

FINANCE COMMITTEE

11-0074R

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT
WITH WAGNER, FALCONER & JUDD, LTD., FOR LEGAL SERVICES
IN COLLECTIONS.

CITY PROPOSAL:

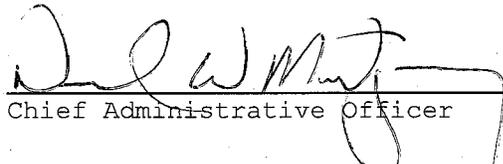
RESOLVED, that city officials are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. _____, with Wagner, Falconer & Judd, Ltd., to provide legal services and represent the city of Duluth in collection actions as requested, with collection matters handled on a contingent fee basis and related services on an hourly fee basis in accordance with its proposal (Attachment A) and payable from various departments/agencies, organizations, and objects.

Approved:



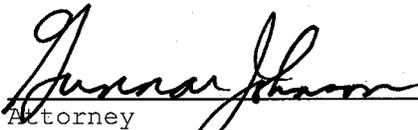
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

FINANCE AH:le 02/02/2011

STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to execute an agreement with Wagner, Falconer & Judd, Ltd., under which that firm will provide legal services and represent the city in collection actions as requested. Compensation will be on a contingent fee basis or hourly fee basis as outlined in the firm's proposal.

Wagner, Falconer & Judd, Ltd., is a law firm headquartered in Minneapolis, Minnesota, which specializes in commercial collections and a wide range of litigation and transactional commercial business services.

**AGREEMENT FOR PROFESSIONAL SERVICES
CITY OF DULUTH
ATTORNEY SERVICES - INDEPENDENT CONTRACTOR
WAGNER, FALCONER & JUDD, LTD.**

Dated: _____

THIS AGREEMENT is by and between the CITY OF DULUTH, a political subdivision of the State of Minnesota, hereinafter referred to as "City", and WAGNER, FALCONER & JUDD, LTD., hereinafter referred to as "Attorney".

WITNESSETH:

WHEREAS, attorney services for collection services will from time to time be needed by the City; and

WHEREAS, City desires that Attorney provide such legal services to it as its Attorney.

NOW, THEREFORE, the City and the Attorney do mutually agree as follows:

1. Services to be Performed.

The Attorney services to be performed are set forth in Attachment A, which is made a part hereof.

2. Personnel.

As described in Attachment A, Attorney will secure, at its own expense, all personnel required to perform the legal services under this contract, and such personnel shall not be the employees of, nor have a contractual relationship with, the City.

3. Assignability.

Attorney shall not assign any interest in this contract and shall not transfer any interest in the same without the prior written approval of the City.

4. Contract Period.

This Agreement shall be effective as of the date hereof and shall continue until terminated as provided in paragraph 5 hereof.

5. Termination of Contract.

Either Attorney or City may, by giving written notice specifying the effective date, terminate this contract in whole or in part. In the event of termination, all property and finished or unfinished documents and other writings prepared by the Attorney under

this contract shall be delivered to City and Attorney shall be entitled to compensation for time expended to the date of termination and expenses incurred.

6. Independent Contractor.

The relationship between the Attorney and City shall be that of an independent contractor. Nothing herein shall in any way make or create any employer- employee relationship between City and Attorney.

7. Standard of Performance and Insurance.

Attorney shall obtain and maintain at its cost and expense insurance that covers the Attorney services performed by it for City as set forth in Attachment A. Attorney shall provide the City with a certificate evidencing the existence of such insurance at such times as City may request. Attorney shall indemnify and hold harmless the City from and against all errors, omissions and/or negligent acts causing claims, damages, liabilities and damages arising out of the performance of its services hereunder.

8. Compensation.

Attorney shall be compensated for the services to be performed hereunder as set forth in Attachment A. Attorney shall submit to the City itemized statements of services rendered during each month setting forth the date such services were rendered, a description of the services rendered, the person performing such services and the amount of time expended in performing such services.

9. Recordkeeping.

Attorney hereby agrees:

9.1 To maintain all books, documents, papers, accounting records and other evidence pertaining to the fees and expenses for which it seeks payment or reimbursement hereunder and appropriate records with respect to the services performed by it under this Agreement.

