

STATE OF TEXAS

COUNTY OF FORT BEND

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KNOW ALL MEN BY THESE PRESENTS:

AGREEMENT FOR THE COLLECTION OF DELINQUENT AD VALOREM TAXES

THIS AGREEMENT is made and entered into by and between FORT BEND COUNTY, a body corporate and politic under the laws of the State of Texas, hereinafter "County" and the law firm of LINEBARGER GOGGAN BLAIR & SAMPSON, LLP, hereinafter referred to as "Contractor." This Agreement supersedes and is in the place of any and all prior agreements for tax collection services entered by and between the parties.

SECTION I
SERVICES PROVIDED BY CONTRACTOR

- 1.01 County enters into this Agreement with Contractor to enforce by suit or otherwise the collection of taxes, penalties and interest accrued on those taxes, owing to County and all other taxing jurisdictions whose taxes are collected by Contractor.
- 1.02 Taxes shall become subject to this Agreement upon the following dates, whichever first occurs:
 - (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 the TEXAS PROPERTY 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 Contractor is at the request of County'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 delinquent tangible personal property, on the 60th day after the February 1 delinquency date; or
 - (F) On July 1 of the year in which the taxes become delinquent.
- 1.03 Contractor shall notify the County Tax Assessor-Collector of any errors, double assessments or other discrepancies coming under its observation during the progress of the work, and shall intervene on behalf of the County in all suits FOR taxes hereafter filed by any taxing unit on property located within its corporate limits.
- 1.04 Pursuant to the Appraisal and Collection Technologies, LLC ("ACT") Hosting Service Agreement ("System Agreement"), which is attached hereto as Exhibit A and is hereby incorporated herein, Contractor agrees to grant to County a non-exclusive, non-assignable license to the ACT System and County accepts such license, subject to the terms set out in the System Agreement and as may be amended. The terms and restrictions of the System Agreement set forth the relative responsibilities of the Contractor, ACT and the County.
- 1.05 Contractor shall provide County with the following for the duration of this Agreement:
 - A. the ACT system and services as described in the System Agreement which is attached hereto as Exhibit A at no cost to County;
 - B. one (1) full-time employee to work in the County Tax Assessor-Collector's Office at no cost to County;
 - C. when requested by the County Tax Assessor-Collector, one (1) part-time employee to work in the County's Tax Office at no cost to County;
 - D. up to three (3) full-time temporary employees to work in the Tax Assessor-Collector's Office during the current tax collection season. The number of employees and the date of their employment will be directed by the County Tax Assessor-Collector at no cost to County.

- 1.06 County shall allow the County Tax Assessor-Collector to approve all employees provided to County under this Agreement. Contractor shall remove any employee provided to County under this Agreement immediately upon notice from the County Tax Assessor-Collector and shall replace the removed employee within five (5) business days.

SECTION II CONTRACTOR'S COMPENSATION

- 2.01 County agrees to pay to Contractor as compensation for the services required hereunder as follows:
- A. fifteen percent (15%) of the amount of all 2000 and prior year taxes, penalties and interest subject to the terms of this Agreement as set forth in Section 1.02 above, collected and paid to the County Tax Assessor-Collector during the term of this Agreement; and
 - B. twenty percent (20%) of the amount of all 2001 and subsequent year taxes, penalties and interest subject to the terms of this Agreement as set forth in Section 1.02 above, collected and paid to the County Tax Assessor-Collector during the term of this Agreement.
- 2.02 Compensation to Contractor shall be paid monthly upon the approval of the County Tax Assessor-Collector.

SECTION III TERM AND TERMINATION

- 3.01 This Agreement shall commence on January 1, 2017 and shall terminate on December 31, 2020.
- 3.02 This Agreement shall not automatically renew. Any renewal shall be subject to express written agreement of the parties.
- 3.03 County may terminate this Agreement by providing thirty (30) days advance notice of termination in writing to Contractor.
- 3.04 In the event of such termination by County, Contractor shall be entitled to receive and retain all compensation due up to the date of said termination.
- 3.05 Contractor shall be allotted an amount of time not to exceed six (6) months following termination of this Agreement to prosecute all pending lawsuits, judgments and bankruptcy claims filed prior thereto ("Wrap-Up Period").
- 3.06 Upon termination, Contractor shall continue to provide the ACT system and services provided under this Agreement at no cost to County for the period of time allotted in Section 3.05 for the Wrap-Up Period. At the expiration of the Wrap-Up Period, Contractor will continue to provide County the ACT system and services if an agreement with mutually agreed upon terms has been negotiated and entered into between the County and ACT.

SECTION IV SERVICES PROVIDED BY COUNTY

In those cases where collection of taxes is enforced by suit, County agrees to furnish Contractor the name, identity, and location of necessary parties, together with the legal descriptions of the property on which the taxes are due. Contractor shall, however, advance all charges and expenses on behalf of County, which are incurred in procuring such information. Any recovery of such expenses by County under TEXAS PROPERTY TAX CODE § 33.48 shall be paid to Contractor within thirty (30) days of collection.

