

Contract for the Collection of Delinquent Taxes

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This Agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (hereinafter called "CLIENT") and Linebarger Goggan Blair & Sampson, LLP (hereinafter called "FIRM") (each a "Party" or collectively the "Parties") acting by and through their respective authorized representatives.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I *Nature of Relationship*

1.01 The Parties hereto acknowledge that this AGREEMENT creates an attorney-client relationship between CLIENT and FIRM.

1.02 The CLIENT hereby employs the FIRM to provide the professional services described herein for the compensation provided below.

1.03 This AGREEMENT is entered into pursuant to and as authorized by Section 6.30 of the Texas Property Tax Code.

Article 2 *Scope of Services*

2.01 The FIRM shall take reasonable and necessary actions to collect property taxes that are owed to the CLIENT and that are subject to this agreement, as hereinafter provided.

2.02 The CLIENT may from time-to-time specify in writing additional actions to be taken by the FIRM in connection with the collection of taxes that are owed to the CLIENT. CLIENT further constitutes and appoints the FIRM as CLIENT's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue the collection of and/or prosecute the CLIENT's claim for taxes.

2.03 Taxes owed to the CLIENT shall become subject to this agreement upon the following dates, whichever occurs first:

(a) On February 1 of the year in which the taxes become delinquent if a previously filed tax suit is then pending against the property subject to the tax;

(b) On the date any lawsuit is filed with respect to the recovery of the tax if the tax is delinquent and is required to be included in the suit pursuant to TEX. TAX CODE § 33.42(a);

(c) On the date of filing any application for tax warrant where recovery of the tax or estimated tax is sought and where the filing of an application for tax warrant by the FIRM is at the request of CLIENT or CLIENT's Tax Assessor-Collector;

(d) On the date of filing any claim in bankruptcy where recovery of the tax is sought;

(e) In the case of tangible personal property, on the 60th day after the February 1 delinquency date;

(f) On July 1 of the year in which the taxes become delinquent; or

(g) At the sole discretion of the CLIENT, any other account turned over for collection prior to July 1, of the year following the imposition of the tax.

2.04 All delinquent personal property taxes shall become subject to this contract and are to be turned over to the FIRM for collection 60 days after the delinquency date for said taxes. The Firm shall be entitled to be compensated based on the penalty previously approved by the City of Allen and imposed by law. For 2004 and prior years, the penalty to defray the cost of collection was approved at 15% of the outstanding balance of taxes, penalties and interest. For tax year 2005 going forward, the penalty to defray the cost of collection was approved at 20% of the outstanding balance of taxes, penalties and interest. All collection penalties or attorney fees collected on those taxes are the property of the FIRM and shall be paid in the same manner as all other collection penalties or attorney fees under this Agreement.

2.05 CLIENT reserves the right to make the final decision as to whether or not to enforce by suit any delinquent tax account turned over to the Firm for collection.

2.06 In connection with its collection of delinquent taxes, the FIRM shall:

(a) Prepare delinquent tax reports and updates based on data provided by the CLIENT'S Tax Assessor-Collector Office;

(b) Provide taxpayers notification by letter and telephone, of current and prior year delinquencies as may be required by law and/or as may be advisable for the purpose of expediting collections;

(c) Represent CLIENT in all delinquent property tax suits, bankruptcy hearings and property tax hearings before federal agencies and actively pursue all tax claims in federal bankruptcy court, and intervene on behalf of CLIENT in all suits for ad valorem taxes filed by any other taxing unit on property located within its boundaries;

(d) Advise CLIENT on legal issues that arise in the process of delinquent tax collection;

(e) Promptly call to the attention of the CLIENT, collector or other officials any errors or discrepancies coming under their observation during the progress of the work and intervene

on behalf of the CLIENT in all suits for taxes hereafter filed by any taxing unit on property located within its taxing jurisdiction;

(f) Provide performance reports to CLIENT. Performance reports shall include at least the following measures or equivalent:

- An annual assessment of the collection of outstanding taxes by the FIRM;
- An annual assessment of the turnover of delinquent taxes which have been placed with the FIRM for collection;
- An annual assessment of any litigation or claims (if any) which would have a material impact on the CLIENT;
- An annual assessment of filed/dismissed/pending litigation claims filed by the FIRM on CLIENT's behalf.

(g) Advise the CLIENT of all cases where investigation reveals taxpayers to be financially unable to pay their delinquent taxes.

Article 3

Compensation

3.01 The CLIENT agrees to pay to the FIRM, as compensation for the services rendered herein, the following amounts:

(a) the amounts previously approved by the City of Allen for the penalty to defray the costs of collection pursuant to Section 33.07 of the Texas Property Tax Code. The penalty as previously approved shall remain in full force and effect from the date of this Agreement going forward (unless otherwise changed or modified by the City of Allen); and

(b) in bankruptcy proceedings, eminent domain proceedings, federal receiverships or any other legal proceeding where the FIRM represents the CLIENT's interest, CLIENT agrees to pay the FIRM as compensation for collection activities on these accounts in an amount equal to 15% for 2004 and prior years and 20% for 2005 and subsequent years of the taxes penalty and interest actually collected.

3.02 The CLIENT (and or the designated tax assessor/collector) shall pay the FIRM by the twentieth day of each month, all compensation earned by the FIRM for the previous month as provided in this Article 3. All compensation above provided for shall become the property of the FIRM at the time payment of the taxes, penalty and interest is made to the collector.

