

AN ORDINANCE                      **101809**

**AUTHORIZING THE RENEWAL, EXTENSION AND AMENDMENT OF THE CURRENT CONTRACT FOR THE COLLECTION OF DELINQUENT PROPERTY TAXES WITH LINEBARGER GOGGAN BLAIR & SAMPSON, ATTORNEYS AT LAW, AND ESCAMILLA & PONECK, INC., ATTORNEYS AT LAW, FOR A PERIOD OF THREE (3) YEARS, BEGINNING JANUARY 1, 2006, AND ENDING DECEMBER 31, 2008.**

\* \* \* \* \*

**WHEREAS**, Ordinance No. 80867, passed and approved September 29, 1994, authorized the City Manager to negotiate a contract with the joint venture of Heard Linebarger Graham Goggan Blair Pena & Sampson, Attorneys at Law, and Escamilla & Poneck (now known as Escamilla & Poneck, Inc., Attorneys at Law, for the collection of ad valorem taxes for the City of San Antonio ("Contract") for a three year period, with an option to renew and extend the Contract for four additional periods, each additional period being either a three-year or five-year period; and

**WHEREAS**, Ordinance No. 86994, passed and approved on November 20, 1997, renewed and extended the Contract for a three year term, commencing January 1, 1998, and ending December 31, 2000; and

**WHEREAS**, Ordinance No. 92993, passed and approved on November 30, 2000, renewed and extended the Contract for a five year term, commencing January 1, 2001, and ending December 31, 2005; and

**WHEREAS**, the above named firms have met or exceeded their performance standards and contractual obligations in each year of the Contract; and

**WHEREAS**, City staff has recommended an extension of the Contract for a three year period, commencing January 1, 2006, and ending December 31, 2006, with amendments to the Contract substantially as set forth in Attachment I to this Ordinance; and

**WHEREAS**, after due deliberations on and consideration of the matter, the City Council desires to approve the renewal, extension and amendment of the Contract, for a three year term commencing January 1, 2006, and ending December 31, 2008, and to authorize the execution of a *Renewal, Extension And Amendment Of Contract* substantially as set forth in Attachment I to this Ordinance; **NOW, THEREFORE;**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

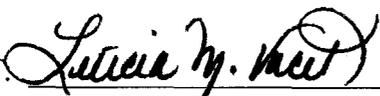
**SECTION 1.** The City Council hereby approves the renewal, extension and amendment of the Contract for a three year period, commencing January 1, 2006, and ending December 31, 2008. The terms and conditions of the renewal, extension and amendment of the Contract shall be substantially as set forth in the *Renewal, Extension And Amendment Of Contract* attached hereto as Attachment I and incorporated herein by reference for all purposes ("Agreement").

**SECTION 2.** The City Manager, an Assistant City Manager, an Assistant to the City Manager, the City Manager's designee, or the City's Director of Finance is hereby authorized to execute the Agreement on behalf of the City of San Antonio, the terms of which shall be substantially as set forth in Attachment I to this Ordinance.

**SECTION 3.** This Ordinance shall take effect ten (10) days from the date of passage hereof.

**PASSED AND APPROVED** this 1<sup>st</sup> day of December, 2005.

  
M A Y O R  
PHIL HARDBERGER

ATTEST.   
City Clerk

APPROVED AS TO FORM:   
City Attorney

# Agenda Voting Results

**Name:** 40.

**Date:** 12/01/05

**Time:** 08:52:06 PM

**Vote Type:** Multiple selection

**Description:** An Ordinance authorizing the renewal, extension, and amendment of the current contract for the collection of delinquent property taxes with Linebarger Goggan Blair & Sampson, LLP, Attorneys at Law, and Escamilla & Poneck, Inc., Attorneys at Law, for a period of three (3) years beginning January 1, 2006 and ending December 31, 2008. [Presented by Milo Nitschke, Director, Finance; Melissa Byrne Vossmer, Assistant City Manager]

