

BILL NO. 1176

ORDINANCE NO. 1089

Sponsor: Councilwoman Muller

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICE CONTRACT FOR LEGAL SERVICES AND DEBT COLLECTION SERVICES WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

WHEREAS, the City has a significant amount of unpaid fines resulting from Municipal Court cases; and

WHEREAS, the law firm of Linebarger, Goggan Blair & Sampson, LLP specialize in collecting delinquent fines.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK JACK, ST. LOUIS COUNTY, MISSOURI AS FOLLOWS:

SECTION 1: The Mayor, and any other City official designated by him, is hereby authorized and directed to execute the Professional Service Contract for Legal and Debt Collection Services with the law firm of Linebarger Goggan Blair & Sampson, LLP in accordance with the Agreement attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: This Ordinance shall become effective upon its passage and approval as provided by law.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BLACK JACK, ST. LOUIS COUNTY, MISSOURI, THIS 1st DAY OF MARCH, 2016.

Norman C. McCourt, Mayor

ATTEST:

Karen E. Robinson, MRCC-S/CMC
City Clerk

APPROVED THIS 1st DAY OF MARCH, 2016.

APPROVED AS TO LEGAL FORM:

Sheldon K. Stock, Special Counsel

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

THIS PROFESSIONAL SERVICE CONTRACT FOR LEGAL AND DEBT COLLECTION SERVICES ("Agreement") is dated this 1st day of March 2016, between THE CITY OF BLACK JACK, MISSOURI (the "City"), and LINEBARGER GOGGAN BLAIR & SAMPSON, LLP ("LGBS") (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 Black Jack Municipal Court;

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

WHEREAS, LGBS 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. LGBS's client is the City. LGBS 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 Black Jack Municipal Court, on an as-needed basis as determined by the Mayor or his/her designee.
- B. The City shall refer delinquent accounts receivable to LGBS 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 two (2) years from the date hereinabove. Subsequent to the two 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. LGBS's services under this Agreement may be terminated:

1. By mutual consent of the parties;

At the City's convenience, with or without cause, by giving LGBS thirty (30) 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. LGBS shall retain as its contingency fee a percentage of actual collections from delinquent accounts receivable referred by the City to LGBS, as follows:

Twenty-two and one-half percent (22.5%) of the total amount collected on accounts referred to LGBS from and after, and during the term of this Agreement that are within ninety (90) 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 LGBS that are more than ninety (90) days from the scheduled due date and which do not require litigation or bankruptcy services.

B. For accounts LGBS believes require litigation or bankruptcy services, LGBS shall, prior to proceeding with such litigation or bankruptcy services, obtain approval in writing from the City, through its Office of the Mayor or his/her designee. If approval is obtained, LGBS shall be paid thirty-three percent (33.33%) of the total amount collected. The City shall reimburse LGBS 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 LGBS for collection, LGBS shall obtain written approval for such settlement from the City, through its Office of the Mayor or his/her designee.

- D. All payments and fees for services provided by LGBS 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 LGBS other than as deductions from recoveries actually collected. LGBS 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. LGBS 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.
- F. It shall be a condition precedent to payment of any invoice from LGBS that LGBS is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Agreement. If damages are sustained by the City as a result of breach or default by LGBS, the City may withhold payment(s) to LGBS for the purpose of set off until such time as the exact amount of damages due the City from LGBS may be determined.
- G. No request for payment shall be processed unless the request is in proper form, correctly computed, and is approved as payable under the terms of this Agreement.
- H. The City shall not be liable for any obligation incurred by LGBS except as may be provided for by this Agreement.
- I. In the event that statutory authority is enacted during the term of this Agreement that serves to allow the City to shift the cost of collection to the delinquent account holder ("add-on collection fee"), thus allowing the City to obtain the collection services under this Agreement at no cost to the City, the parties may negotiate in good faith an increase or adjustment to the amount of the contingency fee paid to LGBS consistent with the statutory authority.

IV. Miscellaneous

- A. Notice. Any notices or demand which under the terms of this Agreement or under any statute may be given or made by LGBS or the City shall be in writing and shall be given or made by personal service, telegram, first class U.S. mail, FedEx, or by certified or registered mail to the parties. Any such notice or demand from LGBS shall be sent to the City department from which the account receivable originated, with carbon copy to: Court Administrator, 12500 Old Jamestown Road, Black Jack, Missouri 63033. Any such notice or demand or correspondence from LGBS concerning legal issues, such as whether to pursue litigation to collect a debt, shall be sent to the Mayor or his/her designee at the above-stated

address. Any such notice or demand from the City to LGBS shall be sent to the following address:

Linebarger Goggan Blair & Sampson, LLP
Client Services Department
2700 Via Fortuna, Suite 400
Austin, TX 78746

And to:

Linebarger Goggan Blair & Sampson, LLP
Attn: Michael J. French, Partner
2700 Via Fortuna, Suite 400
Austin, TX 78746
Phone: (512) 634-3703
E-mail address: mike.french@lgbs.com

- 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 LGBS's books and records located at all LGBS office locations relating to the services provided under this Agreement, including, but not limited to, financial records related to the billing and collection process. LGBS 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, LGBS 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. LGBS agrees to return all data furnished and information derived hereunder promptly upon a request by the City. LGBS 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 St. Louis County, Missouri.
- H. Compliance with Laws. LGBS 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.
- II. Attorney Services Certification. LGBS certifies that at the time of signing this Agreement, either in an individual or firm capacity, LGBS does not represent any party in litigation against the City.
- J. Indemnification. LGBS shall indemnify 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 LGBS'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 LGBS, 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 BLACK JACK

LINEBARGER GOGGAN BLAIR
& SAMPSON, LLP

Norman C. McCourt - Mayor

By: _____
Michael J. French
Partner

APPROVED AS TO FORM ONLY:

Sheldon K. Stock, Special Counsel