

RESOLUTION NO. 2022-03

**AGREEMENT WITH AVENU INSIGHTS & ANALYTICS, LLC
FOR COLLECTION OF SALES/USE TAX**

WHEREAS, the Town of Magnolia Springs, Alabama desires to continue self-collection and administration of Town Sales/Use Tax and;

WHEREAS, Avenu Insights & Analytics has been collecting sales/use tax since January 16, 2007, and will continue to perform the services necessary to administer and collect the taxes for the Town.

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Magnolia Springs, Alabama as follows:

Section 1: The “Tax Revenue Enhancement Agreement Revenue Administration” as submitted by Avenu Insights and Analytics, LLC, attached hereto as Exhibit “A” is approved by the Town Council of the Town of Magnolia Springs.

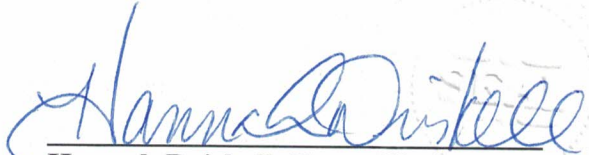
Section 2: The Town Council hereby authorizes the mayor to enter into an agreement with Avenu Insights and Analytics, LLC for sales/use tax collection and administration attached hereto as Exhibit “A.”

Adopted this 22nd day of February, 2022.

ATTEST:



Kim Koniar, Mayor



Hannah Driskell, Town Clerk



Tax Revenue Enhancement Agreement Revenue Administration

This agreement made by and between **Avenu Insights & Analytics, LLC** ("AVENU") and **Town of Magnolia Springs**, a government entity in the state of AL ("CLIENT").

A. Remittance Processing Services

1. Taxes Processed: AVENU will perform remittance processing for sales and use taxes as designated by CLIENT.
2. Taxpayer Notification and Remittance: AVENU will send individualized tax forms to all known taxpayers. Taxpayers will remit payments to the following Address: Town of Magnolia Springs, P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CLIENT, AVENU may change the Address for payments.
3. Deposit Process: Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the CLIENT for each type of tax collected, as shown in more detail on **Exhibit A**.
4. Posting Process: Taxpayer accounts are posted with payment information captured in the AVENU revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change, and address change is captured and added to payment data and taxpayer master file (as determined necessary by AVENU). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by State code. Under-payments are invoiced for remaining tax due plus any required penalties.
5. Changes to **Exhibit A**: CLIENT shall notify AVENU in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended **Exhibit A** shall be prepared and executed by the Parties as soon as reasonably possible. In addition, AVENU shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the CLIENT, then the CLIENT shall immediately notify AVENU and, thereafter, AVENU shall take the steps necessary to insure, designated recipients receive the amounts intended by CLIENT.
6. Notification, Reporting to CLIENT:
 - i. AVENU will provide CLIENT with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to CLIENT'S account numbers and all fees paid to AVENU. These reports will be provided by the 10th of the month following the tax month;
 - ii. CLIENT AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY THE CLIENT TO AVENU WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE;
 - iii. All items credited will be subject to receipt of payment; and
 - iv. AVENU will attend Council meetings at such times as may be reasonably requested by CLIENT.

B. Compliance Services

1. **Taxes Reviewed:** AVENU will perform compliance services for sales, use and other taxes designated by CLIENT under Remittance Processing Services. AVENU will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by CLIENT, AVENU will make reasonable efforts to collect taxes designated by CLIENT hereunder. Where deemed reasonably appropriate, accounts may be turned over to audit or third-party collection. If CLIENT elects to have its attorney pursue collection of certain uncollected accounts, AVENU will assist CLIENT attorney as reasonably requested at its normal hourly rate as reflected herein.
2. **Conduct of Compliance Services:** To assure that all taxpayers are treated fairly, consistently and all compliance services are performed in a similar manner, AVENU representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CLIENT in the same manner as provided for pursuant to *Section A*, above.

