

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

THIS AGREEMENT is made and entered into this _____ day of _____, 2010 by and between the **CITY OF OVERLAND PARK, KANSAS**, hereinafter referred to as “CITY,” and **LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**, hereinafter referred to as “FIRM.”

SECTION I - SCOPE OF WORK

The FIRM shall provide legal services regarding the collection of debts owed to the Overland Park Municipal Court (the “Court”) in accordance with K.S.A. 12-4119, as amended, to the full satisfaction of the Court and in conformance with the Request for Qualifications to Provide Legal Services for the Collection of Delinquent Court Fines and Costs issued by the CITY on December 23, 2009, (the “RFQ”) as well as the FIRM’s response to the RFQ (the “Response”). The RFQ and the Response are incorporated herein by this reference.

Within sixty (60) days of the execution of this Agreement the parties will execute Addendum No. 1 setting forth the details regarding the agreed upon process for referral and collection hereunder.

SECTION II - COMPENSATION

As compensation and fee for services provided pursuant to this Agreement, and as authorized by applicable Kansas law, CITY agrees the firm can collect a fee equal to thirty-three percent (33%) of the total amount collected for the CITY on all accounts referred for collection pursuant to this Agreement. FIRM shall pay over monies collected pursuant to this Agreement daily by ACH or wire transfer, or in such other manner or schedule as agreed in writing between the parties based upon administrative convenience and preference.

FIRM will submit a monthly account reconciliation statement/invoice reflecting all amounts collected – including any collection fee due the FIRM for those monies collected by the CITY on accounts referred to FIRM for collection pursuant to this Agreement. CITY shall pay over fees due to FIRM on a monthly basis, in a manner agreed by the parties, no later than the 30th day following the end of the calendar month within which the CITY receives the monthly reconciliation statement/invoice from FIRM.

SECTION III - DISPUTE RESOLUTION

CITY and FIRM agree that disputes relative to the work performed should first be addressed by negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute FIRM shall proceed with the work as per this Agreement as if no dispute existed; and provided

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

further that no dispute will be submitted to arbitration without the parties' express written consent.

SECTION IV - TERMINATION

Either party may terminate this Agreement by providing written notice of such termination to the other party. If the CITY elects to terminate, upon receipt of such notice from CITY, the FIRM shall: (1) immediately cease all work; and (2) meet with CITY and determine what work, if any, shall be required of FIRM in order to bring the Agreement to a reasonable termination in accordance with the request of the CITY.

SECTION V - ASSIGNMENT

Parties hereto agree that neither shall assign, sublet or transfer their interest in this Agreement without the written consent of the other and further agree that this Agreement binds the parties, their successors, trustees, assignees and legal representatives.

SECTION VI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this Agreement shall supersede all prior verbal and written statements of any and every official and/or other representative of the CITY and FIRM and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written Agreement. In the event that the CITY issues a purchase order, work order, invoice or similar document relating to services performed, such purchase order or similar document shall be for the CITY's administrative purposes only and will not supplement, supersede, modify or affect any of the terms and conditions set forth herein.

SECTION VII - INDEPENDENT CONTRACTOR

FIRM is an independent contractor and as such neither FIRM nor its personnel are agents or employees of the CITY.

SECTION VIII - HOLD HARMLESS, INDEMNIFICATION

A. Definitions. For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

1. "FIRM" means and includes the FIRM, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and
 2. "Loss" means any and all loss, damage, liability or expense of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this Agreement whether arising before or after the completion of the work required hereunder.
- B. For purposes of this Agreement, FIRM hereby agrees to indemnify, defend and hold harmless the CITY, its employees and agents from any and all Loss where Loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the FIRM. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of the CITY or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of the CITY's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the FIRM's obligation hereunder shall not include amounts attributable to the fault or negligence of the CITY. Nothing in this section shall be deemed to impose liability on the FIRM to indemnify the CITY for Loss when the CITY's negligence or other actionable fault is the sole cause of Loss.

SECTION IX - NON-DISCRIMINATION AND OTHER LAWS

- A. FIRM agrees that:
1. the FIRM shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, national origin ancestry or age;
 2. in all solicitations or advertisements for employees, the FIRM shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
 3. if the FIRM fails to comply with the manner in which the FIRM reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

amendments thereto, the FIRM shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the CITY;

4. if the FIRM is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the FIRM shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the CITY; and
5. the FIRM shall include the provisions of subsections (A)(1) through (4), above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply if:

1. FIRM employs fewer than four employees during the term of this Agreement; or
 2. FIRMS contracts with the CITY cumulatively total \$5,000 or less during the fiscal year of the CITY.
- B. The FIRM further agrees that the FIRM shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

SECTION X - PROHIBITION AGAINST CONTINGENT FEES

FIRM warrants that it has not employed or retained any person, firm, or corporation, other than a bona fide employee working solely for FIRM, to solicit or secure the awarding of this Agreement based upon an arrangement that the person, firm or corporation would receive any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award of this Agreement. For the breach or violation of the foregoing provision, the CITY shall have the right to terminate the Agreement without liability and, at its discretion to deduct from the compensation contemplated herein, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

SECTION XI - APPLICABLE LAW, SEVERABILITY, NONWAIVER

This Agreement shall be governed by and construed by the laws of the State of Kansas. The FIRM shall comply with applicable Federal law and regulations, Kansas law and regulations, and applicable City of Overland Park ordinances.

