

**RESOLUTION OF CITY OF CORRY**

**No. 20-08**

A RESOLUTION OF THE TAXING DISTRICT TO APPROVE AN AGREEMENT AMONG THE COUNTY OF ERIE, ERIE COUNTY TAX CLAIM BUREAU AND THE LAW FIRM OF MacDONALD, ILLIG, JONES & BRITTON LLP.

WHEREAS, the County of Erie and the Erie County Tax Claim Bureau (collectively "the County") have entered into an Agreement (the "Agreement") with MacDonald, Illig, Jones & Britton LLP (hereinafter "MIJB") with respect to conduct of judicial, "lien-free," tax sales during the years 2020, 2021, and 2022 (hereinafter the "Judicial Tax Sales") of properties against which delinquent taxes are due and owing; and

WHEREAS, the Board of the Taxing District (the "Board") has been requested to approve the Agreement and agree that properties located in the Taxing District can be exposed to the Judicial Tax Sales; and

WHEREAS, the Board has determined that such resolution, approving the proposed Agreement, is in the best interest of all of the Taxing District and the Tax Claim Bureau, as it will further the general objective of collecting delinquent property taxes and realizing the greatest amount of revenue possible on certain delinquent real estate taxes in accordance with 72 P.S. § 5860.101, *et seq.*

NOW THEREFORE, IT IS HEREBY RESOLVED by the Board of the Taxing District as follows:

1. The proposed Agreement, a copy of which is attached to this Resolution is approved.
2. The Chair of the Board is authorized to execute on behalf of the Taxing District all signature copies of such Agreement and the Secretary and/or Assistant Secretary are authorized to witness or attest the same.
3. The Solicitor and other officials of the Taxing District are authorized to take such actions as are necessary to conclude the Agreement, including but not limited to periodic reviews of and responses to information supplied by MIJB to the Tax Claim Bureau as called for in the Agreement.
4. This Resolution is intended to put in place an ongoing agreement and process for the conduct of the Judicial Tax Sales as is outlined in the Agreement.

ADOPTED this 17<sup>th</sup> day of August, 2020.

1653169

  
Secretary of the Board

*(Faint circular seal of the Taxing District is visible in the background)*

**AGREEMENT AMONG THE COUNTY OF ERIE,**  
**ERIE COUNTY TAX CLAIM BUREAU**  
**AND**  
**MACDONALD, ILLIG, JONES & BRITTON, LLP**

*Regarding Lien Free Tax Sales pursuant to 72 P. S. §5860.101, et seq.*

THIS AGREEMENT, made this 26<sup>th</sup> day of February, 2020, is by and among the COUNTY OF ERIE and the ERIE COUNTY TAX CLAIM BUREAU (collectively, the "County") and MACDONALD, ILLIG, JONES & BRITTON, LLP, 100 State Street, Suite 700, Erie, PA 16507 (hereinafter "MIJB").

WITNESSETH THAT:

WHEREAS, the County desires to conduct judicial, or lien-free, real estate tax sales (hereinafter "Judicial Tax Sale(s)") in calendar years 2020, 2021, and 2022 in order to realize the greatest amount of revenue possible on certain delinquent real estate taxes in accordance with 72 P.S. §5860.101, et seq. (the "Tax Sale Act"); and

WHEREAS, the County will require the assistance of legal counsel to handle the day-to-day work involved in organizing and conducting the 2020, 2021, and 2022 Judicial Tax Sales and to provide the technical and legal expertise necessary to conduct such sales; and

WHEREAS, the County seeks the provision of legal services for the purposes set forth above, and as more fully set forth in the attached Exhibit A - "Scope of Services;" and

WHEREAS, on or about March 7, 2019, the County issued a request for proposals for Judicial Tax Sale Legal Services. MIJB submitted a qualifying proposal that has been recommended for acceptance by the Committee on the Selection of Judicial Tax Sale Legal Counsel (the "Committee"). The County Executive has accepted the recommendation of the Committee and approved the appointment of MIJB pursuant to Article V., Section 3.C.4 of the Erie County Home Rule Charter.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter expressed, and intending to be legally bound hereby, the parties agree as follows:

**GENERAL PROVISIONS**

**ARTICLE 1: SCOPE OF SERVICES**

MIJB shall perform and carry out in a professional manner (i) all of the services set forth in Exhibit "A" of this Agreement entitled "Scope of Services," (ii) those services as required to assure compliance with the laws and regulations applicable to Judicial Tax Sales, and (iii) such other services as the County shall from time to time reasonably request in accordance with provisions Article 17 hereof.