C. General Provisions

1. **Information Provided:** CLIENT represents that the information provided to AVENU in the performance of services hereunder shall be provided free and clear of the claims of third parties. CLIENT represents that it has the right to provide this information to AVENU and that said information shall not be defamatory or otherwise expose AVENU to liability to third parties.
2. **Compliance with laws:** Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.
3. **Taxpayer service:** AVENU will provide a taxpayer assistance number for taxpayer questions. AVENU will provide informational brochures for placement in CLIENT offices, Chamber of Commerce offices, libraries and any other facilities. This information may also be available on the Internet at www.avenuinsights.com.
4. **Review and Appeal Process:** AVENU has adopted and will use a review and appeals process which is based on the *Alabama Taxpayers' Bill of Rights Act* and *Uniform Revenue Procedures Act* codified as Title 40, Chapter 2A, Code of Alabama, 1975, as amended.
5. **Consideration for Remittance Processing Services, Revenue Analysis Services and Compliance Services:** AVENU shall be compensated for the services rendered under this agreement in accordance with the schedule of fees set forth in Exhibit "A".
6. **Audit Services:**
 - i. **AVENU Audit Services:** Audit Services include all preparation for the performance of an audit, any research or statistical analysis performed in relation to an audit, in-house audit/collection efforts, examination of the books and records of the taxpayer, an assessment of the amount due (if any), and all services related to closing an audit.
 - ii. **AVENU Reciprocal Agreement:** To the fullest extent allowed by law, CLIENT hereby authorizes AVENU to act as a facilitator with the Alabama Department of Revenue and other applicable jurisdictions to share audit findings on its behalf.
 - iii. **AVENU Fee:** AVENU shall be compensated for audit services rendered under this agreement at the hourly rate set forth in Exhibit "A". There shall be no contingency fees.

1. If overnight travel or travel more than 25 miles beyond origination point is required, AVENU will pay the auditor and bill the CLIENT for its portion of travel expenses. CLIENT agrees to pay the amount of these fees when due, regardless of any recovery.
2. Billing Increment: Time will be recorded in 15-minute intervals (.25 hours);
3. Shared Audit Fees: When audits for CLIENT overlap with audits for other AVENU clients or clients of AVENU Affiliates, the fees will be shared as follows:
 - a. Travel Time: travel time, expenses, and a daily per diem amount for each audit is distributed evenly among the clients reviewed for each audit.
 - b. Interview Time: time billed during the initial interview of each audit is distributed evenly amongst the clients reviewed for each audit – during this process the auditor determines which clients will actually be audited for and billed Audit Time as follows;
 - i. Audit Time: Time billed during the actual audit stage of each audit is billed according to actual time spent working for each client;
 - i. No Double Billing: In no event will the overlapping audits combined require payment for more than 100% for any one AVENU representative.
7. Company Audit: Once a year AVENU will have an independent auditor prepare an SSAE 16, SOC 1, Type II Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report will be made available upon request.
8. Effective Date: The effective date for the performance of services under the terms of this agreement shall commence April 1, 2022 with collection of April taxes to be remitted on or before May 20, 2022.
9. Term of the Agreement: This Agreement shall be for a term of three (3) years following the date of execution or the maximum period allowed by law, whichever is shorter. Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing ninety (90) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial ninety (90) days notice.
10. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CLIENT shall be obligated to pay AVENU for services performed through the effective date of termination for which AVENU has not been previously paid. In addition, because the services performed by AVENU prior to termination or non-renewal of this Agreement may result in the CLIENT's receipt of revenue after termination which are subject to AVENU'S fee, the CLIENT shall remain obligated after termination or non-renewal to provide to AVENU such information as is necessary for AVENU to calculate compensation due as a result of the receipt of revenue by the CLIENT. The CLIENT shall remain obligated to pay AVENU'S invoices therefore in accordance with the terms of this Agreement.
11. Indemnity: To the fullest extent allowed by law, AVENU hereby agrees to indemnify and hold CLIENT harmless from any claims and against all costs, expenses, damages, claims and liabilities based upon or arising solely out of a breach of this Agreement by AVENU. Except as set forth in the preceding sentence, to the full extent allowed by law, CLIENT hereby agrees to indemnify and hold AVENU harmless from any claims and against all costs, expenses, damages, claims and liabilities

relating in any way to sales, use and other taxes of CLIENT, including, but not limited to, determination of taxes due from taxpayers, the collection thereof and any refunding related thereto.

