



City of Newberry

City Commission Agenda Item

Meeting Date:	November 26, 2018
Title:	Property Tax Collections Audit Services Memorandum of Understanding
Agenda Section:	IX. E
Department:	City Manager
Presented By:	Mike New / Ed Crapo, Alachua County Property Appraiser
Recommended Action:	Receive presentation

Summary:

This item is presented as an informational item on November 26, 2018. Staff expects it to be considered for a vote at the December 10, 2018 City Commission meeting.

In April, 2018, the Alachua County Property Appraiser's (ACPA) office through Ed Crapo entered into an agreement with Tax Management Associates (TMA). The purpose of the agreement is to determine through audit services whether certain property accounts qualify for the homestead exemption pursuant to the Florida Constitution. This agreement essentially outsources work that ACPA is charged with. TMA has resources to verify entitlement the homestead exemption that ACPA does not possess.

Per the agreement, ACPA retains full authority to allocate property accounts to TMA for evaluation. TMA earns a 30% fee on "found" tax revenues in the event the exemption is improper. The initial term of the agreement is for 24 months and is in effect thereafter on a month to month basis. The agreement also has a termination clause for thirty (30) days with cause.

The MOU between the property appraiser and City of Newberry has been approved by the City Attorney's office.

Attachments:

1. Letter from Ed Crapo, Alachua County Property Appraiser, to Mayor Jordan Marlowe dated October 19, 2018 regarding a proposed memorandum of understanding between the Alachua

County Property Appraiser, the Alachua County Tax Assessor, and the City of Newberry to distribute a portion of property taxes paid as a result of audit services provided by Tax Management Associates to TMA, for services rendered.

2. Copy of agreement between the Alachua County Property Appraiser and Tax Management Services dated April, 2018 for tax audit services.
3. Proposed interlocal agreement between the Alachua County Property Appraiser, the Alachua County Tax Assessor, and the City of Newberry to distribute a portion of property taxes paid as a result of audit services provided by Tax Management Associates to TMA, for services rendered.
4. Talking points / questions and answers related to the proposed interlocal agreement.



October 19, 2018

City of Newberry
C/O Mayor Jordan Marlowe
25440 West Newberry Road
Newberry, FL 32669

Dear Mayor Jordan Marlowe,

Several years ago, I became aware of a company that was doing audit work to assist Property Appraisers in detecting homestead exemption claims that were unwarranted and assisting Property Appraisers with tangible property returns to assure that everyone is being treated both fairly and equally. That company, Tax Management Associates (TMA), has successfully performed these services across the country as well as here in Florida.

The Property Appraisers Office has entered into an agreement with TMA to perform that same work in Alachua County. This program has no upfront costs for any of us, it works on a percentage basis of what is actually collected. In brief, this process will work as follows. TMA will identify properties that should not be getting the exemption(s) they are currently claiming. The Tax Collector will bill for the appropriate taxes. When the tax bill is paid, the collector will distribute the monies to the correct taxing authorities and to TMA. This program has been very successful in other counties and we expect it to generate many new dollars for Alachua County as well.

In order for the Tax Collector to be able to pay TMA, each taxing authority has to agree that it is ok to make that percentage payment from the funds they are going to receive. The Tax Collector and I, along with the County Attorney Office, have developed the enclosed memorandum of understanding (MOA) to formalize that approval. We have had discussions with the County, the City of Gainesville, and the School Board to make sure that we are doing things right. They have all signed their MOUs.

Now, I need your assistance and participation. We need 100% of the tax jurisdictions to consent and sign the MOU. The monies collected will be outside of the normal budget process. They will be new and extra dollars. Enclosed please find 3 copies of the MOU for your jurisdiction. Please execute all three and return two copies to me. I am available to answer any questions you may have. Please let me know what I can do to help facilitate your process and thank you for your support.

Respectfully,

Ed Crapo, ASA, AAS, CFA
Alachua County Property Appraiser

**AGREEMENT BETWEEN THE ALACHUA COUNTY
PROPERTY APPRAISER AND TAX MANAGEMENT
ASSOCIATES, INCORPORATED FOR CERTAIN AD
VALOREM TAX EXEMPTION AUDIT SERVICES**

This Agreement (the "Agreement") is made and entered into this 26th day of April, 2018, by and between the ALACHUA COUNTY PROPERTY APPRAISER, with its principal place of business located at 515 N. Main Street, Suite 200, Gainesville, Florida 32601 ("PROPERTY APPRAISER and TAX MANAGEMENT ASSOCIATES, INC., a corporation authorized to conduct business in Florida ("TMA"), to assist the PROPERTY APPRAISER through the performance of audits to verify entitlement to personal exemptions from ad valorem taxation granted on the County tax roll. The PROPERTY APPRAISER and TMA are hereinafter jointly referred to as "Parties."

Contractual services may begin upon full execution of this Agreement.

