

## UPSHUR COUNTY EMERGENCY SERVICES DISTRICT NO. 2

DECEMBER 21, 2021

7:00 P.M.

### MINUTES

The regular meeting of the Upshur County Emergency Services District No. 2 Commissioners was held on December 21, 2021, at the New Mountain Fire Station, 9871 St. Hwy. 155N, Ore City, Texas 75683.

- 1) **Open meeting.** The meeting was opened by Gaston DeBerry, III.
- 2) **Call to order.** Gaston DeBerry, III called the meeting to order. Prayer was led by Gaston DeBerry, III.
- 3) **Determine quorum present.** Gaston DeBerry, III determined a quorum with all members being present.
- 4) **Read and approve minutes from the Regular meeting held November 16, 2021.** Motion by Kenny Hankins with a second by Gregg Price to accept the minutes from the Regular meeting held November 16, 2021. Motion carried 5-0. Unanimous vote in favor.
- 5) **Public Comment.** None.
- 6) **Discuss and take action on execution of contract with Linebarger Goggan Blair & Sampson for delinquent tax collections.** Kenny Hankins made the motion with a second by Tommie Whitaker to execute the contract with Linebarger Goggan Blair & Sampson for delinquent tax collections. Motion carried 5-0. Unanimous vote in favor.
- 7) **Discuss and take action on contracting with the City of Gilmer for Gilmer Fire Department to run automatic aid into ESD#2 territory.** No action.
- 8) **Discuss and take action on the proposal for insurance coverage including Treasurers Position Bond submitted by VFIS.** Motion by Tommie Whitaker and second by Kenny Hankins to give Gaston DeBerry, III and Terri Ross the authority to act on their behalf and to contact Stewart Insurance or other insurance company regarding bond coverage for ESD Board. Motion carried 5-0. Unanimous vote in favor.
- 9) **Pay the first quarterly installment to the Upshur County Appraisal District.** Motion by Kenny Hankins with a second by Trevor Larrington to pay the first quarterly installment to the Upshur County Appraisal District in the amount of \$2,203.55. Motion carried 5-0. Unanimous vote in favor.

10) **Pay the City of Gilmer for dispatching services for the month of November, 2021.** Motion by Kenny Hankins with a second by Gregg Price to pay the City of Gilmer for dispatching services for the month of November, 2021 in the amount of \$900.00. Motion carried 5-0. Unanimous vote in favor.

11) **Pay bills for the Upshur County ESD#2 as submitted and approved.** Gregg Price made the motion with a second by Tommie Whitaker to pay the following bills as submitted and approved. Motion carried 5-0. Unanimous vote in favor.

Terri Ross (Stamps)	\$ 58.00
Terri Ross (November Bookkeeping/Clerical)	\$ 250.00


12) **Pay the City of Ore City the amount of \$8,045.45 for the second monthly installment as set out in the Contract for Fire Fighting Services.** Kenny Hankins made the motion with a second by Gregg Price to pay the City of Ore City the amount of \$8,045.45. Motion carried 3-0 with Gaston DeBerry, III and Tommie Whitaker abstaining.

13) **Pay Diana VFD the amount of \$8,636.00 as their monthly budget allotment.** Tommie Whitaker made the motion with a second by Trevor Larrington to pay Diana VFD the amount of \$8,636.00 plus an additional amount of \$16,200.00 as requested by Diana VFD for the purchase of truck bed and light package for new brush truck. Motion carried 4-0 with Kenny Hankins abstaining.

14) **Pay New Mountain VFD the amount of \$4,022.00 as their monthly budget allotment.** Kenny Hankins made the motion with a second by Gregg Price to pay New Mountain VFD the amount of \$4,022.00 plus an additional \$26,632.87 as requested by New Mountain VFD for the purchase of rescue tools. Motion carried 4-0 with Trevor Larrington abstaining.

15) **Items to be considered for next month's agenda.** Bond insurance and mutual aid agreements with ESD#1.

16) **Adjournment.** Kenny Hankins made the motion with a second by Tommie Whitaker to adjourn. Motion carried 5-0. Unanimous vote in favor.