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

The FIRM does hereby consent and yield to the jurisdiction and venue of the State Courts of the State of Kansas, County of Johnson, and does hereby formally waive any pleas of jurisdiction and venue on account of the residence elsewhere.

In the event that any provision(s) of this Agreement shall for any reason be held invalid, illegal or unenforceable, the invalidity, illegality or unenforceability of that provision(s) shall not affect any other provision(s) of this Agreement, and it shall further be construed as if the invalid, illegal or unenforceable provision(s) had never been a part of this Agreement. The waiver of or failure to enforce any term or condition of this Agreement shall not be construed as a waiver of any other term or condition.

SECTION XII - DATA SECURITY

FIRM shall comply with the requirements of the Payment Card Industry (PCI) Data Security Standards including the Cardholder Information Security Program (CISP) of Visa and the Site Data Protection Program (SDP) of MasterCard, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. FIRM further warrants that all components of the FIRM's online payment system comply with all (NACHA) National Automated Clearing House Association operating rules and regulations regarding the security of ACH transfers and any modifications or replacements of such rules and regulations from time to time. FIRM further warrants that it shall comply with laws related to: (i) payment devices and (ii) electronic fund transfers; and (iii) confidential treatment information. FIRM also shall ensure that all third parties that FIRM engages to perform any function related to the online payments under this Agreement complies with the above referenced PCI and NACHA rules and regulations and with all other applicable laws. FIRM agrees that it is responsible for its own actions or inactions regarding the terms and conditions of this Agreement and further, that FIRM is responsible for any third party that FIRM engages to perform any component services related to the terms and conditions of this Agreement, to include, but not limited to compliance with applicable laws and those regulations set forth above. FIRM agrees it will execute and deliver to CITY all documents that may from time to time be reasonably necessary to verify FIRM's compliance with the requirements of this paragraph.

Confidentiality of Cardholder and Transaction (Credit Card, eCheck) Information. FIRM shall, at all times protect the confidentiality of cardholder and transaction information in accordance with all applicable laws and payment network regulations. FIRM shall not disclose cardholder or transaction information to any third party, except to an agent of FIRM assisting in completing a transaction, or as required by applicable laws or the payment network regulations. FIRM must maintain all systems and media containing cardholder and transaction information in a secure manner to prevent access by or disclosure to anyone other than its authorized personnel. FIRM must maintain cardholder and transaction information for such time periods as may be required by applicable laws and the payment network regulations and thereafter destroy, in a manner that will render the data unreadable, all such media that FIRM no longer deems necessary or appropriate to maintain. Further, FIRM must take all steps reasonably necessary to ensure that cardholder and transaction information is not disclosed or otherwise misused.

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

Data Compromise. FIRM agrees to notify CITY immediately by the quickest means possible, if FIRM knows or suspects that cardholder information has been accessed or used without authorization. The notification referenced above must then be confirmed in writing within two (2) business days. FIRM must take immediate steps to preserve all business records, logs and electronic evidence and contact local law enforcement authorities including the local FBI and U.S. Secret Service if it becomes aware of cardholder information being accessed or use without authorization. FIRM must work with City to rectify any issues that may result from the improper accessing or use of cardholder information without authorization, including providing City with (and obtaining any waivers necessary for) all relevant information to verify FIRM's ability to prevent future data incidents in a manner consistent with this Agreement. Without waiving any of CITY's rights and remedies, FIRM understands and agrees it is liable to the CITY for any damages it suffers for all fraudulent transactions related to such data incident and all costs CITY incurs as a result of such improper and/or illegal use of cardholder information, including claims from third parties and all costs related to the notification of cardholders and cancellation and re-issuance of cards, forensic investigation, and PCI review for a report of compliance.

SECTION XIII - AGREEMENT TERM

The term of this Agreement shall commence on date above written and shall continue for a period of one year. Thereafter, this Agreement will renew annually on the anniversary of the date of execution of this Agreement unless otherwise terminated by either party.

SECTION XIV - SUBCONTRACTORS

FIRM shall not subcontract any of the work or services required by this Agreement without the prior written approval of the CITY. Should the FIRM request and the CITY agree to work being subcontracted, the FIRM shall be as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by said subcontractors, as FIRM is for the acts and omissions of the persons it directly employs.

