

LAW FIRM CONTINGENT FEE CONTRACT

This Agreement (“Agreement”) is made on this the ____ day of _____, 2013, between City of Corpus Christi, Texas, hereinafter referred to as “City”, and Linebarger Goggan Blair & Sampson, LLP, hereinafter referred to as “Law Firm”;

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. PURPOSE OF REPRESENTATION

1.01 City hereby retains and employs Law Firm for the collection of all delinquent accounts in special assessments levied in connection with paving liens and liens filed under Chapter 342 of the Health and Safety Code, including principal and interest owing to the City thereby, hereinafter referred to as “Delinquent Accounts” or “Delinquent Accounts in Special Assessments”. An account is delinquent when it remains unpaid after thirty (30) days of initial invoice.

1.02 The City authorizes and directs Law Firm to take all actions necessary to include the Delinquent Account in pending tax suit, including all necessary court appearances, research, investigation, correspondence, preparation and drafting of pleadings, and all related work necessary to properly represent the City’s interest in these matters. The Law Firm shall check with the City before filing any tax suit or obtaining a judgment on such a suit to ensure the inclusion of all liens in the suit or judgment. If additional liens are filed after the initiation of the tax suit, but before final judgment, Law Firm shall amend the pleadings to include such additional liens. The City will respond within 5 business days to the Law Firm’s request for lien accounts to be included in the filing or amendment of any suit. When a case is set for final hearing, the Law Firm will request an update to identify any additional liens to be included in the suit before the entry of judgment. The City will respond within 5 business days of the request for an update and said liens will constitute the final claims to be included in the suit. The Law Firm shall represent the City in all bankruptcies filed by delinquent property owners, including filing claims, monitoring the bankruptcy process, attending hearings as necessary, and otherwise insuring the City’s interests are protected in the bankruptcy matter with respect to Delinquent Accounts.

1.03 The Law Firm shall pursue collection methods such as letters, telephone calls, in person contact regarding the collection of Delinquent Accounts in Special Assessments. The Law Firm agrees to contact the person who is legally responsible for the Delinquent Account to collect amounts owed. This shall be accomplished by mailings to delinquent accounts on intervals to be agreed upon by the Law Firm and the Director of Financial Services. Exhibit 1 identifies specific tasks to be performed by Law Firm.

1.04 The Law Firm shall provide the City Director of Financial Services with written monthly reports detailing its activities for the preceding month. No settlement agreement

of any claim, suit or proceeding shall be entered into without the approval of the City Director of Financial Services.

1.05 The Law Firm is to call to the attention of the City Director of Financial Services any errors, double assessments, or other discrepancies coming under its observation during the progress of the work. Ownership of information acquired by Law Firm concerning the services performed during this agreement belongs to the City, and Law Firm shall only use such information as needed to perform required services.

1.06 No settlement agreement of any claim, suit or proceeding shall be entered into without the approval of the City's Director of Financial Services. The Law Firm shall accept all payments, including collection fees and filing fees, from property owners. Law Firm shall deposit all payments received daily into City depository account, and also provide collection report identifying the Delinquent accounts for which payment was received by Law Firm. Law Firm shall prepare and send to City for City's signature the release of lien form, based upon the Law Firm's own lien research, on any properties where payment was received in full by Law Firm, within 45 days of receipt of the payment. On a monthly basis, Law Firm shall invoice the City for Law Firm's costs to provide services under this agreement.

1.07 The Law Firm shall maintain a file for each referred claim which shall be available to the City at all times for inspection. Such file shall contain all data pertinent to the claim to support its disposition. All documents, papers, or records pertaining to a file shall be retained after conclusion of all legal proceedings for disposition as mutually agreed to by the City's Director of Financial Services and Law firm.

1.08 Upon the written request of the City Director of Financial Services, the Law Firm shall promptly and no longer than 5 business days after such request, prepare affidavits of lien, at no additional charge to City. Law Firm shall file the affidavits of lien and release of lien documents at the Nueces County Courthouse. The City shall maintain escrow account at Nueces County Courthouse to be used by Law Firm to pay filing fees when filing the affidavit of lien and release of lien. Law Firm will provide City with receipt of filing fees paid using the City escrow account.

1.09 Law Firm shall maintain a database of the Delinquent Accounts in Special Assessments for mailing notices and collection purposes and provide City with real time access to the database at no charge. City retains ownership of all data provided to Law Firm.

