



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 6, 2012

Mr. Richard H. (Chip) Cooke, Jr.
Vice President Sales/Marketing
Tax Management Associates, Inc.
2225 Coronation Boulevard
Charlotte, North Carolina 28227

RE: Personal Property Audit Services – Tri-Party Agreement

Dear Mr. Cooke:

Enclosed is a **fully executed copy** of the *Personal Property Audit Services Tri-Party Agreement between Tax Management Associates, Incorporated and Baldwin County, Alabama and the Baldwin County Revenue Commissioner*, approved during the August 7, 2012, Baldwin County Commission meeting, related to the provision of Business Personal Property Field Audits, among other things therein contained, for the Baldwin County Revenue Commissioner.

If you have any questions or need further assistance, please do not hesitate to contact The Honorable Teddy J. Faust, Jr., Revenue Commissioner, at (251) 937-0245.

Sincerely,

MONICA E. TAYLOR, Assistant Records Manager
Baldwin County Commission

MET/ Item EA1

cc: The Honorable Teddy J. Faust, Jr.
Susan Hill
David Brewer

ENCLOSURE

**PERSONAL PROPERTY AUDIT SERVICES TRI-PARTY AGREEMENT
BETWEEN
TAX MANAGEMENT ASSOCIATES, INCORPORATED
AND
BALDWIN COUNTY, ALABAMA
AND THE
BALDWIN COUNTY REVENUE COMMISSIONER**

THIS TRI-PARTY AGREEMENT [hereinafter referred to as "Agreement"], made and entered into this 7th day of August, 2012, by and between Baldwin County, Alabama, by and through the Baldwin County Commission, the governing body of Baldwin County, Alabama, a political subdivision of the State of Alabama [hereinafter referred herein as "County"], the Baldwin County Revenue Commissioner [hereinafter referred to as "County Revenue Commissioner"] and Tax Management Associates, Incorporated [hereinafter referred herein as "Contractor"].

WITNESSETH

WHEREAS, the County is a political subdivision of the State of Alabama; and

WHEREAS, the Contractor is engaged in the business of providing audit and compliance review services regarding the listing and assessment of Business Personal Property as provided by Alabama Law; and

WHEREAS, the above primarily involves dealing with property tax laws and regulations which are administered by Local and State taxing officials including the Baldwin County Revenue Commissioner, the Honorable Teddy J. Faust, Jr.; and

WHEREAS, Contractor desires to enter into this Agreement to provide services regarding statutory requirements, governmental relations, and administrative agency consulting, as well as contacts with various elements of local governments and businesses sharing a common interest in Business Personal Property listing and assessment compliance and equitable taxation; NOW THEREFORE

FOR AND IN CONSIDERATION of the mutual promises and covenants herein contained, the parties hereto agree as follows:

RECEIVED
SEP 06 2012
BY: Mjt

I. SERVICES

The CONTRACTOR agrees to the following:

Perform Business Personal Property Field Audits to verify the accuracy of personal property listings that are assigned by the County Revenue Commissioner and in accordance with the rules, regulations, and directions of the Alabama Department of Revenue. Field Audits includes the audit of any account assigned by the County Revenue Commissioner requiring a comprehensive review of the taxpayer's accounting records to verify the accuracy in personal property listings. Field Audits will be performed on all accounts for the current year and applicable prior years as directed by the County Revenue Commissioner. The current year shall be deemed to be the year that an individual account is assigned for audit. Specific tasks shall include the following.

- (1) Conduct the scheduling of field audits with taxpayers who are assigned by the County Revenue Commissioner for audit including the preparation of correspondence relative to scheduling and the preparation of other correspondence advising taxpayer of audit findings.
- (2) Conduct audits through the implementation of generally acceptable audit and review procedures regarding a review of a taxpayer's accounting records that are applicable in verifying the accuracy of information contained in a taxpayer's listing of personal property and in accordance with the rules, regulations and policies of the Alabama Department of Revenue.
- (3) Defend audit findings before the taxpayer and County and/or County Revenue Commissioner and throughout any appeals process except that the Contractor shall not be responsible for defending legal or appraisal issues.
- (4) Prepare reports in such form and detail as may be required by the County and/or County Revenue Commissioner in connection with audit activity including but not limited to:
 - (a) Reports on each completed audit describing property owned by the audited taxpayer, description of any property discovered to be escaping taxation and the computation of property valuations computed according to the County's and/or County Revenue Commissioner's standard appraisal methodology. Such information will be described separately for each taxing jurisdiction within Baldwin County, Alabama.
 - (b) Reports describing property in the possession of the audited taxpayer owned by others including leased, loaned, and rented personal property.
 - (c) Reports reflecting the status and audit progress of each taxpayer account assigned to Contractor for audit that shall be provided the County and/or County Revenue Commissioner in conjunction with monthly invoices submitted by the Contractor for payment of services as provided herein.
- (5) Provide training to designated employees of the County and/or County Revenue Commissioner as to all aspects of the services provided by the Contractor. Any designee of the County and/or County Revenue Commissioner may accompany Contractor on any audit, provided however that the County and/or County Revenue Commissioner shall be responsible for the travel-related expenses of such designee.