9.2 To make such materials available at its office at all reasonable times during the contract period and for six (6) years from the date of final payment under this Agreement for inspection by the City and copies thereof shall be furnished to City upon request by City.

10. Miscellaneous.

Attorney agrees that, at all times, both during the term of this Agreement and after the termination of this Agreement, it will be faithful to the City by not divulging, disclosing or communicating to any person, firm or corporation, in any manner whatsoever, except in furtherance of the business of the City or as required by any applicable law, rule, regulation or ordinance of City or any other governmental authority,

any information of any kind, nature or description concerning any matters affecting or relating to the business, of City, or parties contracting with the City.

Any notice required to be given under this Agreement shall be deemed sufficient if in writing, sent by mail to the last known office address of Attorney, or to City Attorney.

This contract constitutes the sole and complete agreement between the parties, superseding any and all other agreements between the parties and no verbal or other statements, inducements or representations have been made or relied upon by either party. No modifications hereof shall be binding upon either party unless in writing and properly executed.

Attorney shall have no authority to enter into any contracts binding upon the City or to create any obligations on the part of the City.

IN WITNESS WHEREOF, the City and the Attorney have executed this contract as of the date first above written.

CITY OF DULUTH

WAGNER, FALCONER & JUDD, LTD.

By _____
Mayor

By  _____
Its: President

Attest _____
City Clerk

Countersigned:

City Auditor

Approved as to form:

City Attorney

City of Duluth Collection Service Agreement

The following is a written summary of services provided by Wagner, Falconer & Judd, Ltd. ("WFJ") to City of Duluth ("Duluth").

Ownership and Experience:

WFJ is a law firm headquartered in Minneapolis, MN. We are focused on providing the highest quality legal services including commercial collections and a wide range of litigation and transactional commercial business services.

WFJ is a commercial collection law firm. Since its inception, our primary focus has been on commercial collection work. Over 90% of WFJ collectors are lawyers and all accounts are managed by lawyers from placement to close.

Founded in 1932, WFJ has over 30 lawyers on staff with an additional 35 paralegals, legal assistants and other support personnel. There are currently five shareholders with a combined experience of over 130 years.

General Information

Fee Structure:

Collection matters will be handled on a contingent fee basis ("Collection Services"). WFJ will charge Duluth a 25% contingent fee on all collections handled in-house by WFJ. On matters that require the assistance of local counsel (or litigation if handled in-house by WFJ), WFJ will charge Duluth a 25% contingent fee, plus an applicable suit fee (typically 5% of claim amount capped at \$1000) and costs. Defense of any counterclaim is handled on an hourly fee basis. Included in Collection Services are in house collection of a placed account, litigation supervision of a placed account, maintenance of the WFJ Website and state tax lien summary, education of appropriate Duluth employees and general consultations with Duluth employees on non placed accounts.

In addition to Collection Services, WFJ provides services to Duluth on an hourly fee basis ("Hourly Services"). For example, WFJ drafts and reviews contracts, files tax liens/claims, title searches, bankruptcy matters and provides general consultation services (typically WFJ does not open or bill hourly time if the general consultation can be resolved within 20 minutes of attorney time- this time is included as part of the Collection Service contingent fee). Hourly rate for Duluth is \$200/hour for associate time and \$250/hour for shareholder time.

Service Capabilities:

As a commercial collection law firm, we handle the collection of receivables from the initial placement through litigation and post-judgment enforcement no matter the jurisdiction or location of the debtor. At all times in the collection process, we aggressively pursue resolutions by making appropriate written and telephonic demands on debtors, exploring potential means of security, settlement and if necessary litigation.

Through our proprietary client extranet we can manage a large portfolio efficiently, communicate with our clients in real time, provide custom reports to our clients, and monitor payment plans with debtors. In addition to our technological capabilities, we understand the importance of making phone calls and other direct efforts to recover our client's funds. All of our files receive individual attention.

