

# CONTRACT FOR COURT FINES AND FEES COLLECTION SERVICES

STATE OF TEXAS

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COUNTY OF HAYS

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## SECTION I. PARTIES TO THE CONTRACT

A. This contract, hereinafter called "Contract", is made and entered into by and between the City of San Marcos, Texas, acting herein by and through its governing body, hereinafter called "the City" and Perdue, Brandon, Fielder, Collins & Mott, L.L.P., hereinafter called "Perdue".

B. This Contract supersedes all prior oral and written agreements between the parties, and can only be amended if done so in writing and signed by all parties. Furthermore, this Contract cannot be transferred or assigned by either party without the written consent of all parties.

C. The City agrees to and does hereby engage Perdue to enforce the collection of delinquent court fines, fees, and court costs pursuant to the terms and conditions described in this Contract.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements hereinafter set forth, the adequacy of which is hereby acknowledged, the City and Perdue agree as follows:

## SECTION II. CITY'S COLLECTION OBLIGATIONS

A. The City agrees to refer all delinquent accounts, as defined below, to Perdue for collection on or about the first (1<sup>st</sup>) or the fifteenth (15<sup>th</sup>) of each month. The City shall refer all delinquent accounts by electronic or magnetic medium, if available, or in any other way that is most favorable to the City. All delinquent accounts should be in a specified format that will allow Perdue to process the account data.

B. An account is considered delinquent when not paid within ninety (90) days of the scheduled appearance date (if the defendant failed to appear), or from any granted extension, or from the date of conviction or judgment, or other court specified due date.

C. The City will provide Perdue with copies of, or access to, the information and documentation necessary to collect the fines, fees, and court costs that are subject to this Contract. It is understood and agreed between the City and Perdue that Perdue will bear no responsibility to collect accounts that are not referred to it by the City due to software upgrades or changes. The accounts not turned over for collection will be subtracted from the overall outstanding balance the City maintains for purposes of statistical reporting and contract evaluation.

### **SECTION III. PERDUE'S COLLECTION OBLIGATIONS**

A. Perdue agrees to refer all payments and correspondence directly to the court that has assessed or levied the fines, fees, and court costs being collected pursuant to this Contract.

B. Perdue agrees to use its best efforts to collect the delinquent accounts received from the City and to comply with all provisions of state and federal law and regulations promulgated pursuant thereto in the rendition of collection services contemplated by this Contract.

C. If requested by the City, Perdue agrees to provide legal advice to the City on its delinquent accounts.

D. Perdue will provide IT personnel to work with the City's municipal court software provider (current provider –Infosol and new provider -New Dawn) to enhance a collections module for the purpose of implementing a collection program with the City. Perdue will bear all the costs associated with the programming and interfacing to include data exchange as listed below and the development of a future interface with OMNI which will be used by the City to transmit data to the State (DPS program for holds on license renewals).

1. Program should include business rules that will automate the pushing of data to the collections vendor and OMNI as identified while automatically affixing the OMNI and collection fee to the case.

2. Push data to the vendor to identify defendants who have come into compliance and should no longer be contacted by the vendor (payment, dismissal, compliance etc.).

3. Allow for the push back of data to update defendant contact information to include but not limited to addresses, telephone numbers and email addresses.

E. Perdue agrees to seek approval by the City of all letters and call scripts it will use. Mail outs will also include an envelope addressed to the City's municipal court for a mail in payment option.

F. Perdue agrees that it will not utilize auto dialers, except as approved by the City. Defendants will be contacted by telephone by an employee of Perdue and no recorded messages will be used.

G. Perdue agrees to reimburse the City of San Marcos for one full time entry level municipal court clerk for the term of the contract and all renewals not to exceed \$38,584 per annum. This shall be payable to the City each month the contract is in force, once case data is provided by the court software program(s), data converted and transmitted to Perdue. Perdue's obligation to reimburse the City each month is conditioned upon the City sending an invoice for reimbursement to Perdue.