## ARTICLE 2: TIME OF PERFORMANCE

2.1 The services of MIJB hereunder are to commence upon receipt by MIJB of the Approval Notice, defined in section 2.2, and shall be undertaken and completed in such a manner as to best fulfill the purposes of this Agreement in accordance with applicable law. This Agreement shall cover the Judicial Tax Sales to be conducted during calendar years 2020, 2021, and 2022. At least one Judicial Tax Sale must be held during each calendar year of this Agreement. MIJB's work under this Agreement shall continue and be complete only upon conclusion of all aspects of the Judicial Tax Sales, including but not limited to, final distribution of the proceeds from each of the Judicial Tax Sales contemplated hereunder for 2020, 2021, and 2022, even in the event that such work extends beyond December 31, 2022.

2.2 The obligations of the County under this Agreement shall be conditioned upon and subject in all events to final approval of this Agreement by Erie County Government pursuant to Article V., Section 3.C.4 of the Erie County Home Rule Charter and written notice thereof to MIJB by the County Executive (the "Approval Notice").

2.3 The Term of this Agreement shall commence on the date this Agreement is approved by County government and shall end upon the completion by MIJB of all follow up work in connection with the 2022 Judicial Tax Sale. The County shall have the authority to retain successor Judicial Tax Sale Counsel at any time to handle Judicial Tax Sales for 2023 and beyond.

## ARTICLE 3: PROPERTIES INCLUDED

The properties to which this Agreement applies (the "Included Properties") shall be (i) all Erie County properties eligible for Judicial Tax Sale by virtue of having been exposed to the upset tax sale in the prior calendar year, together with (ii) such properties as have been exposed to the current year's upset tax sale as agreed upon by the Tax Claim Bureau and MIJB. Such properties shall be identified by the Tax Claim Bureau in a list ("Judicial Tax Sale List") to be provided to MIJB for the current calendar year at or about the time of the issuance to MIJB of the Approval Notice hereunder, and by no later than March 1 of each subsequent calendar year during the term of this Agreement. The properties which shall not be subject to this Agreement are the following:

3.1 Properties removed from any Judicial Tax Sale List by the County or MIJB; provided, such removal shall be limited to circumstances where such property sale cannot proceed legally (including, but not limited to, when it appears that notice required under the Tax Sale Act cannot be properly given) or is contrary to an existing court order.

3.2 Properties in taxing districts which have not agreed to the payment of the Contingent Fee to MIJB.

## ARTICLE 4: SALES PRICE AND PAYMENT PLANS

4.1 *Sales Price.* With the exception of properties located in Millcreek Township, all properties exposed for sale pursuant to this Agreement shall be sold to the highest qualified bidder, subject only to a minimum bid requirement of \$1,000.00 (\$750.00 for mobile homes) for all properties, provided, however, that the County may specifically direct MIJB to establish another minimum bid requirement for a particular property by providing MIJB with written instructions at least ten (10) days prior to the date of the Judicial Tax Sale. Millcreek properties are subject to a separate agreement with the County.

4.2 *Payment Plans.* The County authorizes MIJB, without further need for permission, to negotiate and enter into payment plans with property owners whose properties are subject to sale under this agreement the only restriction being that said payment plans must require the property owner to pay all delinquent taxes owed by the scheduled start of the tax sale. MIJB shall provide periodic notice to the County with regard to the existence

and status of such payment plans.

## ARTICLE 5: COMPENSATION AND COST ADVANCES

5.1 *Fees.* Subject to the provisions of section 5.2, MIJB shall be entitled to receive a contingent fee ("Contingent Fee") equal to the sum of (a) the final sales price of each property sold at the Judicial Tax Sale multiplied by the applicable percentage set forth below, and (b) the total amount collected from or on behalf of the parcel owner of any Included Property prior to the Judicial Tax Sale, as adjusted by Section 5.2, multiplied times the applicable percentage set forth below (the "Collection Amount"):

<u>Collection Amount</u>	<u>Fee Percentage</u>
First \$25,000 of gross proceeds per property	18%
Next \$75,000 of gross proceeds per property	8%
Next \$100,000 of gross proceeds per property	5%
Proceeds over \$200,000 of gross proceeds per property	2%

It is understood that other taxing districts in Erie County may be required to agree to the Contingent Fee for it to be binding upon them, and this Agreement is conditioned on such consent and agreement by other taxing districts, and will extend only to properties in taxing districts which have agreed to the Contingent Fee. The County agrees to assist MIJB in procuring agreements from other taxing districts by recommending to other taxing districts that such agreements be entered into.