WITNESSETH:

WHEREAS, the PROPERTY APPRAISER is responsible under Florida law for the administration of ad valorem property tax exemptions and the preparing and filing of tax liens for back taxes related to the removal of undeserved exemptions; and

WHEREAS, the PROPERTY APPRAISER is responsible under Florida law for the accurate and complete listing and valuation of tangible personal property; and

WHEREAS, the PROPERTY APPRAISER desires to obtain services to audit the Alachua County tax roll (hereinafter "Audit Services") to identify undeserved personal exemptions from ad valorem property tax for: (i) homestead exemption granted pursuant to Article VII, section 6 of the Florida Constitution, and Sections 196.031, Florida Statutes, and (ii) to audit the tangible personal property (hereinafter, the exemption referred to in subparagraph (i) is referred to as the "Homestead Exemption," the audit program referred to in subparagraph (ii) is referred to as the "Tangible Audit."); and

WHEREAS, TMA agrees to provide said Audit Services to the PROPERTY APPRAISER pursuant to the charges, terms, and conditions of this Agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenant contained herein, the Parties agree as follows:

- 1) **INCORPORATION OF RECITALS**: The recitals set forth above are hereby incorporated into and deemed a part of this Agreement.

2) AUDIT SERVICES:

- a) TMA agrees to furnish Audit Services to identify undeserved Ad Valorem Exemptions and perform Tangible Personal Property Audits to assure statutory compliance on the Alachua County tax roll. The Audit Services provided by TMA will be performed in accordance with the terms and conditions in this Agreement and in compliance with all applicable Florida law.
- b) It is expressly agreed by the Parties that the PROPERTY APPRAISER shall retain sole and exclusive discretion and authority to grant, deny, remove exemptions, file liens, and to act on any and all audit recommendations made by TMA. The PROPERTY APPRAISER shall remove Ad Valorem Exemptions and prepare and file tax liens in accordance with governing Florida law and PROPERTY APPRAISER internal policies and procedures. The PROPERTY APPRAISER retains the right to limit a lien to certain tax years, waive penalties and interest, or revoke a lien, as allowed by Florida law. This Agreement does not, and shall not be construed to, delegate any of the PROPERTY APPRAISER'S statutory duties, obligations, or decision-making authority related to the administration of exemptions.
- c) The PROPERTY APPRAISER shall assign properties to TMA for Audit Services as may hereafter be deemed appropriate. TMA agrees that no TMA employee will discuss any aspect of an audit being performed, except with authorized TMA personnel, authorized PROPERTY APPRAISER officials, and the property owner being audited (to the extent hereafter determined appropriate by the PROPERTY APPRAISER), unless otherwise directed to do so by the PROPERTY APPRAISER. All correspondence to property owners in connection with audits will be signed by the PROPERTY APPRAISER or by its authorized designee.
- d) The PROPERTY APPRAISER agrees to make available to TMA the Alachua County tax roll and list of granted exemptions for the years for which audits are to be performed. Additionally, as necessary, the PROPERTY APPRAISER may make available copies of Ad Valorem Exemption applications and supporting documents, or information provided in said applications, subject to confidentiality provisions established by Florida law and addressed in Section 3, herein.
- e) TMA agrees to provide training to designated employees of the PROPERTY APPRAISER as to all aspects of the Audit Services provided pursuant to this Agreement. Any appropriate designee of the PROPERTY APPRAISER may perform an audit with TMA personnel, provided the PROPERTY APPRAISER shall be responsible for any related expenses of such PROPERTY APPRAISER employee.

3) PUBLIC RECORDS RETENTION AND CONFIDENTIALITY:

- a) The PROPERTY APPRAISER is a public agency subject to Florida's Public Records Law, including records retention, production, and confidentiality provisions.
- b) TMA and its employees and agents shall be bound by all applicable public records and confidentiality laws to the same extent that those laws apply to the PROPERTY APPRAISER. These requirements include but may not be limited to those stated in Chapter 119, Florida Statutes, and Sections 193.074 and 195.027(3), Florida Statutes, under which social security numbers, Ad Valorem Exemption applications and supporting documents, and any information provided within the application or supporting documents, are CONFIDENTIAL and EXEMPT from disclosure.
 - i) TMA agrees to retain all records associated with the performance of this Agreement in compliance with applicable Florida records retention schedules.
 - ii) Upon request from the PROPERTY APPRAISER, TMA shall provide the PROPERTY APPRAISER with a copy of requested public records or allow the public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - iii) TMA may be subject to penalties under section 119.10, Florida Statutes, in the event that TMA fails to provide public records to the PROPERTY APPRAISER within a reasonable time. In addition, the PROPERTY APPRAISER may unilaterally terminate this Agreement if TMA refuses to comply with the provisions of this paragraph 3.
 - iv) TMA shall not disclose public records that are exempt or confidential and exempt from public records disclosure requirements, except as authorized by law, for the duration of this Agreement and following completion of this Agreement if TMA does not transfer the public records to the Property Appraiser upon the completion of this Agreement. TMA shall hold the PROPERTY APPRAISER harmless from any liability which may result from an action involving TMA or its employees or agents regarding confidentiality of property owner records. This provision shall survive the termination of this Agreement.
 - v) Upon the completion of this Agreement, TMA shall, at no cost to the PROPERTY APPRAISER, transfer all public records in its possession to the PROPERTY APPRAISER or keep and maintain the public records. If TMA transfers all public records to the PROPERTY APPRAISER upon the completion of this Agreement, TMA shall destroy any duplicate public

records that are exempt or confidential and exempt from public records disclosure requirements. If TMA keeps and maintains public records upon completion of this Agreement, TMA shall meet all applicable requirements for retaining public records. All public records stored electronically must be provided to the PROPERTY APPRAISER, upon request from the PROPERTY APPRAISER, in a format specified by the PROPERTY APPRAISER as compatible with the information technology systems of the PROPERTY APPRAISER. This provision shall survive the termination of this Agreement.

