



MEMORANDUM

TO: Airport Board
FROM: Patrick Dame, C.M., Executive Director
DATE: September 13, 2022
RE: Collection Services Agreement – Express Collections, Inc.

Attached is an agreement with Express Collections, Inc. to handle collection of delinquent accounts with the Airport. This is the same firm that is currently utilized by other City departments for collection efforts. The agreement is for a two year term with the Agency receiving 24% on amounts collected.

Staff is currently developing a written collections policy that will outline steps for collection and when accounts will be turned over to the Agency. This will be similar in nature to current City processes for delinquent accounts.

Staff Recommendation: Staff recommends approval of the agreement with Express Collections, Inc.

COLLECTION SERVICES AGREEMENT

This Collection Services Agreement ("Agreement") is made and entered into this 13th day of September, 2022, by and between Express Collections, Inc. (hereinafter referred to as "Agency"), with its principal offices located at 818 Saint Joseph St, Suite 200, Rapid City, SD 57701, and Rapid City Regional Airport (hereinafter referred to as "Client"), located at: 4550 Terminal Rd Suite 102, Rapid City, SD 57703

WHEREAS, Agency desires to provide collection services on delinquencies; and

WHEREAS, Client desires to assign such delinquent accounts to Agency, as more particularly defined herein on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. **SERVICES AGREEMENT.** This Agreement is a service agreement between Client and Agency. Client agrees to use Agency for the purpose of the collection of its account delinquencies. For purposes of this Agreement, a delinquent account shall mean any account receivable of Client that is past due and is not an "Unqualified Account" (defined below). Client agrees not to use any other method of collecting delinquent accounts receivable or additional collection services involving the delinquent accounts receivable referred to Agency during the term of this Agreement.
2. **COLLECTION SERVICES OF ACCOUNTS RECEIVABLE.** From time to time as mutually agreed upon by the parties, and subject to the terms of this Agreement, Client agrees to assign to Agency its' delinquent accounts receivable (hereinafter referred to as Accounts" and singularly an "Account") for the purpose of collection. To the best knowledge of the Client, the Accounts assigned to Agency shall not include Accounts which are classified as follows (hereinafter referred to as "Unqualified Accounts"): The following are Unqualified Accounts:
 - A. Any account satisfied, settled, or released (the account was paid or otherwise released, or settlement check was received by Client prior to assignment); or
 - B. Discharged pursuant to an Order of Discharge issued by a judge of a Bankruptcy Court; or
 - C. Uncollectible due to fraud or death; or
 - D. Pending Litigation; or
 - E. Uncollectible due to expiration of applicable statute of limitations; or
 - F. Any account where the billing has not been finalized or is anticipating additional charges; or
 - G. Currently assigned or placed with another collection agency, or attorney; or
 - H. Any account that cannot be substantiated by the Client, or
 - I. Any account which is uncollectable as a matter of law, or
 - J. An account which, in the Agency's sole opinion is too difficult or expensive to pursue collection activities.

Client agrees that Agency is only responsible for collection of the amount assigned at the time of placement. Additional fees or costs charged by the Client after listing cannot be added to the original amount assigned. If Client's contract with the consumer allows for collection fees to be added to the amount due, Agency will attempt to recover those fees. Client is responsible for adding any collection fees at the time of placement. However, the recovery of collection fees is not guaranteed, and Agency may not be able to recover any additional fees.

Initials: _____

3. **TERM.** This contract for services shall continue for a period of not less than 2 ^{AP09132022-06} year(s), and shall commence on the 13th day of September, 20 22, and services shall continue through the 13th day of September, 2022, unless otherwise mutually terminated hereunder. At the end of the term, this agreement shall automatically renew for another term of equal duration, unless terminated by either party by providing a written sixty (60) day notice, see Section 10 (RETURN OR CANCELLATION OF ACCOUNTS). Client agrees not to assign account(s) placed for collection with Agency to any other collection agency or third party for collection unless the account(s) have been cancelled and released in writing by Agency. Cancelled accounts may be subject to withdraw fees (see section 5 RATES). It is further agreed that Agency may, at its sole discretion, discontinue services and cancel this contract for delinquency of payments owed by Client, failure of Client to fulfill any statutory or legal duty, any violation of the terms and conditions of this Agreement, or any other just cause. Upon such event, client may be subject to a withdraw fee as defined in Section 5. If this Agreement is terminated for any reason, accounts placed for collection will remain with Agency unless mutually agreed by both parties. If client requests to have accounts returned after termination of this Agreement, the accounts may be subject to the withdraw fee as determined by Agency as provided in Section 5.