H. Perdue agrees to provide customized reports as requested by the City.

I. Perdue agrees to reimburse the City monthly for pre-collection courtesy letters (printing and mailing) upon receipt of an invoice from the City once the New Dawn collections software is installed, data converted and transmitted to Perdue.

J. Perdue shall provide the city with a copy of the agreement with Certified Payments to reduce the convenience fee currently charged to City Defendants within 30 days of the execution of this contract. Perdue also agrees that in the event the City changes credit card providers, that it will work with the city for similar reductions with a new vendor.

K. Perdue agrees to coordinate with the City for two warrant roundup events annually and to provide collection services to include:

1. Paying for printing, mailings and publicity.
2. Providing research for arrest lists to be used by the marshals during the enforcement period.
3. Providing research with telephone numbers for the citizen police academy call nights.

In exchange for these services, city agrees all collection fees will remain in place pursuant to Article 103.0031 during Warrant Round Ups.

L. Perdue agrees to pay for media awareness to include radio spots during peak drive time, advertisement in local and school publications, billboards, bench and bus ads, at times and locations agreed upon by the City. The total amount spent each year of the contract will not exceed \$5,000.

M. Perdue agrees to pay for one (1) payment kiosk in a location acceptable to the City should the City determine this is a feasible option, in an amount not to exceed \$5,000.

N. Perdue agrees to provide credit card payment options, such as a credit card reader/processor for officers in the field should the City determine that is a feasible option for the City. City will use its best efforts to collect Perdue's fee when utilizing the credit card reader/processor.

O. Perdue agrees that it will utilize other defendant contact methods as allowable by law and approved by the City as new technology is developed, e.g., text messaging.

P. Perdue acknowledges that the terms and conditions attached hereto as Exhibit A were a part of the Request for Proposals pursuant to which this Contract was negotiated and agrees that it will comply with and be bound by such terms and conditions.

Perdue further agrees that the Request for Proposals and the various provisions therein shall be and are hereby incorporated into this Contract by reference herein.

#### **SECTION IV. COLLECTION FEE**

The City agrees to pay Perdue as follows:

1. No fee for collected fines, fees, and court costs referred to Perdue by the City imposed on all unadjudicated offenses committed on or before June 18, 2003.
2. Thirty percent (30%) of the collected fines, fees, and court costs referred to Perdue imposed on all adjudicated offenses committed on or before June 18, 2003.
3. Thirty percent (30%) of the collected fines, fees, and court costs referred to Perdue imposed on all offenses occurring after June 18, 2003.

The thirty percent (30%) collection fee shall be added to the amount owed by a defendant that is more than 90 days past due pursuant to Article 103.0031, Texas Code of Criminal Procedure. Purdue will receive payment in the amount of thirty percent (30%) of the aggregate amount collected on a case during the applicable billing period. Funds from cases on payment plans will result in a pro-rata distribution.

#### **SECTION V. EXCEPTIONS TO THE COLLECTION FEE**

A. Pursuant to Article 103.0031(b), Texas Code of Criminal Procedure, Perdue cannot collect from a defendant the percentages referred to in Section IV. COLLECTION FEE if the defendant has been determined by the court of original jurisdiction to be indigent, or has insufficient resources or income, or is otherwise unable to pay all or part of the underlying fine or costs. The collection fee does not apply to a case that has been dismissed by a court of competent jurisdiction or to any amount that has been satisfied through time-served credit or community service.

B. The collection fee shall, however, be applied to any balance remaining after a partial credit for time served or community service if the balance is more than 90 days past due.

#### **SECTION VI. METHOD OF PAYMENT**

Absent an agreement otherwise, the City shall calculate and receive the amount of any collection fee due to Perdue. Said fee shall be paid to Perdue by check on a monthly basis. All compensation shall become the property of Perdue at the time of payment.

