

CONTRACT

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

THIS CONTRACT (the "Contract") is made and entered into by FORT BEND COUNTY (the "County") and the law firm of LINEBARGER GOGGAN BLAIR & SAMPSON, LLP (the "Linebarger").

RECITALS

WHEREAS, pursuant to Chapter 431 of the Texas Transportation Code, the Commissioners Court of Fort Bend County created and organized the FORT BEND COUNTY TOLL ROAD AUTHORITY ("FBCTRA") and FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY ("FBGPTRA") [FBCTRA & GPTRA jointly referred to as the Authority] to provide county roads and highways and other transportation related projects;

WHEREAS, the Fort Bend County Attorney represents the FBCTRA and FBGPTRA in all hearings and proceedings for the collection of unpaid tolls, charges, fees, fines, and costs, unless the County has contracted with a private law Linebarger to perform these services;

WHEREAS, the law firm of Linebarger Goggan Blair & Sampson, LLP ("Linebarger"), a private law Linebarger with substantial experience in the collection of fees and costs due and owing to governmental entities, has represented and warranted that it is duly qualified under all applicable federal and state laws, rules and regulations to represent the County in the performance of these services;

WHEREAS, the Fort Bend County Attorney is recommending that the County contract with Linebarger to represent the County in the performance of these collection services for the FBCTRA and FBGPTRA;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the mutual covenants, agreements and benefits to all parties, it is agreed as follows:

ADMINISTRATIVE HEARING AND LITIGATION SERVICES FOR FORT BEND COUNTY TOLL ROAD AUTHORITY FINES, COSTS & FEES

Section 1 Engagement of Linebarger

The County agrees to employ Linebarger, subject to the supervision of the County Attorney, to represent the County in all hearings and proceedings for the collection of unpaid tolls, charges, fees, fines, and costs, owed to the Fort Bend County Toll Road Authority

(“FBCTRA”) and the Fort Bend Grand Parkway Toll Road Authority (“FBGPTRA”) as authorized by Chapter 284 of the Texas Transportation Code.

Section 2 Scope of Services

During the term of the Contract, including all extensions thereof, Linebarger agrees to provide all administrative and litigation services as may be mutually agreed to by the County Attorney and Linebarger, including, but not limited to the following:

- (a) Generation, filing, and mailing of Administrative Hearing Citations;
- (b) Representation of the County at all Administrative Hearing Dockets;
- (c) Providing adequate staffing at each Administrative Hearing Docket, including at least one attorney and a clerk to serve as the administrative hearing clerk;
- (d) Filing with all post-docket orders and documents with the County Court;
- (e) Representing the County in all administrative hearing appeals,
- (f) Coordinating with the Texas Department of Motor Vehicles in placement and removal of vehicle registration holds;
- (g) Filing of lawsuits for the collection of amounts owed; and
- (h) Such other administrative and litigation services as may be agreed from time to time by Linebarger and the County Attorney.

Section 3 Obligations of the County

The County agrees to perform the following:

- (a) Refer, at the discretion of the County Attorney or other persons the County Attorney designates, unpaid tolls, charges, fees, fines, and costs by medium in a mutually agreed format on or about the first (1st) and (15th) of each month or as agreed to by the parties;
- (b) Provide copies of, or access to, the information necessary to collect the unpaid tolls, charges, fees, fines, and costs that are the subject of this Contract;
- (c) Provide for the deposit of amounts referred directly into the appropriate County account. Linebarger shall not be required to maintain a lockbox or other such account for the deposit of amounts collected; and
- (d) Pay Linebarger as specified in Section 7 of the Contract.

Section 4 Coordination of Services and Procedures

Throughout the term of the Contract, Linebarger shall use its best efforts and shall employ all reasonable and legal means necessary and appropriate to the collection of unpaid tolls, charges, fees, fines, and costs for the County. Linebarger shall coordinate its performance with the County Attorney and the Authority. Linebarger shall promptly inform the County Attorney and the Authority of all significant events relating to the performance of this Contract.

Section 5 Software

All software systems used by Linebarger to perform its services shall remain the property of Linebarger and any use by the County shall be deemed a license only for the time that the Contract is in effect.

Section 6 Information/Data Control

The County owns and shall retain control over all of its records, including the information collected and supplied by Linebarger in the process of keeping records up to date. Linebarger will protect all County owned records and information against unlawful exposure to third parties throughout the term of the Contract and thereafter for so long as such information remains confidential. Linebarger shall not attempt to obtain information from the County that is not reasonably necessary to the performance of Linebarger's obligations under the Contract. All files related to collections performed under the Contract, whether maintained by the County or Linebarger, are the property of the County. Linebarger shall provide access to these files to the County Attorney and the Authority. At the termination of the Contract, Linebarger shall return all data relating to these accounts in a commercially reasonable medium so as to facilitate the continued administrative processing of the accounts by the County or another law firm selected by the County for that purpose.

