



## COUNTY COMMISSION

BALDWIN COUNTY  
312 Courthouse Square, Suite 12  
Bay Minette, Alabama 36507  
(251) 580-2564  
(251) 580-2500 Fax  
agary@baldwincountyal.gov  
www.baldwincountyal.gov

ANU GARY  
Records Manager  
  
MONICA E. TAYLOR  
Assistant Records Manager

September 26, 2013

Mr. James M. Thomas  
Rivertree Systems, Inc.  
Post Office Box 361361  
Birmingham, Alabama 36526

**RE: Agreement to Perform Auditing Services**

Dear Mr. Thomas:

Enclosed is a **fully executed copy** of the *Agreement for Examination Services*, approved during the September 3, 2013, Baldwin County Commission meeting, for Rivertree Systems, Inc. to perform auditing services for Baldwin County Sales & Use Tax/License Inspection at a cost of \$75.00 per audit hour. This *Agreement* commenced on September 26, 2013, and shall continue in effect for three (3) years or until cancelled by either the County or Rivertree Systems, Inc. upon thirty (30) days prior written notice of cancellation.

If you have any questions or need further assistance, please do not hesitate to contact Heather Gwynn, Sales & Use Tax Coordinator, at (251) 972-6844, Extension 4073.

Sincerely,

ANU GARY, Records Manager  
Baldwin County Commission

AG/met Item BG1

cc: Heather Gwynn  
Debbie West  
Kim Creech

ENCLOSURE

RECEIVED  
SEP 24 2013  
BY: *MEF*

**AGREEMENT FOR EXAMINATION SERVICES**

*3rd September*  
**THIS AGREEMENT** made and entered into on this the \_\_\_ day of \_\_\_\_\_, 2013, by and between the **BALDWIN COUNTY COMMISSION** (hereinafter referred to as the "Client"), and **RIVERTREE SYSTEMS, INC.**, an Alabama corporation (hereinafter referred to as "**RIVERTREE**").

1. The Client desires to provide for the collection of all local taxes and fees, regardless of the jurisdiction in which a taxpayer subject to the Client's taxing power maintains its principal office, to provide that all taxpayers are treated equally and to provide that all tax related ordinances are uniformly and consistently applied. In order to accomplish these goals and objectives, the Client desires to retain the services of a company legally qualified as a "private auditing or collecting firm" as defined in the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Alabama (1975) §40-2A-1, et seq., (hereinafter the "Taxpayers' Bill of Rights") to perform audits and examinations of such taxpayers' books and records, and to assist the Client in issuing assessments.

2. RIVERTREE is qualified as a private auditing or collecting firm under the Taxpayers' Bill of Rights and, as such, provides collection, examining and consulting services for local governments throughout the State of Alabama. RIVERTREE has represented to the Client that (i) it is knowledgeable of all laws and regulations applicable to private auditing or

collecting firms, (ii) it provides its services in full compliance with all applicable laws and regulations, and (iii) it obtains all of the legally required certifications, fidelity bonds, and legal letters of authority to act as a private auditing or collecting firm.

3. The Client desires to retain RIVERTREE as a private auditing firm to provide tax auditing, examination and assessment services under the terms and conditions, of this Agreement.