1.10 City hereby retains and employs Law Firm for the collection of Risk Department claims, i.e., property damage claims by parties who are uninsured. As compensation for said services, the City hereby agrees to pay the Law Firm 20% of all claims which are referred to Law Firm for collection and which are actually collected and paid to the City during the term of this contract, to be paid by and collected from the debtors. All such compensation shall become the property of the Law Firm at the time payment of the monies is made to the City. The City Risk Department will provide a report identifying claims to be pursued on a bi-annual basis. At their own expense, the Law Firm will perform an annual mailing on said claims. The City will accept, apply and deposit

payments received for said claims. The City shall pay any attorney's fees due to the Law Firm monthly by check with an accompanying report of all claims paid.

II. LAW FIRM'S FEES AND EXPENSES

2.01 As compensation for services required under this contract, City hereby agrees to pay Law Firm 20% of all Delinquent Accounts in Special Assessments which are referred to Law Firm for collection and which are actually collected and paid to the City during the term of this contract, to be paid by and collected from the property owners. All such compensation shall become the property of the Law Firm at the time payment of the monies is made to the City. It is the intent of the parties that all payments for Delinquent Accounts, including collection fees and filing fees, shall be paid directly to Law Firm for processing. However, in the event that the City receives payments on these Delinquent Accounts, then the City shall forward the payment (prior to deposit) to the Law Firm for processing. In the event that the City deposits a payment from a Delinquent Account, then the City shall notify Law Firm of the deposited amounts, and pay Law Firm any collection fee owed to Law Firm. The City shall pay over said funds monthly by check.

2.02 It is understood that if the amount of Law Firm's fees under this Contract are regulated or governed by law, and that law precludes any other fee arrangement other than the amount set by law or regulation, then the amount payable to Law Firm is limited to the maximum allowed by law.

2.03 The Law Firm agrees to pay all court costs which the City would be legally obligated to pay and which are incurred in the performance of this Contract. Law Firm will attempt to collect from the delinquent property owner all such costs as are assessable against the delinquent property owner. Specifically, the Law Firm agrees to pay any such costs including citations by publication, services costs, and out of state costs if such collection cannot be made from property owner.

III. REQUIRED RECITALS

3.01 This Agreement is effective only after review and approval by the City Manager or designee.

3.02 Law Firm shall keep current and complete written time and expense records that describe services provided in performing under this contract.

3.03 At any time upon request, Law Firm shall permit City Manager or designee, to inspect or obtain copies of the Law Firm's records kept in accordance with this contract.

3.04 Upon conclusion of any matter for which Law Firm was retained, Law Firm shall provide City with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows Law Firm's computation of the amount of the contingent fee.

3.05 There is no difference in the method by which the contingent fee will be computed if any matter is settled, tried, or tried and appealed.

3.06 Law Firm is responsible for the payment of litigation, mailing, postage, and all other expenses, except that City shall reimburse any county charged filing fees.

IV. TERM

4.01 The term of this Agreement begins upon the date of City Council approval. Either party may terminate this Agreement upon sixty (60) days prior written notice. Upon termination, Law Firm will deliver all pending files on cases referred to it under this Contract to the City. The Law Firm has six (6) months following termination of the contract to reduce to judgments all suits filed prior thereto. Upon termination, Law Firm shall provide the most recent database of the Delinquent Accounts in Special Assessments to City in a form that is usable by the City, or Law Firm shall continue to make database available to City.

V. CITY RESPONSIBILITIES

5.01 City shall identify tax account number, owner name, street address, legal description and amounts owed on original list submitted to Law Firm.

5.02 City will not maintain payment agreements on delinquent accounts referred to Firm for collection. Firm is responsible for maintaining payment agreements on any delinquent accounts.

5.03 City shall respond to incoming telephone calls regarding Delinquent Accounts in Special Assessments.

5.04 City shall notify Law Firm of any settlements, adjustments or cancellations to delinquent accounts.

VI. MISCELLANEOUS

6.01 This agreement shall be construed under and in accordance with Texas law, and all obligations of the parties are performable in Nueces County, Texas.