In the event a taxing district does not agree to be bound to the Agreement then it is agreed that MIJB shall prepare and file a Petition to Disburse Sale Proceeds which will include the proposed deduction of fees based upon the above referenced sliding scale. The parties understand that taxing districts not bound to this Agreement would have the right to object to the Petition and the Court will ultimately have to decide the issue of the appropriate fee for parcels in said taxing district(s).

5.2 *Modifications to MIJB Contingent Fee Calculation.* Notwithstanding the provisions of section 5.2, MIJB's Contingent Fee calculation shall be modified in the following circumstances as specified:

5.2.1 *Removal of Property from Judicial Tax Sale List.* MIJB shall not be entitled to any Contingent Fee with respect to properties removed from the Judicial Tax Sale List by the County Tax Claim Bureau or MIJB pursuant to section 3.1.

5.2.2 *Payment of Delinquent Taxes Prior to Judicial Sale.* With respect to delinquent taxes paid prior to the Judicial Tax Sale: (a) MIJB shall be entitled to fifty percent (50%) of the Fee Percentage set forth in section 5.1 applicable to the amount of delinquent taxes paid prior to a Judicial Tax Sale as a Contingent Fee with respect to any property where, within ninety (90) days from the date of delivery to MIJB of the Judicial Tax Sale List, the Tax Claim Bureau or MIJB receive payment of the delinquent taxes in full, and (b) MIJB shall be entitled to include in the Collection Amount one hundred percent (100%) of the delinquent taxes received by the Tax Claim Bureau or MIJB after ninety (90) days from the date of delivery to MIJB of the Judicial Tax Sale List. Where the Tax Claim Bureau receives payment of the delinquent taxes in full no later than the scheduled start of the Judicial Tax Sale, MIJB shall remove the affected property from the Judicial Tax Sale List.

5.2.3 *Sheriff's Sale of Eligible Property.* With respect to Included Properties subject to a Sheriff Sale prior to the Judicial Tax Sale: (a) MIJB shall be entitled to fifty percent (50%) of the Fee Percentage set forth in section 5.1 applicable to the amount received through a Sheriff Sale as a Contingent Fee where such

Sheriff Sale is noticed and takes place within one hundred and twenty (120) days from the date of delivery to MIJB of the Judicial Tax Sale List, and (b) MIJB shall be entitled to include in the Collection Amount one hundred percent (100%) of the sales proceeds received by the Tax Claim Bureau from any Sheriff's sale taking place more than one-hundred and twenty (120) days after delivery to MIJB of the Judicial Tax Sale List. Where a Sheriff Sale takes place prior to the Judicial Tax Sale, MIJB shall remove the affected property from the Judicial Tax Sale List.

5.2.4 In the circumstances set forth in sections 5.2.1 if a title search on the affected property has been completed or other costs for the affected property have been incurred by MIJB on or before the date the Tax Claim Bureau receives the payment, excluding the first twenty-five properties so removed (for which no search fee shall be charged), the County shall reimburse MIJB for the incurred costs, together with a fee of Two Hundred (\$200.00) Dollars.

5.3 **Cost Advances.** In addition to the Contingent Fee set forth above, MIJB shall be reimbursed by the County for all costs advanced that are required to conduct tax sales pursuant to the terms of this Agreement. The term "cost" shall include, as to each property, title search fees, the amount or pro rata share of the filing fees, advertising expenses, mailing expenses, photocopying expenses, telephone toll charges, witness and reporter fees, and all other expenses reasonably necessary to effect the sale of the property. An estimate of costs shall be provided to the Tax Claim Bureau within ninety (90) days of delivery to MIJB of the Judicial Tax Sale List. Costs shall be itemized for each parcel and based upon actual or pro rata cost (without multiplier) and, shall be deducted as applicable from the sales proceeds of each parcel.

