

## ACTION FORM BRYAN CITY COUNCIL

<b>DATE OF COUNCIL MEETING:</b> July 23, 2013		<b>DATE SUBMITTED:</b> July 2, 2013	
<b>DEPARTMENT OF ORIGIN:</b> Municipal Court		<b>SUBMITTED BY:</b> Hilda Cuthbertson	
<b>MEETING TYPE:</b>	<b>CLASSIFICATION:</b>	<b>ORDINANCE:</b>	<b>STRATEGIC INITIATIVE:</b>
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input checked="" type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
<b>AGENDA ITEM DESCRIPTION:</b> Consideration – One Year Extension to Municipal Court Collection Contract			
<p>Consider a one-year extension of an existing contract with McCreary, Veselka, Bragg &amp; Allen, P.C., for collection of delinquent municipal court cases, at no cost to the City of Bryan.</p>			
<p><b>SUMMARY STATEMENT:</b> On July 27, 2012, the City of Bryan entered into a contract for collection of municipal court delinquent cases (warrants) with McCreary, Veselka, Bragg &amp; Allen (MVBA). This action extends the contract by letter agreement for an additional one-year period, which is a routine practice of the City. The City awarded this contract to MVBA in 2012 following an extensive, months-long request for qualification (RFQ) process. During that process, six (6) firms responded to the City’s request for qualifications; however, of the six, only two met all qualifications and responded to the full scope of services requested by the City. Therefore, the other four responses were disqualified following consultation with the Purchasing Manager, Chief Finance Officer, City Internal Auditor and City Attorney. An internal committee then reviewed the two legally qualified responses and unanimously recommended MVBA to the Council. Brazos County also recently conducted an RFQ process and, after a lengthy review, awarded the collection contract to MVBA. The City of College Station also uses MVBA for their delinquent court collections. There is definitely benefit to all local entities utilizing the same firm for this service.</p> <p>Staff is well pleased with MVBA’s performance. MVBA accepts the City’s filings electronically, saving the staff a tremendous amount of work. MVBA not only locates and stays in contact with defendants, they actually collect monies due, including on payment plans, which is labor and paperwork intensive, and remits routinely and timely the City’s monies to the City. MVBA has never once been late or missed one of their semi-monthly payments to the City. MVBA was the only qualified bidder that maintains a local office with a full-time attorney and staff, and the local staff has a record of responding to inquiries the same day as requested. MVBA has offices throughout Texas and has skip tracing capabilities and specialized software that works well with the Court’s existing software. Further, annually MVBA has graciously mailed, at their cost of several thousand dollars, notices to individuals with outstanding warrants prior to the City’s participation in the Great State of Texas Warrant Roundup, which is above and beyond the services required by their contract.</p>			
<p><b>STAFF ANALYSIS AND RECOMMENDATION:</b> The staff is well pleased with MVBA’s performance and requests the City Council approve the one-year extension. The process in place is working extremely well. College Station and Brazos County also use MVBA and there is definitely benefit to all parties to use the same service. It is felt MVBA can bring the best value to the City. Police Chief Buske has been consulted and also strongly recommends extension of the contract. The City Marshals also strongly recommend contract extension. There is no cost to the City as MVBA’s fees are paid by the defendants through an additional fee added to the balance due on each case as provided by State law. Staff reports there have been no problems with this firm. Their collection services save the City personnel and money by taking a large workload off the Municipal Court staff. Again, they were one of only two responders to the RFQ that met all qualifications and responded to the full scope of services</p>			

required.

**OPTIONS (In Suggested Order of Staff Preference):**

1. Approve the one-year extension.
2. Delay action.
3. Take no action, which could result in a loss of revenue to the City.

**ATTACHMENTS:**

1. Contract
2. One-year extension letter

**FUNDING SOURCE:** There is no cost to the City of Bryan as defendants pay an additional fee to the collection firm as provided by state law.