- (6) Contractor shall comply with provisions of the Alabama statutes in connection with the confidentiality of records including all official records and the records of the taxpayer. Contractor shall hold the County and its agents, County Revenue Commissioner and County Commissioners harmless from any liability including the cost of litigation resulting from an action brought against the Contractor, its employees or agents regarding a breach of confidentiality of taxpayer records or other information acquired from the taxpayer or taxpayer's agent. Furthermore, the Contractor shall defend, indemnify, and hold harmless the County and its agents, County Revenue Commissioner and County Commissioners from and against all claims, damages, losses including death, and expenses, including but not limited to attorneys' fees, arising out of, related to, or resulting from any and all acts or omissions of the Contractor, its employees, servants, or its agents relating to, as a result of, contemplated by, or allowed for herein.

The COUNTY AND COUNTY REVENUE COMMISSIONER agree to the following:

Provide Contractor copies of Personal Property Listings and other relative schedules and documents applicable for the years for which audits are to be performed. Information regarding audits to be performed during the first twelve (12) month period following the execution of this Agreement shall be provided within sixty (60) days following execution. Thereafter, such information shall be provided no later than November 1 each year of the contract period. In addition the County Revenue Commissioner shall provide Contractor sufficient letterhead, envelopes, and postage to be used by the Contractor for correspondence in connection with implementing the services as herein provided.

II. COST AND PAYMENT FOR SERVICES

In consideration of the services described above, the County and County Revenue Commissioner agree to pay fees to the Contractor according to the following:

- (1) Contractor's fees for services provided the County and/or County Revenue Commissioner, in accordance with the provisions of this Agreement, are based on a per-audit fee depending on the size of an individual account assigned for audit. Sizes of accounts shall be determined on the basis of total Personal Property Appraised Value on each account as reflected by the records of the County Revenue Commissioner at the time the account is assigned for audit. Fees shall be determined as follows:

FEE SCHEDULE		
<u>Account Size</u>	<u>Personal Property Value Range</u>	<u>Audit Fee</u>
S	\$0 - \$49,999	\$400.00
A	\$50,000 - \$399,999	\$700.00
B	\$400,000 - \$999,999	\$1,400.00
C	\$1,000,000 - \$4,999,999	\$2,200.00
D	\$5,000,000 - \$19,999,999	\$6,000.00
D3	\$20,000,000 & Greater	\$10,000.00

III. CONTRACTUAL AGREEMENTS BETWEEN CONTRACTOR AND COUNTY AND COUNTY REVENUE COMMISSIONER

1. Unless otherwise provided for in this Agreement, the above fees include all cost associated with the Contractor's performance of services including, but not limited to, travel, food, lodging, mileage, salaries, employee benefits, and defending the audit findings throughout any appeals process.
2. The County Revenue Commissioner will be responsible for the cost of postage for handling audit correspondence and the cost of providing Contractor with copies of County records associated with an account assigned for audit. The County and/or County Revenue Commissioner will also be responsible for all legal costs involving appeals resulting from audits.
3. Contractor shall invoice the County Revenue Commissioner for applicable per-audit fees upon completion of individual audits and acceptance by the County Revenue Commissioner. No invoice will include audit fees on any account assigned for audit until the audit is completed and accepted by the County Revenue Commissioner.
4. Contractor will provide the County Revenue Commissioner documentation of services rendered and documentation of billing fees. In the event it is determined that audit fees billed by the Contractor and paid by the County on inaccurate or incomplete audits, the Contractor will complete the applicable audits accurately without additional compensation or otherwise refund the County the fees received for such audits.
5. Contractor shall not perform services for which total program billings exceed \$ 49,900.00 per annum unless otherwise agreed to in writing by the parties, executed and attached hereto and titled as an "addendum" to this Agreement.

IV. GENERAL PROVISIONS

The COUNTY, COUNTY REVENUE COMMISSIONER and CONTRACTOR further agree as follows:

1. TERM OF AGREEMENT

This Agreement is effective beginning upon execution by the parties hereto. The initial term of this Agreement commences on August 7, 2012, and expires on September 30, 2012. Thereafter, this Agreement shall automatically renew annually on October 1st of each year, contingent upon the County's funding for continued Business Personal Property Audit services. However, notwithstanding the aforesaid, in no case shall this Agreement renew for a period exceeding two (2) consecutive annual periods or beyond October 1, 2014.

