA within thirty (30) days of the request by a City agency regarding the individual;

- (g) Incorporate any amendments to PHI when notified to do so by the responsible City agency;
  - (h) Provide an accounting of all uses or disclosures of PHI made by Cada, Froscheiser, Cada, and Hoffman as required under the HIPAA privacy rule within sixty (60) days;
  - (i) Make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining the responsible City agency's compliance with HIPAA; and
  - (j) At the termination of this Agreement, return or destroy all PHI created or received by Cada, Froscheiser, Cada, and Hoffman on behalf of a City agency, and, if return is not feasible, the protections of this agreement will extend to such PHI.
- 2) The specific uses and disclosures of PHI that may be made by Cada, Froscheiser, Cada, and Hoffman on behalf of City agencies include those Services enumerated within this Agreement.

B. Security Rule:

- 1) Cada, Froscheiser, Cada, and Hoffman, in its capacity as a Business Associate, shall carry out its obligations under this Agreement in compliance with the security regulations pursuant to HIPAA and ARRA, regarding the security of electronic protected health information ("e-PHI") that is received as a result of the Services provided hereunder. In conformity therewith, Cada, Froscheiser, Cada, and Hoffman agrees that it will:
- (a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the covered entity as required in the regulations;
  - (b) Ensure that any agent of Cada, Froscheiser, Cada, and Hoffman, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect PHI; and

- (c) Report to relevant City agency any security incident of which it becomes aware.

C. Notwithstanding any other provisions of this Agreement, this Agreement may be terminated by the City, in its sole discretion, if the City determines that Cada, Froscheiser, Cada, and Hoffman has violated a term or provision of this Agreement pertaining to Cada, Froscheiser, Cada, and Hoffman's obligations as a Business Associate of the relevant City agency, or if Cada, Froscheiser, Cada, and Hoffman engages in conduct which would, if committed by a City agency, result in a violation of the HIPAA privacy rule or HIPAA security rule by the City.