

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
_____ Recommendations of Boards, Commissions & Committees (Green)
 X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: December 19, 2018 (COW)(B of T) January 3, 2019

TITLE: A Motion Authorizing Execution of a Service Agreement for the Collection of Unremitted Payments for Emergency Services and Utility Bills

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

The Village issued an RFP on November 2, 2018 for collection agency services for Ambulance Billing and Utility Billing. Staff sent the RFP to six agencies recommended by Andres our EMS billing company and other municipalities with a submission date no later than November 23, 2018. Parking tickets at this time are submitted to the State's Local Debt Recovery Program and therefore not included in this RFP.

The Village sends approximately \$15,000 monthly to State Collections Agency and their fee is 25% of all dollars collected. Currently, staff attempts to collect delinquent utility bills and places a lein on the property if it remains unpaid. There are circumstances where the property was sold and this isn't an option. Utility Billing staff will determine if the delinquent account should be sent to collections or liened but not both.

One response was received from Amor Systems Corporation with proposal of 19% contingency fee of all dollars collected. Staff met with a representative from the company and determined their method of collection and understanding of municipal relationships. The have a long term relationship municipal clients including the Village of Alington Heights, Village of Mount Prospect Police Department, Village of Oakbrook, and Palatine Police Department.

Staff requests authorization to execute the attached collections services agreement.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X Timothy Sexton Date 12/19/18
Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



ARMOR COLLECTION AGREEMENT

This agreement is being made by Armor Systems Corporation, hereinafter called the "Agency," for the collection of outstanding accounts due the Village of Lombard, herein after called the "Client."

1. The Agency will use its best efforts to effect collections of accounts referred the Client in accordance with Agency's standard collection procedures, unless different procedures are agreed to between Client and Agency in writing.
2. The Agency will remit to Client on a net basis, to be delivered to the Client no later than the tenth day of the following month. Client agrees to remit any monies due Agency within 30 days of receiving remittance statement.
3. The Agency shall charge Client a commission of nineteen percent (19.0%), of all amounts collected and forty percent (40%), if it involves our attorneys and the courts with court costs paid up front by client. The client will be notified and upon client approval suits may be filed. This is pursuant to this agreement on all accounts placed by Client with Agency, regardless of circumstances effecting payment (the Agency's "Commission").
4. The Agency shall maintain company records, as they pertain to said accounts, in such a manner as to be auditable by the Client during normal business hours.
5. The Agency shall return to the Client without charge, any account that is placed in error or which is invalid, legally unenforceable, or otherwise defective by Client. In the event twenty percent (20%) or more of the accounts placed by Client are placed in error or are invalid, legally unenforceable, or otherwise defective, Agency may charge a ten percent (10.0%) administrative fee to be charged by Agency to Client in order to cover the Agency's costs, expenses, lost productivity, and lost profits associated with Agency's work on the removed or returned accounts. The percentage shall be based upon the total balance of account(s) being removed. The parties agree that the forgoing administrative is a reasonable estimate of the damages that Agency would suffer in the event of excessive removal of accounts by Client, and that such liquidated damages are not intended as a forfeiture or penalty within the meaning of applicable law.

6. Client represents and warrants that the accounts being assigned are valid and enforceable accounts.
7. If Client provides Agency with invalid, legally unenforceable or otherwise defective accounts, Client shall indemnify Agency from any and all liabilities incurred by Agency as a result of the placement of such accounts with Agency, including but not limited to liabilities suffered by the Agency as a result of claims asserted against the Agency for violations or alleged violations of the Fair Debt Collections Practices Act and similar state laws, including attorneys fees and costs incurred in connection with such matters.
8. Client shall not provide Agency with any accounts which have been discharged in bankruptcy, or with respect to which the debtor has threatened to file bankruptcy. In the event Client receives notice that a debtor on an account has filed for bankruptcy, or has threatened to file for bankruptcy, Client shall immediately give notice of the bankruptcy or threatened bankruptcy to Agency.
9. The Agency shall not credit report or submit accounts to Trans Union, Equifax, and Experian Credit Bureaus unless the Client directs Agency to do so in writing, and Agency agrees to said instruction in writing. If Agency agrees to credit report, in the event that Client learns of a dispute regarding a debt that Agency will credit report, Client will immediately provide Agency with notice of the dispute.
10. In the unlikely event that Agency must institute legal proceedings against Client to enforce any of the Agency's rights under this agreement, Agency shall be entitled to recover reasonable attorneys fees incurred in any such proceeding.