2. TERMINATIONS OR ABANDONMENT

If through any cause, Contractor or County fails to fulfill its obligations as provided by this Agreement, or materially violates any of the covenants or stipulations within this Agreement, and such failure continues for thirty (30) days after written notice thereof by a party, either the County or Contractor may thereupon have the right to terminate this Agreement immediately

upon giving written notice to the other party. Said notice shall be delivered to the party personally or mailed by certified mail to the mailing address as specified herein. Furthermore, the County may at any time and for any reason terminate this Agreement upon thirty (30) days notice without cause. In the event of termination, the Contractor shall be entitled to receive its fees for completed audits and equitable and just compensation for all work performed on non-completed audits. All completed and incomplete work including files, documents, work papers, etc. acquired by and in possession of the Contractor at the time of termination shall be delivered to the County Revenue Commissioner within thirty (30) days following date of termination.

3. PROFESSIONAL SERVICES CONTRACT

This Agreement is for professional services. The Contractor is an independent contractor and neither party shall be an agent or employee of the other. Neither party assumes any liability to the other or to any third party for any damages to property including damages to equipment, or personal injury or death, which might arise out of or be in any way connected with any act or omission of the other party.

4. SUBLETTING, ASSIGNMENT, OR TRANSFER

Except as otherwise provided for in this section, subletting, assignment or transfer of all or part of the interest of either party to this Agreement is prohibited unless by written consent of the other party. The County acknowledges and agrees that payment due Contractor (Tax Management Associates, Inc.) under this Agreement and all other agreements with the County, have been collaterally assigned to Branch Banking and Trust Company (a North Carolina banking corporation, whose address is 6869 Fairview Road, Charlotte, North Carolina 28210-3384). All payments due Contractor under this Agreement will be sent **UPON REQUEST** to the bank at that address pursuant to a financing and cash management arrangement. The bank is authorized to receive information relating to this Agreement and payments due under the Agreement from County. The bank is authorized to rely upon the terms of the Agreement.

5. CONFLICT OF INTEREST

The Contractor covenants that it has no public or private interest and will not acquire, directly or indirectly, any interest that would conflict in any manner with the performance of its services. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the County and/or County Revenue Commissioner as wages, compensation, or gifts in exchange for acting as office, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement.

6. COVENANTS AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person other than bona fide employees working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. The Contractor further warrants that no company, person or

employee working for or in any way associated with the performance of services to be performed by the Contractor as provided by this Agreement will be paid or receive any type of compensation contingent upon tax revenue generated by the County and/or other taxing jurisdictions as a result of services rendered. For breach or violation of this warranty, the County will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

7. ACCESS TO RECORDS

The Contractor will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fee paid under this Agreement and make such materials available at Contractor's offices at all reasonable times during the period of the Agreement and for three (3) years from the date of payment hereunder for inspection by the County or by any other governmental entity or agency participating in the funding of this Agreement, or any authorized agents thereof. Copies of said records to be furnished if requested except that environmental compliance working papers may be maintained in appropriate offices in filing cabinets owned by the County. Both the County and Contractor shall have access to such records maintained in offices.

8. GENERAL COMPLIANCE WITH LAWS - SEVERABILITY

The Contractor is assumed to be familiar with and agrees that at all times it will observe and comply with all Federal, State, and Local laws, ordinances, and regulations in any manner affecting the conduct of work. This Agreement will be interpreted in accordance with the laws of the State of Alabama. Should any provision, portion or application thereof of this Agreement be determined by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any applicable law or constitutional provision, the Parties shall negotiate an equitable adjustment in the effected provisions of this Agreement with a view towards effecting the purpose of this Agreement, and the validity and enforceability of the remaining provision, portions or applications thereof, shall not be impaired.

9. HEADINGS

The subject headings of the paragraphs are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both parties, and no purpose of interpretation shall be made to the contrary.

10. ENTIRE AGREEMENT

This Agreement contains the entire Agreement of the parties, and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral Agreements or understanding between the parties.

11. AMENDMENT

This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.

12. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every other provision of this Agreement including any provision of the Agreement that was not enforced.

