

STATE OF ALABAMA)

COUNTY OF BALDWIN)

SALES AND USE TAX COLLECTION AGREEMENT

(Baldwin County Board of Education and Baldwin County Commission)

This SALES AND USE TAX COLLECTION AGREEMENT (the "Agreement") is made by and between the BALDWIN COUNTY BOARD OF EDUCATION, an agency of the State of Alabama (the "Board"), and the BALDWIN COUNTY COMMISSION, the honorable county governing body of Baldwin County, Alabama, and a political subdivision of the State of Alabama (the "Commission").

Presently, the Board and Commission operate under an Agreement whereby the Commission administers, collects and enforces all county levied sales and use taxes where the tax revenue is paid in whole or in part to the Board, said instrument set to expire September 30, 2020, and will be replaced with this Agreement.

Recitals:

1. Pursuant to Alabama law as set forth in Act No. 2000-445 (the "Act"), the Commission is authorized and empowered to enter into agreements to administer, collect and enforce certain taxes and fees.
2. Pursuant to Amendment No. 879 of the Constitution of Alabama 1901 ("Amendment No. 879"), the Commission is authorized to collect the county sales and use taxes and to enforce the provisions of Amendment No. 879, and it shall have and exercise all rights and remedies that the state has for the collection of the state sales tax and the state use tax (as the case may be).
3. The Commission and Board desire to enter into this Agreement pursuant to the Act and Amendment No. 879 for the collection of revenue from sales taxes and use taxes for the Board.

1. Taxes Collected:

The taxes collected under this Agreement are all county levied sales and use taxes and all sales and use taxes levied under the authority of Amendment No. 879 where the tax revenue is paid in whole or in part to the Board ("the taxes").

2. Tax Collection by the Commission:

Subject to applicable laws, rules, regulations and procedures, the Commission will administer, collect and enforce the taxes. The taxes will be held in an interest-bearing account until remitted to the Board. The Commission will use its best efforts to administer, collect and enforce the taxes so that the Board receives timely payment of revenues due from the taxes. The Commission will employ qualified personnel provided with the office space and resources to administer collect and enforce the taxes. In administering, collecting and enforcing the taxes, the Commission will indemnify and hold the Board harmless for liability arising from or in connection with any and all negligent, wanton or intentional acts

or embezzlement by agents, servants, and employees of the Commission; provided that the Commission shall not be liable to the Board for refunds, exemptions or claims for the reimbursement of taxes by taxpayers or otherwise.

3. Remittances to the Board:

The Commission will remit, bi-monthly, the Board's portion of the taxes to the Board as follows:

Beginning October 1, 2020, on the regular Commission meetings on the 1st and 3rd Tuesday of each consecutive month thereafter (or on the date of any rescheduled regular meeting of the Commission), the Commission will disburse to the Board all tax revenues collected by the Commission for the Board, together with the Board's share of interest earned thereon, during the previous month.

4. Records:

The Commission will retain all reports, records and other documents in connection with administering, collecting and enforcing the taxes for a period of five (5) years. On or before the date of each monthly remittance to the Board of the Board's portion of the taxes, the Commission will provide the Board with a full and complete report of tax collection activity which will include, without limitation, the following:

- (a) The total amount of taxes collected during the previous month.
- (b) That portion of the total taxes collected from use tax and that portion of the total taxes collected from sales tax.
- (c) The total amount withheld for collection of taxes.
- (d) The amount of interest earned on the collected taxes.
- (e) Any and all other records reasonably requested in writing by the Board.

Subject to the applicable laws, rules, regulations and procedures, the Board shall have the right to inspect and copy any and all reports, records and correspondence of the Commission in connection with the Commission's administering, collecting and enforcing the taxes at any time, to audit the same in the collection premises and to take all action in connection with such audit.

5. Collection Costs to the Board:

The Board shall pay Commission two percent (2%) of gross taxes collected for administering, collecting and enforcing the taxes ("the Collection Cost").

6. Term:

This Agreement is for a term of three (3) years beginning October 1, 2020 and ending September 30, 2023. Provided, however, any party to this Agreement may terminate this Agreement by providing written notice of not less than ninety (90) days to the other party. In the event this Agreement is terminated by the Board during the term, the Board shall continue to pay its Collection Costs to the Commission for a period of six (6) months after termination.

