



**Memo - Mission Health Business Personal Property Audit**

**To:** Keith Miller – Buncombe County Assessor

**From:** Chip Bourgeault – Tax Management Associates, Inc.

**Date:** September 21, 2018

**Subject:** Mission Health business personal property audit recommendations and TMA hospital audit history.

Tax Management Associates has performed over 235,000 business personal property audits across 18 states for over 200 counties. Of those, TMA has performed 90 audits specifically on hospitals in 6 states including North Carolina, Tennessee, Florida, Indiana, Connecticut and Nevada.

The North Carolina Department of Revenue 2018 Business Personal Property Tax Form instructions state the following with regards to reported costs of assets by a business:

*"COST - Note that the cost information you provide must include all costs associated with the acquisition as well as the costs associated with bringing that property into operation. These costs may include, but are not limited to invoice cost, trade-in allowances, freight, installation costs, sales tax, expensed costs, and construction period interest. **The cost figures reported should be historical cost, that is the original cost of an item when first purchased, even if it was first purchased by someone other than the current owner.**" (bolds and underlines added)*

It is our recommendation with regards to the Mission Health facilities, that Buncombe County pursue auditing the current owner prior to the anticipated buy out. This will ensure Buncombe County has access to historical cost information as recommended by the North Carolina Department of Revenue. It is our experience, that when a business sale occurs, the purchasing party is not provided historical asset costs as part of that transaction. Instead, the purchasing party rebooks the acquired assets based on the overall price paid for the business and then allocates those rebooked costs across all acquired locations. If Buncombe County waits to begin the audit process with the new owner, historical cost information will most likely not be obtainable and this would put the county at a disadvantage to accurately valuing the numerous Mission Health Facilities.

Sincerely,

Chip Bourgeault  
Tax Management Associates, Inc.  
704-840-8972

**Tax Management Associates, Inc.**  
**Business Personal Property Services Contract**

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by and between BUNCOMBE COUNTY, a political subdivision of the State of North Carolina, hereinafter referred to as "County" and TAX MANAGEMENT ASSOCIATES, INC., a corporation authorized to conduct business in North Carolina, hereinafter referred to as "TMA."

WITNESSETH:

WHEREAS, the County desires to obtain services related to the business personal property listing, and auditing, as the same are defined by North Carolina law, of certain business personal property within the County as authorized North Carolina law, specifically for all business entities owned, in whole or in part, or related to in any other relevant way, Mission Health System, Inc., the Board of Directors for the same, and/or any subpart and/or subsidiary thereof and/or any purchasers, successors, and/or assigns (hereinafter, sometimes, collectively referred to as "Mission Health").

NOW, THEREFORE, in consideration of the mutual covenants and agreements made herein, the parties agree as follows:

**AGREEMENT**

**1. SERVICES:**

In accordance with the charges, terms and condition contained in the Contract, TMA agrees to furnish business personal property services to obtain an accurate tax listing and asset cost analysis for all business personal property, in whole or in part, or related to in any other relevant way, Mission Health System, Inc., the Board of Directors for Mission Health, and/or any subpart and/or subsidiary thereof (hereinafter "Services").

- A. Said Services shall include, but not necessarily be limited to assessment of the business personal property located on that certain piece or parcel of property and within the improvements thereon known as the Mission Hospital Campus (Real Parcel Listings #964843769100000 and #964845713800000) and all other Mission Health locations in Buncombe County.
- B. The Services provided by TMA shall be performed in accordance with the terms and conditions provided by this Contract and in compliance with all applicable laws, rules, and/or regulations. TMA agrees to perform the services in accordance with professionally accepted auditing and accounting standards.
- C. In accordance with the charges, terms and conditions contained in this contract, and as part of the Services, TMA agrees to determine the accurate business personal property tax listing and cost analysis of all Mission Health business personal property located in the County. TMA shall perform Services for all Mission Health locations and/or business entities within the County including any it discovers, as well as those assigned by the County.
- D. All correspondence in connection with the Service sent to the Taxpayer will be signed by the County Tax Assessor or by his authorized designee.