13. NOTICES

Any notices to be given or submitted by either party to the other pursuant to this Agreement shall be made in writing and sent by first class mail, postage paid or by hand delivery to:

COUNTY:

Baldwin County, Alabama
312 Courthouse Square, Suite 12
Bay Minette, AL 36507
ATTN: Chairman of the
County Commission

CONTRACTOR:

Tax Management Associates, Inc.
2225 Coronation Boulevard
Charlotte, NC 28227
ATTN: Richard H. (Chip) Cooke, Jr.
Vice President Sales/Marketing

COUNTY REVENUE COMMISSIONER:

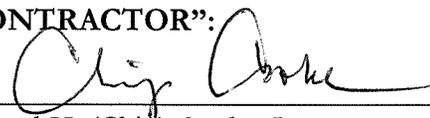
Baldwin County Revenue Commission
P.O. Box 639
Bay Minette, AL 36507
ATTN: Teddy Faust, Jr.
Revenue Commissioner

IN WITNESS WHEREOF, the parties have executed this Agreement for the purposes stated herein, on the day and date first above written.

BALDWIN COUNTY COMMISSION
"COUNTY":

TAX MANAGEMENT ASSOCIATES,
INC.

"CONTRACTOR":



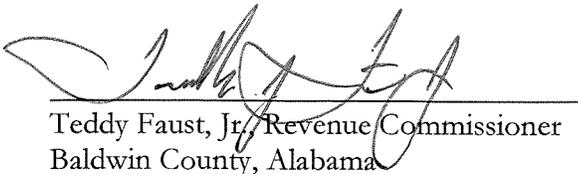
Robert E. James
Chairman of the Baldwin County Commission

Richard H. (Chip) Cooke, Jr.
Vice President Sales/Marketing

(County Seal)

(Corporate Seal)

BALDWIN COUNTY REVENUE COMMISSIONER
"COUNTY REVENUE COMMISSIONER"



Teddy Faust, Jr., Revenue Commissioner
Baldwin County, Alabama

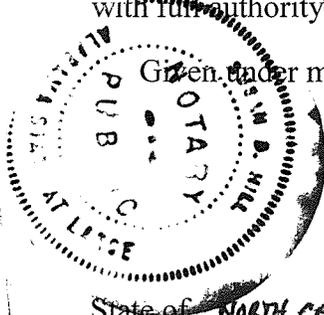


NOTARY PAGE TO FOLLOW

State of Alabama)
County of Baldwin)

I, Susan B. Hill, Notary Public in and for said County, in said State, hereby certify that Robert E. James, as Chairman of the Baldwin County Commission, and David A. Z. Brewer, as County Administrator of the Baldwin County Commission, whose names are known to me, acknowledged before me on this day that, being informed of the contents of the Tri-Party Agreement, they, as such and with full authority, executed same with full authority to do so.

Given under my hand and official seal, this the 5th day of September, 2012.



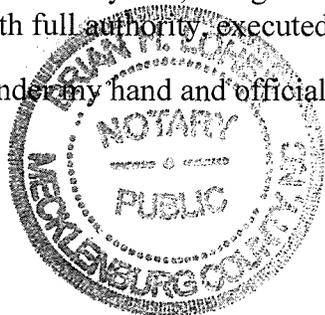
Susan B. Hill
Notary Public

My Commission Expires: **NOTARY PUBLIC ALABAMA STATE AT LARGE**
MY COMMISSION EXPIRES: 06/27/2015
BONDED THRU WESTERN SURETY COMPANY

State of NORTH CAROLINA)
County of MECKLENBURG)

I, BRIAN H. LOHER, Notary Public in and for said County, in said State, hereby certify that Richard H. (Chip) Cooke, Jr., Vice President Sales/Marketing of Tax Management Associates, Inc., of an individual whose name is known to me, acknowledged before me on this day that, being informed of the contents of the Tri-Party Agreement, he, as such and with full authority, executed same with full authority to do so.

Given under my hand and official seal, this the 23RD day of AUGUST, 2012.



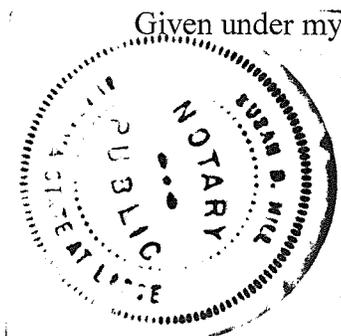
B. H. Loher
Notary Public

My Commission Expires November 11, 2015
My Commission Expires: _____

State of Alabama)
County of Baldwin)

I, Susan B. Hill, Notary Public in and for said County, in said State, hereby certify that Teddy J. Faust, Jr., as Baldwin County Revenue Commissioner, whose name is known to me, acknowledged before me on this day that, being informed of the contents of the Tri-Party Agreement, he, as such and with full authority, executed same with full authority to do so.

Given under my hand and official seal, this the 5th day of September, 2012.



Susan B. Hill
Notary Public

My Commission Expires: **NOTARY PUBLIC ALABAMA STATE AT LARGE**
MY COMMISSION EXPIRES: 06/27/2015
BONDED THRU WESTERN SURETY COMPANY