- c) **IF TMA HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TMA'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE ALACHUA COUNTY PROPERTY APPRAISER'S REPRESENTATIVE AT: Telephone 352-338-3204, e-mail at edcrapo@acpafl.org or via U.S. mail at Suite 200, 515 North Main Street, Gainesville, FL 32601**

4) COSTS AND PAYMENT FOR AUDIT SERVICES:

- a) For Homestead Exemption Audit Services furnished under this Agreement, TMA shall be paid an amount equal to thirty percent (30%) of the taxes, penalties, and interest actually collected as a direct result from each Homestead Exemption audit performed by TMA (hereinafter, the "Homestead Audit Fee"). Taxes shall include all taxes levied by the Alachua County and its subdivisions, including penalties and interest. TMA shall not be paid any fee or expenses for Homestead Exemption Audit Service performed for any account not assigned by the PROPERTY APPRAISER.
- i) As allowed by Florida Statutes, taxpayers found to be in non-compliance with the Homestead Exemption provisions through the provided Audit Services shall be issued a notice of lien. The PROPERTY APPRAISER shall insure that new property tax bills are issued for each year of non-compliance as allowed by Florida Statutes.
- ii) TMA shall be paid \$650.00 for each account assigned by the PROPERTY APPRAISER on which TMA has performed a Homestead Exemption audit and on which the PROPERTY APPRAISER opts, in its sole authority and discretion, to: not issue corrected bills on properties deemed ineligible by said audit for the Homestead Exemption; or, not pursue reasonable collection practices on past due amounts related to liens issued on properties found to be ineligible for the Homestead Exemption through provided Audit Services; or, to remove, delete, or forgive bills, or otherwise abate amounts that would otherwise be owed on properties found to be ineligible through the provided Audit Services. For any account meeting the criteria set forth in this subsection 4.a) ii), the \$650.00 fee shall be the sole and exclusive fee to which TMA shall be entitled for said Homestead Exemption Audit Services.

- b) For Tangible Audit Services furnished under this Agreement, TMA shall be paid an amount equal to thirty-five percent (35%) of the taxes, penalties and interest actually collected as a direct result from each audit performed by TMA (hereinafter, the "Business Audit Fee"). Taxes shall include all taxes levied by Alachua County, including penalties and interest.
- c) The Homestead Audit Fee and the Tangible Audit Fee shall hereinafter collectively be referred to herein as "TMA's Fee."
- d) TMA's Fee shall be calculated upon full or partial payment of any qualifying tax lien, whether payment is made prior to or after recording of the lien and shall be calculated based on taxes levied by all taxing authorities in the tax district of the audited property for each tax year. The PROPERTY APPRAISER shall use reasonable efforts to enter into an associated agreement, interlocal agreement, or memoranda of understanding with each taxing authority that has ad valorem taxing authority within the geographic boundaries of Alachua County, Florida, to obtain the taxing authority's consent for the Alachua County Tax Collector to deduct its proportionate share of the TMA's Fee from the total tax, penalties and interest collected as a result of the Audit Services (hereinafter, collectively referred to as "MOUs").
- e) TMA's Fee shall be paid exclusively from the taxes, penalties, and interest collected in relation to the removal of Ad Valorem Exemptions and as a result of audits performed by TMA. TMA's Fee shall not be payable from future ad valorem tax levies.
- f) This Agreement does not constitute a pledge or general obligation of ad valorem taxation, or create any obligation on any taxing authority to appropriate or make monies available for the purpose of the Agreement for any tax year. This Agreement does not create the right in any party to compel the exercise of the ad valorem taxing power of any taxing authority, and does not impair the taxing power of any taxing authority.
- g) To facilitate TMA's billing for audit fees, the PROPERTY APPRAISER and/or Alachua County Tax Collector agrees to provide TMA a monthly report listing all taxes, penalties and interest collected as a result of TMA's audits. The report shall include the parcel number, property owner, site address of the properties audited, total collected amount and the collection date. This report, if possible, should be in spreadsheet format; if not available in spreadsheet format, a system-generated report will be acceptable.
- h) TMA shall invoice the PROPERTY APPRAISER and/or the Alachua County Tax Collector for applicable TMA's Fees on a monthly basis. Invoiced fees will be due and payable within ten (10) days following billing date. If payment is not received by TMA within thirty (30) days from billing date; unpaid balance of fees will be subject to additional fees in the amount of one and one-half percent (1 1/2%) per month until payment is received.