This agreement in its entirety shall be in effect from the signing date of this agreement and may be terminated at the option of either party by written notice given at least thirty-(30) days prior to termination. In the event of a termination of this agreement Agency shall be entitled to payment of its Commission on payments on any Account received by Agency or procured as a result of Agency's collection efforts. Agency shall be entitled to deduct its Commission prior to remitting the balance of any payment to Client.

VILLAGE OF LOMBARD

By: _____

Title: _____

Date: _____

ARMOR SYSTEMS CORPORATION

By: _____

Title: _____

Date: _____



CREDIT BUREAU REPORTING

Please select one of the following options:

Yes, we would like Armor Systems Corporation to submit our accounts to Trans Union, Equifax and Experian Credit Bureaus.

No, at this time we choose not to have our accounts submitted to the Credit Bureaus.

VILLAGE OF LOMBARD

By: _____

Title: _____

Date: _____

HIPAA ADDENDUM
Business Associate Agreement

THIS AGREEMENT made this _____ day of _____, 20__ (“Effective Date”), **Village of Lombard**, hereafter referred to as “Provider,” and **Armor Systems Corporation**, hereafter referred to as “Business Associate.”

In Consideration of the agreements contained herein, the parties do hereby agree to addend all past, present and future contracts between the parties with the terms of this Agreement and agree as follows:

1. Definitions. Any term used but not defined in this Agreement shall have the meaning for the term as established in 45 Code of Federal Regulations (“CFR”) §§ 160.103 and 164.501 or as defined in Exhibit A (provided upon request) of this Agreement.

2. Permitted Uses and Disclosures.
 - (a) Permitted Use and Disclosure. Except as otherwise prohibited in this Agreement, Business Associate may use or disclose Protected Health Information (“PHI”) or Electronic Protected Health Information (“EPHI”) to perform functions, activities, or services for, or on behalf of, Provider provided such use or disclosure would not violate the provisions of Subpart E of 45 CFR Part 164 if so used by Provider. See Exhibit B (provided upon request).
 - (b) Required by Law. Except as otherwise prohibited in this Agreement, Business Associate may use or disclose PHI or EPHI as Required by Law.
 - (c) Minimum Necessary. Except as otherwise prohibited in this Agreement, Business Associate agrees to make uses and disclosures and requests for PHI or EPHI consistent with the Provider’s minimum necessary policies and procedures (i.e., the minimum use or disclosure required to achieve the desired purpose). The Provider shall provide its minimum necessary polices and procedures to Business Associate in writing.
 - (d) Use for Management and Administration. Except as otherwise prohibited in this Agreement, Business Associate may use PHI or EPHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - (e) Disclosure for Management and Administration. Except as otherwise prohibited in this Agreement, Business Associate may disclose PHI or EPHI for the proper management and administration of the Business Associate, provided the disclosures are Required by Law or Business Associate obtains reasonable assurances from the person to whom the PHI or EPHI is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the PHI or EPHI has been breached.