**NOW, THEREFORE, PREMISES CONSIDERED,** RIVERTREE and the Client hereby agree as follows:

1. **RIVERTREE SYSTEMS, INC.** The Client and RIVERTREE hereby agree that RIVERTREE will provide the following services:
  - a) Identify and prepare a written list of "taxpayer candidates for examination "based on objective criteria to be agreed upon by RIVERTREE and the Client in advance of such work.
  - b) Pursuant to Code of Alabama (1975) §40-2A-13(d), upon first contact with the taxpayer, RIVERTREE shall disclose in writing the identity of the Client and all other clients represented by RIVERTREE and shall provide a copy of appropriate written authorization of RIVERTREE's representation from the Client and from any such other client.
  - c) Inspect and examine, on behalf of the Client, all books, records and other documents of taxpayers assigned to be examined by the Client to determine to what extent, if any, the taxpayer owes the Client sales and use taxes, occupational taxes, license fees, lease taxes, tobacco taxes, gasoline taxes, interest, penalties and other charges thereon, as directed by Client and in accordance with the ordinances and regulations of the Client.
  - d) RIVERTREE acknowledges that Code of Alabama (1975) §40-2A-13(f) provides that when a private examining or collecting firm represents more than one county, city or town on the date it first contacts a taxpayer, the private examining or collecting firm shall examine the taxpayer's books and records for all such counties, cities or towns simultaneously. Therefore, when conducting examinations initiated by other RIVERTREE clients (counties or other cities and towns), RIVERTREE will include Client on the list of entities for which the examination is being conducted. In the

event RIVERTREE examines a taxpayer on behalf of other RIVERTREE clients who have not enacted the same taxes as Client (i.e., sales, consumer's use, seller's use, business license, occupational, tobacco, lease taxes and all other taxes covered under Baldwin County ordinances), then RIVERTREE's audit of such taxpayer shall include all such taxes of Client.

- e) Perform examinations of taxpayer's records in accordance with "*The Minimum Standard Examination Program*" established by the Alabama Local Tax Institute of Standards and Training (the "Minimum Standards").
- f) Report to the Client that information necessary for the Client to assess the taxpayer's sales and use taxes, license fees, lease taxes, interest, penalties and other charges thereon for transactions which RIVERTREE reasonably believes may have resulted in an obligation of the taxpayer to pay such taxes to the Client.
- g) Prepare and present to the Client a "Findings Report," which shall include, at a minimum, all information required to prepare a written report under the Minimum Standards and a summary thereof on each examination performed. In the event RIVERTREE's audit indicates that a particular taxpayer has no tax Liability to the Client, RIVERTREE shall provide the Client a written report including the name of the taxpayer audited, the types of tax for which the taxpayer was examined and found to have no liability, and the audit period.
- h) Provide full cooperation to the Client in the preparation of any legal documents, attend any judicial, administrative, departmental, appellate or other legal hearings and be available to testify at hearings that may be required to collect any amounts due to the Client from the taxpayer.
- i) Pursuant to the Code of Alabama (1975) §40-2A-13(h), RIVERTREE shall notify the taxpayer if any tax overpayments are discovered, and the taxpayer is due any refunds from the Client, or if the taxpayer owes any tax to the Client.
- j) At the direction of the Client, to act as the Client's agent in the assessment of taxes, interest and penalties, or to provide full cooperation to Client in making assessments based on audits conducted by RIVERTREE.
- k) Any additional or incidental services which are allowable by law and are reasonably necessary in order to carry out RIVERTREE's obligations under this Agreement.

**RIVERTREE shall collect all taxes with checks payable to the Baldwin County.**

2. **Compensation.** It is understood that each RIVERTREE client will only pay a prorated portion of total audit costs when RIVERTREE is conducting examinations for multiple clients at one time. Client agrees to pay RIVERTREE its prorated portion of each audit's total audit costs which shall consist of **seventy-five dollars (\$75.00) per hour.**

RIVERTREE shall be paid monthly based upon hours worked submitted to the client by the fifteenth (15th) day of the month for the month next proceeding. The parties acknowledge that the Code of Alabama (1975) §40-2A-6 specifically prohibits the Client from entering into any contract or arrangement with a private examining or contracting firm for the examination of a taxpayer's books on a contingency fee basis and agree that RIVERTREE's compensation under this Agreement is not in any way contingent upon or otherwise related to the amounts discovered during examinations nor contingent upon or related to amounts finally received by the Client.

