

**PROFESSIONAL SERVICES CONTRACT FOR ONLINE  
AUCTION PORTAL**

**between**

**Baldwin County Alabama**

**And**

**GovEase Auction LLC**

THIS AGREEMENT FOR ONLINE AUCTION PORTAL (“Agreement”) is executed and entered into by and between the Baldwin County (“the Customer”) and GovEase, LLC (“GovEase”) this the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”). In consideration of the promises, rights and obligations set forth below, and intending to be legally bound thereby, the parties hereby agree as follows:

## **I. Initial Term and Renewal**

The term of this Agreement shall commence on the Effective Date and shall remain in force for six (6) months, unless terminated earlier pursuant to the terms of this Agreement. Customer may renew the term of this Agreement by providing written notice of such intention to GovEase. To the extent the Agreement’s term extends past the current term of the elected official(s) designated by the Customer to administrate and sign this Agreement on behalf of the Customer, the Agreement shall be subject to cancellation by any subsequently elected official that first assumes office after the Effective Date. Should such a subsequently elected official desire to exercise this option to cancel, they must provide written notice to GovEase of said intention to cancel within thirty (30) days of assuming office.

## **II. Scope of Services**

1. In exchange for payment by the Customer as set forth in Section III of this Agreement, GovEase will provide the services outlined in **Exhibit “A”** of this Agreement.
2. The services to be performed pursuant to this Agreement shall be performed in accordance with the applicable laws and regulations of the State of Alabama, with proper venue for any action arising hereunder lying in Baldwin County, Alabama.

## **III. Fees and Billing**

1. The fee schedule for all tax sales held during the term of this Agreement shall be set forth as provided in this section, to begin with the April 29, 2020 Baldwin County Tax Sale. As used in this Agreement, the term “tax sale(s)” shall mean the public offering of sale by Customer of Tax Deeds or Tax Liens on real properties located in the Customer’s jurisdiction with delinquent property taxes pursuant to applicable statutes governing the State of Alabama.
2. In consideration of the services to be rendered by GovEase as set forth in this Agreement, the Customer shall pay or cause to be paid to GovEase fees in accordance with **Exhibit “B”** of this Agreement.
3. GovEase shall not be obligated to provide any services hereunder in the event the Customer is more than ninety (90) days delinquent in paying any invoices, provided, however, that

GovEase has provided written notice to the Customer that it will cease performing services unless delinquent invoices are paid in full.

#### **IV. Warranties**

##### **A. Limited Warranties**

GovEase warrants that the web site and internet application, when provided with accurate and properly formatted data by the Customer and third party users, and when accessed by properly functioning software and equipment of third party users with the appropriate system requirements, will perform substantially as required in order to facilitate the Customer's online tax sales. For the purposes of this Agreement, the term "third party users" shall be defined as bidders or participants in tax sales conducted by GovEase on behalf of the Customer pursuant to this agreement. In the event that failures or defects arise with the web site or internet application prior to, during or after a tax sale, GovEase will, at no charge to the Customer, make any necessary corrections to the web site and/or internet application so that the web site performs substantially as required under the terms of this Agreement, and will use its best efforts to make such necessary corrections applicable within 24 hours of being notified by the Customer of any failures or defects in the web site, provided that the Customer provides GovEase with information necessary and sufficient to correct such failure or defect upon GovEase's request. In the event GovEase is not able to make such corrections within 24 hours, GovEase's chief executive officer and/or chief operating officer will confer with a representative of the Customer to advise the Customer on the status of problem resolution and anticipated time of correction.

#### **V. Modification**

1. This Agreement may only be modified, altered or amended by a written instrument duly executed by authorized representatives of the Customer and GovEase.
2. The language of this Agreement may be amended and/or modified by one or more Addendums attached hereto and identified below and signed by both parties in order to comport with the laws of the state where the tax sales conducted under this agreement will be held or to otherwise reflect the agreement of the parties. Any Addendums attached to this Agreement that amend or modify this Agreement that conflict with or are specifically designated to replace language within this Agreement shall control and any such Addendums shall, by reference herein, become a part of the Agreement as if reprinted full herein. The following Addendums are attached to this Agreement:

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#### **VI. Breach and Termination**

1. In the event of the occurrence of a material breach or violation of this Agreement by a party, the non-breaching party shall provide written notice to breaching party regarding the occurrence of said material breach or violation of this Agreement, along with a description of the steps necessary to remedy, resolve or remove the material breach or violation. If said material breach or violation is not remedied, resolved or removed within (30) days after such written notice, the non-breach party may immediately terminate this Agreement.