- E. In order to assist in the scheduling of the Mission Health entities selected by the County for services, the County agrees to make available to TMA copies of the business personal property listings and/or other relevant data for each and any years for which Mission Health may have provided the same to the County.
- F. TMA agrees to provide Services for the 2019 business personal property tax listing. This service will require TMA to perform an audit of tangible assets along with an asset cost analysis. The audit and cost analysis will be performed on the 2018 financial records and any prior year financial records required to complete this service.
- G. It is expressly understood by TMA that under the provisions of North Carolina General Statute §105-299, it and its employees are subject to the State Confidentiality Statutes (General Statute §105-289(I) and General Statute §105-259) and the penalties contained therein. TMA agrees to abide by any and all applicable laws concerning confidentiality of taxpayer records and shall indemnify, defend, and hold the County harmless from any liability which may result from an action involving TMA or its employees or agents regarding confidentiality of the taxpayer's records.
- H. TMA agrees to provide training to designated employees of the County as to all aspects of the Services provided pursuant to this Contract. Any appropriate designee of the County may accompany TMA on any meeting with Mission Health provided the County shall be responsible for the travel related expenses of such County employee.
- I. TMA agrees that no employee of the company will consult with or answer questions regarding any aspect of the Services, except with authorized County officials and the taxpayer, unless otherwise directed to do so by the County Tax Assessor.
- J. If through any cause, TMA or the County fails to fulfill its obligations as provided by this Contract, or materially violates any of the covenants or stipulations within this Contract, or becomes unsatisfied with services rendered, 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 Contract immediately upon giving thirty (30) prior written notice to the other party. Said notice shall be mailed to the party by certified mail to the mailing address as specified herein. In the event of termination, all audits assigned and completed by TMA and all fees for completed audits shall be payable in accordance with the terms as provided by this Contract, less any costs or expenses incurred or anticipated to be incurred by the County due to any errors or omissions of TMA. Should this Contract be terminated, TMA shall deliver to the County within seven (7) days, at no additional cost, all deliverables including any electronic or files relating to the audit.
- K. It is expressly understood and agreed to by TMA and the County that the audit services performed under this Contract represent an examination of data and materials, as might be contained in a taxpayer's 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 taxpayer's listing of property. This service is not a Business appraisal service except that information obtained in the Services performed by TMA may be used by the County Tax Assessor to form an opinion or estimate of value as in an appraisal. TMA is solely responsible for the professional quality, accuracy and timely completion and/or submission of all work related to the audits.

## **2. COST AND PAYMENT FOR AUDIT SERVICES:**

1. The County shall pay to TMA for services furnished under this Contract the sum of ten thousand dollars (\$10,000) for Mission Hospital Campus (Real Parcel Listings #964843769100000 and #964845713800000) and other hospital locations within the County, and the sum of six hundred and fifty dollars (\$650) per location or entity for all other non-hospital Mission Health locations. Payment for Services hereunder shall not exceed \$ 25,000 without the County's express written authority via an instrument preaudited in the manner required by the Local Government Budget and Fiscal Control Act. Prior to undertaking the Services, County and TMA shall discuss which locations are known to exist. TMA shall inform County if it discovers any new locations other than those identified in the discussion referenced above and shall not perform Services on the same without the County's permission.

TMA agrees to bill the County on a monthly basis; however, no billing shall include charges for services rendered on the services unless and until the service has been completed and 30 days have passed, unless otherwise agreed by the County Assessor.

2. Invoicing – The County agrees to pay TMA for all properly completed and invoiced services. If the event the amount stated on an invoice is disputed by the County, the County may withhold payment of all or a portion of the amount stated in an invoice until the parties resolve the dispute. Should TMA fail to perform its duties under the terms of this Contract, County may, without fault or penalty, withhold any payments associated with the work to be performed until such time as said work is completed.
3. Not Contingency Fee – It is expressly understood by the County and TMA that the invoicing provisions of this contract and/or contract addendum(s) are not subject to or contingent on the results of any or all audit(s) assigned by County to TMA and performed by TMA. Fees for said audits, regardless of the outcome or results of said audits, will be invoiced by TMA to the County after said audits have been completed and the taxpayer's appeal rights exhausted or time barred by applicable statutes of limitations, unless otherwise agreed by the County Tax Assessor.
4. All expenses incurred by TMA in performing the Services under this Contract including, but not limited to, travel, food, lodging, mileage, salaries, etc. shall be the responsibility of TMA. The County will be responsible for the cost of postage related to the Services hereunder and for the cost of providing TMA copies of County tax records associated with an individual locations.
5. All legal costs involving tax appeals resulting from an audit shall be the responsibility of the County.
6. TMA will support the listing of assets and value determined for tax year 2019 with, but not limited to, the taxpayer, the Board of Equalization and Review, and the Property Tax Commission.
7. Payment for services shall not constitute an agreement that services are rendered. Services are considered rendered after all appeal rights or legal proceedings related to services provided have been exhausted.