**APPROVALS:** Hilda Cuthbertson 7-2-13 Mary Lynne Stratta 7-2-13; Hugh R. Walker, 07/09/2013

**APPROVED FOR SUBMITTAL: CITY MANAGER**

**APPROVED FOR SUBMITTAL: CITY ATTORNEY** Janis K. Hampton 07-15-2013

Revised 04/2013

**CONTRACT FOR THE COLLECTION  
OF DELINQUENT MUNICIPAL  
COURT FINES AND FEES**

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF BRAZOS**           §

THIS CONTRACT is made and entered into by and between the **CITY OF BRYAN, TEXAS**, acting herein by and through its governing body, hereinafter styled, "**City**", and **McCREARY, VESELKA, BRAGG AND ALLEN, P.C.**, hereinafter styled "**MVBA**".

**I.**

The City agrees to retain and does hereby retain MVBA to provide legal services related to the enforcement of the collection of delinquent Municipal Court debt and accounts receivable including: fines, fees, court costs, forfeited bonds, restitution and other amounts in accordance with Article 103.0031, Texas Code of Criminal Procedure (hereinafter referred to in the agreement "Fines and Fees") pursuant to the terms and conditions in this contract.

**II.**

For purposes of this contract all Fines and Fees shall be referred to MVBA when determined to be delinquent as provided for in Article 103.0031, Code of Criminal Procedure. At least once each month on a date or dates agreed upon by the parties, the City will provide MVBA with copies of, or access to, the information and documentation necessary to collect the delinquent fines and fees that are subject to this contract. Whenever feasible, the City shall furnish the information to MVBA by electronic transmission or magnetic medium. The City shall be responsible for the receipting of the payment of all fines and fees pursuant to this contract whether received directly from the defendant or MVBA.

**III.**

MVBA shall forward all cashier checks or money order payments made payable to the City and any correspondence from defendants directly to the Court. Cashier checks or money order payments made payable to MVBA will be deposited daily into the MVBA Trust Account. MVBA may also collect the amount due from the defendant by credit card or electronic draft which is deposited directly into the MVBA Trust Account. MVBA shall remit to the City all payments in full received into the MVBA Trust Account, semi-monthly, along with an invoice detailing the docket number, name of defendant, amount paid to MVBA or Court, MVBA fee percentage and fees earned for each case.

#### IV.

MVBA 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 MVBA's performance of the services described in this contract. The indemnity provision of this contract 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 MVBA, responsibility and indemnity, if any, shall be apportioned in accordance with Texas 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.

Contractor shall maintain professional liability (errors & omissions) insurance with a limit of not less than \$1,000,000. If written on a "Claims-Made" form, contractor agrees to maintain a retroactive date prior to or equal to the effective date of this contract and continuous coverage will be maintained or a supplemental extended reporting period will be purchased with a minimum reporting period not less than two years after the completion of this contract. The contractor is solely responsible for any additional premium for the supplemental extended reporting period.

#### V.

For the collection of Fines and Fees, the City agrees to pay to MVBA, as compensation for the professional services rendered the following fees:

1. For those fines and fees resulting from Unadjudicated Offenses that occurred **before** June 18, 2003, there is no fee due MVBA on the amount of fines and fees collected on those cases in which the data files are transmitted to MVBA by electronic media.
2. For those fines and fees imposed against Unadjudicated Offenses that occurred **after** June 18, 2003, and Adjudicated Offenses regardless of the date of the offense, our fee is thirty percent (30%) of the amount of the Fines and Fees collected as provided by Article 103.0031 of the Code of Criminal Procedure.

All compensation shall become the property of MVBA at the time of payment. The City shall pay to MVBA said compensation on a monthly basis by check.

#### VI.

MVBA reserves the right to return to the appropriate court all accounts not collected within one (1) year of referral by the City, or identified as being in bankruptcy. Upon return of these accounts, neither party will have any obligation to the other party to this contract.

