

Tax Management Associates, Incorporated
Business Personal Property Audit Services Agreement
STATE OF INDIANA

This Agreement is made and entered into this 16th day of April, 2019, by and between VIGO COUNTY, a political subdivision of the State of Indiana ("County") and TAX MANAGEMENT ASSOCIATES, INC., a corporation authorized to conduct business in Indiana, (TMA), individually as "Party" or collectively as "Parties" to assist the County Assessor in the performance of audits to verify the accuracy of business taxpayers' listings of personal property for ad valorem taxation.

Contractual services may begin upon full execution of this Agreement.

SPECIAL PROVISIONS

WITNESSETH:

WHEREAS, the County desires to obtain audit services on the County's business personal property taxpayers as authorized by Ind. Code § 6-1.1-36-12 *et seq.*; and

WHEREAS, TMA agrees to provide said audit services for the County pursuant to the charges, terms and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the promises mutually exchanged, the parties agree as follows:

1. SERVICES

- A. In accordance with the charges, terms and conditions contained in this Agreement, TMA agrees to furnish business personal property audit services to verify the accuracy of business taxpayer's business personal property tax listing filed with the County Assessor.
- B. The services provided by TMA will be performed in accordance with the terms and conditions provided by this Agreement and in compliance with all applicable Indiana Property Tax Codes and as further prescribed by the Indiana Department of Local Government Finance. TMA agrees to perform audits in accordance with professionally accepted auditing and accounting standards.
- C. Audits to be performed by TMA to verify the accuracy in taxpayer's listings shall be selected and assigned by the County as outlined in this Agreement and agreed to by the Parties.
- D. It is expressly agreed by the Parties that all work performed by TMA shall be under the direct supervision and control of the County Assessor. All correspondence in connection with audits will be signed by the County Assessor or by his/her authorized designee.
- E. In order to assist in the scheduling of taxpayers' listings selected by the County Assessor for audit, the County agrees to make available to TMA copies of the personal property listings for the years for which audits are to be performed.

- F. TMA agrees to audit the listing assigned for audit for the current year and applicable prior years as provided by the Indiana Code.
- G. It is expressly understood by TMA that, under the provisions of the Indiana Code, TMA and its employees are subject to the State Confidentiality Statutes and the penalties contained therein. TMA agrees to abide by the Indiana Code concerning confidentiality of taxpayer records and shall hold the County harmless from any liability that may result from an action directly resulting from TMA or its employees or agents regarding confidentiality of taxpayer records.
- H. If an effort to assist the County, TMA agrees to provide training to designated employee(s) of the County Assessor as to all aspects of the audit services provided pursuant to this Agreement. Any appropriate designee of the County Assessor may accompany TMA on any audit, provided the County shall be responsible for the travel-related expenses of such County employee for that audit(s).
- I. TMA agrees that no employee of TMA will consult with or answer questions regarding any aspect of an audit being performed, except with authorized County officials and the taxpayer being audited, unless otherwise directed to do so by the County Assessor or by his/her authorized designee.
- J. If through any cause, TMA or the County Assessor fail to fulfill its obligations as provided by this Agreement, or materially violates any of the covenants or stipulations within this Agreement, and such failure or violation continues for thirty (30) days after written notice thereof by a Party, either Party shall thereupon have the right to terminate this Agreement immediately upon giving written notice to the other Party. Written notice shall be delivered to the Party personally with written acknowledgement of the accepting Party or mailed by certified mail to the mailing address as specified herein. In the event of termination, all audits assigned to TMA that are deemed to be in process shall be completed by TMA and all fees for completed audits shall be payable in accordance with the terms as provided by this Agreement. An audit is deemed to be in process after the necessary information concerning the audit has been given to TMA and the taxpayer has been contacted of the upcoming audit. All other files not in process as defined above will be returned to the County. Additionally, if this Agreement is terminated, the payment clause listed under Special Provisions 2.C. of this Agreement will cease to be in effect. Payments due TMA will revert to the fee schedule listed under Special Provisions 2.B. of this Agreement. As of the date of termination, the total number of audits either completed or in process (as defined above) will be billed to the County by TMA according to the fee schedule found in Special Provisions 2.B.
- K. It is expressly understood and agreed to by TMA and the County Assessor that the audit services performed under this contract represents an examination of data and materials, as might be contained in a taxpayers accounting records or other documents, for the purpose of verifying the accuracy of listings, reports or statements filed with the County in connection with a taxpayers listing of property and that such services is not an appraisal service except that information obtained in an audit performed by TMA may be used by the County Assessor to form an opinion or estimate of value as in an appraisal.

