

RESOLUTION NO. 37-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR THE COLLECTION OF DELINQUENT TAXES WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP; PROVIDING FOR CERTAIN FINDINGS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, after having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the City Council of the City of Mesquite, Texas, desires to approve the Agreement for the Collection of Delinquent Taxes with Linebarger Goggan Blair & Sampson, LLP, attached hereto as Exhibit 1 and incorporated herein by reference (“Agreement”); and

WHEREAS, after exercising due diligence, the City Council finds and determines that: (i) there is a substantial need for the legal services to be provided pursuant to the Agreement; (ii) these legal services cannot be adequately performed by the attorneys and supporting personnel of the City at a reasonable cost; (iii) these legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of delinquent tax penalties provided by Texas Tax Code Sections 6.30, 33.07, 33.08 and 33.48 and because the City does not have the funds to pay the estimated amounts required under a contract only for the payment of hourly fees; (iv) Linebarger Goggan Blair & Sampson, LLP, is well qualified and competent to perform the legal services required to comply with the terms of this Agreement; (v) Linebarger Goggan Blair & Sampson, LLP, will provide specialized legal services to the City beginning August 6, 2024, and will do so with competence and professionalism; and (vi) the Agreement with Linebarger Goggan Blair & Sampson, LLP, is the result of an arm’s length transaction between the City and Linebarger Goggan Blair & Sampson, LLP, and is fair and reasonable; and

WHEREAS, the City Council finds it to be in the public interest to approve the Agreement with Linebarger Goggan Blair & Sampson, LLP.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The recitals set forth above in this Resolution are true and correct and are hereby incorporated herein.

SECTION 2. The City Council hereby approves the Agreement with Linebarger Goggan Blair & Sampson, LLP, attached hereto as Exhibit 1, and authorizes the City Manager to finalize and execute the Agreement on behalf of the City of Mesquite.

SECTION 3. This Resolution shall become effective from and after its passage.

Administration / Agreement for the Collection of Delinquent Taxes

August 5, 2024

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of August 2024.

DocuSigned by:

*Daniel Aleman Jr.*

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Daniel Alemán, Jr.  
Mayor

ATTEST:

DocuSigned by:

*Sonja Land*

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Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:

DocuSigned by:

*David L. Paschall*

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David L. Paschall  
City Attorney

**Agreement for the Collection of Delinquent  
Taxes**

This Agreement is made and entered into by and between the City of Mesquite, (hereinafter called "**CLIENT**") and Linebarger Goggan Blair & Sampson, LLP (hereinafter called "**FIRM**").

**Article I**  
*Nature of Relationship*

**1.01** The parties hereto acknowledge that this Agreement creates an attorney-client relationship.

**1.02** The CLIENT hereby employs the FIRM to provide the professional services described herein for the compensation provided below.

**Article 2**  
*Scope of Services*

**2.01** The FIRM shall take reasonable and necessary legal action to collect property taxes that are owed to the CLIENT and that are subject to this Agreement, as hereinafter provided.

**2.02** The CLIENT may from time-to-time specify in writing additional actions to be taken by the FIRM in connection with the collection of taxes that are owed to the CLIENT. CLIENT further constitutes and appoints the FIRM as CLIENT's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to pursue the collection of and/or prosecute the CLIENT's claim for taxes.

**2.03** Taxes owed to the CLIENT shall become subject to this Agreement upon the following dates, whichever occurs first:

(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 TEX. 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 FIRM is at the request of CLIENT or CLIENT'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 tangible personal property, on the 60th day after the February 1 delinquency date;

(f) On July 1 of the year in which the taxes become delinquent; or

(g) At the sole discretion of the CLIENT, any other account turned over for collection prior to July 1, of the year following the imposition of the tax.

**2.04** All delinquent personal property taxes shall become subject to this Agreement and are to be turned over to the FIRM for collection 60 days after the delinquency date for said taxes. A penalty, as previously approved by the governing body of CLIENT, shall be assessed to defray the cost of collecting those taxes as provided by § 33.11, Texas Tax Code, said amount consistent with the terms herein. All collection penalties or attorney fees collected on those taxes are the property of the FIRM and shall be paid in the same manner as all other collection penalties or attorney fees under this Agreement.

**2.05** CLIENT reserves the right to make the final decision as to whether or not to enforce by suit any delinquent tax account turned over to the FIRM for collection.