- i) The Alachua County Tax Collector shall make payment to TMA, of all sums properly invoiced under the provisions of this paragraph, in accordance with the provisions of Chapter 218, Part VII (Local Government Prompt Payment Act), Florida Statutes. Payments shall be made to the following address:

TAX MANAGEMENT ASSOCIATES, INC.
ATTN: Accounts Receivable
5121 Parkway Plaza Blvd.
Charlotte, NC 28217

- j) If the Alachua County Tax Collector distributes a TMA Fee based on a lien payment that is subsequently reversed for any reason-including but not limited to a correction to the tax roll, a final judgment in a lawsuit, or a bounced check, TMA shall refund the applicable fee to the Alachua County Tax Collector. If, in the month immediately following the payment reversal, the total balance of TMA's Fee for the monthly distribution exceeds the refund due and owing to the Alachua County Tax Collector, said refund amount will be withheld from the monthly distribution. Any such withholding will be reflected in the Alachua County Tax Collector's monthly report. If the balance of TMA Fees in the following month is not sufficient to cover the refund amount, the Alachua County Tax Collector will send TMA a bill for the remainder of the refund amount, and TMA will remit the full amount billed within thirty (30) days. Should a reversed lien payment be reinstated and paid for any reason, TMA retains the right to TMA's Fee, which will be paid by the Alachua County Tax Collector in full accordance with this Agreement.
- k) As of the date that original Ad Valorem Exemption data is passed to TMA from the PROPERTY APPRAISER, as denoted by electronic time stamp on the communicating equipment, all accounts for which TMA provided an audit and which were determined by TMA to be ineligible for an Ad Valorem Exemption, shall be construed as the result of the provided Audit Services and shall be subject to TMA's Fee under these payment provisions. However, if the PROPERTY APPRAISER discovers an undeserved Ad Valorem Exemption on a property that was not identified by TMA as potentially having received undeserved Ad Valorem Exemption(s), no Fee shall be paid in relation to that property.
- i) An "account" is an individual property denoted by the parcel identification number on the property tax roll and shall be treated as a separate account under these payment terms. Any individual account is severable and treated as unique and distinct in terms of the amount owed to TMA for services provided under this contract. Payments of TMA's Fee for multiple accounts may be made together provided that an accounting of TMA's Fee for each individual account is provided.
- l) All expenses incurred by TMA in performing audits under this Agreement including, but not limited to, travel, food, lodging, mileage, postage, salaries, etc. shall be the responsibility of TMA and are not subject to reimbursement from the PROPERTY APPRAISER, the Alachua County Tax Collector or any of the taxing authorities. TMA

shall maintain a sufficient workforce of employees necessary to provide the Audit Services, and there shall be no additional compensation paid to TMA for said employees.

- m) All legal costs involving appeals of the Audit Services resulting from TMA's audits shall be the responsibility of the PROPERTY APPRAISER. TMA shall fully cooperate with and provide all support requested by the PROPERTY APPRAISER to defend TMA's audit findings throughout any appeals process, as deemed appropriate or necessary by the PROPERTY APPRAISER, and TMA shall not be entitled to any additional fees or costs. Defense of audit findings may include, but shall not be limited to, personal appearances at meetings with property owners or their representatives, and provision of testimony and evidence concerning information and opinions provided in audit at any administrative, judicial, or quasi-judicial hearings.

5) TERMINATION:

- a) This Agreement shall become effective on the date that it has been executed by all Parties and shall remain in effect for an initial term of twenty-four (24) months, and shall continue in effect thereafter on a month-to-month basis. After the initial twenty-four-month term, any Party can terminate this Agreement without cause (*i.e.*, for convenience) by providing thirty (30) days' written notice of termination to the other Parties.
- b) If through any cause TMA, or the PROPERTY APPRAISER fails to fulfill its obligations as provided by this Agreement, or materially violates any of the covenants or stipulations within this Agreement, or becomes unsatisfied with services rendered, and such failure or violation continues for thirty (30) days after written notice thereof by a Party, any Party shall thereupon have the right to terminate this Agreement immediately upon giving written notice to the other Parties. Said notice shall be delivered to the Parties personally or mailed by certified mail to the mailing address as specified herein under "Notice."
- c) In the event that any county-wide taxing authority terminates its MOU, or sufficient funds are otherwise not available to support this Agreement for a new fiscal period, the PROPERTY APPRAISER shall notify TMA of such occurrence and the Agreement shall terminate on the last day of the current fiscal period without penalty or expense. In the event of such termination, TMA's Fees for all audits completed by TMA up to the date of the notification of termination shall be payable in accordance with the terms provided by this Agreement.
- d) In the event of termination for cause or without cause, all audits assigned to TMA and on which TMA has initiated work or expended resources, shall be completed by TMA and all TMA's Fees for completed Audits shall be payable in accordance with the terms as provided by this Agreement. Because tax liens may not be paid within the term of this Agreement, provisions related to the payment of TMA's Fees shall survive the termination of the Agreement, and shall terminate upon the

later of the collection and payment of all liens related to TMA audits, or the expiration of such liens as a matter of Florida law.

- e) Upon completion of all audits, TMA shall provide any records related to this Agreement to the PROPERTY APPRAISER for record retention purposes, as further addressed in Section (3), herein.

6) GENERAL PROVISIONS:

- a) **AUTHORITY TO CONTRACT:** The Parties understand that PROPERTY APPRAISER'S and TAX COLLECTOR'S authority to contract for the service herein originates in Florida law.
- b) **DOCUMENTS COMPRISING AGREEMENT AND CONFLICT CONTROL:** This Agreement incorporates by reference the associated MOUs between the PROPERTY APPRAISER, TAX COLLECTOR and each Alachua County taxing authority. In the event of a conflict between this Agreement and the MOUs in relation to the rights and duties of TMA, the PROPERTY APPRAISER, and the TAX COLLECTOR, this Agreement shall supersede.
- c) **INDEMNIFICATION:** To the fullest extent permitted by law, TMA shall indemnify and hold harmless the PROPERTY APPRAISER, TAX COLLECTOR, and the taxing authorities, and their respective 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 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, agents, or contractors under this Agreement or under any Agreements entered into by TMA in connection with this Agreement. This indemnification shall survive the termination of this Agreement.
- d) **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 Agreement on the grounds of race, color, national origin, sex, age or disability.
- e) **LAW CONTROLLING:** The laws of the state of Florida shall control and govern this Agreement. Sole and exclusive venue for any action arising under this Agreement shall be Alachua County, Florida.
- f) **NON-ASSIGNMENT:** This Agreement is not assignable by any Party, by operation of law or otherwise.
- g) **MODIFICATION:** This Agreement may be amended only by a written agreement executed by all Parties hereto.

