



## 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

December 18, 2012

Ms. Kim Briley  
Finance Director  
City of Daphne  
Post Office Box 400  
Daphne, Alabama 36526

**RE: Contract between the City of Daphne, Alabama and the Baldwin County Commission to Provide Audit Services**

Dear Ms. Briley:

Enclosed is a **fully executed copy** of the *Contract for Services*, approved during the December 4, 2012, Baldwin County Commission meeting, authorizing the Baldwin County Commission (Sales, Use & License Tax Department) to enter into a contract with the City of Daphne, Alabama, to provide auditing services at a rate of five (5%) percent 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/met Item EE1

cc: Kim Creech  
Al Ban

ENCLOSURE



## Contract for Services

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

### WITNESSETH:

**Whereas**, the City of Daphne 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; and

**Whereas**, the City of Daphne and Baldwin County desire to enter into a Professional Service Contract under which Baldwin County’s “Sales & Use Tax Department” shall provide such services for the City of Daphne 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.

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

- I. **Obligations Generally**: The City of Daphne hereby contracts with, and Baldwin County agrees to perform for the City of Daphne, 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 Contract, as if fully set forth herein.

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- III. Professional Qualifications: For the purpose of this contract, Baldwin County represents to the City of Daphne 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 in, 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 Daphne and have no authority to contract for or bind the City of Daphne in any manner outside of this contract without specific written permission.
- VI. No Agency Created: It is neither the express nor the implied intent of the City of Daphne or Baldwin County to create an agency relationship pursuant to this Contract, 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 Daphne outside of the **auditing/review function. All enforcement and collection activities shall be the sole responsibility of the City of Daphne 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 Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- VIII. Entire Contract: This contract represents the entire and integrated contract between City of Daphne and Baldwin County and supersedes all prior negotiations, representations, or contracts, either written or oral. This contract may be amended only by written instrument signed by all parties.

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- IX. Failure to Strictly Enforce: The failure of the City of Daphne to insist upon the strict performance of any of the terms, covenants, contracts 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 Daphne to thereafter enforce any such term, covenant, contract, 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 without the prior written consent of the City of Daphne.
- 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 to the extent permitted by Alabama law. Subject to applicable state or federal law, 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 Daphne's prior written consent, which may be withheld or granted in the sole discretion of the City of Daphne. The City of Daphne shall be able to obtain copies of their respective portions of the audit work papers, as authorized under our Exchange of Information Contract.
- 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 Daphne

Kim Briley, Finance Director  
Daphne City Hall  
P.O. Box 400  
Daphne, AL 36526

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- XIII. Services to be Rendered: Baldwin County is retained by the City of Daphne 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 Daphne will encompass: investigation and verification of records, contracts, subcontracts, purchase invoices, lease contract, 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 Daphne, Baldwin County shall issue assessments as provided by, but not limited to, Code of Alabama, §40-2A-7 or as otherwise required by state law. All subsequent follow-up collection efforts shall be the responsibility of the City of Daphne.

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

Baldwin County will provide ongoing communications with City of Daphne regarding this service, including updates, emails, etc. as requested. Additionally, Baldwin County will meet with the City of Daphne 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 pursuant to this contract, but shall demonstrate a high degree of consistency and regularity with respect to contacts made with persons and firms 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 Daphne, 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 Revenue Department of the City of Daphne 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 Daphne: The City of Daphne shall provide written notice to Baldwin County whenever the City of Daphne 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 Daphne's taxing jurisdiction.**

XVI. Termination of Services: The City of Daphne 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 Daphne shall pay Baldwin County for all services rendered, and for any expenses deemed by the City of Daphne 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 Contract and shall not be paid.

XVIII. Direct Expenses:

- (a) As a fee for services to be rendered hereunder, the City of Daphne shall pay to Baldwin County a fee at the rate of five (5%) percent of total tax owed (inclusive of penalty and interest) or \$300 to cover costs for each audit or account, 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 Daphne shall be received by Baldwin County in the form of a check made payable to the City of Daphne and shall be forwarded, along with appropriate and applicable audit paperwork, to the City of Daphne as soon as possible. Any unpaid taxes, penalties and interest shall be the responsibility of the City of Daphne to collect. All audits that confirm a taxpayers owes tax(es) to the City of Daphne which were erroneously paid to another City, as described in §40-23-2.1, Code of Alabama, 1975, shall be considered

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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 Daphne and the erroneous taxing authority to resolve.

- (d) Baldwin County shall submit invoices to the City of Daphne 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 Daphne 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 Daphne 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 of termination 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 due to an 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.

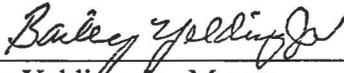
XXII. Governing Law: This contract shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

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

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**IN WITNESS WHEREOF**, the parties hereto have executed this Contract on the last day of execution by the Baldwin County as written below.

**CITY OF DAPHNE**

  
\_\_\_\_\_  
Bailey Yelding, Jr., Mayor  
DATE: 12-12-2012

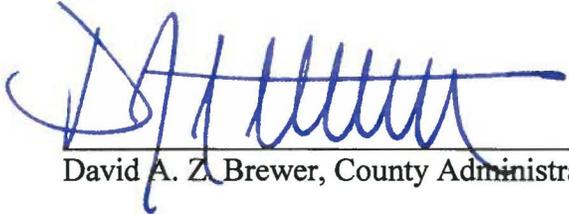
ATTEST:

  
\_\_\_\_\_  
Rebecca A. Hayes, Interim City Clerk

**BALDWIN COUNTY COMMISSION**

  
\_\_\_\_\_  
Tucker Dorsey, Chairman  
Baldwin County Commission  
DATE: Dec. 18 2012

ATTEST:

  
\_\_\_\_\_  
David A. Z. Brewer, County Administrator



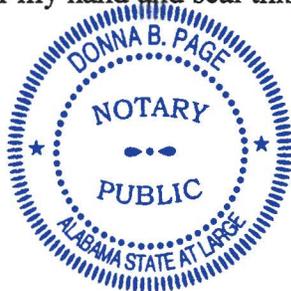
**NOTARY PAGE TO FOLLOW**

STATE OF ALABAMA )

COUNTY OF BALDWIN )

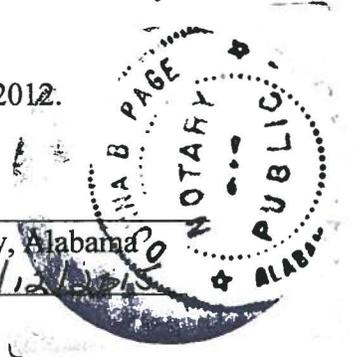
I, Donna Page, a Notary Public, in and for said County in said State, hereby certify that BAILEY YELDING, JR., whose name as Mayor, and REBECCA A. HAYES, whose name as Interim City Clerk of the CITY OF DAPHNE, ALABAMA, an Alabama municipal corporation, are signed to the foregoing instrument and who are 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 Alabama municipal corporation.

Given under my hand and seal this 12 day of December, 2012.



Donna Page

Notary Public, Baldwin County, Alabama  
My Commission Expires: 9/12/2015



STATE OF ALABAMA

COUNTY OF BALDWIN

I, Monica E. Taylor, a Notary Public, in and for said County in said State, hereby certify that 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 13<sup>th</sup> day of December, 2012.



Monica E. Taylor

Notary Public, Baldwin County, Alabama

My Commission Expires: My Commission Expires 09/05/2016