

**CONTRACT FOR THE COLLECTION OF  
DELINQUENT TAXES**

THIS CONTRACT is made and entered into by and between the **CITY OF MCKINNEY**, (hereafter referenced as the “City”) a political subdivision of the State of Texas, acting by and through its City Council, and **ABERNATHY, ROEDER, BOYD & HULLETT, P.C.**, McKinney, Texas, (hereafter referenced as the “Firm”).

**I.  
RECITALS**

City is a political subdivision of the State of Texas with the right and obligation to collect certain taxes;

The Firm is a law firm which, among other legal services, provides services relating to the collection of Delinquent Taxes (as defined herein);

The City desires to retain the Firm to assist in the collection of Delinquent Taxes owed by taxpayers to the City;

The Firm desires to assist the City in the collection of Delinquent Taxes owed to the City by its taxpayers;

Therefore, the City and Firm agree as follows:

**II.  
RETENTION OF FIRM BY CITY**

1. City and the Firm acknowledge that through this Agreement they have an attorney-client relationship.

2. In return for the Firm providing the services described below, the City shall compensate the Firm as provided herein and shall perform the duties set forth herein.

**III.  
DELINQUENT TAXES SUBJECT TO THIS AGREEMENT**

1. City authorizes the Firm to collect all delinquent taxes, penalties and interest and all other recoverable costs allowed by law (which collectively are referred to herein as “Delinquent Taxes”) owing to City which the City’s tax collector or other authorized representative refers to the Firm, which are or become delinquent during the Term (as defined below) or are otherwise properly subject to legal action for purposes of collection during the Term.

2. Among other Delinquent Taxes, during the Term the following shall be subject to collection by the Firm:

- (a) Taxes that become delinquent during the Term that are not delinquent for any prior year. These Delinquent Taxes shall become subject to collection by the Firm on the first day of the month in which penalties and interest attach to the taxes pursuant to Section 33.07, 33.08, and/or 33.11 of the Texas Property Tax Code;
- (b) Delinquent Taxes that are required to be included in a suit pursuant to Texas Property Tax Code § 33.42(a) on the date any lawsuit is filed with respect to the recovery of the tax;
- (c) Taxes, on the date of filing of 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 the City's authorized representative;
- (d) Delinquent Taxes secured by property, even if the property is also subject to Delinquent Taxes which pre-existed the Term, if (i) the property securing the Delinquent Taxes is under litigation, or comes under litigation, or (ii) if referred to the Firm for collection by City's tax collector;
- (e) Delinquent Taxes owed on personal property shall become subject to this Contract sixty days after the delinquency date for said taxes. (For taxes owed on personal property, a 20% penalty shall be assessed as provided by Section 33.11, Texas Property Tax Code. 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 Contract.);
- (f) Taxes, including but not limited to current taxes, on the date of taxpayer filing an application for bankruptcy relief, where recovery of the tax or estimated tax is sought by the City; and
- (g) Any other Delinquent Taxes which the City requests the Firm to pursue under Texas Property Tax Code Sections 33.21 or 33.48, et. seq. or other applicable law.

3. The City has the right to make the final decision whether to collect Delinquent Taxes through a lawsuit, provided that the City has communicated its decision to the Firm in writing.

#### **IV. INTELLECTUAL PROPERTY RIGHTS**

1. The City 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 City agrees and hereby grants to the Firm the right to use and incorporate any information provided by the City ("City Information") to update the databases in this proprietary software, and, notwithstanding that City Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the City shall have no rights or ownership whatsoever in and to the software or the data

contained therein, except that the City shall be entitled to obtain a copy of such data that directly relates to the City's accounts at any time.

2. The Firm agrees that it will not share or disclose any specific confidential City Information with any other company, individual, organization or agency, without the prior written consent of the City, 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 City Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain City 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.

## **V. TERM**

1. This Agreement is effective upon execution by the City's authorized representative.
2. This Agreement shall remain in effect until August 1 of the fifth year following the Execution of this Agreement (the "Term").
3. If at any time during the initial term of this Agreement or any extension hereof, the City determines that the Firm's performance under this Agreement is unsatisfactory, the City shall notify the Firm in writing of the City's concern. The notice from the City shall specify the particular deficiencies that the City 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 City remains unsatisfied with the Firm's performance, the City may terminate this Agreement effective upon the expiration of thirty (30) days following the date of written notice to the City of such termination ("Termination Date").
4. For up to six (6) months following the expiration or termination of this Agreement, the Firm shall continue to pursue collection efforts for any matter referred by the City pursuant to this Agreement prior to the expiration of the Agreement. The City shall compensate the Firm according to the terms of this Agreement for Delinquent Taxes collected in relation to the Firm's services, even if those Delinquent Taxes are paid after termination or expiration of this Agreement.