2. Either party may terminate this Agreement at any time for any reason by providing the other party with 45 days' written notice of its intent to terminate the Agreement.
3. Termination of this Agreement shall not deprive a party of other remedies available under this Agreement or the applicable law for failure of a party to perform its obligations under this Agreement. Failure of either party to enforce a material breach or any violation of the terms of this Agreement or exercise of remedies hereunder shall not be considered as a waiver of that party's rights, respectively, with respect to any subsequent breach or violation.
4. In the event of a party's breach or failure to perform its obligation under this Agreement and it becomes necessary for either party to employ an attorney to enforce compliance with any of the provisions herein contained or to give advice, enforce or demand either party's rights or remedies hereunder, then the defaulting or breaching party shall be liable for the non-breaching or non-defaulting party's attorney fees, court costs and other expenses occasioned by such default(s) or breach(es).
5. Upon termination of this Agreement, each party shall promptly return to the other any and all personal property of the other held by such party, including, but not limited to, any of GovEase's confidential information as that term is used in Section IX of this Agreement, and shall provide a certificate to the other party to the effect that it has delivered to the other party all property belonging to the other party, including confidential information, and has retained no duplicates or copies of, nor conveyed to any third party, any such property.

## **VII. Notice**

Any notices required to be sent hereunder shall be hand delivered or sent by a nationally recognized overnight delivery service (such as FedEx) or by certified mail (return receipt requested) to the following addresses:

CUSTOMER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: J. Bradford Boyd Hicks  
8820 U.S. Highway 90  
Daphne, AL 36526

GOVEASE: Ryan Matthews, President  
GovEase, LLC  
2080 Main St.  
2nd Floor  
Madison, Mississippi 39110

With a copy to: Price W. Donahoo, Esq.  
Donahoo Law Firm, PLLC  
Post Office Box 1549  
Madison, Mississippi 39130 \_\_\_\_\_

All written notices required under this Agreement shall be effective upon the earlier of the date received, refused or returned as undeliverable.

### **VIII. Title**

It is agreed between the parties that GovEase owns all rights, title and interest in and to the web site, internet application, and all documents, files, reports, data summaries, work papers and working documentation, electronic or otherwise, created by or on behalf of GovEase in connection with the services to be performed by GovEase pursuant to this Agreement, as well as the related source code including copyright, trade secret, patent, trademark and other proprietary rights and all customizations, enhancements, modifications, improvements, derivations or other variations thereof. This Agreement does not transfer to the Customer under any circumstances any of GovEase's ownership rights in the web site, internet application or the related source code.

### **IX. License**

1. GovEase grants the Customer and its full-time, part-time or contract employees (excluding professional consultants), subject to the terms and conditions of this Agreement, a limited, non-perpetual, non-transferable and non-exclusive license to access and use the web site and internet application solely in conjunction with the Customer's billing, collection and administration of the relevant taxes and tax sales. This license immediately terminates upon any termination of this Agreement. GovEase is acting as an Application Service Provider ("ASP") supplying to the Customer a hosted service via the Internet.
2. The Customer acknowledges and understands that the GovEase web site and internet application licensed under this Agreement is owned by GovEase and constitutes a valuable trade secret belonging to GovEase. The Customer also acknowledges and understands that GovEase is willing to provide the Customer with certain proprietary business and technical information regarding its web site and internet application pursuant to this Agreement. It is expressly understood and agreed that the software used to develop and operate the web site and internet application; any related materials and documentation provided by GovEase, including without limitation information related to security, functionality or other technical aspects of the web site and internet application; the non-public pages of the web site; and all documents, files, reports, data summaries, work papers and working documentation, electronic or otherwise, created by or on behalf of GovEase in connection with the services to be performed by GovEase pursuant to this Agreement (sometimes collectively referred to herein as "confidential information") constitute a valuable proprietary product and trade secret of GovEase embodying substantial creative efforts and confidential information, ideas, and expressions. The Customer agrees to hold all such confidential information in strictest confidence and take such steps as are reasonably necessary to protect the confidentiality of the confidential information and other materials designated by GovEase as confidential. Such steps shall include, without

limitation, refraining from taking any action in derogation of GovEase's ownership rights in the web site, internet application and confidential information.