3. Obligations and Activities of Business Associate.

- (a) Use and Disclosure of PHI or EPHI. Business Associate shall use or disclose the PHI or EPHI only as permitted or required by this Agreement or as Required by Law.
- (b) Safeguards. Business Associate shall use appropriate administrative, technical or physical safeguards necessary to prevent use or disclosure of PHI or EPHI other than as provided by this Agreement.
- (c) Reporting. Business Associate shall notify Provider of any use or disclosure of PHI or EPHI for a purpose that is not provided for in this Agreement of which Business Associate becomes aware, including breaches of Unsecured Protected Health Information, and any Security Incident of which it becomes aware.
- (d) Disclosure to Agents and Subcontractors. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI or EPHI received from, or created by Business Associate on behalf of Provider, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information as set forth in attached Vendor Agreement. Business Associate agrees to ensure any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Provider's PHI or EPHI, and acknowledges that it shall request from the Provider and so disclose to its affiliates, subsidiaries, agents, and subcontractors or other third parties, only the minimum PHI or EPHI necessary to perform or fulfill a specific function required or permitted hereunder.
- (e) Desiginated Record Set. Business Associate shall provide access, at the request of Provider, and in a time and manner mutually acceptable to Business Associate and Provider, to PHI or EPHI in a Designated Record Set (i.e., all PHI or EPHI Business Associate maintains for Provider), to Provider or, as directed by Provider, to an Individual in order to meet the requirements under 45 CFR § 164.524. See Exhibit B, P. 43-46 (provided upon request).
- (f) Amendment of Protected Health Information. Business Associate agrees to make any amendment(s) to PHI or EPHI in a Designated Record Set as directed or agreed to by the Provider pursuant to 45 CFR § 164.526, or to take other measures as necessary to satisfy Provider's obligations under 45 CFR § 164.526. See Exhibit B, P. 46-48 (provided upon request).
- (g) Internal Practices, Policies and Procedures. Business Associate shall make internal practices, books and records available to the Secretary of the Department of Health and Human Services ("HHS") for compliance purposes.
- (h) Accounting for Disclosures. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Provider as necessary to satisfy the Provider's obligations under 45 CFR § 164.528. See Exhibit B, P. 48-50 (provided upon request).
- (i) Provider Obligations. To the extent the Business Associate is to carry out one or more of Provider's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Provider in the performance of such obligation(s). See Exhibit B (provided upon request).

- (j) Material Breach. If Business Associate knows of, or becomes aware of, a pattern of activity or practice of Provider that constitutes a material breach or violation of Provider's obligations under this Agreement, Business Associate shall take reasonable steps to cure the breach or end the violation, as applicable, and if such steps are unsuccessful shall terminate this Agreement as described in Section 5.

4. Obligations of Provider.

- (a) Notice of Privacy Practices. Provider shall provide a copy of Provider's Notice of Privacy Practices to Business Associate. Business Associate's uses and disclosures of PHI and EPHI must be consistent with the Provider's Notice of Privacy Practices.
- (b) Incident Reporting by Provider. Provider agrees to report to Business Associate any incident of which it becomes aware, that the confidentiality, integrity or availability of PHI or EPHI is not safeguarded in accordance with the terms of this Agreement.

5. Term and Termination.

(a) Term. The term of this Agreement shall commence as of the Effective Date, and shall terminate on the date mutually agreed upon by Provider and Business Associate, or on the date Provider terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Provider, if Provider determines Business Associate has violated a material term of this Agreement and Business Associate has not cured the breach or ended the violation within the time specified by Provider.

(c) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI and EPHI received from Provider, or created, maintained, or received by Business Associate on behalf of Provider, shall:

1. Retain only that PHI or EPHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Provider the remaining PHI or EPHI that the Business Associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 (see Exhibit C, (provided upon request)) with respect to EPHI to prevent use or disclosure of the PHI or EPHI, other than as provided for in this Section, for as long as the Business Associate retains the PHI or EPHI.
4. Not use or disclose the PHI or EPHI retained by Business Associate other than for purposes for which such PHI or EPHI was retained and subject to the same conditions set out at Section 2 of this Agreement which applied prior to termination; and

5. Return to Provider the PHI or EPHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. Indemnity. The parties to this Agreement shall mutually protect, indemnify and hold each other harmless from all claims and damages including attorney's fees, arising from failure of the other party to comply with applicable federal, state or local laws and regulations or the performance of the work and services by that party under this Agreement.

7. No Third Party Beneficiaries. Business Associate and Provider agree that individuals who are the subject of PHI or EPHI are not intended to be third party beneficiaries of this Agreement.

8. Amendment. This Agreement may not be amended, altered, or modified unless in writing and signed by the parties who agree to amend as necessary to comply with the HIPAA Rules and any other applicable law.

9. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Provider to comply with the HIPAA Rules.

10. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

Provider
Village of Lombard

By _____
Print _____
Title _____
Date _____

Business Associate
Armor Systems Corporation

By: _____
Print: _____
Title: _____
Date: _____