3. **Representations and Warranties.** RIVERTREE represents and warrants as follows:

- a) RIVERTREE is a corporation valid and existing and in good standing under the laws of the State of Alabama.
- b) As of the effective date of the Agreement, RIVERTREE, and any employee or agent of RIVERTREE providing services under this Agreement, shall have obtained all licenses and bonds necessary or appropriate to perform RIVERTREE's obligations under this Agreement, and all such licenses and bonds shall be current and in good standing and shall be maintained throughout the term of this Agreement.
- c) RIVERTREE agrees to comply with all current and future laws, rules and regulations applicable to all services provided by RIVERTREE under this Agreement, including, but not limited to, the Local Tax Simplification Act of 1998, the Alabama Local Tax Procedures Act of 1998 and the Taxpayers' Bill of Rights as currently in effect and hereafter amended.
- d) RIVERTREE agrees to comply with all laws and regulations relating to the employees of RIVERTREE, including, without limitation, all tax withholding requirements and worker's compensation laws.

4. **Change in Law.** The parties agree that in the event of any conflict between the requirements of any applicable law and the terms of this Agreement, then the requirements of such applicable law shall control. If any law applicable to the services provided by RIVERTREE under this Agreement shall be amended, or otherwise changed following the effective date of this Agreement, and the Client, in its sole discretion, determines that such amendment, modification or change in the law shall impair or frustrate the Client's purposes for entering into this Agreement, then the Client shall have the option to terminate this Agreement as provided in Paragraph 10 below.

5. **Requirements of Examiners.** All RIVERTREE examiners shall meet all requirements of the Taxpayers' Bill of Rights and other current or future applicable law. At a minimum, all such examiners shall (i) be certified public accountants or accountants licensed by the State Board of Public Accountants, or (ii) be certified by the Alabama Local Tax Institute of Standards and Training and maintain fidelity bonds in accordance with the Code of Alabama (1975) §40-23-30, as currently in effect and hereafter amended. If any assessment based on an audit by RIVERTREE is invalidated due to lack of proper certification of RIVERTREE's auditors, RIVERTREE must either provide an audit of the assessed taxpayer conducted by a certified auditor or reimburse Client for all amounts paid to RIVERTREE in connection with the audit. RIVERTREE shall indemnify and hold Client harmless from any loss in revenues arising from or in connection with any invalidated assessment based upon an audit conducted by RIVERTREE if such invalidation is due to lack of proper certification of RIVERTREE 's auditors or due to any other fault of RIVERTREE.

6. **Inspection.** The Client reserves the right at all reasonable times to inspect the documents, information, taxpayer examination system and procedures of RIVERTREE to ensure that RIVERTREE and its employees are complying with the terms of this Agreement and all applicable laws. Any such inspection or any lack of inspection by the Client, however, shall not be deemed to waive the requirements of, or excuse RIVERTREE from complying with, the terms of this Agreement and all applicable laws.

7. **Confidentiality of Tax Information.** RIVERTREE shall not print, publish or divulge the return of any taxpayer or any part of a return or any information or data supplied by the Client or secured in arriving at the amount of the tax value reported and shall act in conformance with all current and future federal, state and local laws and regulations concerning the confidentiality of tax information, including, but not limited to, the Taxpayers' Bill of Rights (collectively, the "Confidentiality Laws"). All principals, officers and employees of RIVERTREE involved with the services provided by RIVERTREE under this Agreement, prior to undertaking such services, shall execute an agreement in form and context acceptable to the Client binding such principals, officers and employees to observe the Confidentiality Laws.

8. **Independent Contractor.** The parties agree that RIVERTREE is and shall at all times be considered an independent contractor, and neither it nor its employees shall be considered employees of the Client or entitled to any rights or benefits accorded to employees of the Client. RIVERTREE and the Client affirm that this Agreement does not create a partnership or joint venture, and that no expressed, implied or apparent rights are intended to inure to any third parties under the terms and conditions herein.

9. **Term.** This Agreement shall be effective as of the date set forth in the preamble hereto and will continue for a period of 3 year(s) from that date unless terminated as herein provided. Pursuant of the Code of Alabama (1975) §40-2A-12, this Agreement shall not be renewed or extended beyond such three (3) year term; provided, however, that the parties may negotiate a new contract concerning the subject matter of this Agreement to become effective following expiration of this Agreement.