3. The Customer shall not disclose or otherwise make available GovEase's confidential information in any form to any person except to those employees of the Customer or GovEase who need access to the information to facilitate the Customer's authorized use of the web site. Nothing herein shall be construed, however, to prohibit the Customer from making any disclosures required of the Customer pursuant to any legal process or request from any governmental authority having jurisdiction over the Customer, or from making disclosure required by applicable law. However, prior to any such disclosure, the Customer shall provide written notice at least fourteen (14) days prior to any such disclosure to GovEase in order to enable GovEase to seek judicial relief. The Customer's obligations under this paragraph shall survive termination of this Agreement.

## **X. Confidentiality**

Each party agrees to treat any information they receive that is submitted to the web site by third party users, including without limitation, deposit amounts, social security numbers, bank account numbers, federal tax identification numbers, etc., in accordance with applicable law and the "privacy policy" set forth in the related link on the web site. GovEase will not change the "privacy policy" without the Customer's consent, which will not be unreasonably withheld.

## **XI. Place of Execution; Governing Law; Venue**

This Agreement shall be deemed to be executed in Baldwin County, State of Alabama, regardless of GovEase's domicile, and shall be interpreted and construed in accordance with the laws of the State of Alabama. The parties agree that the venue for any and all claims between the parties arising from this Agreement in the state courts in and for Baldwin County, Alabama

## **XII. Successors**

The provisions of this agreement shall be binding upon and for the benefit of the heirs, personal representatives, successors and assigns of the parties. Neither party shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party.

## **XIII. Severability**

1. If any provision of this Agreement is found to be unlawful or to otherwise conflict with applicable law, the applicable law shall control and the offending provision shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.
2. If any provision of this Agreement is found to be unlawful or to otherwise conflict with applicable law, then the parties hereby agree to modify said provision, in a writing to be signed by authorized representatives of the parties, to comply with the applicable law and to reflect the parties' intention if necessary.

## **XIV. Force Majeure**

1. Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or is delay due to a

“force majeure.” For purposes of this Agreement, the term “force majeure” means any cause, action or agency delaying or preventing the performance of a party's obligation(s) under this Agreement which is beyond the reasonable control or foreseeability of such party including but not limited to natural disasters, wars, power failures, internet outages and other acts of God.

2. Upon notice of a force majeure event, the party whose performance under this Agreement is affected thereby shall:
  - a. Promptly notify the other party by the quickest means available, explaining the nature and expected duration thereof; and
  - b. Use reasonable efforts to diligently remedy the interruption or delay, provided that the interruption or delay is reasonably capable of being remedied by that party.

## **XV. Authorization**

Both GovEase and the Customer each represent and warrant to the other that each is authorized by all required and necessary corporate or government authority or action to enter into this Agreement and that the individual(s) signing this Agreement on behalf of GovEase and the Customer are authorized to bind GovEase and the Customer to its terms. Furthermore, both GovEase and the Customer represent that they are free to enter into this Agreement and that doing so, or performing the duties required under this Agreement, will not violate the terms of any other agreements or contracts between the parties and any third parties.

## **XVI. Complete Agreement**

This Agreement constitutes the entire understanding and Agreement between the parties hereto with respect to its subject matter and supersedes all prior or contemporaneous Agreements, representations, warranties and understandings of such parties, whether oral or written.

## **XVII. Indemnification.**

GovEase shall defend, indemnify and hold the Customer harmless from and against any Claim against the Customer arising out of any failure or inability of GovEase to perform its obligations hereunder, any breach by GovEase of any applicable law, data security or privacy obligations arising from performance of this Agreement, or any action or omission of GovEase related to or arising under this Agreement. GovEase's obligations under this paragraph shall survive termination of this Agreement. Notwithstanding anything to the contrary herein, the liability of Customer hereunder, by reason of breach or otherwise, shall be limited to the amount of fees payable to GovEase hereunder.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the Effective Date of this Agreement duly authorized to execute this Agreement.

GOVEASE AUCTION, LLC

By:

\_\_\_\_\_  
Ryan Matthews, President

BALDWIN COUNTY COMMISSION

By: \_\_\_\_\_

Its: Chairman

Attest:

By: \_\_\_\_\_  
Wayne Dyess  
County Administrator



## **EXHIBIT A**

### **SCOPE OF SERVICES**

GovEase shall provide a custom web site to administer tax sales on behalf of the Customer. The term “web site” shall mean an Internet web site hosted by or at the expense of GovEase that will utilize GovEase’s internet application to conduct online tax sales on behalf of the Customer. The term “internet application” means the proprietary internet application software developed by GovEase to facilitate tax sales using a process that replicates a live, public outcry auction that can be accessed through the web site. The procedures and technical requirements of the tax sales shall be substantially as described herein.