5.3.1 Subject to sections 5.3.2 and 5.3.3, all costs shall be billed at the lesser of MIJB's internal cost or the best available actual third party cost less any applicable discounts.

5.3.2 Photocopying expense shall be charged at a rate not to exceed ten (\$.10/page) cents per page for photocopies made in-house by MIJB. Where possible, an outside vendor shall be utilized for high volume photocopying, and the actual invoice shall be included as a cost.

5.3.3 Title search fees shall be capped at the rate of Sixty (\$60.00) Dollars per search and such search shall extend back in time to the first warranty deed beyond thirty (30) years.

5.4 **Manner of Payment.** The Contingent Fee and cost advances shall be collected as follows:

5.4.1 **Sales Proceeds:** MIJB shall collect the gross proceeds of all Judicial Tax Sales initiated or conducted pursuant to the terms of this Agreement and deposit these funds in a separate Interest on Lawyers Trust Account (or IOLTA) (the "Tax Sales Account"). Pursuant to the provisions of the Tax Sale Act, MIJB shall obtain an Order approving and directing disbursements of the funds in the Tax Sale Account. Any Order authorizing disbursement from the Tax Sale Account shall direct that MIJB shall be entitled to the percentage (and to retain such percentage) of each sale according to the sliding scale above, and to reimbursement for the cost advances described above.

5.4.2 **Payment Plan Proceeds.** MIJB shall collect the gross proceeds of all payment made in connection with properties on the Tax Sale List and deposit these funds in the Tax Sales Account. To the extent the County (as opposed to MIJB) collects any funds prior to or in anticipation of any sales initiated or to be conducted in accordance with the terms of this Agreement; or continues to collect funds in accordance with the terms of installment agreements related to any properties contained on the list provided by the Tax Claim Bureau to MIJB, the County, within a reasonable period of time, but not later than forty-five (45) days from the date of the receipt of said funds, shall deliver such funds to MIJB for deposit into the Tax Sale Account referred to in Article 5.4.1 above.

5.4.3 **Deposit in Tax Sale Account** MIJB shall deposit all funds it receives as payment of delinquent taxes or Judicial Tax Sale proceeds into the Tax Sale Account referred to in paragraph 5.4.1 above and

the same shall be distributed in accordance with the Order approving and directing disbursements.

5.4.4 *Weekly Reports.* MIJB shall furnish the Tax Claim Bureau with a weekly report which shall consist of the following: (1) Parcel Identification Number; (2) Total Delinquent Taxes; (3) Name of Party Tendering Delinquent Taxes; (4) Date and Amount of Payment; (5) Term of Payment; (6) Sum of Payments Made, and (7) such other information as the Tax Claim Bureau may reasonably require from time to time.

#### **ARTICLE 6: DATA TO BE FURNISHED**

All data, including written materials, photographs, drawings, maps, surveys, graphics or other information collected or created as part of this project, including any and all information related to tax delinquency, notices or the recording of liens, which are necessary for carrying out the work as outlined in Exhibit "A" shall be furnished to MIJB for the duration of this Agreement without charge by the County. MIJB shall be entitled to copy or reproduce any such data for its own use and files.

#### **ARTICLE 7: OWNERSHIP OF DATA**

All data, including written materials, photographs, drawings, maps, graphics or other information collected or created as part of this project effort, whether delivered under this Agreement or not, shall be acquired on behalf of the County, and shall be the property of the County.

All source, intermediate and final data/work products collected or created as part of this project effort, represents "work for hire" and as such, MIJB, intending to be legally bound hereby, assigns to the County any and all of its interest in the material produced and to be produced for this project.

#### **ARTICLE 8: PERSONNEL**

MIJB represents that it employs, or will employ, at its own expense, all personnel required in performing the services of this Agreement. MIJB shall also notify the County of all key personnel assigned to the project effort and request approval from the County for any assignment changes of key personnel throughout the duration of the project. MIJB employees engaged in field work shall identify themselves as being retained by the County to conduct this project to any interested person or property owner.

The County will direct all inquiries in regard to the lien free sale to MIJB. MIJB agrees to provide personnel that will be responsible for addressing all inquiries and providing updates to the public in a reasonable period of time.

