



**COUNTY COMMISSION
BALDWIN COUNTY**

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Anu Gary
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November 22, 2019

Mr. Richard H. (Chip) Cooke, Jr.
Chief Executive Officer
Tax Management Associates, Inc.
5121 Parkway Plaza Blvd.
Charlotte, North Carolina 28217

RE: Personal Property Audit Services Agreement

Dear Mr. Cooke:

Please find enclosed a **fully executed copy** of the *Personal Property Audit Services Agreement between Tax Management Associates, Incorporated and Baldwin County, Alabama* approved during the November 5, 2019, Baldwin County Commission meeting, related to the provision of 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.

This *Agreement* is effective beginning upon execution by the parties. The initial term of the *Agreement* begins upon execution for a period of thirty-six (36) months. Thereafter, the *Agreement* shall continue in effect on a month-to-month basis until terminated by either party.

The Contractor shall not perform services for which total program billings exceed \$49,999.00 per annum unless otherwise agreed to in writing by the parties, executed and attached hereto and titled as an "addendum" to this *Agreement*.

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

Sincerely,

MONICA ENGLISH
Assistant Administrative Services Manager
Baldwin County Commission

ME/vk Item BJ1

cc: Teddy J. Faust
Susan Hill

ENCLOSURE(S)

**PERSONAL PROPERTY AUDIT SERVICES AGREEMENT
BETWEEN
TAX MANAGEMENT ASSOCIATES, INCORPORATED
AND
BALDWIN COUNTY COMMISSION, BALDWIN COUNTY, ALABAMA**

This Agreement, made and entered into this 19th day of November, 2019 by and between the Baldwin County Commission, Baldwin County, Alabama, hereinafter referred to as "County", and Tax Management Associates, Incorporated, hereinafter referred to as "TMA".

SPECIAL PROVISIONS

WITNESSETH

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

WHEREAS, TMA is engaged in the business of providing audit and compliance review services regarding the listing and assessment of business personal property taxes 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 County Tax Assessor; and

WHEREAS, TMA 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:

I. SERVICES

TMA agrees to the following:

Perform business personal property field audits to verify the accuracy of personal property listings that are assigned by the County Tax Assessor and in accordance with the rules, regulations, and directions of the Alabama Department of Revenue. Field audits include the audit of any account assigned by the County 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 Tax Assessor. 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 Tax Assessor for audit including the preparation of electronic correspondence relative to scheduling and the preparation of other electronic 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 throughout any appeals process except that TMA 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 Tax Assessor 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 standard appraisal methodology. Such information will be described separately for each taxing jurisdiction within the County.
 - (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 TMA for audit that shall be provided the County Tax Assessor in conjunction with monthly invoices submitted by TMA for payment of services as provided herein.

- (5) Provide training to designated employees of the County as to all aspects of the services provided by TMA. Any designee of the County may accompany TMA on any audit, provided however that the County shall be responsible for the travel-related expenses of such designee.
- (6) TMA 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. TMA shall defend, indemnify, and hold the County harmless from any liability including the cost of litigation resulting from an action brought against TMA, its employees or agents regarding a breach of confidentiality of taxpayer records or other information acquired from the taxpayer or taxpayer's agent or any matter arising out of or relating to any and all acts or omissions of TMA or any of TMA's obligations under this Agreement.

The COUNTY agrees to the following:

- (1) Provide TMA 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 ninety (90) days following execution.

II. COST AND PAYMENT FOR SERVICES

In consideration of the services described above, the County agrees to pay fees to TMA according to the following:

- (1) TMA's fees for services provided to the County, 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 the total personal property appraised value on each account as reflected by the records of the Tax Assessor 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>
A	\$0 - \$399,999	\$750.00
B	\$400,000 - \$999,999	\$1,500.00
C	\$1,000,000 - \$4,999,999	\$2,400.00
D	\$5,000,000 - \$19,999,999	\$6,200.00
D3	\$20,000,000 & Greater	\$10,000.00

Should the County require any consulting work outside the scope of conducting business personal property audits, the fee would be: One hundred and fifty dollars (\$150.00) per hour.