- a. This Agreement constitutes the sole and only Agreement between the parties and supersedes any prior undertakings or written or oral agreement between the parties respecting the subject matter of this agreement.
- b. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

- c. This Agreement may be amended only by written agreement signed by duly authorized representatives of the parties hereto. The City Manager is authorized to execute amendments to the Agreement.
- d. Law Firm agrees to comply with all applicable Federal, State, and Local laws, including laws related to collections.
- e. As desired by City, Law Firm agrees to an audit of files maintained by Law Firm pertaining to this Contract.
- f. Neither party may assign this Agreement without the prior written approval of other party.
- g. Notice may be sent by certified mail, postage prepared, and is deemed received on the third day after deposit if sent certified mail. Notice shall be sent as follows:

If to City: City of Corpus Christi
 Attn: Director of Financial Services
 P. O. Box 9277
 Corpus Christi, Texas 78469-9277

If to Law Firm: Linebarger Goggan Blair & Sampson, LLP
 Attn: Paul D. Chapa, Partner
 500 N. Water Street, Suite 1111
 Corpus Christi, Texas 78401

- h. The Law Firm will not commence work under this Contract until the Law Firm has complied with the insurance requirements set out in the attached Exhibit 2.
- i. If the City has not awarded a new contract for the collection of delinquent accounts upon the expiration of this Contract, the contract will continue on a month-to-month basis, at the current fees, until such time as either party provides the other party with sixty (60) days written notice that it does not wish to continue the contract. This Contract automatically expires on the effective date of a new contract for the collection of Delinquent Accounts in special Assessments. The City will provide written notice of the effective date of the new contract to Law Firm.
- j. The parties recognize that the continuation of any contract after the close of any fiscal year of the City is subject to appropriations and budget approval providing for such contract item as an expenditure in that budget. The City does not represent that said budget item will actually be adopted, that determination is within the sole discretion of the City Council at the time of adoption of each budget. If the budget item for this Contract is not adopted, City will notify Law Firm and Law Firm may terminate the Contract at the end of the then current fiscal year.
- k. The insurance requirements are attached as Exhibit 2 to this agreement.

Agreed to by the City of Corpus Christi and Law Firm:

City of Corpus Christi

By: _____

Ron Olson, City Manager

Date: _____

Attest

By: _____

Rebecca Huerta, City Secretary

Approved as to form: _____

By: _____

Julian Grant, Assistant City Attorney

For the City Attorney

Linebarger Goggan Blair & Sampson, LLP

By: _____

Paul Daniel Chapa, Partner

Date: _____

Exhibit 1

Services Performed by Law Firm

Collection of Lien

Maintain database of delinquent accounts for mailing and collection purposes and provide City with real-time access to the database at no charge.

Include liens in delinquent tax suits.

Mass mailings of delinquent bills as requested by City.

Respond to incoming phone calls to Law Firm regarding Delinquent Accounts.

Produce affidavits for law suit evidence.

Perform judgment lien research for tax sales.

Represent City in bankruptcy court when property owner in bankruptcy.

Perform telephone collections.

Prepare deeds for resale.

Disburse tax sale and resale money.

Present resale bids to Council.

Answer correspondence regarding Delinquent Accounts.

Law Firm will inform City of any forwarding addresses on returned mail received by Law Firm.

EXHIBIT 2
INSURANCE REQUIREMENTS

I. **CONTRACTOR’S LIABILITY INSURANCE**

- A. Contractor must not commence work under this agreement until all insurance required herein has been obtained and such insurance has been approved by the City. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been obtained.
- B. Contractor must furnish to the City’s Risk Manager two (2) copies of Certificates of Insurance, showing the following minimum coverage by insurance company(s) acceptable to the City’s Risk Manager. The City must be named as an additional insured for the General liability policy.

| TYPE OF INSURANCE | MINIMUM INSURANCE COVERAGE |
|---|--|
| 30-Day Notice of Cancellation, material change, non-renewal or termination is required on all certificates | Bodily Injury and Property Damage Per occurrence - Aggregate |
| COMMERCIAL GENERAL LIABILITY including: 1. Commercial Form 2. Premises – Operations 3. Products/ Completed Operations 4. Contractual Liability 5. Independent Contractors | \$1,000,000 COMBINED SINGLE LIMIT |
| PROFESSIONAL LIABILITY to include : 1. Personal Injury 2. Errors and Omissions | \$1,000,000 COMBINED SINGLE LIMIT |

- C. In the event of incidents / accidents of any kind, Contractor must furnish the Risk Manager with copies of all reports of any claims within ten (10) days of the incident/ accident.

II. **ADDITIONAL REQUIREMENTS**

A. Certificate of Insurance:

- * The **City of Corpus Christi** must be named as an **additional insured** on the General liability coverage.
- * The **name of the project** must be listed under “Description of Operations”
- * At a minimum, a **30-day written notice** of material change, non-renewal, termination or cancellation to the Risk Manager is required.