



RESOLUTION NO. 2022-29

AGREEMENT WITH AVENU INSIGHTS & ANALYTICS, LLC ON BUSINESS LICENSE DISCOVERY/RECOVERY ADMINISTRATION

WHEREAS, the Town of Magnolia Springs, Alabama desires to continue self-collection and administration of Town business license discovery/recovery, and;

WHEREAS, the Town of Magnolia Springs, Alabama at present has a contract with Avenu Insights & Analytics, LLC to administer and collect business license fees through discovery, and whereby Avenu Insights & Analytics, LLC will perform the services necessary to administer and collect the business license fees for the Town and;

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 for Business License Discovery/Recovery 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 business license discovery/recovery administration attached hereto as Exhibit "A."

Adopted this 27th day of September 2022.



Kim Koniar, Mayor

ATTEST:



Hannah Driskell, Town Clerk



Tax Revenue Enhancement Agreement Business License Discovery/Recovery Administration

This Agreement is made as of January 1, 2023 by and between Avenu Insights & Analytics, LLC ("AVENU") and Town of Magnolia Springs, a government entity in the state of AL ("CLIENT").

A. Discovery/Recovery Services

1. Discovery/Recovery Services include:
 - i. Analysis of two or more municipal lists. These lists could include current discovery/recovery license data, sales tax data, property tax lists and telephone directories at least once a year.
 - ii. Properties/entities that are not in one or all of the databases are presumed unregistered.
 - iii. AVENU will generate a letter requiring payment, proof of payment, or documented response for all properties/entities presumed unregistered. If no response, AVENU may mail additional letters and contact the property/entity via phone call before proceeding with additional collection procedures.
2. Taxpayer Remittance: Taxpayers will remit payments to Town of Magnolia Springs, P.O. Box 830725, Birmingham, AL 35283-0725. Upon reasonable notice to CLIENT, AVENU may change the P.O. Box for Sample Client payments. CLIENT will be responsible for renewals. AVENU will provide a list to CLIENT.
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. Underpayments 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: AVENU will provide CLIENT with timely reports including, but not limited to, payment listings showing all monies received, a detail and summary reconciliation report that corresponds to CLIENT'S account numbers and all fees paid to AVENU.

B. General Provisions

1. Taxpayer service: AVENU will provide a taxpayer assistance number for taxpayer questions.

2. AVENU, in collecting any fee, tax, interest, court cost, or penalty shall have no authority to determine the amount of fee, tax, interest, court cost, or penalty owed the state, Client, or municipal governing authority.
3. Consideration for Discovery/Recovery Services:
 - i. AVENU Fee for Discovery/Recovery Services: AVENU will receive fifty percent (50%) of discovery/recovery revenue collected by AVENU.
 - ii. AVENU fee for copies of forms: AVENU will receive an amount equal to \$5.00 per form mailed or faxed to the CLIENT per the request of the CLIENT. AVENU will provide at no additional cost a detailed payment listing that includes taxpayer name, address, schedule number, and remittance information.
 - iii. AVENU fee for Direct Payments: AVENU will receive fifty percent (50%) of discovery/recovery revenue received and deposited by the Client, which is a result of AVENU collection efforts.
4. Company Audit: Once a year AVENU will have an auditor prepare an Independent Service Auditor's Report on Controls Placed in Operation and Tests of Operating Effectiveness. This report is commonly called a SOC 1 report and will be made available upon request.
5. Effective Date: The effective date for the performance of Services under the terms of this Agreement shall commence January 1, 2023.
6. Term of the Agreement: This Agreement shall be for a term of three (3) years following the date of execution. 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) day notice.
7. 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.
8. 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 to sales, use and other taxes of CLIENT, including, but not limited to, determination of taxes due from taxpayers, the collection thereof, the Deposit Process, Section A (3), above, and any refunding related thereto.

9. **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.
10. **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.
11. **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.
12. **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, pandemic, endemic, quarantine, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
13. **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.
14. **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.

15. 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.
16. 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.

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

Avenu Insights & Analytics, LLC

By: _____

Name: Carl Kumpf

Title: CFO

Date: _____

Town of Magnolia Springs

By: Kim Koniar

Name: Kim Koniar

Title: Mayor

Date: 10-12-2022

EXHIBIT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

August 23, 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
				Discovery/Recovery

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

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

Sincerely Yours,

Lis Feliciano
Client Relations Manager
213-246-2445

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

By: _____
Name: _____ Avenu Insights & Analytics, LLC
Title: _____

September 27, 2022

RE: Letter of Introduction

Dear Business Owner/Manager:

The Town of Magnolia Springs has contracted with AVENU (Revenue Discovery Systems) to perform collection services for business license taxes on the Client's behalf. AVENU helps the Client ensure that all businesses pay their fair share of business license tax.

AVENU, as the Client's authorized representative, is bound by the same confidentiality as the Client's own employees. Any information provided to AVENU will be used solely for the purpose(s) of this collection contract.

We ask that you extend your full cooperation to AVENU, and we thank you in advance for doing so. If you have any questions, please contact AVENU directly at 855-219-4336, or by email at dresupport@avenuinsights.com.

Your cooperation is greatly appreciated during this process.

Sincerely,



Hannah Driskell
Client Administrator
Town of Magnolia Springs

Date: 9/27/2022

September 27, 2022

RE: Letter of Authorization

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, the 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. Accordingly, 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 levied by our taxing jurisdiction.

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,



Hannah Driskell
Client Administrator
Town of Magnolia Springs