Unlike a typical law firm, we are uniquely positioned to handle the high volume of Duluth accounts. WFJ has been involved in the commercial collection practice for 75 years and have developed the systems necessary to effectively handle a large volume of commercial collection accounts.

As a law firm, we are able to draft the appropriate documents to provide the teeth needed to increase the success rate of agreed payment plans as well as review each account for potential counterclaims. In addition, we are well versed in the laws of the jurisdictions Duluth does business to maximize the available security provided by the applicable jurisdiction's laws. As attorneys, we are specially suited to assist our client's in-house counsel with the avoidance and defense of any counterclaims.

If we are not successful collecting an account in-house, we utilize a worldwide network of attorneys and law firms that we have worked with for many years enabling us to pursue litigation on behalf of our clients anywhere in North America and beyond. Being attorneys, we are specially suited to the task of managing local counsel when litigation is ongoing. Furthermore, because we are nationally recognized as a forwarder of commercial collection claims the files we send to local counsel receive maximum attention.

Client Education:

We believe that education and training our critical to our success and the success of our clients. The training provided by WFJ, is performed at a location convenient to Duluth and is done within the confines of our standard contingent fee structure, at no additional cost to Duluth.

As a further convenience to and as an additional educational tool for Duluth, we will maintain on the WFJ Extranet a database of tax lien law complete with applicable statutory notice forms.

Where service are performed:

Through our offices in Minneapolis, Minnesota, Milwaukee, Wisconsin, and La Crosse, Wisconsin and via our collection network, our commercial collection and business practice extends to all 50 states and US territories in addition to Canada and the rest of the world.

Operating Hours:

Our office hours are from 8:00 a.m. to 5:00 p.m. Central Standard Time. Many of our attorneys and staff are working beyond office hours and we are available 24/7 via cell phones and email for any issues that may arise.

Quality Standards and Processes:

WFJ is focused on customer service. Our Mission is: "To Identify, Define and Meet our client's needs while exceeding their expectations." We strive to provide the highest quality service in the representation of our clients based on established firm standards as well as client specific requirements.

We have an experienced in-house customer service trainer who provides on-going staff training and has also developed standards of services for our attorneys and support staff to follow. Our trainer has had experience managing and training call centers with hundreds of employees. In addition, our in-house trainer has traveled around the country providing training to other law firms on customer service and effective phone skills.

Our firm has senior attorney managers overseeing the assignment and work of all files. The client account manager meets bi-monthly to review files with attorneys and staff.

Our entire staff is located in Minnesota and Wisconsin. We believe this is an important feature and something which distinguishes WFJ from others who may outsource aspects of their collection practice offshore. Duluth wants to be able to both collect its past due accounts and maintain its relationships with its businesses and citizens. We believe it is imperative that if a debtor calls back they reach the person who called them and not another representative assigned through some automated process. In this manner we are able to say with confidence that we can collect money without unduly alienating the debtor in those instances where Duluth wishes to preserve the relationship. All of our staff understands the importance of this process in helping clients collect while maintaining their relationships.

Account Manager:

The account manager for Duluth is Michael DuPont. Mr. DuPont is a WFJ shareholder and has worked at WFJ for 20 years. In addition to Mr. DuPont, the Duluth account is serviced by two additional attorneys, Jeff Nicolet and Matt Resch. Mr. Nicolet has worked with WFJ for over 13 years and Mr. Resch has worked with WFJ for over 4 years.

In addition, the Duluth account is serviced by paralegals and legal assistants. Mr. DuPont serves as the primary point of contact and assigns and monitors the work of all files placed with WFJ. Mr. DuPont, Mr. Nicolet and Mr. Resch will travel to the Duluth for in person meetings on a frequency acceptable to Duluth.

Mr. DuPont is also responsible for reviewing the money collected, commissions earned, and costs expended. He is also responsible for the development and implementation of our procedures for handling a high volume of collection files. This includes the hiring and performance review of all staff, the assignment and monitoring of schedules, and the development, review and approval of demand letter language, promissory notes, confessions of judgment, making sure WFJ is current on the applicable laws of the jurisdictions Duluth does business, pleadings and other documents used in our efforts to collect.