SECTION V INSURANCE

- 5.01 Prior to commencement of the Services and for the duration of the term of this Agreement, Contractor shall keep in full force and effect a policy of general liability insurance of not less than \$1,000,000.00 for each claim aggregate, which shall be approved by the Fort Bend County Risk Management Department prior to purchase. The policy shall contain a clause that the insurer will not cancel or change the insurance without first giving County ten (10) days prior written notice. The insurance shall be in a company acceptable to the Fort Bend County Risk Management Department, and a copy of the policy or certification of insurance shall be delivered to the Fort Bend County Risk Management Department as soon as available. Crime insurance shall include coverage for crimes by Contractor employees.
- 5.02 Contractor shall maintain Employee Dishonesty and, when applicable, Inside/Outside Money & Securities coverages for County-owned property in the care, custody and control of the Contractor. Coverage limits shall not be less than \$1,000,000. The policy shall include as loss payee Fort Bend County.
- 5.03 Professional Liability Insurance with limits not less than \$1,000,000.
- 5.04 County shall be named as additional insured to all required coverage with the exception of professional liability. All Liability policies including Workers' Compensation written on behalf of Contractor shall contain a waiver of subrogation in favor of County.
- 5.05 If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

SECTION VI INTELLECTUAL PROPERTY RIGHTS

- 6.01 County recognizes and acknowledges that Contractor owns all right, title and interest in certain proprietary software that Contractor may utilize in conjunction with performing the services provided in this Agreement. County agrees and hereby grants to Contractor the right to use and incorporate any information provided by 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, County shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that County shall be entitled to obtain a copy of such data that directly relates to County's accounts at any time.
- 6.02 Contractor 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. Contractor shall have the right to use County Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain County Information. These aggregate statistics are owned solely by Contractor and will generally be used internally, but may be shared with Contractor's affiliates, partners or other third parties for purposes of improving Contractor's software and services.

SECTION VII COSTS

- 7.01 County and Contractor recognize that publication costs for citations and notices of sale and title abstract costs will be incurred in the process of providing the litigation services contemplated in this Agreement. All such costs shall be billed to the County, in care of the Contractor, and Contractor will advance the payment of such costs on behalf of County. Upon recovery of such costs from the defendants or from the tax sale of defendants' property, Contractor shall be reimbursed for the advance payment. Alternatively, Contractor may arrange with the vendor or agency providing the service that actual payment of the costs of services is wholly contingent upon recovery of such costs by the County or Contractor from the defendants or from the tax sale of defendants' property. In such contingent arrangements, the County has no responsibility or liability for payment or advancement of any costs, other than forwarding to the vendor or service provider any cost amounts received from defendants or from the tax sale of defendants' property.
- 7.02 County acknowledges that Contractor may provide services, such as title research, with its own employees or with other entities or individuals who may be affiliated with Contractor; however, any charges for such services will be reasonable and consistent with the same services if obtained from a third party. Upon the recovery of such costs, the County shall (a) pay Contractor for any such costs which have been advanced by Contractor or performed by Contractor, and (b) pay any third party agency or vendor owed for performing such services.

SECTION VIII INDEMNIFICATION

- 8.01 CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD COUNTY HARMLESS FROM EACH AND EVERY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN OR JUDGMENT INCLUDING REASONABLE ATTORNEYS FEES, CAUSED BY OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH THE ACTS AND OMISSIONS OF CONTRACTOR, ITS AGENTS, SERVANTS OR EMPLOYEES PURSUANT TO THIS AGREEMENT.
- 8.02 Contractor shall timely report all such matters to County and shall, upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment, no later than the fifteenth day of each month, provide County with a written report on each such matter covered by this paragraph and by Section 8.03 below, setting forth the status of each matter, the schedule or planned proceedings with respect to each matter and the cooperation or assistance, if any, of County required by Contractor in the defense of each matter.
- 8.03 County shall timely forward to Contractor copies of any and all claims, demands, suits, actions, proceedings or judgments which it may receive and which it may contend is covered by this section. Thereafter, County shall fully cooperate with Contractor in its defense of each such matter.
- 8.04 Contractor's duty to defend, indemnify and hold County harmless shall be absolute. It shall not abate or end by reason of the expiration or termination of this Agreement unless otherwise agreed by County in writing. The provisions of this section shall survive the termination of the Agreement and shall remain in full force and effect with respect to all such matters no matter when they arise.
- 8.05 In the event of any dispute between the parties as to whether a claim, demand, suit, action, proceeding, lien or judgment appears to have been caused by or appears to have arisen out of or in connection with acts or omissions of Contractor, Contractor shall nevertheless fully defend such claim, demand, suit, action, proceeding, lien or judgment until and unless there is a determination by a court of competent jurisdiction that the acts or omissions of Contractor are not at issue in the matter.