Article 4

Intellectual Property Rights

4.01 The CLIENT recognizes and acknowledges that the FIRM owns all right, title and interest in certain proprietary software that the FIRM may utilize in conjunction with performing the services provided in this Agreement. The CLIENT agrees and hereby grants to the FIRM the right to use and incorporate any information provided by the CLIENT ("CLIENT Information") to update the databases in this proprietary software, and, notwithstanding that CLIENT Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the CLIENT shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the CLIENT shall be entitled to obtain a copy of such data that directly relates to the CLIENT's accounts at any time. Such data to be provided by the

FIRM to the CLIENT in a readily convertible format upon CLIENT's request and at the termination or expiration of this Agreement.

4.02 The FIRM agrees that it will not share or disclose any specific confidential CLIENT Information with any other company, individual, organization, agency or taxing entity, without the prior written consent of the CLIENT, except as may be required by law or where such information is otherwise publicly available. It is agreed that the FIRM shall have the right to use CLIENT Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain CLIENT Information. These aggregate statistics are owned solely by the FIRM and will generally be used internally, but may be shared with the FIRM's affiliates, partners or other third parties for purposes of improving the FIRM's software and services, but not commercial use.

Article 5

Term and Termination

5.01 This Agreement shall be effective on September 24, 2019 (the "Effective Date") and shall continue thereafter until terminated by either Party. Either Party to the Agreement has the right to terminate the contract at any time upon 60 days written notice to the FIRM and/or the CLIENT.

5.02 If at any time during the term of this Agreement the CLIENT determines that the FIRM's performance under this Agreement is unsatisfactory, the CLIENT shall notify the FIRM in writing of the CLIENT's determination. The notice from the CLIENT shall specify the particular deficiencies that the CLIENT has observed in the FIRM's performance. The FIRM shall have sixty (60) days from the date of the notice to cure any such deficiencies. If at the conclusion of that sixty-day remedial period, the CLIENT remains unsatisfied with the FIRM's performance, the CLIENT may terminate this AGREEMENT effective upon the expiration of thirty (30) days following the date of written notice to the FIRM of such termination ("Termination Date").

5.03 Should this AGREEMENT be terminated, the FIRM shall be entitled to continue to prosecute any tax suits, applications for tax warrants or bankruptcy claims pending on the Termination Date or Expiration Date for an additional six months following termination or expiration. The CLIENT agrees that the FIRM shall be compensated as provided by Article 3 for any base tax, penalties and interest collected in the pending matters during the six-month period.

5.04 The CLIENT agrees that the FIRM shall be reimbursed for any costs advanced and shall be paid for any services performed on behalf of the CLIENT when such costs are recovered by or on behalf of the CLIENT, regardless of the date recovered. It is expressly agreed that neither the expiration nor the termination of this Agreement constitutes a waiver by the FIRM of its entitlement to be reimbursed for such costs and to be paid for such services. It is further expressly agreed that the expiration of any six-month period under Section 5.04 does not constitute any such waiver by the FIRM.

Article 6

Miscellaneous

6.01 *Indemnification.* FIRM agrees to DEFEND, INDEMNIFY AND HOLD CLIENT, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits,

judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by FIRM's intentional or negligent act, error, or omission of Firm, any agent, officer, employee, consultant or subcontractor of Firm and their respective officers, agents, employees, and client's representatives while in the exercise of performance of the rights or duties under this Agreement. THE FIRM'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY FIRM UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.02 Insurance.

(a) FIRM shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage including the property of the CLIENT, its officers, contractors, agents and employees (collectively referred to as the "Client") insuring against all claims, demands or actions relating to the work and services provided by the FIRM pursuant to this Agreement with a minimum combined single limit of not less than \$2,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations coverage of \$1,000,000.00. This policy shall be primary to any policy or policies carried by or available to the Client; (ii) policy of automobile liability insurance covering any vehicles owned, non-owned and hired and/or operated by FIRM, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit for bodily injury, death and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of FIRM's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability with policy limit of not less than \$1,000,000.00 per claim and \$1,000,000.00 in the aggregate, covering negligent acts, errors and omissions by FIRM, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement.

(b) All insurance shall be endorsed to provide the following provisions: (1) name the Client, its officers, and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance and Professional Liability; (2) provide for a waiver of subrogation against the Client for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to the Client that indicates the insurance company will provide to the Client at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the FIRM shall provide at least thirty (30) days prior written notice to the Client of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. All policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by the Client.

(d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to the Client prior to commencement of services. On every date of renewal of the required insurance policies, the FIRM shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to the Client. In addition, the FIRM shall within ten (10) business days after written request provide the Client with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to the Client is a condition precedent to the payment of any amounts due to FIRM by the Client. **6.03**

6.03 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery or on the day actually received if sent by courier or otherwise hand delivered:

If intended for CLIENT:

Attn: City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

With copy to:

Peter G. Smith City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard Street Dallas, Texas 75201

If intended for FIRM:

Attn: Mary Sue Daniel
Linebarger Goggan Blair & Sampson, LLP
2777 N. Stemmons Freeway, Suite 1000
Dallas, TX 75207

6.04 Integration. This Agreement contains the entire agreement between the parties hereto and may only be modified in a written amendment, executed by both parties.

6.05 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to choice of law rules. Venue shall lie exclusively in the state district court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.06 Independent Contractor. It is understood and agreed by and between the Parties that the FIRM, in satisfying the conditions of this Agreement, is acting independently, and that the

CLIENT assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by FIRM pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the CLIENT. FIRM shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.07 Assignment. The FIRM may not assign this Agreement without the prior written consent of CLIENT.

6.08 Prohibition of Boycott Israel. FIRM verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the FIRM is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the FIRM has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

This Agreement is executed on behalf of the FIRM and of the CLIENT by the duly authorized persons whose signatures appear below.

City of Allen, Texas

Linebarger Goggan Blair & Sampson, LLP

By: _____

By: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

ATTEST:

By:

Shelley B. George, City Secretary

APPROVED AS TO FORM:

By:

Peter G. Smith, City Attorney