- h) **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement of the Parties and no other agreement, except the MOUs, or modification to this Agreement, expressed or implied, shall be binding on any 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 all Parties.
- i) **EXECUTION IN COUNTERPARTS:** This Agreement, and any Amendments thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the Party executing or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.
- j) **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, or should future changes to Florida law conflict with any portion of this Agreement, the Parties shall, in good faith, attempt to 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. If a future change to Florida law conflicts with or preempts the entirety of this Agreement, the Agreement will be immediately terminated, subject to the termination and public records provisions herein.
- k) **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 all Parties, and no purposes of interpretation shall be made to the contrary.
- l) **NOTICE:** Any notices to be given or submitted by any Party to the others pursuant to this Agreement shall be made in writing and sent by first class mail, postage paid or by hand delivery to:

PROPERTY APPRAISER:
 ALACHUA COUNTY
 PROPERTY APPRAISER
 515 N. Main Street
 Suite 200
 Gainesville, FL 32601
 ATTN: Ed Crapo

TMA
 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:

ALACHUA COUNTY
PROPERTY APPRAISER
515 NORTH MAIN ST, SUITE 200
GAINESVILLE, FL 32601

AUTHORIZED SIGNATURE:



ED CRAPO

TITLE: PROPERTY APPRAISER
OFFICER

DATE: Apr 25, 2018

ACCEPTED:

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

AUTHORIZED SIGNATURE:



RICHARD H. (CHIP) COOKE, JR.

TITLE: CHIEF EXECUTIVE

DATE: 4/28/18

**MEMORANDUM OF UNDERSTANDING FOR USE OF PROPERTY TAX
COLLECTIONS TO FUND CERTAIN AD VALOREM TAX
EXEMPTION AUDIT SERVICES**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of this _____ day of _____, 2018, by and between the ALACHUA COUNTY PROPERTY APPRAISER ("PROPERTY APPRAISER"), ALACHUA COUNTY TAX COLLECTOR ("TAX COLLECTOR"), and the CITY OF NEWBERRY ("TAXING AUTHORITY"). Collectively, the PROPERTY APPRAISER, the TAX COLLECTOR and the TAXING AUTHORITY are referred to herein as the "Parties."

WHEREAS, the PROPERTY APPRAISER is responsible under Florida law for the administration of ad valorem property tax exemptions, including homestead exemption, and the preparing and filing of tax liens for back taxes related to the removal of undeserved exemptions; and

WHEREAS, the PROPERTY APPRAISER is responsible under Florida law for the accurate and complete listing and valuation of tangible personal property; and **WHEREAS**, the TAX COLLECTOR is responsible under Florida law for the collection and distribution of ad valorem property taxes, including back taxes and tax liens, and associated penalties, fees, and interest; and

WHEREAS, the TAXING AUTHORITY receives local property tax revenue to fund essential public services; and

WHEREAS, the Parties to this MOU recognize that there may be property owners on the Alachua County tax roll claiming undeserved and/or fraudulent personal exemptions from ad valorem property tax, which reduces property tax revenue and unfairly shifts the property tax burden to other property owners; specifically: (i) homestead exemption granted pursuant to Article VII, section 6 of the Florida Constitution, and Sections 196.031, Florida Statutes, and (ii) that there may be property owners on the Alachua County tax roll who are not reporting or under reporting the value of their tangible personal property (hereinafter, the exemption referred to in subparagraph (i) is referred to as the "Homestead Exemption," the audit program referred to in subparagraph (ii) is referred to as the "Tangible Audit." and both exemptions are collectively referred to as the "Ad Valorem Exemptions"); and

WHEREAS, the PROPERTY APPRAISER intends to enter into a contract with TAX MANAGEMENT ASSOCIATES, INC. ("TMA") for audit services to identify properties with undeserved Ad Valorem Exemptions for the purpose of collecting taxes due on those properties, which funds would otherwise be unavailable to the TAXING AUTHORITY (hereinafter the "TMA Audit Agreement"); and

WHEREAS, TMA shall provide said audit services in exchange for the fees established in the TMA Audit Agreement, which generally consists of: (i) an amount equal to thirty percent (30%) of any tax, penalties, and interest collected from back taxes assessed or tax liens filed by the PROPERTY APPRAISER on parcels identified through a TMA audit as having undeserved Homestead Exemption(s), and (ii) an amount equal to thirty-five percent (35%)

of any tax, penalties, and interest collected from taxes assessed by the PROPERTY APPRAISER on parcels identified through a TMA audit of tangible personal property as more particularly described in the TMA Audit Agreement (hereinafter, collectively referred to as "TMA's Fee"); and

