

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

SERVICE CONTRACT
For
FEES AND FINES COLLECTION SERVICES

THIS CONTRACT (hereinafter “AGREEMENT”) is made and entered into by and between the County of Hidalgo, Texas, acting herein by and through its governing body, hereinafter referred to as “COUNTY”, and Linebarger Goggan Blair & Sampson, LLP, hereinafter referred to as “FIRM”.

Article 1
Nature of Relationship and Authority for Contract

- 1.01 The parties hereto acknowledge that this AGREEMENT creates an attorney-client relationship between COUNTY and the FIRM.
- 1.02 The COUNTY hereby employs the FIRM to provide the services hereinafter described for compensation hereinafter provided.
- 1.03 This AGREEMENT is entered into pursuant to and as authorized by Subsection (a) of Art. 103.0031, Texas Code of Criminal Procedure.

Article 2
Scope of Services

2.01 COUNTY agrees to employ FIRM as the successful respondent to the Request for Proposal (“RFP”) sought to provide legal services in connection with the collection and enforcement of delinquent fines, fees and court costs more particularly described in the attached Exhibit “A”. FIRM agrees to provide specific legal services to enforce the collection of delinquent court fees and fines that are subject to this AGREEMENT pursuant to the terms and conditions described herein, the specifications and requirements attached hereto as Exhibit A and as more fully described in FIRM’s response to the Request for Proposal attached herein as Exhibit “B”. Such legal services shall include, but not be limited to giving recommendations and legal advice to COUNTY, taking legal enforcement action representing COUNTY, in any dispute or legal challenge over authority to collect such court fees and fines, defending COUNTY in litigation or challenges of its collection authority, and representing COUNTY in collecting its interests in bankruptcy matters as determined by FIRM and COUNTY. This AGREEMENT supersedes all prior oral and written agreements between the parties regarding court fees and fines, and can only be amended if done so in writing and signed by agreement of all parties. Furthermore, this contract cannot be transferred or assigned by either party without the written consent of all parties.

2.02 The COUNTY may from time-to-time specify in writing additional actions that should be taken by the FIRM in connection with the collection of the fines, fees and court costs that are subject to this AGREEMENT. COUNTY further constitutes and appoints the FIRM as COUNTY's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue collection of the COUNTY'S claims.

2.03 Fines, fees and court costs that are subject to collection by and through this AGREEMENT are those that are more than one hundred twenty (120) days past due as of the effective date hereof and those that become more than one hundred twenty (120) days past due during the term hereof that are not the subject of any other similar collection contract with another firm or collection service vendor in force as of the time of the execution of this contract **and** that are "referred" to FIRM by COUNTY. As used in this section, "more than 120 days past due" has that meaning assigned by Subsection (f) of Art. 103.0031, Texas Code of Criminal Procedure Acts 2005, 79th Leg., ch. 1296, § 4, eff. June 18, 2005. The meaning assigned to the phrase "more than 120 days past due" shall, for the term and purposes of this AGREEMENT, survive any future amendments to, or repeal of, Article 103.0031, Texas Code of Criminal Procedure, or any parts thereof.

2.04 The COUNTY agrees to provide to the FIRM data regarding any fines, fees and court costs that are subject to this AGREEMENT and are "referred" to FIRM by COUNTY. "Referred" cases shall mean any fine and fee that is more than one hundred twenty (120) days past due that the COUNTY specifically transmits through electronic medium and designates for FIRM collection. The COUNTY shall have the right to retain and not "refer" all fines and fees that are more than one hundred twenty (120) days past due. The data for any "referred" cases shall be provided by electronic medium in a file format-as may be agreed upon by the COUNTY and the FIRM and as may be modified from time to time by agreement. The COUNTY shall provide the data to the FIRM not less frequently than monthly, as per the specifications and requirements attached hereto as Exhibit "A".

2.05 COUNTY agrees to only "refer" eligible fines, fees and court costs that are specifically designated and transmitted to FIRM by COUNTY for collection. COUNTY is not required to designate a specific or minimum amount of fines and fees for referral to FIRM.

2.06 The FIRM, in all communications seeking the collection of fines, fees and court costs, shall require that all payments be made directly to the COUNTY at an address designated by the COUNTY.