7. Miscellaneous:

- (a) Assignment. This Agreement may not be assigned by any party hereto without the consent of the other parties hereto.
- (b) Successors Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- (c) Section and Paragraph Headings. The section and paragraph headings in this Agreement are for reference purposes only shall not affect the meaning or interpretation of this agreement.
- (d) Designation. The terms "the Board" and "the Commission" as used herein shall include agents, servants and employees of the Board and the Commission designated to act on their respective behalf.
- (e) Amendment. This Agreement may be amended only by an instrument in writing executed by all parties hereto.
- (f) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto, and supersedes all prior understandings with respect to the subject matter hereof.
- (g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.
- (h) Governing Law. This Agreement shall be construed and enforced under and in accordance with and governed by the Constitution and laws of the State of Alabama.
- (i) Provision Severable. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of anyone or more of the provisions of this Agreement shall not affect the validity or enforceability of the other provisions.
- (j) Compliance with Law. The Commission and the Board will comply at all times with all laws, rules and regulations of governmental authorities having jurisdiction and applicable to them under this Agreement including, without limitation, bid laws and rights protected by state and federal constitutions and statutes.
- (k) Construction. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of any association between the Board and the Commission, and no acts by either the Board of the Commission shall be deemed to create such relationship.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the _____ day of _____ 2020.

BALDWIN COUNTY BOARD OF EDUCATION
An Agency of the State of Alabama

JaNay Dawson, President

ATTEST:

Eddie Tyler, Superintendent and Ex Officio Secretary

BALDWIN COUNTY COMMISSION
The Honorable County Governing Body of Baldwin County,
Alabama, and a political subdivision of the State of Alabama

Billie Jo Underwood, As Its Chairman

ATTEST:

Wayne Dyess, County Administrator

Attachment – Code of Alabama, 1975, as amended, §45-2-243

NOTARY PAGE TO FOLLOW

STATE OF ALABAMA)

BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said COUNTY in said state, hereby certify that, JaNay Dawson, as President of the Baldwin County Board of Education, and Eddie Tyler, Superintendent and Ex Officio Secretary of the Baldwin County Board of Education, who are known to me, acknowledged before me on this day that, being informed of the contents of said Sales and Use Tax Collection Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Board of Education on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA)

BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said COUNTY in said state, hereby certify that, Billie Jo Underwood, whose name as Chairman of the Baldwin County Commission, and Wayne Dyess, whose name as County Administrator of the Baldwin County Commission, who are known to me, acknowledged before me on this day that, being informed of the contents of said Sales and Use Tax Collection Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission on the day the same bears date.

Given under my hand and seal this the _____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires: _____

Section 45-2-243**Designees; compensation; powers.**

(a) The Baldwin County Commission and any municipality located in Baldwin County, if authorized by resolution or ordinance duly adopted by the Baldwin County Commission or the governing body of the municipality, may enter into agreements by which a designee may administer and enforce any tax or license enacted by the county or a municipality, and collect the taxes and license fees due thereunder or, in the case of a county levied tax or license, the county commission may by resolution duly adopted, administer, collect, and enforce any county levied tax or license fee. For purposes of this section, a designee means any entity, person, or corporation, including, but not limited to, the State Department of Revenue, designated by resolution or ordinance of the Baldwin County Commission or a municipality to act for or on behalf of the county or municipality. A county or a municipality may agree to pay the designee compensation for its services, not to exceed three percent of the aggregate amount collected pursuant to the agreement, or in the event the county commission elects to administer, collect, and enforce a county levied tax or license fee, the county commission may retain not more than two percent of aggregate amount collected to be distributed to any other entity. Any contract or alteration thereto or any resolution made pursuant to this section under which revenue is collected for the Baldwin County Board of Education shall be approved by a resolution of the Baldwin County Board of Education prior to implementation and must be reviewed for renewal the third year of implementation and each subsequent three-year period thereafter.

(b) The designee, in the performance of any contract or agreement and the administration and enforcement of any local tax and license collection, or the county commission, shall have the same rights, remedies, powers, and authorities as would be available to the State Department of Revenue or the municipality if the tax or license collection were being administered and enforced by the State Department of Revenue or the municipality and shall report information on new accounts to the State Department of Revenue on a monthly basis; provided, however, that any rules and regulations adopted or utilized by Baldwin County or its designee shall be consistent with the rules and regulations of the State Department of Revenue.

(Act 95-664, p. 1376, §§1, 2; Act 2000-445, p. 802, §1.)