WHEREAS, TMA's Fee shall be paid exclusively from the taxes, penalties, and interest collected in relation to the removal of Ad Valorem Exemptions as a result of audits performed by TMA, and shall not constitute a pledge or general obligation of tax funds or create an obligation on the TAXING AUTHORITY to appropriate or make monies available for the purpose of this MOU beyond the fiscal year in which this MOU is executed; and

NOW, THEREFORE, the PROPERTY APPRAISER, TAX COLLECTOR, and undersigned TAXING AUTHORITY, for and in consideration of the mutual promises, covenants, and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

TERMS

- 1) Incorporation of Recitals. The recitals set forth above are hereby incorporated into and deemed a part of this MOU.
- 2) Authorization of Reduced Collections for Fee Payment:
 - a) The undersigned TAXING AUTHORITY authorizes the TAX COLLECTOR to deduct its proportionate share of TMA's Fee, as established in the TMA Audit Agreement, from the total property tax, penalties and interest collected as the result of the removal of Ad Valorem Exemption(s) pursuant to TMA audits. The TAX COLLECTOR shall distribute the remaining tax revenue to the undersigned TAXING AUTHORITY according to governing Florida law.
 - b) This MOU does not constitute a pledge or general obligation of ad valorem taxation, or create any obligation on any TAXING AUTHORITY to appropriate or make monies available for any tax year, and does not create the right in any party to compel the exercise of the ad valorem taxing power of any TAXING AUTHORITY.
 - c) The TAX COLLECTOR may, upon request, make available to the TAXING AUTHORITY an accounting of all tax proceeds collected pursuant to the TMA Audit Agreement, TMA's Fees paid to TMA, and the total funds distributed to each taxing authority within the geographic boundary of Alachua County, Florida.
- 3) Term & Termination: This MOU shall be effective as of the date of execution for an initial term of eighteen (18) months. Thereafter, this MOU shall renew automatically on an annual basis until such time as the TMA Audit Agreement is terminated or

otherwise expires, except for such provisions as survive termination as further agreed herein.

- a) The TAXING AUTHORITY may opt out of this MOU provided it notifies the PROPERTY APPRAISER and TAX COLLECTOR in writing at least ninety (90) days prior to October 1. This option shall become effective upon October 1 of the year following the initial term delineated above .
 - b) The Parties acknowledge that TMA audit services shall not be provided for any parcel in the TAXING AUTHORITY'S specific taxing district if the TAXING AUTHORITY does not sign, or subsequently withdraws from, this MOU for use of property tax collections to fund Ad Valorem Exemption Audit Services.
 - c) Upon termination of this MOU, TMA's Fees for all audits completed by TMA in the TAXING AUTHORITY'S tax districts up to the date of termination shall be payable in accordance with the terms provided by the MOU and the TMA Audit Agreement. Because tax liens may not be paid within the term of this MOU, the authorization of reduced collections for TMA's Fee payment shall survive the termination of this MOU, and shall terminate upon the later of the collection and payment of all liens related to TMA audits, or the expiration of such liens as a matter of Florida law.
- 4) Severability: Should any provision, portion, or application thereof of this MOU or the TMA Audit Agreement be determined by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any applicable law or constitutional provision, or should future changes to Florida law conflict with any portion of this MOU or the TMA Audit Agreement, the Parties shall, in good faith, attempt to negotiate an equitable adjustment in the affected provisions of this MOU with a view toward effecting the purpose of this MOU, and the validity and enforceability of the remaining provisions, portions, or applications thereof, shall not be impaired. If a future change to Florida law conflicts with or preempts the entirety of this MOU, this MOU will be immediately terminated, subject to the termination provisions herein.
 - 5) Public Records: The Parties are public agencies subject to Florida's public records laws, including records retention, production, and confidentiality provisions. The PROPERTY APPRAISER and TAX COLLECTOR agree to retain all records maintained by their agencies and associated with the performance of this MOU in compliance with applicable Florida records retention schedules, and to make all non-confidential or exempt records available for inspection or copying upon request and in compliance with Florida's public records laws.
 - 6) Liability: The PROPERTY APPRAISER retains sole discretion and authority to grant, deny or remove exemptions, or file liens for undeserved Ad Valorem Exemptions in accordance with Florida law. All legal costs involving appeals of the removal of Ad Valorem Exemptions and resulting from audits shall be the responsibility of the PROPERTY APPRAISER. The undersigned TAXING AUTHORITY has no decision-making authority in relation to exemptions or liens

under this MOU and assumes no liability for any claims, damages, losses, or expenses, direct, indirect or consequential, arising out of or resulting from the actions of TMA, the PROPERTY APPRAISER, or the TAX COLLECTOR under this MOU or the TMA Audit Agreement.