#### **ARTICLE 9: INDEPENDENT CONTRACTOR**

No provision of this Agreement is intended, nor shall this Agreement be interpreted, to create an employer-employee relationship between the County and MIJB. The relationship which this Agreement is intended to create is that of independent contractor and this Agreement shall be so interpreted.

#### **ARTICLE 10: SUBCONTRACTING**

MIJB may subcontract for the performance of any of the services required to carry out pursuant to this Agreement, except for any services involving the application of legal knowledge, judgment or expertise. The County shall not be required to pay compensation, nor be obligated in any other way, to any subcontractor retained by MIJB. Any such subcontract entered into by MIJB shall provide that MIJB will retain ultimate control and responsibility for the completion of the project, as outlined in the Scope of Services, and that the subcontractor shall be bound by these conditions and any other requirements applicable to MIJB in the conduct

of the Scope of Services.

#### **ARTICLE 11: ACCEPTABLE DELAYS**

Performance hereunder is expected to require services on an annual basis, however, neither the County nor MIJB shall be held responsible for damages caused by delay or failure to perform hereunder when such delay or failure is due to fires, strikes, storms, floods, scarcity of fuel, governmental regulation or orders, legal acts of public authorities, acts of God or other acts which cannot be provided against.

#### **ARTICLE 12: MAINTENANCE OF RECORDS**

MIJB shall maintain complete and accurate records with respect to allowable costs incurred, manpower expended and revenues collected under this Agreement. All such records shall be clearly identified and readily accessible to the County upon reasonable notice.

#### **ARTICLE 13: EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, MIJB agrees as follows:

13.1 MIJB shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. MIJB shall take affirmative action to insure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. As used herein, "treated" means and includes, without limitation, the following: recruited, whether advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. MIJB agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.

13.2 MIJB shall, in all solicitations or advertisements for employees placed by or on behalf of MIJB, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.

13.3 MIJB shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or worker's representative of MIJB's commitment under the Equal Employment Opportunity clause of the County and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

13.4 MIJB shall furnish all information and reports requested by the County Executive and/or the Tax Claim Bureau to ascertain compliance with the program.

13.5 MIJB shall take such action with respect to any subcontractor as the County may direct as a means of enforcing the provisions of subsection 13.1 through 13.8 hereof, including penalties and sanctions for noncompliance; provided, however, that in the event MIJB becomes involved in or is threatened with litigation as necessary to protect the interests of the County to effectuate the County's Equal Employment Opportunity Program, and, in the case of contracts receiving Federal assistance, MIJB or the County may request the United States to enter into such litigation to protect the interests of the United States.

13.6 If requested by the County, MIJB shall file and shall cause its subcontractors, if any, to file

compliance reports with the County. Compliance reports filed at such times, as directed, shall contain information as to the employment practices, policies, programs and statistics of MIJB and its subcontractor.

13.7 MIJB shall include the provisions of subsections 13.1 through 13.8 of the Equal Employment Opportunity Clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

13.8 Refusal by MIJB or subcontractor to comply with any portion of this program as herein stated and described will subject the offending party to any and all of the following penalties:

- a. Withholding of all future payments under the involved public contract to MIJB in violation until it is determined that MIJB or subcontractor is in compliance with the provisions of the contract.
- b. Refusal of all future bids for any public contract with the County or any of its departments or divisions until such time as MIJB or the subcontractor demonstrates that it has established and shall carry out the policies as herein outlined.
- c. Cancellation of this contract.
- d. In cases in which there is substantial or material violation or the threat of substantial or material violation of the compliance procedure or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions including the enjoining; within applicable law, of MIJB, subcontractors or other organizations; individuals or groups who prevent directly, indirectly or seek to prevent directly or indirectly, compliance with the policy, as herein outlined.

#### **ARTICLE 14: INELIGIBLE CONSULTANT**

MIJB certifies that it is not included in the U.S. Comptroller General's list of ineligible consultants.

#### **ARTICLE 15: NON-COLLUSION**

MIJB guarantees that the proposal submitted is not a product of collusion with any other consultant and no effort has been made to fix the proposal price of any consultant or to fix any overhead, profit or cost element of any proposal price.

#### **ARTICLE 16: COVENANT AGAINST GRATUITIES**

MIJB shall warrant that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any official or employee of the County with a view toward securing favorable treatment in awarding, amending or evaluating performance of the Agreement.