4. **SERVICES PROVIDED BY AGENCY.** Agency agrees to provide the following services for Client:

- A. X-Press Demand Program (optional) – If instructed by the Client, the Account(s) may be placed into an optional Demand Program prior to initiating Direct Action Collections. This program gives the Account 14 days to pay or the Account(s) will be referred to a Collection Representative for Direct Action. Some restrictions apply as provided for in Section 5.
- B. Direct Action Collections – Collector assisted collections, including contact of Account(s) for the purpose of collection. Direct Action Services, as defined below, include but are not limited to the following:
- Contacting Account(s) for Collection – Contacting Account(s) by phone or written correspondence, for purpose of collection, including: Contact for payment in full, establishing payment arrangements, or an agreed settlement of said Account.
 - Skiptracing – Locating an Account's new address, phone number, or place of employment for purpose of collection of said Account.
 - Forwarding – If an Account moves out-of-state it may become necessary to forward an Account to an agency located in the debtor's home state for purpose of collection or legal action.
- C. Credit Bureau Reporting – Agency can at the Client's discretion report accounts assigned for collections to a major credit bureau at no additional charge to the Client. Client reserves the right to request all accounts reported, or only certain accounts and agrees to contact Agency regarding which accounts are to be reported. Agency reserves the right to not report or terminate reporting an account(s) to a consumer's credit file, if reporting the account(s) places Agency at risk of violation of any Federal or State laws or regulations. Agency agrees to follow and comply with all applicable state and federal laws regarding credit reporting including the Fair Credit Reporting Act (FCRA). Client agrees to notify agency of any disputes received as well as any bankruptcy notices and adjustments to account information. Client understands that the FCRA requires certain information to be present with the account before allowing the report to be placed on the consumer's credit file. If Client chooses to have Agency report accounts to the Credit Bureau, Client acknowledges receipt of the Credit Bureau Addendum included with this agreement.

Please initial below:

_____ Yes, Client would like Agency to report qualified accounts to the Credit Bureau.

_____ No, Client would not like Agency to report accounts to the Credit Bureau.

Initials: _____

5. **RATES.** Client agrees to the Rate Schedule as defined in this section. The Rate Structure & Program Guidelines shall remain in effect through the term of contract unless otherwise agreed by Client and Agency, at which time a new contract shall be required.

A. X-Press Demand Program (Optional Pre-Collection Program)

The 14 day Demand Program notifies your consumer that their Account will be assigned to a collection representative if payment in full is not received.

Rate: **FREE** (see restrictions)

Program Restrictions & Guidelines:

1. Accounts will not be accepted for the Demand Period only. Accounts cancelled during the demand period will be subject to a 10% cancellation fee.
2. Payments must be received and/or reported 14 days from the date of listing to qualify. When the demand period expires, the remaining balance automatically transfers into "Direct Action" (Direct Action rates apply).
3. If the mail is returned, the account will automatically transfer to a Collection Representative for immediate collection activity (Direct Action rates apply).
4. Minimum account balance of \$50.00 is accepted for the Demand Program.

B. Direct Action

Accounts are assigned to a collection representative for full-service collections as defined under Section 4 (**SERVICES PROVIDED BY AGENCY**).

Rate: 24 % on amount collected

Fee Restrictions & Guidelines:

1. Rates will not increase for skiptracing or Credit Bureau reporting.
2. 24 % Legal Accounts (An account in which a Legal Assignment or Assignment of Judgment has been returned to Agency).
3. 24 % Accounts forwarded to an out of state agency.
4. 10 % Accounts paid before listing, insurance payments, trade-outs, equipment returns, adjustments, accounts turned over in error or any account deemed unqualified as defined in Section 2(A-H) "unqualified accounts" if reported in the first 30 days,
24 % If reported after 30 days.
24 % If the account is in Legal Status (An account in which a Legal Assignment or Assignment of Judgment has been Returned to Agency).
5. 24 % Accounts under \$50.00.
6. N/A % Special Rate Condition; -----
7. 10 % Withdraw Fee. A withdraw fee will be charged on Account(s) withdrawn from Agency upon written notice from Client unless otherwise agreed upon by Agency in writing. This fee will be charged unless:
24 % If the account is currently on a payment plan or if the consumer has promised payment to Agency or Client.
24 % If the account is in Legal Status. (An account in which a Legal Assignment or Assignment of Judgment has been Returned to Agency) or closed due to Client's Breach of Contract.