Section 7 Law Firm's Compensation

The County agrees to compensate Linebarger for all services and other considerations provided by Linebarger under the Contract as follows:

- (a) To impose a cost of one hundred dollars (\$100.00) as authorized by section 284.202 of the Transportation Code, on each account on which a citation for prosecution by Linebarger at an administrative hearing is issued as authorized by section 284.204 of the Transportation Code; fifty dollars (\$50.00) of such costs to be paid to Linebarger upon collection.
- (b) To impose an additional cost of one hundred dollars (\$100.00) as authorized by section 284.202 of the Transportation Code, on each account prosecuted at an administrative hearing pursuant to section 284.204 of the Transportation Code; fifty dollars (\$50.00) of such costs to be paid to Linebarger upon collection.
- (c) To pay to Linebarger fifty percent (50%) of all of civil fines assessed by administrative hearing officer and collected by Linebarger for those hearings appealed pursuant to section 284.210 of the Transportation Code.
- (d) To pay to Linebarger all court awarded attorney's fees collected by Linebarger through the filing of a lawsuit to the extent permitted by law.

Linebarger agrees that the County's obligations under the Contract are limited to the amounts recovered under the Contract. Linebarger recognizes and acknowledges that the accounts referred to it will be unadjudicated cases. Linebarger further agrees that there will be a pro rata distribution of amounts collected if the amounts collected on an account are less than the amounts owed, unless an alternative distribution has been agreed to by the County and Linebarger.

Section 8 County Auditor

The County Auditor shall have the right to audit all transactions arising out of this Contract.

Section 9 Contract Term

The term of this Contract shall begin upon the approval by Commissioners Court and execution by Linebarger, until terminated as herein provided.

Section 10 Termination

(a) The County may terminate the Contract at any time by giving Linebarger thirty (30) days written notice.

(b) If the Contract is terminated, Linebarger shall use its best efforts and due diligence to make an orderly transition of all services back to the County Attorney. All case files, correspondence, legal documents, and other records and data of any kind that relate to the administrative process efforts under this Contract will be turned over to the County Attorney, free of cost.

Section 11 Notices

All notices and demands given reference to in this Contract ("Notice") shall be in writing and shall be effective upon receipt by the party to whom a Notice is directed.

(a) The parties designate as the place and person or official upon whom all Notices shall be served, as follows:

(i) To Linebarger:

Linebarger Goggan Blair & Sampson, LLP
4828 Loop Central Drive, Suite 600
Houston, Texas 77081
ATTN: James Harris
Telephone: 713-844-3400
Telecopy: 713-844-3504

(ii) To the County:

Fort Bend County
Attention: County Judge
401 Jackson Street
Richmond, Texas 77469
Telephone: 281-341-8608
Telecopy: 281-341-8609

(b) A copy of all notices to the County shall be concurrently served on, and all other correspondence with the County shall be directed to:

Fort Bend County Attorney
401 Jackson Street
Richmond, TX 77469
Telephone: 281-341-4555
Telecopy: 281-341-4557

Fort Bend County Toll Road Authority
c/o Muller Law Group
16555 Southwest Freeway,, Suite 200
Sugarland, TX 77478-2789
Telephone: 281-500-6050
Telecopy: 281-634-9406

(c) Notices may be delivered in person, facsimile (in either case with originals to be contemporaneously mailed to the addresses), sent by first class or express mail (postage prepaid) or by an overnight courier (such as Federal Express or UPS) to the recipient at its address hereinafter set forth or, as to any such recipient, at such other address as may be designated by same in a notice to the other party in the manner provided in this Contract.

Section 12 INDEMNITY

LINEBARGER AGREES TO, AND HEREAFTER SHALL, INDEMNIFY AND DEFEND THE COUNTY AGAINST, AND SHALL PROTECT AND HOLD THE COUNTY HARMLESS FROM, ANY AND ALL CLAIMS, LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES ACTION AND CAUSES OF ACTION OF EVERY KIND, CROSS-ACTIONS, THIRD-PARTY ACTIONS, ACTIONS IN INTERVENTION, ACTION FOR CONTRIBUTION AND INDEMNITY, JUDGMENTS, ADMINISTRATIVE ORDERS, COSTS EXPENSES DISBURSEMENTS OR REQUIREMENTS OF ANY KIND OR ANY NATURE WHATSOEVER WHICH HAVE BEEN OR MAY EVER BE ASSERTED BY ANY PERSON WITH RESPECT TO ANY NEGLIGENT OR WRONGFUL ACT OF LINEBARGER ARISING OUT OF OR PERTAINING TO THIS CONTRACT, OR

