



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

October 22, 2013

Ms. Clara Myers
Finance Director
City of Orange Beach
Post Office Box 458
Orange Beach, Alabama 36561

**RE: Contract Between City of Orange Beach, Alabama and Baldwin County
Commission to Provide Auditing Services**

Dear Ms. Myers:

Enclosed is a **fully executed original Contract** approved during the October 1, 2013, Baldwin County Commission meeting, between the Baldwin County Commission and the City of Orange Beach, to provide auditing services at a rate of five percent (5%) of total tax owed (inclusive of penalty and interest) or \$300.00 to cover costs, whichever is greater. This *Contract* shall be effective and commence immediately upon the same date as its full execution, and the same shall terminate upon both the expiration of thirty-six (36) months and/or upon a written notification thereof received by either party.

If you have any questions or need further assistance, please do not hesitate to contact Kim Creech, Clerk/Treasurer, at (251) 937-0303.

Sincerely,

ANU GARY, Records Manager
Baldwin County Commission

AG/enc Item BF4

cc: Kim Creech
Heather Gwynn
Debbie West

ENCLOSURE



Contract for Services

This "**Contract for Services**" is made and entered into by and between the City of Orange Beach, Alabama and Baldwin County (hereinafter called "COUNTY"), acting by and through its governing body, the Baldwin County Commission.

WITNESSETH:

Whereas, the City of Orange Beach is in need of a professional agent capable of performing certain professional auditing and/or review services; and

Whereas, Baldwin County guarantees that it has met, as of the date of execution, any and all requirements under Alabama law specifically as set forth in, but not limited to, The Taxpayers' Bill of Rights in Title §40-2A-1 et seq., Code of Alabama 1975,

Whereas, the City of Orange Beach and Baldwin County desire to enter into a Professional Service Agreement under which Baldwin County's "Sales & Use Tax Department" shall provide such services for the City of Orange Beach as are allowed and set forth herein and in accordance with the Code of Alabama and more specifically as set forth within The Taxpayers' Bill of Rights in §40-2A-1, et. seq., Code of Alabama 1975.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained the sufficiency of which being hereby acknowledged, the City of Orange Beach and Baldwin County do hereby agree as follows:

- I. **Obligations Generally:** The City of Orange Beach hereby contracts with, and Baldwin County agrees to perform for the City of Orange Beach, those professional services as hereinafter set forth. This document shall serve as the binding contract for the services of Baldwin County. Baldwin County shall immediately commence performance of the professional services outlined herein upon full execution of this Contract. All work will be done within a timely fashion and shall be completed within the times herein set out. Notwithstanding this provision, the County shall provide in advance written notification of audits.
- II. **Recitals Included:** The above recitals and statements are incorporated as part of this Agreement, as if fully set forth herein.
- III. **Professional Qualifications:** For the purpose of this contract, Baldwin County represents to the City of Orange Beach that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the services as may be required by the COUNTY and by the

law of the State of Alabama as set forth, but not limited to §40-2A-1 et. seq.,
Code of Alabama 1975.

- IV. Legal Compliance: Baldwin County shall at all times comply with all applicable Federal, State, local laws, and regulations applicable to sales and use tax requirements. This Contract for Professional Services in no way provides for an exclusive grant of special privileges in violation of Article I §22, Alabama Constitution of 1901.
- V. Independent Agency: Baldwin County acknowledges that it is an independent agency, and Baldwin County will at all time remain as such in performing services under this Contract. Baldwin County and the agents thereof are not employees or partners of the City of Orange Beach and have no authority to contract for or bind the City of Orange Beach in any manner outside of this agreement without specific written permission.
- VI. No Agency Created: It is neither the express nor the implied intent of the City of Orange Beach or Baldwin County to create an agency relationship pursuant to this Agreement, except for that relationship as authorized pursuant to The Taxpayers' Bill of Rights. Therefore, Baldwin County does not in any manner act on behalf of the City of Orange Beach outside of the **auditing/review function. All enforcement and collection activities shall be the sole responsibility of the City of Orange Beach following the closure of the audit findings** as allowed for under this contract and §40-2A-1 et. seq., Code of Alabama, 1975, and any expansion of that authority and relationship is prohibited and void.
- VII. Unenforceable Provisions: Unless otherwise required by law, if any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- VIII. Entire Agreement: This agreement represents the entire and integrated agreement between City of Orange Beach and Baldwin County and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only by written instrument signed by all parties.
- IX. Failure to Strictly Enforce: The failure of the City of Orange Beach to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute a default or be construed as a waiver or relinquishment of the right of the City of Orange Beach to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.
- X. Assignment: This Contract or any interest herein shall not be assigned, transferred or otherwise encumbered by Baldwin County within the prior written consent of the City of Orange Beach.