Training of Staff:

We consider training to be essential to WFJ providing Duluth with world class legal and collection services. All of our staff is trained on the law as it specifically relates to Duluth and the jurisdictions where Duluth does business. This training is ongoing and lead by Mr. DuPont with assistance from Mr. Nicolet and Mr. Resch. In addition, all of our attorneys are required to participate in 15 hours of Continuing Legal Education each year in order to maintain their licenses. As a further supplement to the Duluth specific education and the general training offered through the attorney CLE requirement, we have rotating topics presented by an attorney to the firm at our periodic staff meetings.

All new employees participate in extensive training the first two weeks of their employment. Employees are trained on our website, our policies and procedures for particular clients for whom they will be working and our internal policies regarding customer service, file maintenance, accounting, etc. General customer service and phone skills training are provided by our in-house trainer to all new employees during their first few weeks with the firm and to the entire firm on a yearly basis.

We have training manuals developed for the use of our website and numerous documented procedures and substantive outlines on specific legal topics that are provided to new employees and supplemented as developed and revised. These include client service philosophy, communication uniformity, email and voicemail uniformity, standards of service for attorneys, paralegals and legal assistants, as well as general topics of law of importance to Duluth and other clients.

Disaster Recovery Plan:

We have contracted with a third party company for the daily back up and offsite storage of all of our electronic data. Data is stored in two electronic vaults – one in Minneapolis, Minnesota and one in St. Paul, Minnesota. Our website server is also offsite and is backed up on a daily basis. In the event of a catastrophe, we are able to be back up and running at our branch offices and on remote personal computers within a day.

Insurance and Bonding:

We have general liability insurance with an umbrella policy of \$5,000,000 per occurrence up to \$5,000,000 aggregate per year. As a law firm, WFJ also carries professional

malpractice liability insurance in the amount of \$1,000,000 per incident up to \$2,000,000 aggregate per year. WFJ has a Fidelity Bond in the amount of \$5,000,000.

Operational Policies and Procedures for Collections Process

Collections:

Accounts may be placed with our office via our website, email, facsimile or mail. If placed via our website, the account is already entered into the website and an automatic email notification is generated and sent to the attorney responsible for assigning files and the person that entered the new matter. If the account is placed via another method, the file is first entered into our website and then is reviewed by the managing attorney. An acknowledgement of claim is sent to the client with 24 hours of receiving the account and necessary backup documentation.

The managing attorney assigns the file to a responsible attorney who then reviews the file (nature of the claim, existence of any security such as lien rights, any potential counterclaims, etc.) and sends, via fax (if possible) and mail, an initial demand letter for payment. The letter is sent within one business day (unless time sensitive) of receipt of claim and required backup documentation from client. At the same time, WFJ staff will follow up with attempts at phone contact. If there is communication with the debtor, we work towards obtaining payment or setting up a payment plan if agreed to by the client. If payment is not received or a payment plan is not formalized, the attorney will send a final demand letter. If there is no payment received or payment plan arranged within seven days of the final demand letter, the attorney will determine if suit is recommended and will request authorization from the client to either start suit or forward to local counsel for investigation and suit. Based on the nature of the Duluth matters WFJ expects to litigate most matters. Local counsel will only be retained after the approval by Duluth in situations where the debtor is located outside of MN or WI.

The files placed with local counsel are monitored by a WFJ attorney. If recommended and authorized by client, suit will be initiated typically within two weeks of receipt by local counsel of suit fee and cost requirements. We monitor the files that are with local counsel every three weeks to determine their status. In addition to our office calendar, WFJ's client extranet has a calendar to assist in the monitoring of all files. If payment is not received, or an acceptable payment plan is not formalized after service of the lawsuit, litigation will proceed. Once judgment is obtained, WFJ and/or local counsel will pursue judgment enforcement. Methods used post-judgment include, bank levies, sheriff's levies, and discovery, such as depositions to determine sources of assets to satisfy the judgment. Once a settlement payment is received, a payment plan completed, a judgment collected or sources of money exhausted, WFJ will close its file. Our closed files are maintained for at minimum of seven years before being disposed of in a commercially reasonable manner so as to protect all confidential information. All steps outlined above are recorded in our website notes for each account.