## **SECTION VII. COMMENCEMENT AND TERMINATION OF CONTRACT**

This Contract shall commence on December 1, 2013 and expire on November 30, 2015, provided, however, that either party to this agreement shall have the right to terminate this agreement by giving the other party thirty (30) days written notice of their desire and intention to terminate this Contract. Upon termination Perdue shall have an additional six (6) months to complete work on all delinquent accounts referred from the City prior to the notice of termination and will be entitled to compensation on such accounts if collected.

## **SECTION VIII. OPTION TO EXTEND CONTRACT**

The Contract may be extended for three (3) additional one (1) year periods, provided all terms and conditions remain in full force and effect except for the contract period being extended. This option, if exercised, is to be executed in the form of an Authorization of Change in Services, to be issued no sooner than ninety days (90) prior to expiration of this contract, nor later than the final day of the contract period. This option to extend requires the mutual agreement of both parties. Refusal by either party to exercise this option to extend will cause the contract to expire on the original or mutually agreed upon date. The total period of the contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of five (5) years.

## **SECTION IX. NOTICES**

A. For purposes of sending notice under the terms of this Contract, all notices from the City shall be sent to Perdue by certified United States mail, or delivered by hand or courier, and addressed as follows:

Perdue, Brandon, Fielder, Collins & Mott, LLP  
Attn: Michael J. Darlow  
1235 North Loop West, Suite 600  
Houston, Texas 77008  
Telephone Number: 713-862-1860

B. All notices from Perdue shall be sent to the City by certified United States mail, or delivered by hand or courier, and addressed as follows:

City of San Marcos  
Attn: Susie Garcia, Court Administrator  
630 East Hopkins  
San Marcos, Texas 78666  
Telephone Number: 512-393-8190

## **SECTION X. VENUE AND CONTROLLING LAW**

This Contract is made and is to be interpreted under the laws of the State of Texas. Venue for any disputes involving this Contract shall be in the appropriate courts in Hays County, Texas.

**SECTION XI. INDEPENDENT CONTRACTOR**

It is expressly agreed that Perdue is an independent contractor, and not an employee, agent, partner or joint venturer with the City.

**SECTION XII. SEVERABILITY**

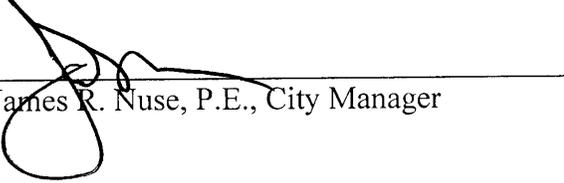
A. Every provision of this Contract is intended to be severable. If any term or provision hereof is hereafter deemed by a court of competent jurisdiction to be illegal, invalid, void or unenforceable, for any reason or to any extent whatsoever, such illegality, invalidity, or unenforceability shall not affect the validity of the remainder of this Contract, it being intended that such remaining provisions shall be construed in a manner most closely approximating the intention of the parties with respect to the illegal, invalid, void or unenforceable provision or part thereof.

B. This Contract is executed on behalf of the City by the presiding officer of its governing body who is authorized to execute this instrument by Ordinance heretofore passed and recorded in its minutes. This Contract may be executed in any number of counterparts, and each counterpart shall be deemed an original for all purposes. Signed facsimiles or electronically signed Contracts executed on behalf of the City by the presiding officer of its governing body authorized to execute this instrument shall be binding and enforceable.

EXECUTED by the Parties to be effective as of December 1, 2013.

**City of San Marcos, Texas**

By:

  
James R. Nuse, P.E., City Manager

**Perdue Brandon Fielder Collins & Mott, L.L.P.**

By:

  
Michael J. Darlow, Partner

**EXHIBIT A**  
**City of San Marcos, Texas**  
**Terms and Conditions for Standard Professional/Personal Services Contracts**

**1. Standards of Performance**

(a) The performance of all services by Perdue under the Contract will be by or under the supervision of persons appropriately licensed or registered under state, local and federal laws as applicable.

(b) In performing all services under the Contract, Perdue will use that degree of care and skill ordinarily exercised for similar projects by firms who possess special expertise in the types of services involved under the Contract.