III. CONTRACTUAL AGREEMENTS BETWEEN TMA & THE COUNTY

- (1) Unless otherwise provided for in this Agreement, the above fees include all costs associated with TMA'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 will be responsible for the cost of postage for handling audit correspondence and the cost of providing TMA with copies of County records associated with an account assigned for audit. The County will also be responsible for all legal costs involving appeals resulting from audits.
- (3) TMA shall invoice the County for applicable per-audit fees upon completion of individual audits and acceptance by the Tax Assessor. No invoice will include audit fees on any account assigned for audit until the audit is completed and accepted by the County Tax Assessor.
- (4) TMA will provide the County documentation of services rendered and documentation of billing fees on a regular basis and upon request from the County. In the event it is determined that audit fees are billed by TMA and paid by the County on inaccurate or incomplete audits, TMA will complete the applicable audits accurately without additional compensation or otherwise refund the County the fees received for such audits.
- (5) TMA shall not perform services for which total program billings exceed \$49,999.00 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 and TMA further agree as follows:

(1) TERM OF AGREEMENT

This Agreement is effective as of the date the last party executes below and shall continue for a period of thirty-six (36) months. Thereafter, this Agreement shall continue in effect on the same terms, conditions and rates set forth herein but on a month-to-month basis until terminated by either party in writing.

(2) TERMINATIONS OR ABANDONMENT

If through any cause, TMA or the 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 party may thereupon have the right to terminate this Agreement effective immediately upon giving written notice of such election to the other party. Any such notice shall be delivered to the party personally or mailed by certified mail, return receipt requested, to the mailing address as specified herein. The County may terminate

this Agreement upon thirty days' notice without cause. In the event of termination, TMA 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 TMA at the time of termination shall be delivered to the County Tax Assessor within thirty (30) days following the date of termination.

(3) PROFESSIONAL SERVICES CONTRACT

This Agreement is for professional services. TMA is an independent contractor and neither party shall be considered an agent or employee of the other. Neither party assumes any liability for or 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) CONFLICT OF INTEREST

TMA 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. TMA 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 as wages, compensation, or gifts in exchange for acting as office, agent, employee, subcontractor, or consultant to TMA in connection with any work contemplated or performed relative to this Agreement.

(5) COVENANTS AGAINST CONTINGENT FEES

TMA warrants that it has not employed or retained any company or person other than bona fide employees working solely for TMA, 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 TMA, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. TMA further warrants that no company, person or employee working for or in any way associated with the performance of services to be performed by TMA 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.

(6) ACCESS TO RECORDS

TMA will maintain all books, documents, papers, accounting records, and other evidence pertaining to the fees paid under this Agreement and make such materials available at TMA's offices at all reasonable times during the term of this Agreement and for three (3) years from the date of each 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 are 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 TMA shall have access to such records maintained in offices.

(7) GENERAL COMPLIANCE WITH LAWS - SEVERABILITY

TMA 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 its work hereunder. This Agreement will be interpreted in accordance with the laws of the State of Alabama, with proper venue for any action arising under or related to this Agreement lying in Baldwin County. 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 affected provisions of this Agreement with a view towards affecting the purpose of this Agreement, and the validity and enforceability of the remaining provision, portions or applications thereof, shall not be impaired.

(8) 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.

(9) 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.

(10) AMENDMENT

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

(11) 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.

(12) 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 certified class mail, return receipt requested and postage paid or by hand delivery to:

COUNTY:

Baldwin County Commission

PO Box 1389

Bay Minette, AL 36507

ATTN: Billie Jo Underwood
Chairman

CONTRACTOR:

Tax Management Associates, Inc.

5121 Parkway Plaza Blvd.

Charlotte, NC 28217

ATTN: Richard H. (Chip) Cooke, Jr.
Chief Executive Officer

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

COUNTY:

Billie Jo Underwood

Billie Jo Underwood
Chairman
Baldwin County Commission
Baldwin County, Alabama

Date: 11/19/19

(County Seal)

CONTRACTOR:

Richard H. (Chip) Cooke, Jr.

Richard H. (Chip) Cooke, Jr.
Chief Executive Officer
Tax Management Associates, Inc.

Date: 11/19/19

(Corporate Seal)

ATTEST:

Wayne Dyess

Wayne Dyess
County Administrator
Baldwin County Commission
Baldwin County, Alabama

Date: 11/19/19