Initials: _____

6. **LEGAL ACTION.** Agency will exercise its sole discretion in determining whether any legal action should be initiated on any Account. Agency may consider such factors as: a) the likelihood of success on the merits of such action; b) the benefit to be achieved versus the economic costs associated or required to achieve a favorable result; and/or c) any reason, based upon Agency's sole discretion, that said claim is worth pursuing. Such listing of factors shall not be the sole and exclusive list, and Agency may also consider other factors not listed herein in making its decision to pursue a claim. If Agency determines legal action should be initiated, then Agency will not pursue any litigation, until Client approves said lawsuit. Said approval must be in writing upon a form approved by Agency. Upon approval, Client agrees to be bound by any such decision made by Agency in the enforcement of the case, and any decision of the Court. Agency may settle any and all claims as it deems appropriate.

Client agrees to fully cooperate with Agency in providing necessary documentation and truthful witness testimony at trial if needed. Client shall hold Agency harmless for any breach of representation and warranties regarding accounts placed for collections. Agency agrees to pay legal costs associated with the collection of the debt. In the event of a counterclaim related to Client's conduct, Client shall hold Agency harmless from all costs and expenses, including attorney's fees and sanctions. In the event of such a counterclaim, Agency shall promptly notify Client of the same, and Client may agree to defend the counterclaim itself or may agree to pay Agency for all costs of defense of the counterclaim. Client may be charged the legal rate under Section 5 if the case is ruled in favor of the Defendant as a result of negligence by the Client.

7. **REMITTANCE OF DIRECT PAYMENTS.** Client shall remit and report to Agency all direct payments, insurance payments and/or account adjustments made to Client as soon as such payment/adjustment is known or received by Client. Commission will only be charged if payment was received and reported during the "Direct Action" period. Client authorizes Agency to endorse and deposit checks, money orders, or other negotiable instruments, made payable to the Client but received by Agency, and Client does hereby constitute and appoint Agency as its agent and attorney-in-fact for such purposes only.
8. **CORRESPONDANCE WITH CONSUMER.** In order to prevent compromise of Agency's collection efforts, Client grants Agency complete and full control of the account(s) and agrees not to initiate communication with the consumer, including ceasing to send any written correspondence such as statements or invoices. Client will immediately refer all consumer-initiated contact with Client directly to Agency. If Client is contacted by the consumer, Client will notify Agency immediately.
9. **RETRIEVAL OF ACCOUNT DOCUMENTS.** The FDCPA (Fair Debt Collection Practices Act) requires Agency to provide validation to the consumer upon request. Therefore, Client must provide supporting documentation and confirmation of the correct amount due within 30 days of request from the Client by Agency. If proper documentation is not available, Client shall provide a lost note affidavit for such Account. If requested by Agency, Client will make a witness with knowledge about Account information available to Agency for disputed court appearances to support any pleading, or litigation matter. If Client cannot substantiate the debt within 30 days of request by Agency, the Account may be closed as an Unqualified Account and Client will be charged as provided in Section 5.
10. **RETURN OR CANCELLATION OF ACCOUNTS.** The Accounts placed by Client and accepted by Agency for collection may not be withdrawn during the term of this Agreement or while still eligible to be reported on a consumer's credit file, unless otherwise agreed in writing with Agency. Any Accounts withdrawn or cancelled by Client for any reason shall be subject to a withdraw fee to Agency to recover its cost of servicing the account as defined in Section 5. Accounts may not be withdrawn if in the process of legal action unless provided for in Section 6, or in the process of payment activity or unless mutually agreed upon in writing by both parties. Agency reserves the right to cancel and return any Account. If Agency cancels and returns any Account due to Client's breach of this contract, the Account will be subject to a withdraw fee as defined in Section 5. Accounts in Judgment, pending legal action, or with a promised payment will not be returned unless agreed upon by Agency in writing.