## **VI. SERVICES OF THE FIRM**

In Consideration of the compensation to be provided by the City to the Firm, the Firm shall provide the following services during the Term:

- (i) On behalf of the City, take appropriate, lawful, and ethical actions to attempt to collect Delinquent Taxes referred to the Firm;
- (ii) Represent the City in legal action for the purpose of collecting Delinquent Taxes;

- (iii) Intervene on behalf of City in suits for taxes filed by any taxing unit on property located within its taxing jurisdiction;
- (iv) Make progress reports to City on any collection matter referred to the Firm within a reasonable time following written request from the City;
- (v) Inform the City's tax collector or other designated officials of any errors, double assessments or other discrepancies it discovers in the course of the Firm's work;
- (vi) Attempt to promptly advise City of all cases where investigation reveals taxpayers to be financially unable to pay their Delinquent Taxes;
- (vii) Any other services deemed by the Firm to be reasonably necessary to collect the Delinquent Taxes or reasonably related to any litigation that the Firm is engaged in on behalf of City; and
- (viii) Obtain and carry Professional Liability Coverage, and Errors and Omissions coverage.
- (ix) Include in any suit filed for delinquent taxes the collection of receivables, such as mowing liens, demolition liens, and other liens filed by the City with the County Clerk of Lamar County, Texas.
- (x) To the extent authorized by law, the Firm is authorized to include select receivable accounts, identified by City and The Firm and secured by liens against real property ("Land-Based Receivables"), in new and pending delinquent tax collection law suits to which City is a party. City agrees to furnish the Firm with statements of account for delinquent Land-Based Receivables and will furnish forms for said statements on request. City will make available to the Firm all information City has with regard to the name, identity, and location of the persons or entities owing money and the legal description of the property. City further agrees that the Land-Based Receivables which it turns over to the Firm for collection will have been perfected in accordance with state law and local ordinance, if any.

## **VII. DUTIES OF THE CITY**

In addition to timely paying the Firm the compensation described below, the City shall have the following duties:

- (i) Refer to the Firm any and all matter subject to collection under this Agreement, including but not limited to Delinquent Taxes which come due during the Term or matters which are otherwise identified in Article III, Section 2 above;
- (ii) Provide to the Firm any and all data and information which the Firm may require or request to pursue the Delinquent Taxes, including but not limited to:

- (a) The name of the Taxpayer;
  - (b) The last known address(es) for the Taxpayer;
  - (c) The years and the amount of Delinquent Taxes;
  - (d) Specification of additional interest and penalties for a reasonable number of months following referral; and
  - (d) A legal description of the property the subject of the Delinquent Taxes or which secures the Delinquent Taxes.
- (iii) Cooperate with the Firm in collection efforts, including but not limited to:
- (a) Updating information by furnishing a list of paid accounts and adjustments to the tax roll as appropriate and to assist the Firm in the collection of the Delinquent Taxes;
  - (b) Promptly providing updated information when requested for accounts subject to collection efforts, including but not limited to accurate calculations of Payoff Amounts;
  - (c) Promptly considering and responding to requests for decisions – such as whether to pursue litigation with regard to a particular matter, or what offers to tender, if any, to taxpayers who cannot pay Delinquent Taxes;
  - (d) Accepting calls from the Firm, and promptly returning calls and written communications from the Firm if the authorized representative of the City is not available; and
  - (e) If appropriate and requested, ensuring a qualified representative of the City is available to appear at court hearings or other proceedings.
- (iv) Promptly inform the Firm of any notices it may receive during the Term in relation to collection of Taxes, including but not limited to:
- (a) Notices related to bankruptcy filings;
  - (b) Demand letters from taxpayers or their counsel;
  - (c) Writs or subpoenas received in relation to tax collection efforts; or
  - (d) Other documents or notices which may, directly or indirectly, relate to the collection efforts of the Firm; and
- (v) The City's tax collector or other designated official agrees to promptly investigate and report in relation to any errors, double assessments, or other discrepancies which may be reported to it. Upon verification by the City of the error, double assessment or other inaccuracy, the portion improperly assessed, if any, shall no longer be subject to collection efforts by the Firm.

## **VIII.**

### **COMPENSATION**

1. For the Firm's services provided hereunder, City agrees to pay to Firm as compensation twenty (20%) percent of the amount of all revenues (including current year and prior taxes, penalty and interest) subject to the terms of this Contract and collected and paid to City or

the City's tax collector, when collected. City shall pay the Firm its compensation within thirty (30) days of receipt of payment by the City or City's tax collector.