- 8.06 In the event that any such matter being so defended by Contractor also involves any claim of negligence or wrongful action by County, County shall have the right to participate in the defense of the matter through separate counsel, such separate counsel shall be paid for by Contractor.
- 8.07 Contractor shall have full authority to resolve all matters being defended by it providing such settlement(s) shall not involve any findings adverse to County and shall not involve or require any payments or contributions by County.
- 8.08 In the event of any final judicial determination or award of any matter covered by this section, County shall be responsible to third parties, pro rata, for any negligence determined to have been caused by County. County neither waives nor relinquishes any immunity or defense on behalf of itself, its officers, employees, and agents as a result of its execution of this Agreement and performance of the covenants contained herein.
- 8.09 Contractor's indemnification shall cover, and Contractor shall indemnify County, in the manner provided for and to the extent described above, in the event County is found to have been negligent for having selected Contractor to perform the work described in this Agreement.
- 8.10 The provision by Contractor of insurance shall not limit the liability of Contractor under this Agreement.
- 8.11 Contractor shall cause all contractors and consultants who may have a contract to perform services under this Agreement, to agree to indemnify County and to hold County harmless from all claims for bodily injury and property damage that may arise from said sub-contractor or consultant's operations. Such provisions may arise from said sub-contractor or consultant's operations. Such provisions shall be in a form satisfactory to County.
- 8.12 County shall be exempt from, and in no way liable, for, any sums of money which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Contractor providing such insurance.

SECTION IX NOTICE

- 9.01 Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the County or Contractor at the address set forth below.
- 9.02 If mailed, any notice or communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail.
- 9.03 Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

A. If to Contractor:

Linebarger Goggan Blair & Sampson, LLP
512 South Seventh Street
Richmond, Texas 77469

B. If to County, notice must be sent to Fort Bend County and Fort Bend County Tax Assessor-Collector:

Fort Bend County
County Judge
401 Jackson Street
Richmond, Texas 77469

Fort Bend County Tax Assessor-Collector
1317 Eugene Heimann Circle
Richmond, Texas 77469

- 9.04 Either party may designate a different address by giving the other party ten (10) days of written notice.

SECTION X PUBLIC CONTACT

Contact with the news media, citizens of Fort Bend County or governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall Contractor release any material or information developed in the performance of its services hereunder without the express written permission of County, except where required to do so by law.

SECTION XI MODIFICATIONS

This instrument contains the entire Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any previous contacts and/or agreements between the parties are superseded by this Agreement. If there is a conflict between this Agreement and any previous agreement or contract, the provisions of this Agreement shall prevail. Any oral or written representations or modifications concerning this instrument shall be of no force and effect except a subsequent written modification signed by all parties hereto.

SECTION XII MISCELLANEOUS

- 12.01 By entering into this Agreement, the parties do not intend to create any obligations, express or implied, other than those specifically set out in this Agreement.
- 12.02 Nothing in this Agreement shall create any rights or obligations in any party who is not a signatory to this Agreement.
- 12.03 This Agreement is exempt from competitive bidding pursuant to Chapter 262, TEXAS LOCAL GOVERNMENT CODE.
- 12.04 Contractor agrees and understands that: by law, the Fort Bend County Attorney's Office may only advise or approve contracts or legal documents on behalf of its clients; the Fort Bend County Attorney's Office does not advise or approve a contract or other legal document on behalf of any other party not its client; the Fort Bend County Attorney's Office has reviewed this document solely from the legal perspective of its client; the approval of this document by the Fort Bend County Attorney's Office was offered solely to benefit its client; Contractor and other parties should not rely on this approval and should seek review and approval by their own respective legal counsel.
- 12.05 This Agreement is not assignable, provided however, Contractor may, from time-to-time, obtain co-counsel of subcontract some of the services provided for herein to other law firms or entities. In such cases, Contractor shall 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.
- 12.06 County acknowledges and consents to the representation by Contractor of other taxing entities that may be owed taxes or other claims and be secured by the same property as the County's claim.

SECTION XIII

EXECUTION

This Agreement shall not become effective until executed by all parties hereto.

FORT BEND COUNTY

Robert E. Hebert, County Judge

Date _____

Attest:

Laura Richard, County Clerk

Reviewed by:

Patsy Schultz, Tax Assessor-Collector

Date _____

CONTRACTOR: LINEBARGER GOGGAN
BLAIR & SAMPSON, LLP

Charles Austin Sutton, Capital Partner

Date _____

Attachment: Exhibit A – ACT Service & Support Level Specification Agreement

APPROVED AS TO LEGAL FORM:

Roy Cordes
County Attorney