Initials: _____

11. **REMITTANCE TO CLIENT.** Agency shall account and remit to Client for all monies collected on Client's accounts no more than thirty (30) days from the last day of the month in which the money is collected. The Agency's accounting shall be in written form, shall specify the date and amount of each payment and the Account to which such payment was credited. This accounting report shall be separate from the check provided as payment to the Client. Any amounts owed to Agency from Client for direct payments, cancelled accounts, legal fees, etc. will be deducted from the amount owed to Client from Agency unless alternate arrangements have been made in advance.
12. **SEVERABILITY.** If any provisions, or application thereof, of this Agreement is held unlawful or unenforceable in any respect, the parties hereto agree that such illegality or unenforceability shall not affect other provisions or allocations that can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provisions are amended so as to make valid, reasonable and enforceable and agree to be bound by the terms of such provisions, as modified by court.
13. **CONFIDENTIALITY.** The parties understand and agree that the terms of this Agreement are confidential and they will not be disclosed to anyone outside of their respective organizations, except as required to perform this Agreement, or as may be required by court order.
14. **ENTIRE AGREEMENT.** This Agreement is intended to define the full extent of the legal enforceable undertakings of the parties hereto, and no related promise or representation, written or oral, which is not set forth explicitly in this Agreement, is intended by either party to be legally binding. Both parties acknowledge that in deciding to enter into this transaction they have relied on no representations, written or oral, other than those explicitly set forth in this Agreement
15. **GOVERNING LAW; EXCLUSIVE VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to the conflicts of laws rules of such state. The exclusive venue for any dispute between the parties arising out of or related to this Agreement shall be a federal or state court located in Pennington County, State of South Dakota.
16. **INDEMNITY.** Agency agrees to indemnify, defend and hold the City harmless from and against any and all liability, losses, claims, damages, costs, and expenses including, but not limited to, costs of defense and reasonable attorney's fees, which the City may hereafter suffer itself or pay to another party by reason of any claim, action, or right of action, at law or in equity, arising out of willful misconduct, error omission or negligent act of Agency resulting in injury (including death) to any person or damage to any property to the extent such are caused by or are alleged to be caused by Agency or its employees, any subcontractor or its employees, or any person, firm, partnership, or corporation employed or engaged by Agency. Agency further agrees to indemnify, defend and hold the City harmless from and against any and all claims, penalties, charges, or other fees which may be made, assessed or levied as a result of Agency's collection practices, including any breaches of applicable federal or state law related to those practices.

SIGNATURE PAGE TO FOLLOW

Initials: _____

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the date first above written.

CLIENT: Rapid City Regional Airport (Business Name)

4550 Terminal Rd Suite 102 (Street Address)

Rapid City, SD 57703 (City, State, Zip)

BY: _____ (signed)

Rod Pettigrew (printed)

Board President (title)

AGENCY: Express Collections, Inc.
818 Saint Joseph St. Suite 200
Rapid City, SD 57701

BY: _____ (signed)

Troy Anderson (printed)

President (title)

Initials: _____

CREDIT REPORTING ADDENDUM

The federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681-1681y, imposes responsibilities on all persons who furnish information to consumer reporting agencies (CRAs). These responsibilities are found in Section 623 of the FCRA. Any Client who requests Express Collections, Inc., to report accounts to a CRA upon placing the account for collections needs to become familiar with rules and regulations set forth by the FCRA to ensure compliance. Failure to comply with these duties may result in your accounts not being reported to a CRA or deleted if previously reported. Accounts placed with Express Collections, Inc will begin reporting to the Credit Bureau on the first available monthly reporting cycle 45 days after the day the account was listed for collections. For medical debts, the reporting will begin on the first available monthly reporting cycle 180 days after the day the account was listed for collections.

ACCURACY

When you provide information to a CRA, you have obligations under the FCRA to ensure the accuracy of the information you furnish. As a rule, it's illegal to report information that you know or believe is inaccurate. You have "reasonable cause to believe" that information is inaccurate if you have knowledge, other than allegations from the consumer, that would lead a reasonable person to doubt the accuracy of the information. You cannot under any circumstances report information the consumer has told you is accurate if it is, in fact inaccurate. FCRA Section 623(a)(1)(C).

In order to maintain accuracy of account reported to CRAs, Express Collections, Inc. requires that any client that provides consumer information for the purpose of credit reporting adhere to the following guidelines:

- The information provided should ensure that the account being reported is for the right person and reflect the terms of the account and the consumer's performance on the account.
- Maintenance of records required to substantiate the debt is available for the period of time the debt is referred to collections.
- Provide accurate dates of delinquency, charge dates and payment history.
- Provide updated or corrected information when necessary.
- Provide consumer identifiers, like name(s), address(es), date of birth, Social Security Number, or telephone number(s).