(c) Any provisions in the Contract pertaining to the City's review, approval and /or acceptance of written materials prepared by Perdue and/or its subconsultants in connection with the Contract will not diminish Perdue's responsibility for the materials.

(d) Perdue will perform all of its services in coordination with the City. Perdue will advise the City of data and information Perdue needs to perform its services and Perdue will meet with City representatives at mutually convenient times to assemble this data and information.

(e) In performing all services under the Contract, Perdue will comply with all local, state and federal laws.

**2. City's Responsibilities**

(a) The City will provide information to Perdue regarding the City's requirements for Perdue's services under the Contract. The City will furnish Perdue with copies of data and information in the City's possession needed by Perdue, at Perdue's request. The City will provide this information and render decisions expeditiously for the orderly progress of Perdue's services.

(b) The City will designate an authorized representative to act on the City's behalf with respect to the Contract. The City will examine documents and information submitted by Perdue, and promptly render responses to Perdue on issues requiring a decision by the City.

**3. Perdue's Records**

(a) All expense records of Perdue related to the Contract will be kept on a recognized accounting basis acceptable to the City and will be available to the City at mutually convenient times. (applies only if Perdue is to be reimbursed for any expenses).

(b) The City, its auditors and federal and state agencies that have monitoring or auditing responsibilities for the Contract will have access to any books, documents, papers and

records of Perdue which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts, copying and transcriptions.

(c) Perdue will furnish to the City at such time and in such form as the City may require, financial statements including audited financial statements, records, reports, data and information, as the City may request pertaining to the matters covered by the Contract. Information provided pursuant to this subsection will be held in strict confidence to the extent permitted by applicable law.

#### **4. Ownership and Use of Documents**

(a) All documents prepared by Perdue in connection with the Contract are the property of the City whether any project related to the Contract is executed or not.

(b) Perdue will retain all of its records and supporting documentation relating to the Contract, and not delivered to the City, for a period of three years, except that in the event Perdue goes out of business during that period, it will turn over to the City all of its records relating to the Project for retention by the City.

#### **5. Patent Fees and Royalties**

(a) If applicable, Perdue will pay all license fees, royalties, and other costs incident to the use of any invention, design, process, product or device subject to a patent right or copyright held by others in performing the work or in the completed project.

(b) Perdue will hold harmless, indemnify and defend the City, its officers, agents and employees from and against all claims, damages, losses and expenses, including attorney's and expert witness fees, arising out of any claim of infringement of a patent right or copyright in the performance of the work or the incorporation in the work of any invention, design, process, product or device.

#### **6. Perdue as Independent Contractor**

It is expressly agreed that Perdue is an independent contractor, and not an employee, agent, partner or joint venturer with the City. Perdue will not pledge or attempt to pledge the credit of the City.

#### **7. Designation of Perdue's Contact Person**

Perdue agrees to designate in writing a single contact person assigned to coordinate Perdue's performance of obligations under the Contract. Any changes to this designation must be made by Perdue in writing to the City.

#### **8. Breach**

The City will have the right to declare Perdue in breach of the Contract for cause when the City determines that this Contract has not been performed in accordance with its written terms and conditions.

## **9. Term; Termination of Contract**

(a) The term of the Contract begins on the effective date established on the first page of the Letter Contract and will end upon Perdue's completion, and the City's acceptance of all services described in the Contract unless the Contract is terminated under subsections (b) or (c) below.

(b) The Contract may be terminated by either party upon 30 calendar days prior written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. Perdue will provide the City with at least a 30 calendar day period of opportunity to cure before Perdue initiates termination.

(c) The Contract may be terminated for convenience and without cause by the City upon at least 30 calendar days prior written notice to Perdue.

(d) In the event of termination as provided in this Section, Perdue will immediately discontinue any and all services under the Contract at the City's request. Perdue will be compensated for all services performed to the termination date which are deemed by the City to be in accordance with the Contract. This amount will be paid by the City upon Perdue's delivering to the City all information and materials developed or accumulated by Perdue in performing the services described in the Contract, whether completed or in progress. The expense of the reproduction of these items will be borne by the City.