2.07 The COUNTY shall have the right to retract any referred fine, fee or court cost at any time, so long as no collection has occurred. Further, any matters with post judgment modifications or orders waiving the collection of fines/fees shall be deemed ineligible for third party collection.

2.08 If a fee, fine or court cost that is referred to FIRM by COUNTY is disposed of under Art. 103.0031(d), Texas Code of Criminal Procedure, by the Court of Original Jurisdiction, after a determination is made that the defendant is indigent, or has insufficient resources or income, or

is otherwise unable to pay all or part of the underlying fine or costs, neither COUNTY nor Defendant is liable for any costs or fees associated with the referral to FIRM.

2.09 The FIRM is only eligible to receive reimbursement for any fine/fee imposed as part of the COUNTY's participation in a SCOFFLAW program and/or the OMNIBASE system after these penalties have become delinquent, according to the terms of this agreement.

2.10 Subject to the exceptions stated herein at Sections 2.07, 2.08 and 2.09, the FIRM'S thirty percent (30%) collection fee shall be allocated from the total amount of fines, fees and court costs collected and not the total amount of cases referred.

Article 3 ***Compensation***

3.01 The COUNTY agrees to pay the FIRM as compensation for the services required hereunder:

- a) Thirty (30%) percent of all the fines, fees and court costs subject to the terms of this AGREEMENT that are collected by the COUNTY during the term of this AGREEMENT and that were incurred under Art. 103.0031(a)(2), Texas Code of Criminal Procedure, as a result of the commission of a criminal or civil offense committed (as described in Section 2.03 herein); and
- b) Zero (0%) percent of all the fines, fees and court costs subject to the terms of this AGREEMENT that are collected by the COUNTY during the term of this AGREEMENT and that were waived and/or modified under Art. 103.0031(d), Texas Code of Criminal Procedure, as a result of the commission of a criminal or civil offense (as described in Section 2.08 herein); and
- c) Zero (0%) percent of all eligible fines, fees and court costs subject to the terms of this AGREEMENT that are collected by the COUNTY through their own collection efforts during the term of this AGREEMENT and which are NOT referred to FIRM for collection; and
- d) Thirty (30%) percent of the total amount of all other eligible fines, fees and court costs [exclusive of any collection fee assessed by the COUNTY pursuant to Subsection (b) of Article 103.0031, Texas Code of Criminal Procedure] subject to the terms of this AGREEMENT and that are referred to and collected by the FIRM during the term of this AGREEMENT.

3.02 The COUNTY shall pay the FIRM by the thirtieth day of each month all compensation earned by the FIRM for the previous month as provided in this Article 3. The COUNTY shall provide an accounting showing all collections for the previous month with the remittance.

Article 4
Intellectual Property Rights

4.01 The COUNTY 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 COUNTY agrees and hereby grants to the FIRM the right to use and incorporate any information provided by the COUNTY (“COUNTY Information”) to update the databases in this proprietary software, and, notwithstanding that COUNTY Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the COUNTY shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the COUNTY shall be entitled to obtain a copy of such data that directly relates to the COUNTY’s accounts at any time.

4.02 The FIRM agrees that it will not share or disclose any specific confidential COUNTY Information with any other company, individual, organization or agency, without the prior written consent of the COUNTY, 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 COUNTY Information for internal analysis, improving the proprietary software and database, and generating aggregate data and statistics that may inherently contain COUNTY Information. These aggregate statistics are owned 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.

Article 5
Costs

5.01 The FIRM and COUNTY recognize that certain costs may be incurred in the process of providing any additional services contemplated in Section 2.02 above or in providing any special litigation services. The COUNTY agrees that all such costs shall be billed to the COUNTY or, (ii) when possible, arrange with the vendor or agency providing the service that the costs of services will not be paid unless and until such costs are recovered by the COUNTY from the debtor.

5.02 The COUNTY acknowledges that the FIRM may provide such services with its own employees or with other entities or individuals who may be affiliated with the FIRM, but the FIRM agrees that any charges for such services will be reasonable and consistent with what the same services would cost if obtained from a third party.

5.03 The COUNTY agrees that upon the recovery of such costs, the COUNTY will (i) pay the FIRM for any such costs that have been advanced by the FIRM or performed by the FIRM and (ii) pay any third party agency or vendor owed for performing such services.