## **VII.**

The initial term of this contract is one year, beginning on the date this contract is executed by the parties hereto, and shall thereafter continue with the option of extending this contract, subject to approval of funding and review of the service provided by the Contractor, for four (4) additional one (1) year terms to be extended one (1) year at a time. Contracts are extended upon mutual agreement of both Vendor and the City. The City of Bryan will not consider Contract extensions which include any increase in unit bid prices.

Either party may, without cause, terminate this contract at the end of the initial contract term or thereafter by giving the other party written "Notice of Termination of Contract" at least thirty (30) days prior to the intended termination date.

In the event that the City terminates this contract, MVBA shall be entitled to continue its collection activity on all accounts previously referred to MVBA for six (6) months from the date of receipt of the "Notice of Termination of Contract" and to payment of its fee, pursuant to Paragraph V of this contract for all amounts collected on accounts referred to MVBA. The City may, at its discretion, refer additional accounts to MVBA after notice of termination has been received by MVBA. At the end of the six (6) month period, all accounts shall be returned to the City by MVBA.

## **VIII.**

For purposes of sending notice under the terms of this contract, all notices from the City shall be sent to MVBA by certified United States mail, McCreary, Veselka, Bragg & Allen, P.C., Attention Harvey M. Allen, P. O. Box 1310, Round Rock, Texas 78680-1310, or delivered by hand or by courier, and addressed to: 700 Jeffrey Way, Suite 100, Round Rock, Texas 78664-2425, and all notices to the City shall be sent by certified United States mail or delivered by hand or courier, to the City of Bryan, Attention: Court Administrator, Hilda Cuthbertson, P.O. Box 1000, Bryan, Texas 77805.

## **IX.**

This contract is made and is to be interpreted under the laws of the State of Texas. Venue for any disputes arising under this contract shall be in Brazos County, Texas.

In the event that any provision(s) of this contract shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of that provision(s) shall not affect any other provision(s) of this contract, and it shall further be construed as if the invalid or unenforceable provision(s) had never been a part of this contract.

## **X.**

In consideration of the terms and compensation herein stated, MVBA hereby agrees to undertake performance of said contract as set forth above.

The City has authorized by order heretofore passed and duly recorded in its minutes the chief executive officer to execute this contract.

This contract may be executed in any number of counterparts, and each counterpart shall be deemed an original for all purposes. Signed facsimiles shall be binding and enforceable.

WITNESS the signatures of all parties hereto this, the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2012.

**CITY OF BRYAN:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Janis K. Hampton, City Attorney

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

**APPROVED FOR PROCESSING:**

\_\_\_\_\_  
Jason P. Bienski, Mayor

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

**ATTEST:**

\_\_\_\_\_  
Mary Lynne Stratta, City Secretary

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

**SERVICE PROVIDER:**

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

Printed Name: \_\_\_\_\_

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

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



CITY OF BRYAN  
The Good Life, Texas Style.™

June 26, 2013

McCreary, Veselka, Bragg and Allen, PC  
Mr. Steven W. Whigham  
P O Box 1310  
Round Rock, Texas 78680

RE: 1<sup>st</sup> Extension of Contract No. 12-015 "Collection of Delinquent Municipal Court Cost Fines and Fees", dated July 27, 2012.

Dear Mr. Whigham;

Be advised that the above referenced contract will expire on August 12, 2013. It is our intent to recommend extending said contract to City Council for one (1) additional year beginning August 12, 2013 through August 11, 2014.

If your company is willing and able to extend the contract, please complete the following information and return this original within ten (10) days from the date of this notification.

I, SHELBURNE J. VESELKA Vice President  
Print Name Print Title  
of McCREARY VESELKA BRAGG & ALLEN, P.C.  
Print Company Name

agree to extend Contract No. 12-015 with the City of Bryan, under the same prices, terms, conditions and provisions as those contained in the original contract as referenced above and upon approval by the City of Bryan City Council.

Signed: Shelburne J. Veselka Date: June 28, 2013

Karen Sonley  
Karen Sonley, Purchasing Supervisor  
City of Bryan – Purchasing Department