## **10. Insurance and Indemnity**

**(a) Perdue will indemnify, hold harmless and defend the City and its employees, agents, officers and servants from any and all lawsuits, claims, demands and causes of action of any kind arising from the negligent or intentional wrongful acts errors or omissions of Perdue, its officers, employees or agents. This will include, but not be limited to, the amounts of judgments, penalties, interest, court costs, reasonable legal fees, and all other expenses incurred by the City arising in favor of any party, including the amounts of any damages or awards resulting from claims demands and causes of action for personal injuries, death or damages to property alleged or actual infringement of patents, copyrights, and trademarks and without limitation by enumeration, all other claims, demands, or causes of action of every character occurring, resulting, or arising from any negligent or intentional wrongful act, error or omission of Perdue and/or its agents and/or employees. This obligation by Perdue will not be limited because of the specification of any particular insurance coverage required under the Contract.**

(b) Perdue will procure and maintain at its own expense insurance with insurance companies authorized to do business in the State of Texas, covering all operations under the Contract, whether performed by Perdue or its agents, subcontractors or employees. Before commencing the work Perdue will furnish to the City a certificate or certificates in a form satisfactory to the City, showing that Perdue has complied with this paragraph. All certificates will provide that the policies will not be canceled until at least 30 calendar days

prior written notice has been given to the City. Failure of Perdue to demand a certificate or other sufficient evidence of full compliance with these insurance requirements or failure of Perdue to identify a deficiency from the evidence that is provided as proof of insurance will not be construed as a waiver of Perdue's obligation to maintain the required insurance coverage specified herein. Commercial general liability and motor vehicle insurance will be written with the City as an additional insured and will be endorsed to provide a waiver of the carrier's right of subrogation against the City. The kinds and amounts of insurance required are as follows:

Workers' Compensation Insurance and/or Employer's Liability: In accordance with the provisions of the Workers' Compensation Act of the State of Texas and/or \$500,000.00/\$500,000.00 for Employer's Liability.

Liability Insurance: (1) Commercial general liability insurance (standard ISO version) with a combined single limit of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, providing coverage for, but not limited to, bodily injury and property damage, premises /operations, products/completed operations, independent engineers as applicable. (2) Business Motor Vehicle liability insurance (standard ISO version) in an amount not less than \$1,000,000 per occurrence (3) professional liability coverage to cover lawful claims arising in connection with the Project in the combined single limit amount of at least \$1,000,000.00 as applicable.

(c) The stated limits of insurance required by this Section are **minimum only**--they do not limit Perdue's indemnity obligation, and it will be Perdue's responsibility to determine what limits are adequate. These limits may be met by basic policy limits or any combination of basic limits and umbrella limits. The City's acceptance of certificates of insurance that do not comply with these requirements in any respect does not release Perdue from compliance with these requirements.

#### **11. No Waiver of Immunity**

The City's execution of and performance under the Contract will not act as a waiver by the City of any immunity from suit or liability to which it is entitled under applicable law. The parties acknowledge that the City, in executing and performing the Contract, is a governmental entity acting in a governmental capacity.

#### **12. Remedies; No Waiver.**

In the event of a default or breach of the Contract by Perdue, the City reserves the right to choose among the remedies for the default or breach available to the City. These remedies may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce the Contract with respect to one or more defaults by Perdue will not waive the City's ability to enforce the Contract after that time.

### **13. "Green" Procurement**

It is the City's intent to be proactive with regard to the environment. The City encourages "Value Purchasing" of environmentally friendly products. Perdue is encouraged to identify and utilize green solutions in performing any services under the Contract, as appropriate.

### **14. Safety**

The work to be performed under this contract will be performed entirely at Perdue's risk. Perdue will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work to be performed under this contract. Perdue will take all reasonable precautions for the safety of and will provide all reasonable protection to prevent damage, injury, or loss to employees, the work, the endangered species, or the property affected by this contract. All damage or loss to any property caused in whole or in part by Perdue, any subcontractor, or anyone directly or indirectly employed by any of them will be remedied by Perdue.