  
\_\_\_\_\_  
Presiding Officer Signature  
Title: President

Date: 2-15-22

**ESD#2 Bills to be Paid:**

- |    |  |           |
|----|--|-----------|
| 1) | Terri Ross (Stamps)                        | \$ 58.00  |
| 2) | Terri Ross (November Bookkeeping/Clerical) | \$ 250.00 |

Upshur County Appraisal District

105 Diamond Loch Road  
Gilmer, TX 75644-9372

# Invoice

Date	Invoice #
1/1/2022	1200

Bill To
Emergency Services District #2 PO Box 1241 Gilmer, TX 75644

Description	Amount
2022 First Quarter Entity Payment	2,203.55
<b>Total</b>	<b>\$2,203.55</b>



GILMER  
405 N CYPRESS ST  
GILMER, TX 75644-9998  
(800)275-8777

12/07/2021 02:50 PM

Product	Qty	Unit Price	Price
US Flag Coil/100	1	\$58.00	\$58.00
Grand Total:			\$58.00
Cash			\$100.00
Change			-\$42.00

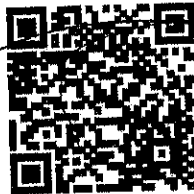
\*\*\*\*\*  
USPS is experiencing unprecedented volume increases and limited employee availability due to the impacts of COVID-19. We appreciate your patience.  
\*\*\*\*\*

Preview your Mail  
Track your Packages  
Sign up for FREE @  
<https://informedelivery.usps.com>

Earn rewards on your business account purchases of Priority Mail labels with the USPS Loyalty program by using Click and Ship. Visit [www.usps.com/smallbizloyalty](http://www.usps.com/smallbizloyalty) for more info.

All sales final on stamps and postage.  
Refunds for guaranteed services only.  
Thank you for your business.

Tell us about your experience.  
Go to: <https://postalexperience.com/Pos>  
or scan this code with your mobile device,



or call 1-800-410-7420.

UFN: 483515-0644  
Receipt #: 840-57520249-3-3076706-1  
Clerk: 06

ACTION APPROVING CONTRACT  
WITH LINEBARGER GOGGAN BLAIR & SAMPSON, LLP

After having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the Agreement for Delinquent Tax Collection Services with Linebarger Goggan Blair & Sampson, LLP is approved and the Board President is authorized to execute this Agreement.

After exercising its due diligence, The Upshur County Emergency Services District #2 finds that:

1. There is a substantial need for the legal services to be provided pursuant to the Agreement for Delinquent Tax Collection Services;
2. These legal services cannot be adequately performed by the attorneys and supporting personnel of the District at a reasonable cost;
3. These legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of delinquent tax penalties provided by Texas Tax Code Sections 6.30, 33.07, 33.08, 33.11, and 33.48 and because the District does not have the funds to pay the estimated amounts required under a contract only for the payment of hourly fees;
4. Linebarger Goggan Blair & Sampson, LLP, is well qualified and competent to perform the legal services required to comply with the terms of this contract;
5. The contract with Linebarger Goggan Blair & Sampson, LLP is the result of an arm's length transaction between the District and Linebarger Goggan Blair & Sampson, LLP and is fair and reasonable.

**UPSHUR COUNTY EMERGENCY SERVICES DISTRICT #2 RESOLUTION  
AUTHORIZING THE IMPOSITION OF A 20% PENALTY FOR COLLECTION  
COSTS ON DELINQUENT TAXES FOR TAX YEAR 2021 AND SUBSEQUENT  
YEARS**

***RECITALS***

Section 6.30 of the Texas Tax Code, as amended, authorizes Upshur County Emergency Services District #2 to provide for compensating an attorney up to 20% of the delinquent tax, penalty, and interest collected by the attorney.

Sections 33.07, 33.08, and 33.11 of the Texas Tax Code, as amended, authorize Upshur County Emergency Services District #2 to impose additional penalties secured by a tax lien to defray the cost of collection, not to exceed the amount of the compensation specified in the contract with an attorney pursuant to section 6.30 of the Texas Tax Code.