12. **Limitation of Liability:** To the maximum extent permitted by law, in no event shall AVENU, its employees, contractors, directors, affiliates and/ or agents be liable for any special, incidental or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not AVENU has been advised of the possibility of any such loss or damage. In addition, AVENU'S total liability hereunder, including reasonable attorney's fees and costs, shall in no event exceed an amount equal to the fee paid by the CLIENT for the affected service to which the claim pertains. The foregoing sets forth the CLIENT'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between AVENU and the CLIENT and AVENU'S pricing reflects the allocation of risk and limitation of liability specified herein.
13. **Equal Opportunity to Draft:** The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any Party upon a claim that that party drafted the ambiguous language.
14. **Assignment:** This Agreement shall be binding upon and inure to the benefit of the Parties, their successors; representatives and assigns. AVENU shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CLIENT, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, AVENU may assign this Agreement, in whole or in part, without the consent of CLIENT to any corporation or entity into which or with which AVENU has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of AVENU; or any corporation or entity which acquires all or substantially all of the assets of AVENU. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
15. **Force Majeure:** AVENU shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. **Subcontractors:** AVENU shall have the right to hire assistants as subcontractors or to use employees to provide the Services required by this Agreement. AVENU, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. AVENU shall be solely responsible for and shall hold CLIENT harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
17. **Intellectual Property Rights:** The entire right, title and interest in and to AVENU'S database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in AVENU. The foregoing notwithstanding, in no event shall any CLIENT-owned data provided to AVENU be deemed included within the Work Product.
18. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties hereto and supersedes any prior understandings or written or oral agreements between the Parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written Agreement signed by both Parties hereto.
19. **Invalidity:** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability

shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

IN WITNESS WHEREOF, the parties hereto as of the date first above written have duly executed this Agreement.

Avenu Insights & Analytics, LLC

By: _____

Name: _____

Title: _____

Date: _____

Town of Magnolia Springs

By: Kim Koniar

Name: Kim Koniar

Title: Mayor

Date: _____

Proposed pricing contained herein valid for 60 days from date of issuance. Issued 1/11/2022 JK

EXHIBIT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

January 11, 2022

Hannah Driskell
Town of Magnolia Springs
P.O. Box 890
Magnolia Springs, AL 36555

Dear Ms. Driskell:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
Magnolia Springs	062102098	XXXXXX9861	100%	Sales/Use; all rates

Tax Types and Rate Codes will be administered at the following percentages:

Tax Type	Rate Type	Percentage
Sales/Use	General	3.00%
Sales/Use	Mfg Machine	1.00%
Sales/Use	Farm	1.00%
Sales/Use	Auto	1.00%
Sales/Use	Amusement	3.00%
Sales/Use	Vending	3.00%

If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

Avenu Insights & Analytics, LLC

600 Beacon Parkway West, Suite 900
Birmingham AL 35209
ATT: Contracts Department

COMPENSATION

Compliance Services: AVENU will receive an amount equal to Two Dollars and Eighty-Five Cents (\$2.85) per account per transaction OR 1.90% of gross revenues collected, whichever is lower, for providing Remittance Processing Services and Revenue Analysis Services.

Audit Services: AVENU will receive an amount based on an hourly rate of seventy-three dollars (\$73.00) for audit services. There shall be no contingent fees. Each year on the Anniversary date of the Effective Date of this Agreement the hourly rate will increase by 3%.

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,
Connie Taylor
Client Relations Manager
AVENU
205-423-4144 direct dial
205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.

By: _____
Name: _____
Title: _____ (AVENU)

02/22/22

RE: Letter of Introduction

Dear Taxpayer:

Request is hereby made to examine all books of account, invoices, sales receipts and working papers necessary to ascertain the correct amount of applicable taxes being administered by the Town of Magnolia Springs.

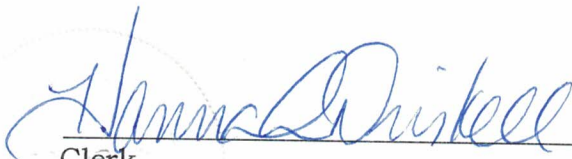
Please note that under authority granted by Section 11-3-11.2 and Sections 11-51-200 through 11-51-206 of the Code of Alabama 1975, Town of Magnolia Springs has contracted with AVENU to act as our duly authorized agent in order to perform taxpayer audit examination services for our jurisdiction. Therefore, AVENU is hereby authorized to examine and/or audit the records, books, or other relevant information maintained by you for the purpose of computing and determining the correct amount of any applicable tax, license, or fee assessed by our taxing jurisdiction.

At or before the beginning of this audit, AVENU will provide to you the current version of the State of Alabama Publication 1A which provides, in simple and non-technical terms, a statement of your rights. Those rights include the right to be represented during an examination, a written description of the basis for any assessments, and an explanation of your appeal rights. Please read this material carefully and contact your professional advisors for tax or legal advice.

Please contact us directly if at any time you have any questions or complaints or if you are unable to obtain a reasonable response after several attempts to communicate with the person assigned to your case. For verification of the identity of an auditor, you may contact the audit department of AVENU at 205-423-4126.

Your cooperation is greatly appreciated during this process.

Sincerely,


Clerk

Date:

02/22/22

Town of Magnolia Springs