- 7) Notice: Any notices to be given or submitted by any Party to the other Parties pursuant to this MOU shall be made in writing and sent by first class mail, postage paid or by hand delivery to:

PROPERTY APPRAISER:
ALACHUA COUNTY PROPERTY APPRAISER
515 N. Main Street
Suite 200
Gainesville, FL 32601

TAX COLLECTOR:
ALACHUA COUNTY TAX COLLECTOR
12 SE 1st Street
Gainesville, FL 32601

TAXING AUTHORITY:
CITY OF NEWBERRY
25440 West Newberry Road
Newberry, FL 32669

- 8) Applicable Law: The terms and conditions of this MOU shall be governed by the laws of the State of Florida. Sole and exclusive venue for any action arising under this MOU shall be in Alachua County, Florida.
- 9) No Third-Party Beneficiaries: This MOU is for the sole benefit of the Parties hereto, and in no event, shall this MOU be construed to be for the benefit of any third party, nor shall any party hereto be liable for any loss, liability, damages or expenses to any person not a party to this MOU.
- 10) Amendment: This MOU may be amended only by a written agreement executed by all Parties hereto.
- 11) 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 MOU shall be deemed to have been drafted by all Parties, and no purposes of interpretation shall be made to the contrary.
- 12) Execution in Counterparts: This MOU, and any Amendments thereto, may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the Party executing

or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page is an original thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by the proper officer of each, as of the date first written above.

EXECUTED AND ENTERED INTO BY THE PARTIES HERETO.

ACCEPTED:

ALACHUA COUNTY
PROPERTY APPRAISER
515 NORTH MAIN STREET, SUITE 200
GAINESVILLE, FL 32601

AUTHORIZED SIGNATURE:



ED CRAFO
PROPERTY APPRAISER

DATE: 6/14/18

ACCEPTED:

ALACHUA COUNTY
TAX COLLECTOR
12 SE 1ST STREET
GAINESVILLE, FL 32601

AUTHORIZED SIGNATURE:



JOHN POWER
TAX COLLECTOR

DATE: 6/14/18

ACCEPTED:

CITY OF NEWBERRY
25440 West Newberry Road
Newberry, FL 32669

AUTHORIZED SIGNATURE:

JORDAN MARLOWE
MAYOR

DATE: _____

Ed Crapo
Alachua County Property Appraiser
Micanopy Town Hall
November 13, 2018

Let me begin with a few generalized statements and then begin to answer any specific questions.

The MOU in front of you tonight has one issue in it. That is, If the research that TMA does results in additional property tax dollars being collected, does the Tax Collector have your permission to distribute a portion of the money that would be normally distributed to you, to TMA?

The current agreements, if fully executed, do nothing to change or transfer any powers, authorities or rights to or from any jurisdictions or individuals.

There is nothing in any of the agreements that will ever cost Micanopy, or any other jurisdiction, any money. Nor is there anything that would diminish any current or future revenue stream by any money. If the program goes forward you will receive, in the first year 70% of a dollar that you would not receive otherwise. In the second and all future years you will receive 100%.

TMA will work under the direction and at the direction of the Property Appraiser at all times. TMA does not become invested with any of the powers, authorities or duties of the Property Appraiser. They become, essentially, Property Appraiser staff. What they bring to the transaction is an ability to process huge data bases that the Property Appraiser will never have access to. From these analysis, they are able to recommend properties to us that they believe should not be receiving homestead exemptions. On the Tangible Property side, they offer the Property Appraiser access to CPAs for short durations to accomplish our statutory responsibilities. They offer us an educated pool of people that we will never be able to afford to hire.

Now, let's move in to some of the specific questions.

1. [The Town should be copied on the \(pending? / already agreed to?\) contract between the Property Appraiser's Office and Tax Management Associates.](#)

That contract for services, which has been provided to your attorney, deals with an agreement between TMA, the Tax Collector and the Property Appraiser. It in no way obligates Micanopy or anyone else to anything. As I believe we shall experience this evening it will become a distraction to what we are here to discuss tonight. In earlier discussions with the BOCC and School Board the analysis was that there was no need to involve any of the taxing jurisdictions in that agreement and that in fact keeping them out of it would help minimize any potential liability exposure.

[This contract is referred to in the MOU. The Town should not opt-in without the details referred to in that primary contract.](#)

Because you are not a party to that agreement, I did not feel you needed to review it. The provisions in that agreement only affect the Tax Collector and Property Appraiser.

In the Property Assessors cover letter he states that he has already entered into an agreement with TMA. In the MOU it states that the agreement is intended. Which is it?

The agreement for services between the Tax Collector, TMA and the Property Appraiser is completed. Had the three of us not been able to come to agreement there would have been no reason to come to you and ask for your participation. The MOUs are not all completed. At this point we have received executed agreements from the School Board, the BOCC, the MSTU, the Library Board and the City of Gainesville. Again, had the BOCC and SBAC not agreed there would have been no point in bringing this agreement to you. The deal would have been dead.

2. Upon cancellation of the contract the liens clause causes any parcel having a lien that has not yet been satisfied to be held by TMA for future collection of fees once the lien is finally satisfied. Is there no limitation that can be set on the time which parcels can be held by TMA after MOU cancellation?

The liens are held by Alachua County. TMA has their agreement for a share of the collection of that lien, if and when it is paid. If that lien is levied prior to any cancellation of agreements, they will always be entitled to payment for the work they have done. Liens and their expiration are a matter of State Statute.

3. If the Town terminates the MOU, are there any other exceptions that can be held by TMA after termination? (besides the lien issue?)

Micanopy will only have an agreement with the Tax Collector and Property Appraiser. If Micanopy cancels that, TMA is not a party. Therefore, they have no claims.

4. Beyond the stated fees to be collected by TMA, are there any other fees agreed to by the contract between the Property Appraiser's office and TMA?