ANY ACTION TAKEN OR OMITTED BY LINEBARGER UNDER OR PURSUANT TO THIS CONTRACT OR ITS DUTIES AND OBLIGATIONS UNDER THIS CONTRACT. ALL OF LINEBARGER'S OBLIGATIONS, PURSUANT TO THIS SECTION 12, SHALL EXTEND TO AND INCLUDE AND PROTECT THE COUNTY AND EVERY OFFICIAL, DEPUTY, AND EMPLOYEE OF THE COUNTY ("THE INDEMNIFIED PARTIES") EVEN IF LINEBARGER'S OBLIGATIONS ARISE IN PART DUE TO THE NEGLIGENCE OF ONE OR MORE OF THE INDEMNIFIED PARTIES, THEIR OFFICIALS, DEPUTIES, AND OR THEIR EMPLOYEES, BUT ONLY ON A COMPARABLE FAULT BASIS.

Section 13 Insurance

Linebarger shall procure, pay for and maintain during the term of this Contract a policy of lawyers professional liability insurance including errors and omissions with a minimum limit of \$1,000,000.00 per occurrence, and Linebarger shall produce current copies of such policies from time to time upon request made by the County. Linebarger shall also name the County as a "named insured" on Linebarger's: (i) \$2,000,000 blanket "employee and Linebarger" dishonesty bond or policy; (ii) \$2,000,000 aggregate coverage, \$1,000,000 coverage per occurrence, general liability policy; and (iii) excess liability policy (umbrella form) with \$5,000,000 of aggregate coverage. Linebarger shall provide the County Attorney with copies of such policies, or other reasonable evidence acceptable to the County Attorney that such policies are in place with the County as a "named insured" and with each insurance company's agreement that policies so issued shall not be terminated without 30 days of prior written notice to the County Attorney, and Linebarger shall keep such policies in such amounts or in such other amounts or may be approved by the County, in full force and effect throughout the term of this contract.

Section 14 Governing Law; Venue

This Contract shall be governed by and construed in accordance with the laws of the State of Texas and venue shall be in Fort Bend County, Texas.

Section 15 Headings

Headings, captions and other designations used in this Contract are only for convenience and reference and in no way define the scope and content of this Contract, or in any way affect its provisions.

Section 16 Number; Gender of Words

Whenever the singular number is used herein, it includes the plural wherever appropriate, and words of any gender include other genders where appropriate.

Section 17 Assignment; Sub-Contracting

This Contract provides for personal and/or professional service and Linebarger shall not assign this Contract or any portion thereof without the prior written consent of the County Attorney. In performing services under this Contract, Linebarger acts and is an independent contractor, and no provisions of this Contract shall be construed as making Linebarger the agent, servant, or employee of the County. Without implication that this Contract may be transferred and assigned other than herein provided, rights and privileges, terms, and conditions, and duties and obligations created in this Contract shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 18 Severable Provisions

In the event any provision, or any portion thereof, of this Contract, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, all its other provisions and all portions thereof, shall be valid and enforceable to the fullest extent permitted by law.

Section 19 Entireties

This instrument, with all attachments hereto, contains the entire agreement between the parties hereto with respect to the rights herein granted and the obligations herein assumed. No agreement shall be effective to add, change, amend, modify, waive or discharge this Contract in whole or in part, unless such agreement is in writing and signed by the parties hereto.

Section 20 Counterparts

This Contract may be executed in counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

Section 21 No Third Party Beneficiaries

Except as herein specifically provided, no rights, privileges or immunities of any party shall inure to the benefit of any other third party; neither shall any third party be deemed to be a third party beneficiary of any of the provisions contained herein.

Section 22 Further Assurances

Each party shall execute all further documents and instruments required from time to time to assure the other party of its full rights intended to be established and conveyed in this Contract.

Section 23 No Waiver

No delay or omission by any of the parties in exercising any right or power accruing upon non-compliance or failure of performance by any other party under the provisions of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver, by any party of any covenant, condition, provision, or performance under this Contract, shall not be construed to be a waiver of any succeeding breach thereof, or any other covenant, condition, provision or performance of this Contract.

[EXECUTION PAGE FOLLOWS]

APPROVED AS TO FORM:

ROY CORDES
County Attorney

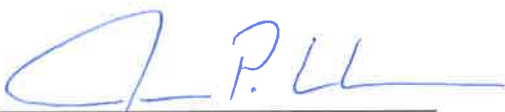
FORT BEND COUNTY

By _____
MARCUS SPENCER
Assistant County Attorney

By _____
ROBERT E. HEBERT
County Judge

Date Signed _____

LINEBARGER GOGGAN BLAIR & SAMPSON ATTEST

By 
JAMES P. HARRIS
Partner

By _____
Fort Bend County Clerk

Date Signed 1/30/18