XI. Ownership of Documents/Work: Baldwin County shall be the owner of copyright or other intellectual property rights in reports, documents and deliverable produced and paid under this Contract, and to the extent permitted by Alabama law except as otherwise allowed or required by applicable laws, rules or regulations. Baldwin County shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of its duties hereunder, without the City of Orange Beach's prior written consent, which may be withheld or granted in the sole discretion of the City of Orange beach. The City of Orange Beach shall be able to obtain copies of their respective portions of the audit work papers, as authorized under our Exchange of Information Agreement.

XII. Notice: Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

Baldwin County
Baldwin County Commission
312 Courthouse Square
Suite 12
Bay Minette, AL 36507

With Carbon Copy mailed to: Baldwin County Sales & Use Tax
Department
P.O. Box 189
Robertsdale, AL 36567

City of Orange Beach
Clara Myers, Finance Director
Orange Beach City Hall
P.O. Box 458
Orange Beach, AL 36561

XIII. Services to be Rendered: Baldwin County is retained by the City of Orange Beach as a professionally-qualified Auditing Agency as defined under §40-2A-1 et. seq., Code of Alabama 1975, and the general scope of work for services rendered on behalf of the City of Orange Beach will encompass: investigation and verification of records, contracts, subcontracts, purchase invoices, lease agreement, and other pertinent data pertaining to operations which might subject an individual, partnership, corporation or other entity to sales, use, and rental/lease taxes. If any taxes which were audited are owed to the City of Orange Beach, Baldwin County shall issue assessments as provided by, but not limited to, Code of Alabama, §40-2A-7. All subsequent follow-up collection efforts shall be the responsibility of the City of Orange Beach.

Baldwin County will perform any and all work and services associated with providing to the City of Orange Beach efficient, timely and accurate auditing and/or review functions as a qualified professional auditing service.

Baldwin County will provide ongoing communications with City of Orange Beach regarding this service, including updates, emails, etc. as requested. Additionally, Baldwin County will meet with the City of Orange Beach as needed or requested.

Baldwin County is responsible for the professional quality, technical accuracy, timely completion and coordination all services furnished by Baldwin County under this Contract. Baldwin County is responsible for providing the services as outlined herein.

- XIV. Conditions of Work: It is understood that Baldwin County may employ a broad range of means, methods, and conditions of work at Baldwin County's sole description, so long as such remain consistent with established and acceptable business practices for professional revenue auditors. Baldwin County may devote such time and effort as it deems appropriate to perform the services enumerated in paragraph I. above, but shall demonstrate a high degree of consistency and regularity with respect to contacts made with persons and firms described in said paragraph for the express purpose of carrying out the terms and conditions therein described.

Baldwin County represents that its services shall be performed within the limits provided by the City of Orange Beach, in a manner consistent with the level for care and skill ordinarily exercised by Baldwin County under similar circumstances at the time the services are performed.

Baldwin County shall coordinate directly with the Finance Department of the City of Orange Beach, for the purposes of ensuring that all technical and otherwise relevant issues are satisfied, and therefore, ensuring proper delivery of services.

- XV. General Responsibilities of the City of Orange Beach: The City of Orange Beach shall provide written notice to Baldwin County whenever the City of Orange Beach is in need of specific auditing services to be performed hereunder on an emergency basis. Baldwin County reserves the right to schedule any emergency audits as their schedule permits. Baldwin County shall render services on an ongoing basis, as audits are scheduled by Baldwin County's Sales & Use Tax Department, within the City of Orange Beach's taxing jurisdiction.

- XVI. Termination of Services: The City of Orange Beach or Baldwin County may terminate this Contract, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, Baldwin County shall discontinue its work to the extent specified in the notice.

In the event of termination, the City of Orange Beach shall pay Baldwin County for all services rendered, and for any expenses deemed by the City of Orange Beach and Baldwin County to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

- XVII. Compensation Limited: The compensation to be paid to Baldwin County shall be the full compensation for all work performed by Baldwin County under this Contract. Any and all additional expenditures or expenses of Baldwin County, not listed in full with this Contract, shall not be considered as a part of this Agreement and shall not be paid.