**2.06** In connection with its collection of delinquent taxes, the FIRM shall:

- (a) Prepare delinquent tax reports and updates based on data provided by the CLIENT'S Tax Assessor-Collector Office;
- (b) Provide taxpayers notification by letter and telephone, of current and prior year delinquencies as may be required by law and/or as may be advisable for the purpose of expediting collections;
- (c) Represent CLIENT in all delinquent property tax suits, bankruptcy hearings and property tax hearings before federal agencies and actively pursue all tax claims in federal bankruptcy court, and intervene on behalf of CLIENT in all suits for ad valorem taxes filed by any other taxing unit on property located within its boundaries;
- (d) Advise CLIENT on legal issues that arise in the process of delinquent tax collection;
- (e) Promptly call to the attention of the CLIENT, collector or other officials any errors or discrepancies coming under their observation during the progress of the work and intervene on behalf of the CLIENT in all suits for taxes hereafter filed by any taxing unit on property located within its taxing jurisdiction;
- (f) Provide performance reports to CLIENT. Performance reports shall include at least the following measures or equivalent:
  - An annual assessment of the collection of outstanding taxes by the FIRM;
  - An annual assessment of the turnover of delinquent taxes which have been placed with the FIRM for collection;
  - An annual assessment of any litigation or claims (if any) which would have a material impact on the CLIENT;
  - An annual assessment of filed/dismissed/pending litigation claims filed by the FIRM on CLIENT's behalf.
- (g) Advise the CLIENT of all cases where investigation reveals taxpayers to be financially unable to pay their delinquent taxes.

### **Article 3** *Compensation*

**3.01** The CLIENT agrees to pay to the FIRM, as compensation for the services rendered herein, the following amounts:

- (a) The amounts previously approved by the governing body of CLIENT for the penalty to defray the costs of collection pursuant to § 33.07 of the Texas Property Tax Code. The penalty as previously approved shall remain in full force and effect from the date of

this Agreement going forward (unless otherwise changed or modified by CLIENT); and

- (b) Fifteen (15%) percent of the taxes, penalty, interest and fees actually collected in any bankruptcy, eminent domain, receivership or any other legal proceeding where the collection of the Client's taxes are sought and prosecuted by the FIRM.

**3.02** The CLIENT (and or the designated tax assessor/collector) shall pay the FIRM by the twentieth day of each month, all compensation earned by the FIRM for the previous month as provided in this Article 3. All compensation above provided for shall become the property of the FIRM at the time payment of the taxes, penalty and interest is made to the collector.

#### **Article 4**

##### *Intellectual Property Rights*

**4.01** The CLIENT 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 CLIENT agrees and hereby grants to the FIRM the right to use and incorporate any information provided by the CLIENT ("**CLIENT Information**") to update the databases in this proprietary software, and, notwithstanding that CLIENT Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the CLIENT shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the CLIENT shall be entitled to obtain a copy of such data that directly relates to the CLIENT's accounts at any time. Such data to be provided by the FIRM to the CLIENT in a readily convertible format upon CLIENT's request and at the termination or expiration of this Agreement.

**4.02** The FIRM agrees that it will not share or disclose any specific confidential CLIENT Information with any other company, individual, organization, agency or taxing entity, without the prior written consent of the CLIENT, 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 CLIENT Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain CLIENT Information. These aggregate statistics are owned solely 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, but not commercial use.

#### **Article 5**

##### *Term and Termination*

**5.01** This Agreement shall be effective on August 6, 2024 (the "**Effective Date**") and shall continue thereafter until such time as either CLIENT or FIRM terminates this Agreement by providing a 60-day written notice of intent to do so as set forth in Section 5.02.

**5.02** If at any time during the term of this Agreement, the CLIENT determines that the FIRM's performance under this Agreement is unsatisfactory, the CLIENT shall notify the FIRM in writing of the CLIENT's determination. The notice from the CLIENT shall specify the particular deficiencies that the CLIENT has observed in the FIRM's performance. The FIRM shall have sixty (60) days from the date of the notice to cure any such deficiencies. If at the conclusion of that sixty-day remedial period, the CLIENT, in CLIENT's sole and subjective opinion, remains unsatisfied with the FIRM's performance, the CLIENT may terminate this Agreement effective upon the expiration of thirty days following the date of written notice to the FIRM of such termination ("**Termination Date**").

**5.04** Whether this Agreement expires or is terminated, the FIRM shall be entitled to continue to prosecute any tax suits, applications for tax warrants or bankruptcy claims pending on the Termination

Date or expiration date for an additional six months following termination or expiration. The CLIENT agrees that the FIRM shall be compensated as provided by Article 3 for any base tax, penalties and interest collected in the pending matters during the six-month period.

**5.05** The CLIENT agrees that the FIRM shall be reimbursed for any costs advanced and shall be paid for any services performed on behalf of the CLIENT when such costs are recovered by or on behalf of the CLIENT, 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 six-month period under Section 5.04 does not constitute any such waiver by the FIRM.

**Article 6**  
*Miscellaneous*

**6.01 Indemnification.** FIRM agrees to INDEMNIFY AND HOLD CLIENT, ITS OFFICERS AND EMPLOYEES, HARMLESS against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney’s fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may arise out of or be occasioned or caused by FIRM’s negligent act, error, or omission of FIRM, any agent, officer, employee, consultant or subcontractor of FIRM and their respective officers, agents, employees, and CLIENT’s representatives while in the exercise of performance of the rights or duties under this Agreement.