| Voter                    | Group       | Status      | Yes | No | Abstain |
|--------------------------|-------------|-------------|-----|----|---------|
| ROGER O. FLORES          | DISTRICT 1  |             | x   |    |         |
| SHEILA D. MCNEIL         | DISTRICT 2  |             | x   |    |         |
| ROLAND GUTIERREZ         | DISTRICT 3  | Not present |     |    |         |
| RICHARD PEREZ            | DISTRICT 4  |             | x   |    |         |
| PATTI RADLE              | DISTRICT 5  |             | x   |    |         |
| DELICIA HERRERA          | DISTRICT 6  |             | x   |    |         |
| ELENA K. GUAJARDO        | DISTRICT 7  |             | x   |    |         |
| ART A. HALL              | DISTRICT 8  | Not present |     |    |         |
| KEVIN A. WOLFF           | DISTRICT 9  |             | x   |    |         |
| CHIP HAASS               | DISTRICT_10 | Not present |     |    |         |
| MAYOR PHIL<br>HARDBERGER | MAYOR       | Not present |     |    |         |

A T T A C H M E N T I

**RENEWAL, EXTENSION AND AMENDMENT OF CONTRACT**

THE STATE OF TEXAS           §

THE COUNTY OF BEXAR       §

This *Renewal, Extension And Amendment Of Contract* ("Agreement") is made and entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "First Party"), a Texas Municipal Corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, passed and approved December 1, 2005, and **LINEBARGER GOGGAN BLAIR & SAMPSON, LLP**, Attorneys at Law and **ESCAMILLA & PONECK, INC.**, Attorneys at Law, each acting by and through its duly authorized representative (hereinafter collectively referred to as "Second Party").

**ARTICLE I.**

First Party hereby exercises its option to renew and extend the term of the *Contract For The Collection Of Delinquent Taxes* (hereinafter referred to as the "Contract") such option having been granted to First Party in Section X. of the Contract, originally entered into by and between First Party and Second Party for delinquent ad valorem tax collection services, having been approved by the City of San Antonio City Council, through Ordinance No. 80867, passed and approved on September 29, 1994, and most recently renewed pursuant to *Renewal And Extension Of Contract* dated January 10, 2001, having been approved by the City of San Antonio City Council, through Ordinance No. 92993, passed and approved on November 30, 2000.

**ARTICLE II.**

The undersigned parties agree that the term of the Contract, as originally stated in Article X., is hereby extended for a three (3) year period, commencing January 1, 2006, and ending December 31, 2008, unless terminated earlier pursuant to the terms of the Contract or the terms provided herein.

The option to renew and extend the term of the Contract for one (1) additional period shall remain the option of First Party. The option to renew and extend for such additional period may be exercised by First Party for a three (3) or five (5) year period, at the sole discretion of the First Party.

### ARTICLE III.

Second Party shall not assign any interest in the Contract to any other party without the prior written consent of the First Party.

### ARTICLE IV.

Article VII. of the Contract is hereby amended so as to delete therefrom all provisions related to payment by First Party to Second Party of 15% of any taxes, penalty, and interest collected by Second Party **(a)** in a bankruptcy action involving taxes collected prior to July 1 of the year in which they become delinquent, and/or **(b)** involving Federal Deposit Insurance Corporation (FDIC), Financial Institutions Reform Recovery And Enforcement Act (FIRREA), or successor(s) to Resolution Trust Corporation (RTC) and/or Federal Savings and Loan Insurance Corporation (FSLIC) related accounts, **unless (i)** the 15% additional penalty imposed by Texas Property Tax Code Section 33.07, or **(ii)** the 15% attorney's fees provided for by Texas Property Code Section 33.48, are also collected by Second Party.

### ARTICLE V.

Article XI. of the Contract is hereby amended in its entirety, so that it shall hereafter read as follows:

As further consideration for the renewal of the Contract pursuant to this Agreement, the following services and enhancements shall also be provided to First Party by Second Party:

- A. During each year of the term of this Agreement, Second Party shall reimburse First Party in an amount equal to the **lesser** of **(i)** First Party's actual costs incurred in connection with its in-house parking collection program, or **(ii)** \$76,000.00. No portion of the reimbursement shall be derived from the compensation paid to Second Party by First Party pursuant to the provisions of Section 33.07 or Section 33.48 of the Texas Property Tax Code.
- B. Second Party, upon request and referral by First Party, shall provide bankruptcy and collection services to the extent requested by First Party in connection with **(a)** Community Development Block Grant (CDBG) and/or HOME Investment Partnerships Act (HOME) Owner Occupied Rehabilitation, **(b)** CDBG and HOME Owner Occupied Reconstruction, **(c)** Homeownership Incentive Program (HIP), and **(d)** American Dream Down Payment Initiative (ADDI) loans made by First Party. Such bankruptcy and collection services provided by Second Party shall