2. COST AND PAYMENT FOR AUDIT SERVICES

- A. All expenses incurred by TMA in performing Audits under this Agreement including, but not limited to, travel, food, lodging, mileage, and salaries shall be the responsibility of TMA. TMA shall also be responsible for the cost of standard postage related to Audit correspondence and the cost of providing TMA copies of County tax records and returns associated with each individual Audit.
- B. The County shall pay TMA, for the services furnished under this Agreement, a per audit fee based on the class of account assigned for audit. Pursuant to Ind. Code § 6-1.1-36-12(c), TMA's fees shall not be on a percentage basis or otherwise provide for payments under this Agreement that are based in any way on increases of assessed value or property tax revenue that are attributable to the discovery of property that has been undervalued or omitted from assessment. Therefore, TMA provides a per audit fee based on the initial assessed value of the taxpayer being audited as determined by the following fee schedule:

Classification	"True Cash" Valuation Range (in dollars)	Per Audit Fee
A1	\$0-\$399,999	\$ 755.00
B	\$400,000-\$999,999	\$ 1,505.00
C	\$1,000,000-\$4,999,999	\$ 2,405.00
D	\$5,000,000-\$19,999,999	\$ 6,205.00
D3	Over - \$20,000,000	\$10,005.00

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) per hour.

- C. TMA may perform Audits for any township in the County. TMA's services under this Agreement shall be paid by the County Auditor in accordance with, and as permitted under, Indiana Code § 6-1.1-36-12 *et seq.*
- D. The County agrees to provide TMA a report (in the form of a spreadsheet) providing information on all collections from Taxpayers the County has received as a result of business personal property audits performed by TMA under the original contract. The County will also provide a cumulative report at each settlement period. The County agrees to include the following information related to the audit performed in such report:
- Taxpayer Name for Audit Performed
 - Name Taxpayer is Doing Business As (DBA)
 - Taxpayer Identification
 - Taxpayer Address
 - Date Taxpayer was Billed by the County
 - Amount Taxpayer was Billed by the County
 - Tax paid to County by Taxpayer
 - Interest on Taxes due to the County that have been paid by the Taxpayer
 - Any amount of penalty for delinquent taxes paid by the Taxpayer to the County
 - Total amount of money paid by the Taxpayer to the County
 - Total amount of money remaining to be paid by the Taxpayer to the County

The County will establish a Delinquent Business Personal Property Fund ("Fund") to be administered by the County Auditor's Office as authorized by Ind. Code § 6-1.1-36-12(b). The Fund shall be a continuing, non-reverting fund, with all balances remaining therein at the end of each year. Such balances shall not lapse into the county general fund, or ever be directly or indirectly diverted in any manner to uses other than those stated in this section. All deposits made under this Agreement for the collection of delinquent business personal property taxes shall be deposited in the Fund. The Fund will be established only for the purposes of this Agreement. The Fund will not commingle any additional funds received by the County pursuant to another vendor Agreement or taxpayer collections made by another party, including the County. The County Treasurer shall deposit the amount of taxes, including penalties and interest that result from additional assessments on undervalued or omitted property collected from all taxing jurisdictions in the county after deducting the amount of any property tax credits that reduce the owner's property tax liability for the undervalued or omitted property. The Fund shall remain in existence during the term of the Agreement for the collection of delinquent personal property taxes. Distributions shall be made from the Fund without appropriation only for the following purposes: (1) All fees and other costs related to this Agreement; (2) After the payments required by the Agreement have been made and the Agreement has expired, the County Auditor shall distribute all money in the fund to the appropriate taxing units in the county using the property tax rates of each taxing unit in effect at the time of the distribution. Notwithstanding the above, pursuant to Ind. Code § 6-1.1-36-12(b)(2), the County Assessor and TMA shall establish a monetary threshold. For purposes of this Agreement the threshold shall be \$ 375,000 ("Threshold"). When money in the Fund exceeds the Threshold, the County Auditor shall distribute the money in excess of the Threshold to the appropriate taxing units in the County using the property tax rates of each taxing unit in effect at the time of distribution. Funds distributed in excess of the Threshold do not release the County from the obligation to pay all fees and expenses due and owing to TMA pursuant to Section 2(E) below.

- E. All fees and expenses (Audit Fee's) shall be detailed on a TMA invoice and may be submitted monthly to the County and shall be due and payable within thirty (30) days following billing date provided sufficient proceeds have been collected and, if applicable, deposited in the Fund as authorized by I.C. § 6-1.1-36-12(b); provided, however, TMA shall not invoice unless there are funds available in Fund. TMA shall not be paid for the discovery of undervaluation or omission with respect to a personal property return before all appeals of the assessment under the return have been finalized. TMA guarantees, that for the initial term of this Agreement, the total amount due and payable to TMA for Audit Fees shall not exceed the gross amount of taxes, including penalties and interest, collected as a result of TMA's audits. This guarantee by TMA is contingent upon an agreement by the County that, at a minimum, all business personal property accounts with a Current Assessed Value of \$40,000 and greater will be assigned TMA for audit.
- F. All legal costs involving appeals resulting from an audit shall be the responsibility of the County. TMA shall defend its audit findings throughout any appeals process without additional cost to the County. Defense of audit findings shall include personal appearances at meetings with taxpayers or their representatives and providing testimony and evidence at all hearings before the Assessor, Property Tax Assessment Board of Appeals, and at any other appeal level concerning information identified in an audit. TMA shall use reasonable efforts to defend its audit findings.