## **GENERAL PROVISIONS**

- A. **AUTHORITY TO CONTRACT**: The County authority to contract for the service herein is authorized by North Carolina General Statute §105-299.
- B. **AUDIT**: All invoices shall be submitted by TMA to the County Tax Assessor with sufficient detail for services completed.
- C. **TERM / CANCELLATION**: This Contract shall become effective from the date entered above and shall remain in effect until the audit is deemed complete. This Contract may be terminated by either party without cause following the initial term upon thirty (30) days written notice. Notwithstanding the foregoing, the County may terminate this Contract for any reason, or for no reason, upon thirty (30) days written notice to TMA without penalty and, in such an event, will pay to TMA the pro-rated value of the work it has performed. The following schedule will be used to determine the proration:

Proration Schedule:

10% of payment total for assigned accounts once initial introduction letter is sent to the taxpayer.

50% of payment total for assigned accounts once 30 days has past from the appointment date listed on the appointment letter sent to the taxpayer.

- D. **COLLATERAL ASSIGNMENT**: The County acknowledges and agrees that payment due TAX MANAGEMENT ASSOCIATES, INC. under this Contract 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 TAX MANAGEMENT ASSOCIATES, INC. under this the Contract will be sent, **UPON REQUEST by Branch Banking and Trust**, to the Bank at that address pursuant to a financing and cash management arrangement. Payments made by the County pursuant to such request shall constitute accord and satisfaction the sums due to TMA. The Bank is authorized to receive information relating to this Contract and payments due under the Contract and all amendments or modifications to the Contract from BUNCOMBE COUNTY (the government authority). The Bank is authorized to rely upon the terms of the Contract. The government authority agrees to give notice to the Bank thirty (30) days prior to termination of this Contract.
- E. **INDEMNIFICATION**: To the fullest extent permitted by laws and regulations, TMA shall indemnify, defend, 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 to attorneys and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this contract or the actions of TMA or its officials, employees, or contractors under this Contract or under the Contracts entered into by TMA in connection with this contract. This indemnification shall survive the termination of this Contract.
- F. **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 contract. 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.
- G. **LAW CONTROLLING**: The laws of the state of North Carolina shall control and govern this contract.

- H. **NON-ASSIGNMENT**: This Contract is not assignable by either party, by operation of law or otherwise, unless expressly agreed to in writing by both parties.
- I. **MODIFICATION**: This contract may be modified only by a written agreement executed by both parties hereto.
- J. **ENTIRE AGREEMENT**: This contract constitutes the entire agreement of the parties and no other agreement or modification to this contract, expressed or implied, shall be binding on either party unless same shall be in writing and signed by both parties. This Contract may not be orally modified. Any modifications must be in writing, expressly titled a modification or addendum to this contract, attached to this contract, and signed by both parties.
- K. **SEVERABILITY**: Should any provision, portion, or application thereof of this Contract 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 Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions, portions, or applications thereof, shall not be impaired.
- L. **NON-APPROPRIATION**: TMA acknowledges that County is a governmental entity, and the validity of this Contract is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this Contract, then this Contract shall automatically expire without penalty to County immediately upon written notice to TMA of the unavailability and non-appropriation of public funds. It is expressly agreed that County shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Contract, but only as an emergency fiscal measure during a substantial fiscal crisis.

In the event of a change in the County's statutory authority, mandate and/or mandated functions, by state and/or federal legislative or regulatory action, which adversely affects County's authority to continue its obligations under this Contract, then this Contract shall automatically terminate without penalty to County upon written notice to TMA of such limitation or change in County's legal authority.

- M. **NOTICES**: Any notices to be given or submitted by either party to the other pursuant to this Contract shall be made in writing and sent by first class mail, postage paid or by hand delivery to:

COUNTY:  
BUNCOMBE COUNTY  
94 Coxe Avenue  
Asheville, NC 28801  
ATTN: Keith Miller  
Tax Assessor

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

{Signature Page Follows}

**Executed and entered into by the parties hereto:**

The individual signatories below have the expressed and implied authority on behalf of their respective Boards to execute this Agreement. The Parties may execute this Agreement in separate counterparts and the execution of a copy shall have the same effect as the execution of an original. Such execution may be by facsimile or PDF attachment to an email.

ACCEPTED:

BUNCOMBE COUNTY  
94 COXE AVENUE  
ASHEVILLE, NC 28801

ACCEPTED:

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

***AUTHORIZED SIGNATURE:***

\_\_\_\_\_  
GEORGE WOOD  
INTERIM COUNTY MANAGER

***AUTHORIZED SIGNATURE:***

\_\_\_\_\_  
RICHARD H. "CHIP" COOKE, JR.  
CHIEF EXECUTIVE OFFICER

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST BY:

\_\_\_\_\_  
Lamar Joyner  
Clerk to the Board

ATTEST BY:

\_\_\_\_\_  
TITLE:  
  
\_\_\_\_\_

PRE-AUDIT APPROVAL:

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Deputy County Finance Director

APPROVED (If Required):

AUTHORIZED SIGNATURE:  
  
\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_  
  
\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Buncombe County Staff Attorney