SECTION XV - INSURANCE REQUIREMENTS

The FIRM shall secure and maintain, throughout the duration of this Agreement, insurance (on an occurrence basis unless otherwise agreed to) of such types and in at least such amounts as required herein. Any coverage provided by a Claims-Made form policy must contain a three year tail option, extended reporting period, or must be maintained for three years post Agreement.

The FIRM shall provide certificates of insurance and renewals thereof on an approved Acord form. Certificates of insurance for professional liability may be issued on forms provided by the insurer. The CITY shall be notified by receipt of written notice from the insurer at least thirty (30) days prior to material modification or cancellation of any policy listed on the Certificate.

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

The CITY will only accept coverage from an insurance carrier who offers proof that it:

- A. Is licensed to do business in the State of Kansas;
- B. Carries a Best's policy holder rating of A- or better; and
- C. Carries at least a Class VII financial rating.

OR

is a company mutually agreed upon by the CITY and FIRM

A. COMMERCIAL GENERAL LIABILITY POLICY

Each Occurrence: \$ 1,000,000

General Aggregate: \$ 2,000,000

Policy must include the following conditions:

- 1. Premises and Operations
- 2. Broad Form Contractual/Contractually Assumed Liability
- 3. Personal Injury

B. AUTOMOBILE LIABILITY

Policy shall protect the FIRM against claims for bodily injury and/or property damage arising from the ownership or use of all owned, hired and/or non-owned vehicles and must include protection for either:

- 1. Any Auto

OR

- 2. All Owned Autos (if any);
Hired Autos; and
Non-Owned Autos.

Limits-

Each Accident, Combined Single Limits,
Bodily Injury and Property Damage:

\$ 1,000,000

C. WORKERS' COMPENSATION

This insurance shall protect the FIRM against all claims under applicable state workers' compensation laws. The FIRM shall also be protected against claims for injury, disease or death of

PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF DELINQUENT ACCOUNTS

employees which, for any reason, may not fall within the provisions of workers' compensation law. The liability limits shall not be less than the following:

| | |
|---------------------------|-------------------------|
| Workers' Compensation: | Statutory |
| Employer's Liability: | |
| Bodily Injury by Accident | \$100,000 each accident |
| Bodily Injury by Disease | \$500,000 policy limit |
| Bodily Injury by Disease | \$100,000 each employee |

D. PROFESSIONAL LIABILITY

The FIRM shall maintain throughout the duration of this Agreement Professional Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00), and shall provide the CITY with certification thereof.

E. CRIME

The FIRM shall maintain throughout the duration of this Agreement a commercial crime policy, including employee theft. The minimum limit shall be \$1,000,000 per loss. The policy must include a "Clients' Property" endorsement CR 04 01 or similar.

F. SUBCONTRACTOR'S INSURANCE

If a part of the Agreement is to be sublet, the FIRM shall either:

1. Cover all subcontractors in its insurance policies; or
2. Require each subcontractor not so covered to secure insurance which will protect against all applicable hazards or risks of loss as and in the minimum amounts designated.

SECTION XVI - ADJUSTMENT TO AGREEMENT TERMS

Changes to the terms of this Agreement may be made only in writing and must be approved by the CITY and the FIRM. The Presiding Judge of the CITY shall be authorized to execute Addendums and Amendments to this Agreement on behalf of the CITY.

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

**PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF
DELINQUENT ACCOUNTS**

Linebarger Goggan Blair & Sampson, LLP
Attention: Director of Client Services
P. O. Box 17428
Austin, TX 78760

and to

Scott McGlasson
Linebarger Goggan Blair & Sampson, LLP
819 Walnut, Suite 309
Kansas City, MO 64106

For purposes of sending notice under the terms of this Agreement, all notice from the FIRM shall be sent to the CITY by certified United States mail, or delivered by hand or by courier, and addressed as follows:

Presiding Judge, Karen Arnold-Burger
Overland Park Municipal Court
12400 Foster
Overland Park, KS 66213

Robin Barnard
Overland Park Municipal Court
12400 Foster
Overland Park, KS 66213

and to

Tammy M. Owens
Overland Park Law Department
8500 Santa Fe
Overland Park, KS 66212

SECTION XVII - ENTIRE AGREEMENT AND ORDER OF PREFERENCE

This Agreement, along with the RFQ, all attachments thereto, and the FIRM's written response, comprises entire Agreement between the parties hereto with respect to the subject matter hereof, and all prior and contemporaneous understandings, representations and agreements are merged therein or superseded thereby.

Any conflict to the provisions of this Agreement and the documents incorporated by reference shall be determined by the following priority order:

**PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION OF
DELINQUENT ACCOUNTS**

- A. Written modifications and addenda to this Agreement;
- B. This Agreement;
- C. The RFQ including any addenda; and
- D. The Response including any addenda, appendices and exhibits.

SECTION XVIII - EXECUTION OF CONTRACT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officials on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

**LINEBARGER GOGGAN BLAIR &
SAMPSON, LLP**

Carl R. Gerlach
Mayor

Name: _____
Title: _____

Date

Date

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

