

AGREEMENT FOR COLLECTION OF FORT BEND GRAND PARKWAY
TOLL ROAD AUTHORITY FINES, COSTS & FEES

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 PERDUE BRANDON FIELDER COLLINS & MOTT, LLP (the "Firm").

RECITALS

WHEREAS, pursuant to Chapter 431 of the Texas Transportation Code, the Commissioners Court of Fort Bend County created and organized the FORT BEND GRAND PARKWAY TOLL ROAD AUTHORITY ("FBGPTRA") on June 8, 2010 to provide county roads and highways and other transportation related projects;

WHEREAS, FBGPTRA is recommending that the County contract with the law firm of Perdue Brandon Fielder Collins & Mott, LLP for the collection of fines, costs and fees owed to Fort Bend County for the use of toll road projects;

WHEREAS, the law firm of Perdue Brandon Fielder Collins & Mott, LLP, a firm 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 provide these collection services for Fort Bend County;

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:

COLLECTION OF FORT BEND GRAND PARKWAY TOLL
ROAD AUTHORITY FINES, COSTS & FEES

Section 1 Engagement of the Firm

The County agrees to employ the Firm, subject to the supervision of the County Attorney, to represent the County, by providing all collection services that are reasonable, necessary, and appropriate to the collection of all fines, costs and fees as authorized by Chapter 284 of the Texas Transportation Code related to the operation of Fort Bend Grand Parkway Toll Road Authority ("FBGPTRA").

Section 2 Scope of Services

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

- (a) An enforcement and collection effort that includes mailed notices, telephone calls, and skip-tracing services;
- (b) The delivery of current defendant/debtor location information to a county department or third party selected by the County, as appropriate;
- (c) Such other collection actions as may be agreed from time to time by the Firm and the County Attorney; and
- (d) The Firm will submit a written work plan to the County Attorney for approval and the Firm will conduct its activities in accordance with such work plan.

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, fines, costs and fees by medium in a mutually agreed format on or about the first (1st) and (15th) of each month;
- (b) Provide copies of, or access to, the information necessary to collect the fines, fees, and costs that are the subject of this Contract; and
- (c) Pay the Firm as specified in Section 7 of the Contract.

Section 4 Coordination of Services and Procedures

Throughout the term of the Contract, the Firm shall use its best efforts and shall employ all reasonable and legal means necessary and appropriate to the collection of fines, costs and fees for Fort Bend. The Firm shall coordinate its performance with the County Attorney and other persons that the County Attorney designates. The Firm shall promptly inform the County Attorney of all significant events relating to the performance of this Contract.

Section 5 Software

All software systems used by the Firm to perform its collection services shall remain the property of the Firm 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 the Firm in the process of keeping records up to date. The Firm will protect all records and information owned by the County against unlawful exposure to third

parties throughout the term of the Contract and thereafter for so long as such information remains confidential. The Firm shall not make any attempt to obtain information from the County that is not reasonably necessary to the performance of the Firm's obligations under the Contract. All files related to collections performed under the Contract, whether maintained by the County or the Firm, are the property of the County. The Firm shall provide access to these files to the County Attorney. At the termination of the Contract, the Firm shall return all data relating to these accounts in a commercially reasonable medium so as to facilitate the continued collection of the accounts by the County or another third party selected by the County for that purpose.

Section 7 Firm's Compensation

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

- (a) To impose a cost of fifty dollars (\$50.00) on each unpaid invoice authorized by section 284.202 of the Transportation Code that is referred to the Firm for collection services; such costs to be paid to the Firm upon collection.
- (b) To impose an additional cost of twenty-five dollars (\$25.00) as authorized by section 284.202 of the Transportation Code, on each account on which a citation for prosecution by the Firm at an administrative hearing is issued as authorized by section 284.204 of the Transportation Code; such costs to be paid to the Firm upon collection.
- (c) To impose an additional cost of fifty dollars (\$50.00) as authorized by section 284.202 of the Transportation Code, on each account which is prosecuted at an administrative hearing pursuant to section 284.204 of the Transportation Code; such costs to be paid to the Firm upon collection.
- (d) To pay to the Firm 50% of all of civil fines assessed by administrative hearing officer or court and collected by the Firm through the filing of a lawsuit to the extent permitted by law.