Article 6
Term and Termination

6.01 This AGREEMENT shall be effective _____, 2015 (the “Effective Date”) and shall expire on _____, 2018 (the “Expiration Date”) unless extended as hereinafter provided. This AGREEMENT may be renewed for an additional one (1) year under the same rates, terms and conditions unless otherwise approved by the County of Hidalgo Commissioner’s Court.

COUNTY reserves the right to continue this AGREEMENT under the same fees, terms and conditions for an additional ninety (90) days grace period at the end of the AGREEMENT term due to unforeseen delays in the award of new bid, or the COUNTY’S inability to award new contract.

6.02 Either party may, without cause, terminate this AGREEMENT by giving the other party ninety (90) days written notice of its intent to terminate the AGREEMENT.

6.03 Whether this AGREEMENT expires or is terminated, the FIRM shall be entitled to continue to collect any items and to pursue collection of any claims that were referred to and placed with the FIRM by the COUNTY prior to the Termination Date or Expiration Date for an additional ninety (90) days following termination or expiration. The COUNTY agrees that the FIRM shall be compensated as provided by Article 3 for any such item or pending matters during the ninety (90) day period.

6.04 The COUNTY agrees that the FIRM shall be reimbursed for any costs advanced and shall be paid for any services performed pursuant to Article when such costs are recovered by or on behalf of the COUNTY, 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 ninety (90) day period under Article 6 does not constitute any such waiver by the FIRM.

Article 7
Miscellaneous

7.01 Subcontracting. The FIRM may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the FIRM will retain supervisory control and responsibility for any services provided by such co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

7.02 Mediation. Any controversy between the parties to this AGREEMENT involving the construction or application of any of the terms, covenants, or conditions of this AGREEMENT shall, on the written request of one party served on the other, be submitted to mediation.

7.03 Integration. This AGREEMENT contains the entire AGREEMENT between the parties hereto and may on be modified in a written amendment, executed by both parties.

7.04 Representation of Other Governmental Entities. The COUNTY acknowledges and consents to the representation by the FIRM of other governmental entities that may be seeking the payment of fines and fees or other claims from the same person(s) as the COUNTY.

7.05 **INDEMNIFICATION.** FIRM SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES AND AGENTS FROM ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES INCLUDING ATTORNEY FEES FOR THE DEFENSE OF ANY ACTION AGAINST COUNTY ARISING OUT OF, RESULTING FROM, OR CONNECTED WITH THE PROVISIONS OF THE SERVICE BY FIRM UNDER THIS AGREEMENT. SAID INDEMNITY SHALL COVER ANY ACT OR FAILURE TO ACT BY THE FIRM, ITS AGENTS OR EMPLOYEES.

7.06 Immunities. Nothing in this AGREEMENT is intended to, and COUNTY does not, hereby waive, release or relinquish any right to assert any of the defenses COUNTY enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to COUNTY as to any claim or action of any person, entity, or individual against COUNTY.

7.07 Notices. For purposes of sending any notice under the terms of this contract, all notices from COUNTY shall be sent to FIRM by certified United States mail, or delivered by hand or by courier, and addressed as follows:

Linebarger Goggan Blair & Sampson, LLP
Attn: Lucy G. Canales
205 S. Pin Oak Ave.
Edinburg, Texas 78539

All notices from the FIRM to the COUNTY shall be sent to COUNTY by certified United States mail, or delivered by hand or by courier, and addressed as follows:

County of Hidalgo c/of Ramon Garcia, County Judge
100 E. Cano
Edinburg, Texas 78539

EXECUTED on the _____ day of _____, 2015.

County of Hidalgo, Texas

Linebarger, Goggan, Blair & Sampson, LLP

Ramon Garcia, County Judge

Lucy G. Canales, Partner

Approved by Commissioners Court: _____

ATTESTED BY:

Arturo Guajardo, Jr., County Clerk

APPROVED AS TO FORM:

**Office of Hidalgo County Criminal District Attorney
Ricardo Rodriguez, Jr.**

BY: _____
Josephine Ramirez-Solis, Assistant District Attorney

DRAFT