10. **Default.** If RIVERTREE shall fail in any respect to comply with the terms of this Agreement, the Client shall notify RIVERTREE in writing of the matters with regard to which default is asserted, and RIVERTREE shall have thirty (30) days to cure such default. If RIVERTREE fails to either cure such default within said time, then the Client may terminate this Agreement at any time thereafter by giving written notice to RIVERTREE of its election to terminate.

11. **Termination.** Either party may terminate this Agreement, with or without cause or hearing, by giving the other party written notice of termination at least thirty (30) days prior to the effective date of termination. Notwithstanding the foregoing, this Agreement shall be terminated automatically, without notice, if RIVERTREE, for any reason loses or foregoes its license required under Code of Alabama (1975) §40-2A-13 or §40-2A-14. RIVERTREE shall provide the Client all documentation, records, reports, and examinations as of the effective date of the termination with a final itemized statement of fees due.

12. **Assignment; Subcontracting of Services.** Client acknowledges and agrees that RIVERTREE may retain auditors or examiners on an independent contractor basis to provide the services described in this Agreement, and Client consents to RIVERTREE's retention of such auditors or examiners. Provided, however, that any such auditor or examiner must meet

all criteria applicable to auditors and examiners under law or under this Agreement and provided further that all terms and conditions of this Agreement, including, but not limited to, indemnities, applicable to services provided by RIVERTREE, shall apply to any work performed by such auditors and examiners. RIVERTREE shall maintain and, upon Client's request, shall provide to Client a list of all auditors and examiners authorized to provide services on behalf of RIVERTREE. Except as provided in this Paragraph 12, RIVERTREE shall not assign any of its rights or obligations under this Agreement or enter into an agreement with any person, entity or subcontractor to perform the obligations of RIVERTREE under this Agreement. Any such assignment or other agreement by RIVERTREE shall be null and void.

13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the undersigned parties, by and through their duly authorized officers or representatives, have executed this Agreement on the year and day first above written.

THE BALDWIN COUNTY COMMISSION

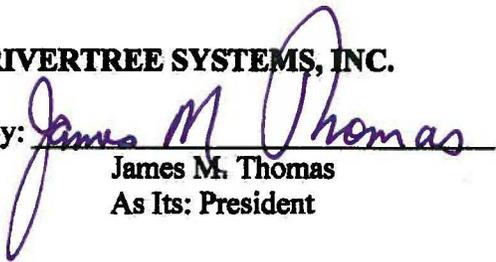
By:   
J. Tucker Dorsey  
As Its: Chairman



ATTEST:

  
David A.Z. Brewer  
As Its: County Administrator

RIVERTREE SYSTEMS, INC.

By:   
James M. Thomas  
As Its: President

9/20/13  
Date

STATE OF ALABAMA )

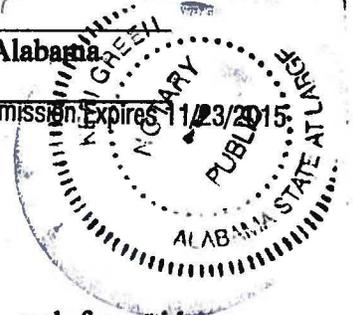
COUNTY OF BALDWIN )

I, Kei Sheen, Notary Public, in and for said County in said State, hereby certify that J. TUCKER DORSEY, whose name as Chairman, and DAVID A.Z. BREWER, whose name as County Administrator, of the BALDWIN COUNTY COMMISSION, a county commission and political subdivision of the State of Alabama, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said county commission.

Given under my hand and seal this 26<sup>th</sup> day of September, 2013.

Kei Sheen  
Notary Public, Baldwin County, Alabama

My Commission Expires: 11/23/2015



STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, Timothy S Clark, Notary Public, in and for said County in said State, hereby certify that JAMES M. THOMAS, whose name as President of Rivertree Systems, Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this date, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date as an act of Rivertree Systems, Inc.

Given under my hand and seal this 20<sup>th</sup> day of September, 2013

Timothy S Clark  
Notary Public, Baldwin County, Alabama

My Commission Expires: 3/31/15