The Upshur County Emergency Services District #2 has contracted with Linebarger Goggan Blair & Sampson, LLP ("Linebarger") to collect its delinquent taxes pursuant to section 6.30 of the Texas Tax Code, as amended.

The contract provides that Linebarger's compensation shall be comprised of section 33.07 penalties, section 33.08 penalties, section 33.11 penalties and section 33.48 attorney fees awarded to and collected by Linebarger, pursuant to each statute of the Texas Tax Code.

The Upshur County Emergency Services District #2 has agreed in the contract to impose section 33.07, section 33.08, and section 33.11 penalties of 20% to offset the cost of delinquent tax collection efforts. Notwithstanding any other provision of this resolution, it is not intended to and it should not be construed so as to impose an additional penalty under Section 33.07 of the Texas Tax Code on any delinquent tangible personal property taxes that Section 33.11 of the Texas Tax Code forbids its application.

***ORDER***

IT IS ORDERED, ADJUDGED AND DECREED BY THE Upshur County Emergency Services District #2 THAT:

**Section 1.** The matters and facts related in the preamble of this order are hereby found and determined to be true and correct.

**Section 2.** In connection with 2021 taxes that become delinquent before June 1, 2022, and subsequent years' taxes, the Upshur County Emergency Services District #2 hereby affirmatively imposes an additional 20% penalty pursuant to Tex. Tax Code § 33.07.

**Section 3.** In connection with 2021 taxes that become delinquent on or after June 1, 2022, and subsequent years' taxes the Upshur County Emergency Services District #2 hereby affirmatively imposes an additional 20% penalty pursuant to Tex. Tax Code § 33.08.

**Section 4.** In connection with 2021 taxes that become delinquent on or after February 1, 2022 and subsequent years' taxes imposed on tangible personal property, the Upshur County

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Emergency Services District #2 hereby affirmatively imposes an additional 20% penalty pursuant to Tex. Tax Code § 33.11.

**Section 5.** The Upshur County Tax Assessor-Collector is authorized to mail notice of the delinquency and of the penalty to each property owner in accordance with Tex. Tax Code sections 33.07, 33.08, and 33.11.

**PASSED, APPROVED, AND ADOPTED** this 21<sup>st</sup> day of December 2021.

**ATTEST/SEAL:**

Upshur County Emergency Services District #2

By: Tim R...

By: Gaston DeBerry III  
Gaston DeBerry III, Board President

## **Agreement for Tax Collection Services**

This Agreement is made between Linebarger Goggan Blair & Sampson, LLP (hereinafter referred to as the "Firm") and Upshur County Emergency Services District #2 (hereinafter referred to as the "Client").

### **Article I**

#### *Nature of Relationship*

**1.01** The parties hereto acknowledge that this Agreement creates an attorney-client relationship.

**1.02** The Client hereby employs the Firm to provide the services hereinafter described for compensation hereinafter provided.

### **Article 2**

#### *Scope of Services*

**2.01** The Firm shall take reasonable and necessary actions to collect property taxes that are owed to the Client and to any other taxing unit whose taxes are assessed and collected by the Client, and that are subject to this agreement, as hereinafter provided.

**2.02** The Client may from time-to-time specify in writing additional actions to be taken by the Firm in connection with the collection of taxes that are owed to the Client. Client further constitutes and appoints the Firm as Client's attorneys to sign all legal instruments, pleadings, drafts, authorizations and papers as shall be reasonably necessary to prosecute the Client's claim for taxes.

**2.03** Taxes owed to the Client shall become subject to this agreement upon the following dates, whichever occurs first:

(a) On February 1 of the year in which the taxes become delinquent if a previously filed tax suit is then pending against the property subject to the tax;

(b) On the date any lawsuit is filed with respect to the recovery of the tax if the tax is delinquent and is required to be included in the suit pursuant to TEX. TAX CODE § 33.42(a);

(c) On the date of filing any application for tax warrant where recovery of the tax or estimated tax is sought and where the filing of an application for tax warrant by the Firm is at the request of Client's Tax Assessor-Collector;

(d) On the date of filing any claim in bankruptcy where recovery of the tax is sought; or

(e) In the case of tangible personal property, on the 60th day after the February 1 delinquency date; or

(f) On July 1 of the year in which the taxes become delinquent.