DUTY TO CORRECT AND UPDATE INFORMATION

If information is furnished to a CRA on a regular basis and you determine that any information provided is inaccurate or incomplete, you must promptly notify our office so we may notify the CRA and provide corrections or additions. Going forward, you must furnish only the correct information that is to be reported to the CRA(s). FCRA 623(a)(2)(B)

DELINQUENT AND DISPUTED ACCOUNTS

Once a consumer disputes any information about the debt, that information may not be reported to a CRA without telling the CRA that the information is in dispute. FCRA 623(a)(3)

When you refer an account for collections that you have already reported to a CRA you must notify the CRA that you have done so, you also must report the date of delinquency to the CRA within 90 days. The date of delinquency is the date the consumer's account was considered delinquent. The delinquency date must be a minimum of sixty (60) days from the date of the original charge or sale for services or goods provided, or from the date the last payment was due on an installment contract. The account cannot be placed for collections for a minimum of thirty (30) days past the date of delinquency. FCRA 623(a)(5)(A)

A debt collector furnishing information to a CRA about accounts of a creditor must report the date of delinquency provided by the original creditor. FCRA 623(a)(5)(A) This date of delinquency determines how long the debt can be reported on a consumer's credit report. Generally, a CRA may report a delinquent debt for seven years from the date of delinquency.

If the original creditor does not provide a date of delinquency, the debt collector has two options:

- Establish and follow reasonable procedures to determine the date from the original creditor or another reliable source; or
- If you cannot determine the date, establish, and follow reasonable procedures to ensure that the reported date of delinquency is a date **before** the account was referred to collections or charged off. FCRA 623(a)(5)(B)

DISPUTES FROM THE CONSUMER TO THE CRA

If a CRA notifies our office that a consumer disputes information provided, we must:

- Investigate the dispute and review all relevant information provided by the CRA about the dispute;
- Report our findings to the CRA;
- Provide corrected information to every CRA that received the information if the investigation shows the information is incomplete or inaccurate; and
- Modify the information, delete it, or permanently block its reporting if the information turns out to be inaccurate or incomplete or can't be verified. FCRA 623(b)(1)

These steps must be completed with the time allowed under the FCRA for the CRA to resolve the dispute. Normally this is thirty (30) days after the CRA gets the dispute from the consumer. If the consumer provides additional relevant information during the 30-day period, the CRA has 15 more days to resolve the dispute. If we don't investigate and respond to the notification of the dispute withing the specified times, the CRA must delete the disputed information from its files. FCRA 623(b)(2) and 611(a)(1)

DISPUTES FROM THE CONSUMER TO THE DATA FURNISHER

If you or our office receive a written notification of dispute directly from the consumer, we must:

- Conduct a reasonable investigation
- Review all relevant information provided by the consumer
- Report results to the consumer, generally within thirty (30) days.
- Notify each CRA in which we provided inaccurate information if the investigation finds the information was inaccurate.

We are **not** required to investigate the dispute if it relates to:

- The consumer didn't provide enough information
- The dispute is substantially the same as the dispute previously submitted
- We already fulfilled our obligation and there is no new information
- Information provided is believed to have been submitted or prepared on behalf of the consumer by or submitted on a form supplied to the consumer by a credit repair organization.

If a dispute is found to be frivolous or irrelevant, we must notify the consumer withing five (5) business days after making the determination. This notice can be a form letter. Include the reason for the determination and, if relevant, any information the consumer needs to submit so we can investigate the disputed information. Furnisher Rule 660.4(e), 660.4(b) and 660.4(f). If you receive a written dispute directly from the consumer, you must notify our office promptly.

Initials: _____

VICTIMS OF IDENTITY THEFT

When we are notified by a CRA that a consumer's identity has been stolen, we have specific duties under the FCRA:

- When a CRA notifies our office that the information furnished is being blocked on a consumer's credit file because of identity theft, we must take steps to prevent the re-reporting of the information. FCRA 623(a)(6)(A)
- If a CRA notifies you that the debt has resulted from identity theft, prior to placing the account with our office, you may not sell, transfer, or place that debt for collections. FCRA 615(f)(1)
- If a consumer notifies you or our office that they are a victim of identity theft, and provides an identity theft report, we must not furnish information to a CRA regarding the fraudulent account or debt. FCRA 623(a)(6)(B)
- If we find that we furnished inaccurate information due to identity theft, we must promptly notify each CRA of the correct information. Going forward, we must report only complete and accurate information. FCRA 623(a)(2)
- If you provided credit, goods, or services to consumers, you may be required to supply application or other transaction records to an identity theft victim or law enforcement officer, if they ask. FCRA 605B(f) 615(g)