#### **ARTICLE 17: CONTRACT CHANGES**

Any proposed change in this Agreement shall be submitted to the County Executive for prior approval and any approved change shall be made by a written amendment. The County Executive may, at any time, by written order, make changes within the general scope of this Agreement. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Agreement, whether changed or not changed by any such order, an equitable adjustment shall be made in the Agreement price



or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Any claim by MIJB for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by MIJB of the notification or change; provided, however, if the County Executive decides that the facts justify such action, the County Executive may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. The County Executive also reserves the right to enter into negotiations with MIJB for the purpose of adding additional project tasks which were not included within the original scope of the contract. Adding project tasks will require a contract modification.

#### **ARTICLE 18: HOLD HARMLESS**

MIJB agrees to and does hereby assume the defense of the County, its agents and employees of any action at law or in equity which may be brought against such indemnified parties by reasons of claims for which indemnification is owed hereunder. MIJB agrees to indemnify the County from and against claims of damages which may be recoverable against the County, including but not limited to, accrued interest on damages, as well as expenses, including, but not limited to, attorney's fees and defense costs, arising out of or resulting from the performance of the work, to the extent caused in whole or in part by the acts or omissions of MIJB, a subcontractor of MIJB, anyone directly or indirectly employed by them or acting on behalf of MIJB, regardless of whether or not such claim or expense is caused in part by a party indemnified hereunder, unless such loss or damage is solely the result of the County's negligence. However, the County shall be solely liable to the return of any purchase price paid for which return or refund is sought. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist. The County shall not be responsible for any loss of life, personal injury, or property damage of any kind in performing and completing the work of this Agreement, unless such loss or damage is the result of the County's negligence.

#### **ARTICLE 19: CONTRACT INTEGRITY**

MIJB shall not have authority, to vary, alter, amend or change this Agreement or any part thereof, without the written consent of the County. MIJB is assumed to be familiar with all federal, state and local laws, codes, ordinances and regulations which affect those engaged or employed in the work or in any manner effect the conduct of the work. No pleas of misunderstanding or ignorance on the part of MIJB will in any way serve to modify the provisions of this Agreement.

#### **ARTICLE 20: COORDINATION**

Throughout the project, MIJB will coordinate project activities with the Erie County Sheriff's Department, the County, the County Bureau of Assessment, the County Tax Claim Bureau, the County Recorder of Deeds and any other parties that will be participating in the project effort. MIJB will also be required to attend periodic project review meetings.

#### **ARTICLE 21: TERMINATION OF CONTRACT**

The County reserves the right to terminate this Agreement for cause, upon seven (7) days written notice to MIJB. In the event of such termination, the County shall be responsible for reimbursement of all costs incurred by MIJB pursuant to this Contract through the date of termination. "Cause" under this Agreement includes, but is not limited to, any one of the following:

- a. A material breach by MIJB of this Agreement or any of MIJB's representations or warranties hereunder;
- b. Failure at any time to comply fully with the provisions of section 23.5 hereof or in the event of any breach of the Non-Participation Acknowledgement;

c. In the event that both David E. Holland and J. W. Alberstadt, Jr. cease to be associated with MIJB;

d. Failure to expose ninety-five (95) percent of properties listed on the Tax Sale List to Judicial Tax Sale by reason of an act or omission of MIJB, unless such act or omission is authorized under this Agreement;

e. The occurrence of an material act or omission on the part of MIJB that is contrary to law or that subjects the County to liability or is injurious to the County unless such act or omission is authorized under this Agreement;

f. Any act of fraud, embezzlement, theft or conduct constituting a conflict of interest; or

g. The failure of MIJB to substantially perform its duties under this Agreement.

Cause shall not include clerical errors that may occur from time to time and which can be corrected and/or do not expose the County to monetary liability.

#### **ARTICLE 22: COUNTY OBLIGATIONS**

In addition to providing payment for the work, the County agrees to furnish the following support and assistance to MIJB during the term of the Agreement.

22.1 Familiarization with all pertinent information presently available to the County both in terms of existing data and current efforts.

22.2 A County staff project coordinator for the Agreement will provide any needed information and guidance for the work requirements in the scope of services.