#### **Specific Actions to be Taken and Services to be Provided by GovEase**

1. GovEase will work with the Customer to determine the development timeline of the web site and to gather information required to build the web site.
2. GovEase will build a tax sales web site that will utilize the internet application to make information available to third party users and to conduct online tax sales using a process that replicates a live, public outcry auction.
3. GovEase will populate the web site and internet application with data provided by the Customer, including, but not limited to:
  - a. A list of properties with delinquent taxes (typically referred to as an advertising list);
  - b. Data on bidders who participated in previous auctions; and
  - c. Additional available data (tax records, pending tax liens on the property, appraiser's web site and links to Geographic Information Systems maps, if available).
4. GovEase will provide training for third party users including an online tax sale demonstration, practice tax sales and an on-site Bidder Orientation Session (at the discretion of the Customer).
5. GovEase shall provide a host server for the web site. The web site will utilize GovEase’s internet application, which is capable of accepting and processing competitive bids from third party users for tax sales offered by Customer. The Customer acknowledges that GovEase’s server may not be dedicated exclusively to the web site. GovEase shall use its best efforts to make the web site available during all regular business hours during each tax sale conducted pursuant to this Agreement and shall not schedule planned maintenance downtime to occur during any such tax sale in normal business hours. During each such tax sale, GovEase shall provide Auction Administrator(s) and the technical support necessary to facilitate the Customer’s conduct of online tax sales.
6. GovEase will include on the web site terms and conditions, with appropriate disclaimers, to which third party users will be required to give assent. Each party

will have the right to reasonably approve the terms and conditions or disclaimers that are included within the web site.

7. On the date when properties with delinquent taxes are advertised in local newspapers (the “advertising dates”), GovEase will post the same list on the web site. It will be at the Customer’s discretion to post such list solely on the GovEase website. The timing and frequency of tax sales conducted pursuant to this Agreement shall be determined by the Customer in accordance with applicable law.
8. Each tax sale conducted by GovEase on behalf of the Customer under this Agreement shall proceed as follows: On the date that the Customer has determined that a tax sale will begin, at a time as instructed by the Customer, and continuing from day to day until all parcels have been offered for sale, the delinquent tax properties shall be sold on the GovEase web site. Third party users can submit bids by using the web site to perform all tasks normally associated with the tax sale including: researching tax history; submitting registration forms and other information as specified by the Customer; submitting bids; viewing; and downloading auction results.
9. The Customer will manage and maintain all tax sale proceeds, deposits, billing and fee payments internally.
10. GovEase acknowledges that its services under this Agreement are being provided to Customer solely due to the state of emergency affecting public health, safety and convenience that has been declared for Baldwin County, Alabama, by the Baldwin County Commission on March 14, 2020, related to the novel coronavirus (COVID-19) pandemic, and the resulting closure of certain public buildings in Baldwin County, Alabama, including, but not limited to, the closure of the public building(s) at which Customer ordinarily conducts its tax sales described herein, the danger to public health, safety and convenience involved and the inconvenience and delay which would result in delay of the services to provided hereunder. Customer and GovEase further acknowledge and agree that the funds to be expended by Customer under this Agreement in the form of fees to GovEase is not anticipated to exceed the total sum of Fifteen Thousand and No/100 (\$15,000.00). Customer may terminate this Agreement upon thirty (30) days' written notice to GovEase in the event said state of emergency is no longer in effect, said public building is re-opened to the general public, GovEase's services are no longer required by Customer, and/or the funds to be expended by Customer hereunder reach the sum of \$14,999.00.

**EXHIBIT B**  
**FEES AND BILLING**

1. In consideration of the services to be rendered by GovEase as set forth in this Agreement and in accordance with Alabama Code Section 40-10-184, for each tax sale administrated by GovEase under the terms of this Agreement on behalf of the Customer, the Customer shall pay or cause to be paid to GovEase a fee of \$12 for every lien sold. Lien certificates not sold in the online auction will not be assessed a fee of \$12.
2. GovEase will submit an invoice setting forth the amount of its fee pursuant to Paragraph 1 of this Section for a tax sale conducted under this Agreement to the Customer within sixty (60) days of the conclusion of each such tax sale. The Customer hereby agrees to pay any such invoices in full within seventy-five (75) days of receiving said invoice.
3. Unless otherwise provided on GovEase's invoice or in other instructions that GovEase provides to the Customer subsequent to the execution of this Agreement, payments shall be made to "GovEase Auction, LLC."