### **15. Taxes**

Perdue will not include Federal taxes or State of Texas limited sales excise and use taxes in its invoices or vouchers and statement of costs. The City is exempt from payment of such taxes and Perdue may retrieve a resale certificate for use on this Project from the State of Texas Comptroller's website.

### **16. Miscellaneous Provisions**

(a) The Contract is governed by the law of the State of Texas. The Contract is to be performed in Hays County and exclusive venue for any dispute arising under the Contract is in Hays County, Texas.

(b) As to all acts or failures to act by either party to the Contract, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued when the party commencing the cause of action knew or should have known of the existence of the subject act or failure to act.

(c) Perdue hereby affirms that neither Perdue, Perdue's firm nor any of its associates or employees have made or agreed to make any valuable gift whether in the form of service, loan, thing, or promise to any person or any of his/her immediate family, having the duty to recommend, the right to vote upon, or any other direct influence on the selection of consultants to provide professional services to the City within the two years preceding the execution of the Contract. A campaign contribution, as defined by the Texas Election Code or the San Marcos City Code will not be considered as a valuable gift for the purposes of the Contract. Perdue further agrees that none of its paid personnel will be employees of the City or have any contractual relationship with the City. All activities, investigations, and other efforts made by Perdue pursuant to the Contract will be conducted by employees, associates, or independent contractors of Perdue.

(d) In performing the services required under the Contract, Perdue will not discriminate against any person on the basis of race, color, religion, sex, national origin, age, disability or ancestry. Perdue agrees not to engage in employment practices which have the purpose or effect of discriminating against employees because of race, color, sex, religion, national origin, age, disability or ancestry. A breach of this covenant may be regarded as a default of Perdue of the Contract.

(e) All references in the Contract to any particular gender are for convenience only and will be construed and interpreted to be of the appropriate gender. The term "will" is mandatory in the Contract.

(f) Should any provision in the Contract be found or deemed to be invalid, the Contract will be construed as not containing the provision and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of the Contract are declared to be severable. Paragraph and Section headings included in the Contract are for convenience only and are not intended to define or limit the scope of any provisions of the Contract.

(g) All services provided pursuant to the Contract are for the exclusive use and benefit of the City and the Contract will not give rise to any rights in third parties.

(h) The City of San Marcos is governed by the Texas Public Information Act (the "Act"), Chapter 552 of the Texas Government Code. The Contract and all written information generated under the Contract may be subject to release under the Act. Perdue will not make any reports, information, data, etc. generated under the Contract available to any individual or organization without the written approval of the City.

(i) In the event that the performance by either the City or Perdue of any of its obligations under the Contract is interrupted or delayed by events outside of their control such as acts of God, war, riot or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of such events.

(j) The City and Perdue, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of the Contract. The City and Perdue may not assign, sublet or transfer any of their rights or delegate or subcontract any of their duties under or interest in the Contract in whole or in part, without the written consent of the other. Any work or services subcontracted under the Contract will be specified by separate written agreement and will be subject to each provision of the Contract.

(k) The Contract including any appendices and referenced attachments or exhibits represents the entire and integrated Contract between the City and Perdue and supersedes all prior negotiations, representations or agreements either written or oral. In the event of a dispute between the parties regarding the intent of the Contract, both parties agree that the Contract will be construed in a manner consistent with the City's Request for Proposals, Perdue's Proposal Response, and the public record of the City Council's approval of the Contract as applicable. The Contract may be amended only by written instrument, which

must be signed by both the City and Perdue. The San Marcos City Council must approve any such authorization of change in services or amendment if it results in a change, the compensation for which exceeds \$50,000.00.

(l) Any exhibits and/or attachments attached to the Contract are incorporated by reference into the Contract as though included verbatim herein. In the event of any conflict between these Terms and Conditions and the provisions of any exhibit or attachment to the Contract, these Terms and Conditions will govern and control.