GENERAL PROVISIONS

1. **AUTHORITY TO CONTRACT:** The County's authority to contract for the service herein is authorized by the Indiana Code.
2. **AUDIT:** All invoices shall be submitted by the TMA to the County with sufficient detail for a proper pre-audit or post-audit.
3. **TERM:** This Agreement shall become effective upon execution and shall remain in effect for a term of **thirty-six (36) months**.
4. **COLLATERAL ASSIGNMENT:** The County acknowledges and agrees that payment due to TMA under this Agreement and all other agreements with the government authority (the "Contract") have been collaterally assigned to Branch Banking and Trust Company (a North Carolina banking corporation, whose address is 6869 Fairview Road, Charlotte, North Carolina 28210-3384). All payments due to TMA under this Agreement will be sent, **UPON REQUEST**, to the Bank at that address pursuant to a financing and cash management arrangement. This payment request from The Bank shall be made in writing to County until it is countermanded by The Bank in writing. The Bank is authorized to receive information relating to this agreement and payments due under the Agreement and all amendments or modifications to the Agreement from the County (the government authority). The Bank is authorized to rely upon the terms of the Agreement. The government authority agrees to give notice to the Bank thirty (30) days prior to termination of this Agreement.
5. **INDEMNIFICATION:** To the fullest extent permitted by laws and regulations, the TMA shall indemnify and hold harmless the County and its officials, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including, but not limited to, fees and charges of engineers or architects, attorneys and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this Agreement or the actions of TMA or its officials, employees or contractors under this Agreement or under the Agreement entered into by the TMA in connection with this Agreement. This indemnification shall survive the termination of this Agreement.
6. **NON-DISCRIMINATION:** TMA shall not discriminate against any person on the grounds of race, color, national origin, sex, age or disability in the administration of this Agreement. Nor shall any person be excluded from participation in, or be denied the benefits of this contract on the grounds of race, color, national origin, sex, age or disability. TMA shall be subject to statutory penalties for violation of this paragraph.
7. **LAW CONTROLLING:** The laws of the state of Indiana shall control and govern this Agreement.
8. **NON-ASSIGNMENT:** This Agreement is not assignable by either party, by operation of law or otherwise.
9. **MODIFICATION:** This Agreement may be modified only by a written agreement executed by both parties hereto.
10. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the Parties and no other agreement or modification to this Agreement, expressed or implied, shall be binding on either party unless same shall be in writing and signed by both parties.

This Agreement may not be orally modified. Any modifications must be in writing, expressly titled a modification or addendum to this Agreement, attached to this Agreement, and signed by both parties.

11. **SEVERABILITY:** 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 toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, portions or applications thereof, shall not be impaired.
12. **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 purposes of interpretation shall be made to the contrary.
13. **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 first class mail, postage paid or by hand delivery to:

COUNTY:
VIGO COUNTY
189 Oak Street
Terre Haute, IN 47807
ATTN: Kevin Gardner
Assessor

CONSULTANT:
TAX MANAGEMENT ASSOCIATES, INC.
5121 Parkway Plaza Blvd.
Charlotte, NC 28217
ATTN: Richard H. (Chip) Cooke, Jr.
Chief Executive Officer

Executed and entered into by the parties hereto.


ACCEPTED:

VIGO COUNTY
189 OAK STREET
TERRE HAUTE, IN 47807

ACCEPTED:

TAX MANAGEMENT ASSOCIATES, INC.
5121 PARKWAY PLAZA BLVD.
CHARLOTTE, NC 28217

AUTHORIZED SIGNATURE BY


BOARD OF COMMISSIONERS
TITLE: President
DATE: 04/16/2019

AUTHORIZED SIGNATURE:


RICHARD H. (CHIP) COOKE, JR.
TITLE: CHIEF EXECUTIVE OFFICER
DATE: _____

ATTEST BY SIGNATURE:

TITLE: _____
DATE: _____


ATTEST BY SIGNATURE:

TITLE: _____
DATE: _____

ATTEST BY SIGNATURE:

TITLE: _____
DATE: _____

THIS CONTRACT HAS BEEN APPROVED AS TO LEGAL FORM BY THE COUNTY
ATTORNEY'S OFFICE ON April 16, 2019

SIGNATURE: 
TITLE: Vigo Co. Att'y.