### **Article 3**

#### *Compensation*

**3.01** Client agrees to pay to the Firm, as compensation for the services required herein, as follows:

(a) fifteen (15%) percent of the amount of all 2020 and prior year taxes, penalty and interest subject to the terms of this contract as set forth in Paragraph 2.03 above, collected and paid to the collector of taxes during the term of this contract, as and when collected; and

(b) twenty (20%) percent of the amount of all 2021 and subsequent year taxes, penalty and interest subject to the terms of this contract as set forth in Paragraph 2.03 above, collected and paid to the collector of taxes during the term of this contract, as and when collected.

**3.02** The Client shall pay the Firm by the twentieth day of each month, all compensation earned by the Firm for the previous month as provided in this Article 3. All compensation above provided for shall become the property of the Firm at the time payment of the taxes, penalty and interest is made to the collector.

#### **Article 4** *Intellectual Property Rights*

**4.01** The Client recognizes and acknowledges that the Firm owns all right, title and interest in certain proprietary software that the Firm may utilize in conjunction with performing the services provided in this Agreement. The Client agrees and hereby grants to the Firm the right to use and incorporate any information provided by the Client ("Client Information") to update the databases in this proprietary software, and, notwithstanding that Client Information has been or shall be used to update the databases in this proprietary software, further stipulates and agrees that the Client shall have no rights or ownership whatsoever in and to the software or the data contained therein, except that the Client shall be entitled to obtain a copy of such data that directly relates to the Client's accounts at any time.

**4.02** The Firm agrees that it will not share or disclose any specific confidential Client Information with any other company, individual, organization or agency, without the prior written consent of the Client, except as may be required by law or where such information is otherwise publicly available. It is agreed that the Firm shall have the right to use Client Information for internal analysis, purposes of improving the proprietary software and database, and to generate aggregate data and statistics that may inherently contain Client Information. These aggregate statistics are owned solely by the Firm and will generally be used internally, but may be shared with the Firm's affiliates, partners or other third parties for purposes of improving the Firm's software and services.

#### **Article 5** *Costs*

**5.01** The Firm and Client recognize that publication costs for citations and notices of sale and title abstract costs will be incurred in the process of providing the litigation services contemplated in this Agreement. All such costs shall be billed to the Client, in care of the Firm, and the Firm will advance the payment of such costs on behalf of the Client. Upon recovery of such costs from the defendants or from the tax sale of defendants' property, the Firm shall be reimbursed for the advance payment. Alternatively, the Firm may arrange with the vendor or agency providing the service that actual payment of the costs of services is wholly contingent upon recovery of such costs by the Client or the Firm from the defendants or from the tax sale of defendants' property. In such contingent arrangements, the Client has no responsibility or liability for payment or advancement of any costs, other than forwarding to the vendor or service provider any cost amounts received from defendants or from the tax sale of defendants' property.

**5.02** The Client acknowledges that the Firm may provide services, such as title research, with its own employees or with other entities or individuals who may be affiliated with the Firm, but the Firm agrees that any charges for such services will be reasonable and consistent with what the same services would cost if obtained from a third party. The Client agrees that upon the recovery of such costs, the Client will: (i) pay the Firm for any such costs which have been advanced by the Firm or performed by the Firm, and (ii) pay any third party agency or vendor owed for performing such services.

**Article 6**  
*Term and Termination*

**6.01** This Agreement shall be effective on January 1, 2022 (The "Effective Date") and shall expire on December 31, 2027 (the "Expiration Date") unless extended as hereinafter provided.

**6.02** Unless prior to 60 days before the Expiration Date, the Client or the Firm notifies the other in writing that it does not wish to continue this Agreement beyond its initial term, this Agreement shall be automatically extended for an additional one year period without the necessity of any further action by either party. In the absence of any such 60 day notice by either the Client or the Firm, the Agreement shall continue to automatically renew for additional and successive one-year terms in the same manner at the end of each renewal period.