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include, but not be limited to: **(i)** printing and mailing at Second Party's sole expense demand letters, notices of default, notices of intent to accelerate and acceleration letters; **(ii)** filing suit and representing First Party in such suit to seek recovery of sums due and owing on a real estate lien note; **(iii)** pursuing First Party's remedies such as non-judicial or judicial foreclosure to the extent requested by First Party; and **(iv)** representing First Party and protecting its interests in Chapter 7 and Chapter 13 bankruptcy cases filed by CDBG, HOME, or other borrowers of the loans described above. Legal Services shall be provided by Second Party in accordance with the Texas Code of Professional Responsibility and as permitted by federal and state law.

- C. Second Party shall provide consulting services regarding its skip tracing knowledge and expertise to First Party upon request of First Party.
- D. Second Party shall **(i)** at its sole expense print and mail not less than one (1) demand letter annually to the owner(s) of record of each property on which sums are owing for costs related to code compliance violations; and **(ii)** in each delinquent tax lawsuit involving property on which sums are owing and delinquent for costs related to code compliance violations, seek recovery of such costs as part of such lawsuit. To collect these receivables, First Party shall provide Second Party with monthly updates on all referred receivables.

#### ARTICLE VI.

The second paragraph of Article VII. of the Contract is hereby amended so that it shall hereafter read as follows:

Second Party guarantees that commencing with the Tax Year 2005 delinquencies that are turned over to Second Party on July 1, 2006, and continuing with each successive Tax Year during the term of this Contract, collections of the adjusted tax levy for that Tax Year will be at NINETY-EIGHT AND ONE-HALF PER CENT (98.5%) or higher, within twelve months from the date the current delinquency is turned over to Second Party for collection. For purposes of this Contract, adjusted tax levy is the current tax levy as of October 1 of the year preceding the year in which those taxes are turned over to Second Party, together with all supplements and supplemental billings, less cancellations and plus net adjustments as of the date of the calculation, except that supplements to the tax roll after April 1 shall not be included in the calculation. The adjusted tax levy shall exclude exempt property, bankruptcies, accounts prohibited by law from collection, double assessments, payment arrangements, hardship cases, accounts subject to age deferral, FDIC, FSLIC, and other FIRREA accounts, and accounts which are not subject to collection due to First Party's policy or by

virtue of acts of God. Payments made in month twelve (12) from the date of turnover but not posted until the following month shall be deemed paid in month twelve (12) for purposes of calculation of Second Party's performance. First Party agrees that, in the event of a successful roll back election or officially declared natural disaster or catastrophic accidental loss of computer capability, physical facilities, or employees of either party, no guarantee shall be in effect for the year or years in which such event occurs. This guarantee also assumes that (i) the base levy remains consistent; (ii) that the current tax collection rate (as of June 30 of each year) will remain at a level substantially equal to 95%; (iii) First Party's economy stays substantially unchanged in comparison to its condition as of the date this Agreement is executed; and (iv) Second Party is given a full twelve (12) month period to implement all elements of its workplan including, but not limited to taxpayer communications, research, and litigation. At the end of twelve (12) months from the time the delinquent roll is transferred to Second Party, the difference by which the amount collected (determined in accordance with the foregoing) falls short of the guaranteed amount (determined in accordance with the foregoing) shall be paid by Second Party to First Party, **up to \$100,000.00**. Such payment shall be made by Second Party to First Party not later than thirty (30) days after determination of the shortfall. No portion of any such payment shall be derived from the compensation paid to Second Party by First Party pursuant to the provisions of Section 33.07 or Section 33.48 of the Texas Property Tax Code. The guarantee provisions related to Tax Year 2007 delinquencies turned over to Second Party on July 1, 2008, shall survive the expiration of this Contract.