22.3 Subject to MIJB's obligations under this Agreement, any other support and assistance reasonably necessary to aid MIJB in fulfilling its obligations under this Agreement.

#### **ARTICLE 23: CONTRACTOR'S OBLIGATIONS**

In addition to completing the work outlined in the Scope of Services- Exhibit A, and as required by all laws and regulations applicable to Judicial Tax Sales, MIJB agrees to meet the following obligations:

23.1 MIJB shall meet periodically with the County to discuss the applicability and progress of the ongoing work.

23.2 MIJB shall immediately notify the County in writing of any unusual development or circumstances which could significantly change or otherwise delay the work outlined in the scope of services.

23.3 To avoid work duplication and expedite completion of the work described in this Agreement, existing information shall be utilized to the fullest extent. Applicable information available from cooperating State agencies will be provided upon MIJB's request.

23.4 MIJB shall perform and conduct a Judicial Tax Sale during calendar years ending December 31, 2020, December 31, 2021, and December 31, 2022, on dates proposed by MIJB and approved in writing by the Tax Claim Bureau. MIJB shall provide and be responsible for all follow-up services relating to each Judicial

Tax Sale including, but not limited to, as set forth in Exhibit A, and as required by applicable laws and regulations.

23.5 In order to avoid even the appearance of any conflict of interest which might be asserted by any person by virtue of Jennifer Brostmeyer Hirneisen, Esq. participating in MIJB's representation of the County pursuant to this Agreement, MIJB shall procure a written and binding acknowledgment (the "Non-Participation Acknowledgement") from Fred Brostmeyer that neither he, nor any member of his family, nor any person acting on their behalf, nor any entity owned or controlled by them or acting on their behalf, shall bid at any Judicial Tax Sale which is the subject of this Agreement, or any Repository Sale during the term of this Agreement.

23.6 MIJB will provide web-based access to both the County and the general public regarding matters pertinent to the Judicial Tax Sales. In addition to the information regarding the Included Properties contained in the public notice of sale, the public portion of the web site will: (i) identify the properties listed on the Tax Sale List within thirty (30) days of receipt of the Tax Sale List, (ii) be regularly (i.e., multiple times a week) updated as to the status of each Included Property, (iii) include a copy of the Petition for Judicial Sale with a reference to the exhibit thereon pertaining to each Included Property, and (iv) be linked to the County's website for further assessment or other information regarding the Included Properties. To the extent feasible, the secure portion of the web site, which will be password accessible only by the County and, if the County so desires, the taxing bodies, will contain additional information including the status of (i) title searches, (ii) publication, (iii) service, (iv) payment plans, and (v) any other matters which the County may reasonably request. MIJB will allow a link to the Judicial Tax Sale web site to be placed on the County's web site if the County so desires.

23.7 MIJB shall obtain and provide to the County a fidelity bond or bonds or insurance to protect against dishonest acts on the part of MIJB attorneys, paralegals, agents, employees, volunteers and all others who handle, or are responsible for handling, funds of the County in fulfilling its obligations under this Contract. Such bond or bonds or insurance shall name the County as an additional insured and shall be in an amount not less than Two Million Dollars (\$2,000,000) or such higher amount as MIJB deems appropriate. Such bond or bonds or insurance shall contain a waiver of defense based upon the exclusion of persons who serve without compensation from the definition of "employee" or other appropriate provisions to assure coverage of such persons. The premiums for all bonds or insurance obtained or maintained by MIJB pursuant to this provision shall be at its sole expense and may not be billed as a cost to the County.

#### **ARTICLE 24: ARBITRATION**

All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof, will be decided by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association, subject to the limitations stated in the following two (2) paragraphs.

24.1 This Agreement to arbitrate will be specifically enforceable under the prevailing Law of any court having jurisdiction.

24.2 A notice of demand for arbitration shall be in writing and a copy of such notice shall be provided to the other parties to this Agreement and filed with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when the institution of legal or equitable proceedings based upon such claim, dispute or other matter in question, would be barred by the applicable statute of limitations.

#### **ARTICLE 25: MISCELLANEOUS PROVISIONS**

25.1 This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Pennsylvania, and all obligations of the parties created hereunder are performable in Erie

County, Pennsylvania.

25.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, to the extent the assignment is permitted under this Agreement.