**6.02 Insurance.** FIRM shall maintain insurance in the following amounts and coverage limits:

<u>Worker s’ Compensation :</u> (Including Waiver of Subrogation)	All liability arising out of FIRM’s employment of workers and anyone for whom FIRM shall be liable for Workers’ Compensation claims. Workers’ Compensation is required and no "alternative" form of insurance shall be permitted.
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<u>Employer’s Liability:</u>	\$500,000.00
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Commercial General Liability:

Occurrence	\$1,000,000.00 (\$500,000.00 for bodily injury; \$500,000.00 for property damage)
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Aggregate	\$1,000,000.00
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Auto Liability:	\$300,00.00 each person
	\$500,000.00 each occurrence (Bodily injury)
	\$300,000.00 ach occurrence (Property damage)

<u>Professional Liability:</u>	\$2,000,000 aggregate and claims made
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**6.03** FIRM shall furnish an original completed Certificate of Insurance to CLIENT’s representative, and which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, containing all required information referenced or indicated thereon. Coverage shall be provided by a carrier approved to do business in the State of Texas and rated at least A-(VII) in A.M. Best’s Key Rating Guide. All

policies shall be written on a primary basis and be non-contributory with any other coverages carried by the CLIENT. CLIENT shall be an Additional Insured on the General Liability policy, which policy shall also include a Waiver of Subrogation. Professional Liability coverage shall be maintained from the Effective Date and for no less than two years past the Termination Date.

**6.04** *Integration.* This Agreement contains the entire agreement between the parties hereto and may only be modified in a written amendment, executed by both parties.

**6.05** *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Venue shall lie exclusively in Dallas County, Texas.

**6.06** *Representation of Other Taxing Entities.* The Client acknowledges and consents to the representation by the FIRM of other taxing entities that may be owed taxes or other claims and be secured by the same property as the Client's claim.

**6.07** *Retention of Files.* The FIRM will retain the files created in the course of performing the services specified in Article 2 above according to the following schedule. After the time periods specified in this Section, CLIENT consents to the destruction of such files, so long as such destruction is undertaken in a manner to protect the confidentiality of any personal or private information contained therein.

Tax Warrants Files: Five years from the date of issuance of a warrant.

Litigation Files: Two years from the date of nonsuit or dismissal of a suit occurring prior to a final judgment.

Five years from the date of sale of the last property pursuant to the judgment or other satisfaction of the judgment.

Ten years from the date of filing of an abstract of judgment, or five years from the date of satisfaction of the judgment, whichever is earlier.

Bankruptcy Files: Two years from the date of dismissal of a bankruptcy proceeding or other order closing the case, or from satisfaction of a claim, whichever is earlier, with respect to Chapter 7 and 13 proceedings.

Three years from the date of dismissal of a bankruptcy proceeding or other order closing the case, or from satisfaction of a claim, whichever is earlier, with respect to Chapter 11 proceedings.

**6.08** *Compliance with Tx Govt. Code § 2271.002.* In order to comply with Tx. Govt. Code § 2271.002, the FIRM verified that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

**6.09** *Compliance with Tx Govt. Code § 2252.151-.154* In order to comply with Tx. Govt. Code § 2252.152, the FIRM verifies that it is not a company identified on the Texas Comptroller's list of companies known to have contracts with, or provide supplies or services to, a foreign organization designated as Foreign Terrorist Organization by the U.S. Secretary of State under federal law.

**6.10** *Compliance with Tx Govt. Code § 2274.001-.002.* In order to comply with Tx. Govt. Code § 2274.002, the FIRM verifies that it does not boycott energy companies and will not boycott energy companies during the term of the Agreement.

**6.11** *Compliance with Tx Govt. Code § 2274.001-.002.* In order to comply with Tx. Govt. Code § 2274.002, the FIRM verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and, will not discriminate during the term of the Agreement against a firearm entity or firearm trade association.

**In consideration of the terms and compensation herein stated**, the FIRM hereby accepts said employment and undertakes the performance of this Agreement as above written. This Agreement is executed on behalf of the FIRM and of the CLIENT by the duly authorized persons whose signatures appear below.

**City of Mesquite**

DocuSigned by:  
**Cliff Keheley**

By: \_\_\_\_\_  
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Title: City Manager

Date: 8/19/2024

**Linebarger Goggan Blair & Sampson, LLP**

DocuSigned by:  
*[Signature]*

By: \_\_\_\_\_  
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Title: Managing Partner

Date: 8/16/2024

**ATTEST BY:**

DocuSigned by:  
*[Signature]*

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Sonja Land, City Secretary

