

ORDINANCE NO. 2008-16

AN ORDINANCE OF THE CITY OF TOMBALL, TEXAS, PROVIDING FOR A FEE TO DEFRAY COSTS OF COLLECTING DELINQUENT FINES, FEES, AND OTHER DEBTS PURSUANT TO ARTICLE 103.0031 OF THE TEXAS CODE OF CRIMINAL PROCEDURE; AUTHORIZING THE MAYOR TO EXECUTE CONTRACT AND THE CITY SECRETARY TO ATTEST CONTRACT, RESPECTIVELY; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

* * * * *

WHEREAS, Article 103.0031 of the Texas Code of Criminal Procedure authorizes the City of Tomball Council to contract with a private firm for the collection of the fees listed above and to impose an additional collection fee in the amount of thirty percent (30%) on each debt or account receivable that is more than sixty days past due and which has been referred to the private firm for collection; and

WHEREAS, the Tomball City Council has determined that it is in the public interest to ensure the prompt payment of delinquent court-imposed fines and fees as provided by said statute; and

WHEREAS, the City of Tomball has entered into a contract with a private firm to provide services for the collection of debts and accounts receivable, i.e.: fines, fees, restitution, other debts, and costs ordered to be paid by a court serving the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOMBALL THAT:

In accordance with Article 103.0031 of the Texas Code of Criminal Procedure, there shall be imposed an additional fee of thirty percent (30%) on all debts and accounts receivable, i.e.: fines, fees, restitution, other debts, and costs that are more than sixty days past due and have been referred to a private firm for collection.

FIRST READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 21ST DAY OF JULY 2008.

COUNCILMAN QUINN	<u>AYE</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

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SECOND READING:

READ, PASSED AND APPROVED AS SET OUT BELOW AT THE MEETING OF THE CITY COUNCIL OF THE CITY OF TOMBALL HELD ON THE 4TH DAY OF AUGUST 2008.

COUNCILMAN QUINN	<u>ABSENT</u>
COUNCILMAN LAZENBY	<u>AYE</u>
COUNCILMAN WEBB	<u>AYE</u>
COUNCILMAN HARVEY	<u>AYE</u>
COUNCILMAN DRIVER	<u>AYE</u>

Gretchen Fagan
GRETCHEN FAGAN, Mayor

ATTEST:

Doris Speer
DORIS SPEER, City Secretary

EXHIBIT "A"

CONTRACT FOR COURT FEES AND FINES COLLECTION SERVICES

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

THIS CONTRACT is made and entered into by and between the City of Tomball, acting herein by and through its governing body, hereinafter called "City", and Perdue, Brandon, Fielder, Collins & Mott L.L.P., hereinafter called "Perdue".

I.

City agrees to employ and does hereby employ Perdue to enforce the collection of delinquent court fees and fines pursuant to the terms and conditions described in this contract. Furthermore, this contract cannot be transferred or assigned by either party without the written consent of all parties.

II.

City agrees to refer all delinquent accounts by electronic or magnetic medium, in the specified format, to Perdue for collection on or about the first (1st) and fifteenth (15th) of each month. An account is considered delinquent when not paid within 60 days of the scheduled appearance date (if the defendant failed to appear), or any granted extension, or from the date of conviction or judgment, or other court specified due date. City will provide Perdue with copies of, or access to, the information and documentation necessary to collect the fees and fines that are subject to this contract.

III.

Perdue is to refer all payments and correspondence directly to the court that has assessed or levied the fees and fines being collected pursuant to this contract. Perdue reserves the right to return all accounts not collected within one (1) year of referral by City, as well as any accounts identified as being in bankruptcy. Upon return of these accounts, neither party will have any obligation to the other party to this contract.

IV.

City agrees to pay to Perdue (1) fifteen percent (15%) of the collected fees and fines referred to Perdue by City imposed on all unadjudicated offenses committed on or before June 18, 2003; (2) thirty percent (30%) on the collected fees and fines referred to Perdue by City imposed on all adjudicated offenses committed on or before June 18, 2003; and (3) thirty percent (30%) of the collected fees and fines referred to Perdue by City imposed on all offenses occurring after June 18, 2003. The 30% shall be added to the amount owed by a defendant that

is more than 60 days past due pursuant to Article 103.0031, Texas Code of Criminal Procedure. Pursuant to law, Perdue cannot collect from a defendant the percentage referred to above 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. All compensation shall become the property of Perdue at the time of payment. City shall pay over said funds on a monthly basis by check.

V.

Perdue agrees to use its best efforts to collect the delinquent accounts turned over to it and to provide legal advice to City on the delinquent accounts as requested by City.

VI.

This contract shall commence on _____, 2008, and end when both parties mutually agree; 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 agreement; and further provided that Perdue shall have an additional six (6) months to complete work on all cases turned over to it prior to the notice of termination.

VII.

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

Perdue, Brandon, Fielder, Collins & Mott, L.L.P.
Attn: Michael J. Darlow - Attorney
1235 North Loop West, Suite 600
Houston, Texas 77008
Telephone (713) 862-1429

VIII.

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 Harris County, Texas.

In the event that any provision(s) of this contract shall for any reason be held invalid, illegal or unenforceable, the invalidity, illegality 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, illegal or unenforceable provision(s) had never been a part of this contract.

IX.

In consideration of the terms and compensation herein stated, Perdue hereby accepts said employment and undertakes performance of said contract as set forth above.

X.

Every provision of this Agreement is intended to be severable. If any term or provision hereof is hereafter deemed by a Court 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 Agreement, 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.

This contract is executed on behalf of City by the presiding officer of its governing body who is authorized to execute this instrument by order 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 shall be binding and enforceable.

XI.

Perdue agrees to indemnify, defend and hold city and its successors and assigns, harmless from and against any and all claims arising out of or in any way connected with its performance under this contract.

WITNESS the signature of all parties hereto on this the _____ day of _____, 2008.

CITY OF TOMBALL, TEXAS

By: _____
GRETCHEN FAGAN, MAYOR

PERDUE, BRANDON, FIELDER, COLLINS & MOTT L.L.P.

By: _____
For the Firm