XVIII. Direct Expenses:

- (a) As a fee for services to be rendered hereunder, the City of Orange Beach shall pay to Baldwin County at a rate of five (5%) percent of total tax owed (inclusive of penalty and interest) or \$300 to cover costs, whichever is greater.
- (b) It is understood that Baldwin County shall pay all other expenses incurred in the performance of all audits performed by Baldwin County or anyone in its employment.
- (c) All revenue generated at the closure of any audits for the City of Orange Beach shall be received by Baldwin County in the form of a check made payable to the City of Orange Beach and shall be forwarded, along with appropriate and applicable audit paperwork, to the City of Orange Beach as soon as possible. Any unpaid taxes, penalties and interest shall be the responsibility of the City of Orange Beach to collect. All audits that confirm a taxpayers owes tax(es) to the City of Orange Beach which were erroneously paid to another City, as described in §40-23-2.1, Code of Alabama 1975, shall be considered complete once the erroneous amount has been established and the taxpayer has been notified. Any erroneous payment(s) shall be the sole responsibility of the City of Orange Beach and the erroneous taxing authority to resolve.
- (d) Baldwin County shall submit invoices to the City of Orange Beach within a timely fashion following the closure of an audit and/or review.

XIX. Method of Payment: Baldwin County shall submit invoices to the City of Orange Beach for payment for work performed. Payment shall be due within thirty (30) days of receipt of such invoice. Such invoice shall be accompanied by a detailed account of compensation to be paid to Baldwin County.

The City of Orange Beach agrees to review and approve invoices submitted for payment in a timely manner.

XX. Effective Date: This Contract shall be effective and commence immediately upon the same date as its full execution, and the same shall terminate upon both the expiration of thirty-six (36) months and/or upon a written notification thereof received by either party within the required thirty (30) day period. This Contract shall automatically renew itself on a month-to-month basis, including all of the provisions herein, if notification is not timely received by either, as required herein, at the end of the current thirty-six (36) month period. Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.

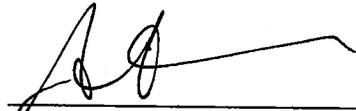
XXI. Force Majeure: The Parties hereto shall incur no liability to the other in the event or effect that can be neither anticipated nor controlled. This allowance shall include both an act of nature and acts of others. Any costs that would otherwise be incurred and/or required pursuant to the provisions herein shall be alleviated for either party by such unlikely event.

XXII. Governing Law: This agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

XXIII. Number of Originals: This Agreement shall be executed with two originals, both of which are equally valid as an original.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the City of Orange Beach as written below.

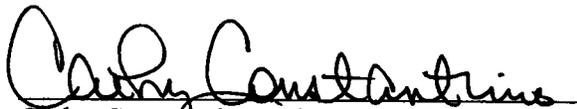
CITY OF ORANGE BEACH



Tony Kennon, Mayor

10-14-13
Date

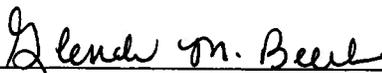
ATTEST:


Cathy Constantino, City Clerk, MMC

State of Alabama)
County of Baldwin)

I, Glenda M. Beech, Notary Public in and for said County, in said State, hereby certify that, TONY KENNON and CATHY CONSTANTINO, as Mayor and City Clerk of the City of Orange Beach, individuals whose names are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, they, executed same on the day the same bears date on or behalf of said City of Orange Beach.

Given under my hand and official seal, this 14 day of October 2013.



Notary Public
My Commission Expires: 07/03/2016

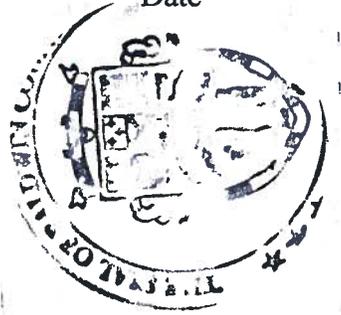


ORIGINAL SIGNED BY MAYOR

BALDWIN COUNTY COMMISSION

Tucker Dorsey
Tucker Dorsey, Chairman
Baldwin County Commission

22 OCT, 2013
Date



ATTEST:

Anu Gary
~~David A.Z. Brewer, County Administrator~~
Anu Gary, Records Manager

State of Alabama)
County of Baldwin)

I, Jeannie M. Bonifay, Notary Public in and for said County, in said State, hereby certify that, J. TUCKER DORSEY and DAVID A. Z. BREWER, as Chairman and County Administrator of the Baldwin County Commission, individuals whose names are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, they, executed same on the day the same bears date on or behalf of said County Commission.

Given under my hand and official seal, this the 22 day of October, 2013.

Jeannie M. Bonifay
Notary Public
My Commission Expires: _____

ORIGINAL SIGNED BY MAYOR