2. Section 33.48(a) (4) of the Texas Property Tax Code provides: "In addition to other costs authorized by law, a taxing unit is entitled to recover reasonable expenses that are incurred by the taxing unit in determining the name, identity and location of necessary parties and in procuring necessary legal descriptions of the property on which a delinquent tax is due." The Firm agrees to advance on behalf of City such costs and expenses. In consideration of the advancement of such costs and expenses by the Firm, City assigns its right to recover the same to the extent approved by the Court and/or customarily and usually approved by the Court. The Firm expressly waives any claim against City for uncollected costs or expenses.

3. Compensation to the Firm for collecting delinquent tax accounts subject to bankruptcy protection shall be limited to any additional penalty (as defined by Texas Property Tax Code Sections 33.07 and 33.08), attorney fees awarded by the Court, or amounts designated as attorney fees by the debtor, if and only when actually collected. For purposes of awarding attorneys' fees in bankruptcy proceedings in connection with the collection of taxes (delinquent or otherwise), the parties have agreed that reasonable attorneys' fees shall be a contingency fee of twenty (20%) of delinquent base taxes, penalties and interest due to the City. Nonetheless, the City shall be under no obligation to compensate the Firm for its services out of the amounts identified as base taxes, penalties or interest and paid to the City or its tax assessor-collector.

4. City agrees to pay to the Firm, as compensation for collecting Land-Based Receivables, twenty (20%) percent of all amounts (representing the principal owed, plus interest thereon) collected from: (1) persons or entities responsible for the payment of any delinquent land-based receivable, or (2) recovered through the foreclosure of any lien securing the payment of a delinquent land-based receivable.

## **IX.** **ADDITIONAL TERMS**

1. Before any controversy between the parties involving the construction or application of any of the terms, covenants, or conditions of this Agreement may proceed to any other forum for adjudication, the parties, within sixty days the written request of one party served on the other, shall mediate through an agreed neutral mediator. If mediation is not successful, the parties agree that any controversy involving the construction or application of any of the terms, covenants, or conditions of this Agreement, shall be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act.

2. This Agreement shall be exclusively governed by and construed according to the laws of the State of Texas and venue for any dispute shall be in Collin County, Texas.

3. This Agreement may only be amended or modified by a written document executed by the Parties and which unequivocally indicates the Parties' intention to modify this Agreement.

4. The Parties agree that the captions and headings contained in this Agreement are for convenience only and shall not be deemed to constitute a part of this Agreement.

5. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one and the same document. A facsimile executed copy of this Agreement, which has been executed by all of the Parties, shall have the same force and effect as an original.

6. The Parties have participated or been provided an opportunity to participate in the drafting of this Agreement, and have presented or been provided the opportunity to present this Agreement to counsel of their choosing for review. Accordingly, in the event of any ambiguity or conflict, the parties agree this Agreement shall not be construed against the drafter.

7. The Firm further agrees to the following:

(a) the Firm will give written notice to the City prior to negotiating a delinquent tax payment agreement with any private client of the Firm; no private client of the Firm will receive any terms more favorable than those available to the general public;

(b) in the very unlikely event that the Firm is required by a Court to engage outside counsel due to a conflict of interest the City shall have the sole right to select that outside counsel; the Firm shall recommend competent outside counsel to the City, preference being given to lawyers practicing in McKinney;

(c) the Firm shall continue to refrain from representing any adverse party to litigation against the City; and

(d) a monthly report of total attorney fees paid to the Firm from accounts collected on behalf of the City is provided to the City by the Collin County Tax Office; should the City not receive this information from the Collin County Tax Office the Firm shall promptly provide this information to the City after receiving the City's written request.

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

9. The persons signing below represent that they are authorized representatives of the respective entities on whose behalf they purport to execute this Agreement.

**Effective this \_\_\_ day of \_\_\_\_\_, 2022.**

**MCKINNEY, TEXAS**

**Abernathy, Roeder, Boyd, & Hullett, PC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Written Findings as to the Collections Contract with  
Abernathy, Roeder, Boyd & Hullett, P.C.:**

The governing body for the City, in support of its decision to contract with Abernathy, Roeder, Boyd & Hullett, P.C. pursuant to Section 2254.1036, of the Government Code, hereby finds the following to be true:

- 1) There is a substantial need for the legal services specified in said contract;
- 2) These legal services cannot be adequately performed by the attorneys and supporting personnel of the City; and
- 3) 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 the matter for which these services will be obtained or because City does not have funds to pay the estimated amounts required under a contract providing only for the payment of hourly fees.

APPROVED and EXECUTED this the \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_

Title: \_\_\_\_\_

City of McKinney