In the event that the Property Appraiser has requested TMA to do research on a property and TMA does the research, and TMA believes that it is a property that should be liened and the Property Appraiser decides not to. The Property Appraiser may be liable for a onetime payment to TMA of \$650. There are no other fees.

5. Are there any fees that could be collected by TMA that would continue in following years, or for the duration of the contract?

No, when a lien is filed that is it. TMA's percentage will come out of that lien and have no claim to future revenues from that property.

6. The Town appears to lose authority via this MOU to render decisions on liens and exemptions with regard to parcels within the Town. Although exemptions are handled by the Property Appraiser's office and liens are filed through them, the Town may find itself in a position of wanting to make a determination on a particular parcel and this contract may get in the way. Is this a possibility?

The Town has no current authority in these matters. This is the sole area of the Property Appraiser. The administration and enforcement of Homestead Exemption is a duty of the PA.

7. Is the Property Appraiser's office relieving itself of duties assigned it by Florida Statute? Not at all. In fact, the opposite is true. The Property Appraiser is trying to increase his ability to perform his statutory responsibilities with a minimal cost to the taxpayers of Alachua County.

We seem to have a situation here that indicates the following:

- the Property Appraisers office has not done due diligence in recording personal property and vetting exemption requests.
- In order to catch up and correct the records, they are outsourcing services.
- The Taxing Authority is the entity losing revenues for these services.
- Those found revenues that result from these services, would have been paid 100% to the Taxing Authority in the correct fiscal year if the Property Appraiser had performed its tasks correctly.
- Is it wrong to assume that the Property Appraisers budget should be paying the fees for this outsourcing as opposed to increasing staff and dealing with the issues in-house?

The accusations of malfeasance in office are a matter of legal review. The tax roll in Alachua County is reviewed and audited annually by the Department of Revenue. The tax roll has been approved every year for the past 38 years. An indication that my office has been performing exceptionally. We collect extra monies in all these issues on an annual basis. However, auditing Duke Energy, for example, is not a simple task. It takes weeks if not months and when you have other power companies, telecoms and utilities, it is not an easy challenge. It would cost the tax payers of Alachua County greater than \$750,000 per year every year to just begin to staff that effort. On exemptions we catch a lot of them every year. But, some of these people intentionally lie. That means they hide what they are doing and how they are doing it. It doesn't make the investigations easy. TMA has access to resources that we will never have because of legal restrictions. The fact that they can do \$1 million of labor for a minimal cost just improves our efficiencies. The outsourcing is increasing staff. In this case at a minimal cost. Alachua County cannot afford to increase my budget by nearly \$2 million dollars to do these things. So, it cannot be paid out of my budget.

8. Where is the listing of fines and penalties that TMA will be imposing on our property owners?

TMA will not be fining and liening our people. Alachua County will be doing that per the same schedule that we are currently operating under. The fines and penalties are State law.

9. What entity will receive interest paid for fraudulent exemptions that were claimed, possibly for many years.

Interest is included along with the penalties in any lien. The payments are distributed the same way property taxes are.

10. How many years back will TMA analyze and assess fines and penalties?

The law provides that we can go back up to 10 years. Again, it will not be TMA doing the fines and penalties. It will be Alachua County.

11. What is the process TMA employees to analyze personal property on parcels? How are responses from Property Owners handled and by whom?

Those accounts to be audited are determined by the Property Appraiser. Whether a book audit, physical inspection or both are indicated will depend upon circumstances. The process will be the same as it is today.

12. Does TMA have the authority to place a lien on a parcel? No, this will done by the Property Appraiser. Can properties be sold for unpaid taxes, penalties, fines after the standard 3 years? Liens do not currently come under the same provisions of collection as the taxes. Property Owners with a large amount due may not be able to satisfy the debt within a three-year time frame. If you have had no problem asking the other tax payers of Alachua County to pick up and pay part of your share for non legal reasons, you really shouldn't have a problem when those people ask you to pay them back.

13. Why does the Property Appraiser need 100% of the County to sign on to this MOU? If one municipality were to opt out, would that negate the contract between the Property Appraiser and TMA? Or is this merely a statement of incentive to sign? Again, the Town should have the ability to analyze that background contract.

Taxes in Alachua County are paid based upon a combined millage rate. We cannot elect to pay our Micanopy taxes but not our BOCC. As such any lien filed will include all the millages applicable to that property. The Tax Collector cannot disperse funds other than by State Statutes unless the taxing authorities authorizes him to do so. Should monies be collected as a result of TMA's efforts and not everyone had agreed to pay them, then only those that had agreed would have to pay the entirety of the bill. The ones that didn't agree would a free ride. That's not fair to anyone. So, it is 100% or nothing.

14. With regard to the Property Appraiser and TMA contract, if amended in the future by those two parties, where is the process in this MOU for presentation and acceptance by each opt-in entity prior to enforcement?

If any amendments were to affect the MOUs, the MOUS would be become obsolete and no longer in effect.

15. On page 3, paragraph 2 of the MOU, fees will be generated for TMA exclusively from collections related to removal of ad valorem exemptions. What about discoveries of additional personal property that was never entered into the Property Appraiser's records? Where is the fee structure for these additions to the tax record?

The personal property process follows a different path. It does not end in a lien. It ends in a back assessment. The assessment is appealable and follows a course similar to ordinary property taxes.