25.3 Whenever the context shall so require, all words herein in the male gender shall be deemed to include the female and neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

25.4 This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the written subject matter.

25.5 The parties shall have the option to extend this Agreement for two additional one (1) year terms on the same terms and conditions.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement the date and year set forth above.

COUNTY OF ERIE

MacDONALD ILLIG JONES & BRITTON, LLP

By: 

Kathy Dahlkemper,  
County-Executive

By: 

Russell S. Warner, Partner

Dated: 2/25/2020

Dated: 2/21/20

Witness: 

Attest: 

J. W. Alberstadt, Jr., Partner

APPROVED AS TO LEGALITY AND FORM

  
Richard W. Perhacs, County Solicitor

Dated: 2/25/20

Approved by Erie County Council Pursuant to  
Article V., Section 3.C.4 of the Home Rule Charter

  
County Clerk

EXHIBIT "A"  
SCOPE OF SERVICES

I. WORK OBJECTIVE

The purpose of this project is to conduct a number of lien-free tax sales pursuant to 72 P.S. §5860.101, et seq. and specifically under 72 P.S. §5860.610, et seq.

II. WORK ELEMENTS

MIJB will be responsible for coordinating and completing each Judicial Tax Sale in accordance with all applicable laws and regulations. Without limiting the generality of the foregoing, MIJB shall undertake the following tasks as part of each Judicial Tax Sale:

A. NOTICE OF SALE: Within forty-five (45) days of receipt by MIJB of the Judicial Sale List, MIJB shall give written notice to all property owners that their property has been designated for Judicial Tax Sale. The notice required hereunder shall be in addition to any other legal notice required by law.

B. TITLE SEARCHES: The contractor shall conduct title searches for each and every parcel identified by the County as being subject to any sale initiated within the scope of this agreement.

C. PETITION FOR JUDICIAL SALE: MIJB shall prepare for each property identified by the County as being subject to sale within the scope of this Agreement a Petition for Judicial Sale pursuant to 72 P.S. §5860.610. Preparation of this Petition shall also include preparation of an appropriate Rule to Show Cause and service of the same as required by 72 P.S. §5860.611. In order to facilitate this process, the County agrees to take such steps as are necessary to officially deputize various employees of MIJB to complete all service required under §5860.611. MIJB shall also be responsible for the publication of any and all notices required under applicable Pennsylvania statute.

D. HEARING ON PETITION: MIJB shall represent the County at any and all hearings scheduled pursuant to 72 P.S. §5860.612 relative to the presentation and/or argument on the Petition for Sale prepared accordance with 72 P.S. §5860.610.

E. CONDUCT OF SALE: MIJB shall appear at and represent the County in the conduct of any and all sales initiated within the scope of this agreement. In addition, while the County does not initiate private sales pursuant to 72 P.S. §5860.613(a), this obligation on the part of MIJB shall include any private sales sought or demanded on written instructions of any taxing district having any tax claims or tax judgments against a property, as required by 72 P.S. §5860.613(a). All monies collected relative to any sale initiated within the scope of this agreement shall be deposited in a separate account to be established by MIJB for this particular purpose. Monies to be deposited in this account shall include any funds received by MIJB at the time of any public or private sale, and any funds received by the County in connection with any public, or private sales, or in connection with any attempt by land owners to stay the lien-free tax sale of their property by entering into a payment agreement.

F. PREPARATION OF DEEDS: MIJB shall prepare quiet claim deeds for the successful purchasers of those properties subject to sale within the scope of this Agreement.

G. MISCELLANEOUS SERVICES: In addition to the above services, MIJB shall also represent the County in any and all legal actions relating to the conduct or outcome of Judicial Tax Sales or otherwise within the scope of this agreement. The representation of the County in this regard shall be at no

additional fee to the County; however associated costs shall be reimbursed in accordance with the terms of the Agreement.

H. TAX YEARS AND PROPERTIES AFFECTED: MIJB shall be responsible for performing the above services with regard to any and all properties meeting the definition of Included Properties during calendar years 2017, 2018, and 2019. The Erie County Tax Claim Bureau shall determine the identity of these properties.

I. ISSUANCE AND RECORD OF RECEIPTS: In connection with any and all payments received by MIJB under this Agreement, including voluntary payments made under section 52.2, MIJB shall issue a receipt to the payor, keep a copy of such receipts, and maintain a record of all such payments.