#### ARTICLE VII.

The first paragraph of Article IX. of the Contract is hereby amended so that it shall hereafter read as follows:

On expiration of the Contract, Second Party shall (i) have through June 30, 2009, to implement all elements of its workplan including, but not limited to taxpayer communications, research, and litigation; (ii) have an additional six months after June 30, 2009, to reduce to judgment all suits filed prior to June 30, 2009; (iii) at its option, have the right to handle to conclusion all suits in which trial court judgments are obtained during the period of the Contract and which are appealed by any party; and (iv) be entitled to the payment provided for in the Contract for all sums collected by Second Party pursuant to any of the actions described above.

## ARTICLE VIII.

Article XII. of the Contract is hereby amended so that it will hereafter read as follows:

Second Party shall provide access to First Party, or its designated representatives, including but not limited to auditors (outside or internal) employed by First Party from time to time, and shall facilitate their reasonable review of data stored by Second Party in various forms, so as to enable an accurate review and statement of First Party's financial condition.

Linebarger Goggan Blair & Sampson, LLP (hereafter "Linebarger") shall procure, pay for, and maintain during the term of this Agreement a policy of lawyer's professional liability insurance, including errors and omissions, with a minimum limit of \$3,000,000.00 per occurrence. Linebarger shall also name First Party as an additional insured on Linebarger's (a) \$2,000,000 blanket "employee and firm" dishonesty bond or policy; (b) \$2,000,000 aggregate coverage, \$1,000,000 coverage per occurrence, general liability policy; and (c) excess liability policy (umbrella form) with \$10,000,000 of aggregate coverage. Linebarger and Escamilla & Poneck (hereafter "Escamilla") shall each have and maintain a workers' compensation policy or other comparable insurance as permitted by state law with waiver of subrogation in favor of First Party. Linebarger and Escamilla, as appropriate, shall provide the Director (defined below) with copies of all policies described herein reflecting First Party as an additional insured and with each insurance company's agreement that policies so issued shall not be terminated without thirty (30) days' prior written notice to the Director (defined below); and Linebarger and Escamilla, as appropriate, shall keep such policies in such amounts or in such other amounts as may be approved by First Party through the Director (defined below), in full force and effect throughout the term of the Contract.

On any account where the City Attorney has requested in writing that collection efforts be initiated or pursued to conclusion, and where taxes, penalty, or interest become uncollectible by virtue of the negligent act or omission of Second Party, such taxes, penalty, or interest may be set off against fees or compensation next payable hereunder to Second Party; however, this provision shall not limit the remedy or recovery of First Party for any claim based on professional error or omission to the amounts payable as compensation or fees hereunder.

Second party shall submit to First Party, on a quarterly basis, reports and information in such form and with such content as are hereafter mutually agreed upon and specified in writing to Second Party by First Party's Director of Finance ("Director"). All such reports and information, and the form and content thereof, specified by the Director shall be reasonably obtainable from Second Party's databases and reasonably related to Second Party's obligations under the Contract. Second Party shall submit all such reports and information, in the form and with the content specified by the Director, so long as the requisite information is reasonably obtainable from Second Party's

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databases and reasonably related to Second Party's obligations under the Contract. All such reports and information shall be in a mutually agreed upon electronic format. All such reports and information shall be submitted to and received by First Party not later than the last day of the month next succeeding the end of the preceding quarter. The first such reports and information shall be due on April 30, 2006, for the first quarter of 2006.

#### **ARTICLE IX.**

Except as amended by the provisions of this Agreement set forth above, the terms and conditions of the Contract shall remain unchanged and in full force and effect during the term of this Agreement.

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**ARTICLE X. CONFLICT PROVISIONS**

Any discrepancy between the provisions of this Agreement and the provisions of the Contract shall be resolved in favor of this Agreement.

EXECUTED and AGREED TO this the \_\_\_\_\_ day of November, 2005.

**FIRST PARTY:**  
CITY OF SAN ANTONIO

**SECOND PARTY:**  
LINEBARGER GOGGAN BLAIR  
& SAMPSON, LLP

BY: \_\_\_\_\_  
Sheryl Sculley  
City Manager

BY: \_\_\_\_\_  
Clifton F. Douglass III  
Managing Partner  
San Antonio

ESCAMILLA & PONECK, INC.

Approved as to form:

BY: \_\_\_\_\_  
Douglas A. Poneck  
Vice President

\_\_\_\_\_  
Robert Nordhaus  
Assistant City Attorney

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