The Firm agrees that the County's obligations under the Contract are limited to the amounts recovered under the Contract. The Firm recognizes and acknowledges that the accounts referred to it will be unadjudicated cases. In the event that the County, an administrative hearing officer, or County Court ultimately determines that no fine or cost is due, the Firm will have no right for any compensation notwithstanding that such account may have been referred to the Firm and that the Firm has engaged in collection activities with regard to such an account. The Firm 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. The Firm shall submit an invoice for fees earned at least once per month to the County Auditor. County shall have up to thirty (30) days to remit payment of fees invoiced to the Firm.

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 the Firm, until terminated as herein provided.

Section 10 Termination

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

(b) If the Contract is terminated prior to the expiration of the term of this Contract, the Firm 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 collections 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) If to the Firm:

Perdue Brandon Fielder Collins & Mott, LLP
Attention: Michael J. Siwierka, Partner
1235 North Loop West, Suite 600
Houston, Texas 77008
Telephone: 800-833-5886
Telecopy: 713-362-1429
 862

(ii) If to the County:

Fort Bend County
Attention: County Judge
301 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, 3rd Floor
Richmond, TX 77469
Telephone: 281-341-4555
Telecopy: 281-341-4557

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

(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

THE FIRM 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, JUDGEMENTS, 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 THE FIRM ARISING OUT OF OR PERTAINING TO THIS CONTRACT, OR ANY ACTION TAKEN OR OMITTED BY THE FIRM UNDER OR PURSUANT TO THIS CONTRACT OR ITS DUTIES AND OBLIGATIONS UNDER THIS CONTRACT. ALL OF THE FIRM'S OBLIGATIONS, PURSUANT TO THIS SECTION 12, SHALL EXTEND TO AND INCLUDE AND PROTECT, COUNTY AND EVERY OFFICIAL, DEPUTY, AND EMPLOYEE OF THE COUNTY ("THE INDEMNIFIED PARTIES") EVEN IF THE FIRM'S OBLIGATIONS RISE IN PART DUE TO THE NEGLIGENCE OF ONE OR MORE OF THE INDEMNIFIED PARTIES, THEIR OFFICIALS, DEPUTIES, AND OR THEIR EMPLOYEES.

Section 13 Insurance

(a) Prior to commencement of the Services, Firm shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Firm shall provide certified copies of insurance endorsements and/or policies if requested by County. Firm shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Firm shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

(i) Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

(ii) Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

(iii) Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

(iii) Lawyer's Professional Liability insurance including errors and omissions with limits not less than \$1,000,000.

(iv) Excess Liability Policy (umbrella form) with \$3,000,000 of aggregate coverage.

(b) County, the members of Commissioners Court, the Fort Bend Grand Parkway Toll Road Authority and, the members of its Board shall all be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of the Firm shall contain a waiver of subrogation in favor of County and members of Commissioners Court, the Fort Bend Grand Parkway Toll Road Authority and, the members of its Board.

(c) If required coverage is written on a claims-made basis, Firm 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 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 the Firm shall not assign this Contract or any portion thereof without the prior written consent of the County Attorney. In performing services under this Contract, the Firm acts and is an independent contractor, and no provisions of this Contract shall be construed as making the Firm 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.

FORT BEND COUNTY:



Robert E. Hebert, County Judge

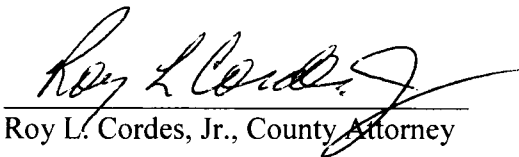
Date: 11-18-14

ATTEST:



County Clerk ~~DIANNE WILSON~~

APPROVED AS TO LEGAL FORM:



Roy L. Cordes, Jr., County Attorney

PERDUE BRANDON FIELDER
COLLINS & MOTT, LLP

By: Michael J. Darbo

Date: 11-6-14