**6.03** If at any time during the initial term of this Agreement or any extension hereof, the Client determines that the Firm's performance under this Agreement is unsatisfactory, the Client shall notify the Firm in writing of the Client's determination. The notice from the Client shall specify the particular deficiencies that the Client has observed in the Firm's performance. The Firm shall have sixty (60) days from the date of the notice to cure any such deficiencies. If at the conclusion of that sixty-day remedial period, the Client remains unsatisfied with the Firm's performance, the Client may terminate this Agreement effective upon the expiration of thirty days following the date of written notice to the Firm of such termination ("Termination Date").

**6.04** Whether this Agreement expires or is terminated, the Firm shall be entitled to continue to prosecute any tax suits, applications for tax warrants or bankruptcy claims pending on the Termination Date or Expiration Date for an additional six months following termination or expiration. The Client agrees that the Firm shall be compensated as provided by Article 3 for any base tax, penalties and interest collected in the pending matters during the six-month period.

**6.05** The Client agrees that the Firm shall be reimbursed for any costs advanced and shall be paid for any services performed pursuant to Article 5 when such costs are recovered by or on behalf of the Client, regardless of the date recovered. It is expressly agreed that neither the expiration nor the termination of this Agreement constitutes a waiver by the Firm of its entitlement to be reimbursed for such costs and to be paid for such services. It is further expressly agreed that the expiration of any six-month period under Section 6.04 does not constitute any such waiver by the Firm.

**Article 7**  
*Miscellaneous*

**7.01** *Assignment and Subcontracting.* This Agreement is not assignable, provided however, the Firm may from time-to-time obtain co-counsel or subcontract some of the services provided for herein to other law firms or entities. In such cases, the Firm will retain supervisory control and responsibility for any services provided by such co-counsel or subcontractors and shall be responsible to pay any compensation due to any such co-counsel or subcontractor.

**7.02** *Arbitration.* Any controversy between the parties to this Agreement involving the construction or application of any of the terms, covenants, or conditions of this Agreement shall, on the written request of one party served on the other, be submitted to arbitration, and such arbitration shall comply with and be governed by the provisions of the Texas General Arbitration Act.

**7.03** *Integration.* This Agreement contains the entire agreement between the parties hereto and may only be modified in a written amendment, executed by both parties.

**7.04 Representation of Other Taxing Entities.** The Client acknowledges and consents to the representation by the Firm of other taxing entities that may be owed taxes or other claims and be secured by the same property as the Client's claim.

**7.05 Retention of Files.** The Firm will retain the files created in the course of performing the Services specified in Article 2 above according to the following schedule. After the time periods specified in this Section, Client consents to the destruction of such files, so long as such destruction is undertaken in a manner to protect the confidentiality of any personal or private information contained therein.

**Tax Warrant files:** Five years from the date of issuance of a warrant.

**Litigation files:** Two years from the date of nonsuit or dismissal of a suit occurring prior to a final judgment.

Five years from the date of sale of the last property pursuant to the judgment or other satisfaction of the judgment.

Ten years from the date of filing of an abstract of judgment, or five years from the date of satisfaction of the judgment, whichever is earlier.

**Bankruptcy Files:** Two years from the date of dismissal of a bankruptcy proceeding or other order closing the case, or from satisfaction of a claim, whichever is earlier, with respect to Chapter 7 and 13 proceedings.

Three years from the date of dismissal of a bankruptcy proceeding or other order closing the case, or from satisfaction of a claim, whichever is earlier, with respect to Chapter 11 proceedings.

**7.06. Compliance with Tx. Govt. Code §2270.002.** In order to comply with Tx. Govt. Code §2270.002, the Firm verifies that it does not boycott Israel and will not boycott Israel during the term of the contract.

**In consideration of the terms and compensation herein stated,** the Firm hereby accepts said employment and undertakes the performance of this Agreement as above written. This Agreement is executed on behalf of the Firm and of the Client by the duly authorized persons whose signatures appear below.

Upshur County Emergency Services District #2

**Linebarger Goggan Blair  
& Sampson, LLP**

By:   
Gaston DeBerry III, Board President

By: \_\_\_\_\_  
Staci Killingsworth, For the Firm

Date: 12-21-21

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

ATTEST:

