

BILL NO.: 4560

ORDINANCE NO.: _____

Introduced by: Council Present

AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE THE ATTACHED PROFESSIONAL SERVICE CONTRACT FOR LEGAL AND DEBT COLLECTION SERVICES WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

Now, Therefore, Be it ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1: The Mayor is hereby authorized to enter into and execute the attached professional service contract for legal and debt collection services, for a period of three (3) years subsequently with a one (1) year automatic renewal, unless terminated, with Linebarger Goggan Blair & Sampson, LLP.

Section 2: The attached contract is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.

Section 3: This Ordinance shall be in full force and effect from and after its passage.

1st Reading this _____ day of _____ 2017

2nd Reading this _____ day of _____ 2017

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2017

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Kirkland	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mathison	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman-at-Large McDaniel	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mitchell	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Williams	Aye	___	Nay	___	Absent	___	Abstain	___

**PROFESSIONAL SERVICE CONTRACT
FOR LEGAL AND DEBT COLLECTION SERVICES**

THIS PROFESSIONAL SERVICE CONTRACT FOR LEGAL AND DEBT COLLECTION SERVICES ("Agreement") is dated this ____ day of _____ 2017, between THE CITY OF BERKELEY, MISSOURI (the "City"), and LINEBARGER GOGGAN BLAIR & SAMPSON, LLP (the "Firm") (together, the "Parties").

WITNESSETH:

WHEREAS, the City desires to enter into a professional service contract with a qualified law firm to provide legal and debt collection services in connection with the collection of delinquent accounts receivable (Court fees, fines and costs) from the Berkeley Municipal Court;

WHEREAS, the City desires to have the Firm provide legal and debt collection services in connection with the collection of said delinquent accounts receivable and the Firm is duly qualified to perform said services; and

WHEREAS, the Firm has agreed to provide, on an as-needed and contingency fee basis, the services described below upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and mutual promises set forth below and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

I. Scope and Nature of Representation

- A. The Firm's client is the City. The Firm will serve as the City's legal counsel and debt collection services agency in connection with the collection of delinquent accounts receivable (Court fees, fines and costs) from the Berkeley Municipal Court, on an as-needed basis as determined by the City.
- B. The City shall refer delinquent accounts receivable to the Firm for collection in a mutually agreed format that provides the necessary information to effect a reasonable collection effort.
- C. The City may engage other entities, including law firms, to perform portions of the representation described herein for which such firms are qualified.

II. Term

- A. The initial term of this Agreement shall be for a period of three (3) years from the date hereinabove. Subsequent to the three year term, this Agreement shall automatically renew each and every year for an additional term of one (1) year unless otherwise terminated by either party in accordance with the terms of this Agreement as specified below.

- B. The Firm's services under this Agreement may be terminated:
1. By mutual consent of the parties;
 2. At the City's convenience, with or without cause, by giving the firm sixty (60) days written notice, and such termination for convenience is cumulative of all rights and remedies which exist now or in the future.

III. Fees

- A. This is a "contingency fee only" agreement for debt collection and legal services. The Firm shall retain as its contingency fee a percentage of actual collections from delinquent accounts receivable referred by the City to the Firm, as follows:

Twenty-two and one-half percent (22.5%) of the total amount collected on accounts referred to THE FIRM from and after, and during the term of this Agreement that are within one hundred and eighty (180) days of the scheduled due date and which do not require litigation or bankruptcy services.

Twenty-five percent (25%) of the total amount collected on accounts referred to the Firm that are more than one hundred and eighty (180) days from the scheduled due date and which do not require litigation or bankruptcy services.

- B. For accounts the Firm believes require litigation or bankruptcy services, the Firm shall, prior to proceeding with such litigation or bankruptcy services, obtain approval in writing from the City, through its Office of the City Attorney. If approval is obtained, the Firm shall be paid thirty-three percent (33.33%) of the total amount collected. The City shall reimburse the Firm for pre-approved non-exempt court costs, which include filing and service fees.
- C. Prior to settling any delinquent account receivable for an amount less than what was originally referred to the Firm for collection, the Firm shall obtain written approval for such settlement from the City, through its Office of the City Attorney.
- D. All payments and fees for services provided by the Firm shall be wholly dependent upon the results obtained from actual collections from delinquent accounts receivable. The City shall not be obligated to make any payment whatsoever to the Firm other than as deductions from recoveries actually collected. the Firm shall advance all of its costs in connection with its representation of the City under this Agreement, and shall not receive any reimbursements or payments whatsoever other than its contingency fee described in this Section III.
- E. The Firm shall remit to the City, on a monthly basis or other schedule as directed in writing by the City, the balance of such actual collections received during the preceding month together with an agreed form of accounting and reconciliation.

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- B. Merger. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understanding, written or oral, between the parties respecting the written subject matter.
- C. Audit. City representatives may perform audits of the Firm's books and records located at all of the Firm's office locations relating to the services provided under this Agreement, including, but not limited to, financial records related to the billing and collection process. The Firm shall keep its books and records available for this purpose for at least three (3) years after this Agreement terminates. This provision does not affect any applicable statute of limitations.
- D. Document Ownership. At all times, the Firm will recognize the City's sole and exclusive ownership of all documents and information provided by the City relating to the services described herein and the sole and exclusive right and jurisdiction of the City to control the use of this information. The Firm agrees to return all data furnished and information derived hereunder promptly upon a request by the City. The Firm shall not use any information acquired by this representation for any purpose other than legal and debt collection services.
- E. Amendments. No amendments, modifications, or alterations of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date of this Agreement and duly executed by the parties.
- F. Conflicts of Law. This Agreement shall be governed, interpreted, and construed under and in accordance with the laws of the State of Missouri.
- G. Any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of the City of Clayton, Missouri.
- H. Compliance with Laws. The Firm shall be responsible for compliance with all applicable local, state, and federal laws, statutes, codes, regulations, executive orders, and ordinances in relation to the services provided under this Agreement. This includes, but is not limited to, the Missouri Sunshine Law.
- I. Attorney Services Certification. The Firm certifies that at the time of signing this Agreement, either in an individual or firm capacity, the Firm does not represent any party in litigation against the City.
- J. Indemnification. The Firm shall indemnify, defend and hold the City harmless from and against all liabilities, losses and/or costs arising from claims for damages, or suits for losses or damages, including reasonable costs and attorney's fees, which may arise as a result of the Firm's performance of the services described in this Agreement. The indemnity provision of this Agreement shall have no

application to any claim or demand which results from the sole negligence or fault of the City, its officers, agents, employees or contractors. And furthermore, in the event of joint and/or shared negligence or fault of the City and the Firm, responsibility and indemnity, if any, shall be apportioned in accordance with Missouri law and without waiving any defenses of either party. The provisions of this paragraph are intended for the sole benefit of the parties hereto and are not intended to create or grant any right, contractual or otherwise, to any other persons or entities.

IN WITNESS HEREOF, the Parties have executed this Agreement the date and year first written above.

THE CITY OF BERKELEY

LINEBARGER GOGGAN BLAIR
& SAMPSON, LLP

Title: Mayor Theodore Hoskins

By: _____
Michael J. French
Partner

APPROVED AS TO FORM ONLY:

City Attorney