The first measure of our success in our commercial collection practice is the amount of money collected and its ratio with the total amount placed for collection. Our success is

also measure by the level of satisfaction our clients have with WFJ and our service provided. We take great pride in the fact that we have maintained several longstanding collection clients over the years.

Our managing attorneys are responsible for managing the work flow of our commercial collection clients. Through the use of our website, the managing attorneys responsible for a given client are able to review the status of all placed accounts and the work performed by the staff and attorneys on a daily basis. Our website sends the responsible attorney of an account a reminder email whenever no notes have been entered on the website file for 21 days. This calendar reminder can be modified to meet the specific needs of a particular client. In addition, attorneys and staff use a checklist found in the front cover of each physical file which contains all deadlines for the stages of our collection files.

Credit, Asset & Skip Tracing Capabilities

All WFJ staff members handling collection files are capable of performing asset, judgment, address, DL number, etc. searches. We use a third party online service predominantly – Accurint®. In some cases, we will retain a third party business to assist in locating debtors. Unless it is very involved requiring a third party search, we do not bill our contingent collection clients for these services. For clients who have retained our firm on an hourly basis, a cost advance is required and out-of-pocket costs are taken from the advance.

Payment Policies:

WFJ will arrange for, formalize and monitor payment plans with debtors to extent the client finds the arrangement acceptable. We negotiate settlements with debtors on a case-by-case basis subject to Duluth approval.

All disputes raised by debtors are investigated by WFJ by reviewing the issues with clients' representatives, obtaining additional documentation when available, and speaking with material witnesses with knowledge of the facts concerning the dispute. It is our approach to develop a sufficient understanding of the facts of a case to be able to counter any alleged disputes. When debtors establish valid disputes as to amounts owing or their liability is seriously in question, it is our responsibility as attorneys to appropriately advise our client of issues impacting collection.

We will accept post-dated checks from debtors only on a case-by-case basis. Payments are processed by our accounting department upon receipt of checks. Checks are deposited in our trust account until the check clears. We have an escrow account for payments made on behalf of DULUTH through Associated Bank. Currently, once a check clears, a check is generated from our trust account for the net amount received (taking into account our fees/costs) and forwarded to the client (typically within 2 weeks of receipt of payment). Payments are entered on our website file as soon as the check clears. When debtors make payments directly to clients, our accounting department

generates an invoice for contingent fee earned and forwards it to the client for payment. The payment is entered in the website file upon confirmation of the direct payment. Statements for outstanding balances owed for commissions or costs are forwarded to clients on a monthly basis. Our remittances include a letter, check and invoice.

Legal Accounts (Files that require litigation):

WFJ is a law firm so any Duluth account placed with WFJ will automatically be sent to legal for collection. If we are not able to arrange voluntary payment from debtor all collection files are reviewed by the responsible attorney to determine whether an account should be litigated to force collection. Some of the criteria involved in this decision include: (1) the client's wishes; (2) the total balance owed; (3) the jurisdiction; (4) whether there is personal liability through a personal guarantee or proprietorship; (5) information as to the assets and liabilities of the debtor and any guarantors; (6) existence of proof problems or absence of necessary documentation; (7) overall likelihood of success on the merits; and (8) whether the debtor's business is still operating. If in the attorney's discretion suit is recommended, then that is communicated to the client along with a request for authorization to initiate suit and/or forward to local counsel.

All matters in Minnesota, Wisconsin and some matters in Illinois are handled in-house by attorneys in our firm. For matters in other jurisdictions, we forward to local attorneys known to us. WFJ is a Martindale-Hubbell A/V rated law firm with more than 75 years of commercial collection experience. As such, we have developed professional and personal relationships with many collection law firms and lawyers throughout the world. We are also members of the Commercial Law League of America and listed in the American Lawyers Quarterly and the General Bar law lists. When we do not know of a law firm in a given jurisdiction, which is rare, we call on our contacts for referrals. The reciprocal nature of law firms referring business to each other between jurisdictions is advantageous for us when selecting local counsel.

WFJ will not forward any matter to local counsel or initiate suit without the express authorization of the client and notification of the applicable increase in the fee.

WFJ's goal when working with its commercial collection clients is to collect as much money as quickly as possible to minimize the number of lawsuits that are filed. We attempt to perform as much legal/collection service within our office to minimize the involvement of outside counsel unless it is absolutely necessary for instance to file suit, file an applicable lien claim or make an appearance in bankruptcy court. Even when local counsel is required to draft and file court papers, WFJ maintains control of the file. As discussed earlier, all files are managed by attorneys at WFJ including those forwarded to local counsel. As attorneys, we speak the same language as local counsel and are able to more efficiently manage the litigation and make sure local counsel is on track.

Once judgment is obtained through litigation or a confession of judgment, WFJ continues to seek collection. Typically, we will make sure some post-judgment discovery is done to ascertain if there are any assets available when enforcing the judgment. When we have

bank information, we will always attempt a bank levy in the hopes of capturing funds in an account. We will also attempt Sheriff's levies where appropriate and in the extreme case foreclose on property available.

When debtors file for bankruptcy, the Automatic Stay typically prevents further post-filing collection activity. However, we routinely file proofs of claim on behalf of our clients and defend preference actions whenever appropriate. In addition, we advise our clients whether to file an Adversary Proceeding in an attempt to have the bankruptcy court determine whether the debt is dischargeable. If the debtor is deceased, we advise our clients whether to pursue collection against the debtor's estate through the probate process.

Reporting

We are able to provide an account status update on a schedule as desired by specific clients. Some clients prefer monthly, some prefer bi-monthly. All accounts placed by Duluth are available for viewing online through our secure website 24 hours a day 7 days a week. We also will provide monthly reports via email on outstanding accounts. Currently, our website can generate the following reports: an "Account Summary" showing all files with their last entered note; and a "Collection Summary" showing all accounts with the amount placed and amount collected to date. Our website is fully customizable so custom reports are possible for individual clients at no extra charge. Copies of the Account Summary and Collection Summary reports are attached.

System/Technology

WFJ has an in-house IT Manager to provide service and support 24 hours a day 7 days a week. Secure access may be granted to whomever the client wishes. A total listing shows for each account the following: requestor (Duluth account rep); request date; assigned attorney; status (active, in suit, local counsel, judgment, paid, etc.); WFJ file number; and last note date. Each account's main page contains general information available, such as balance owed, customer information, customer contact, uploaded documents, etc. Each account has a link to a notes page where all notes are entered and stored. Viewing these notes gives a good picture of everything that has been done on a file. As discussed previously, clients with access to their account are able to place accounts and upload documentation in support of these accounts. They are also able to run all available reports. Please keep in mind that our website is completely customizable to a specific client's needs. If there is information not needed, it can be removed, if there are specific reports desired, they may be developed. It is our goal to make our website as easy to use and useful as possible for our clients. We do offer on-site training of personnel who will be using our website and provide documentation on the use of our website as well.

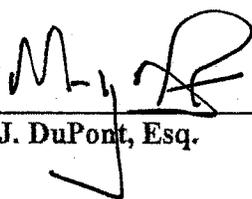
WFJ has a digital phone system that enables managers to monitor phone calls as well as outbound and inbound call activity. This system greatly assists our supervisors with the management of the staff and accounts as well provide opportunities for training.

I ACKNOWLEDGE THAT I HAVE READ THIS SERVICE AGREEMENT AND HAVE DISCUSSED ANY QUESTIONS OR CONCERNS I HAVE REGARDING THIS SERVICE AGREEMENT WITH WFJ. I FULLY UNDERSTAND THE TERMS OF THIS SERVICE AGREEMENT AND I HAVE RECEIVED A COPY OF THE SAME. I AGREE TO RETAIN WFJ IN ACCORDANCE WITH THESE TERMS AND CONDITIONS.

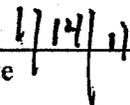
City of Duluth

Date

In consideration of the foregoing I agree to provide representation in the above matter.



Michael J. DuPont, Esq.



Date