

TAX MANAGEMENT ASSOCIATES, INC.

AND

RUTHERFORD COUNTY, NORTH CAROLINA

AGREEMENT REGARDING USE OF TAXSCRIBE® ONLINE SERVICES

This Agreement (this “Agreement”) is made and entered into this _____ day of _____, 2019 (“Effective Date”) by and between **Rutherford** 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 enter into an agreement to obtain access to the TaxScribe® online service created and maintained by TMA and described further herein; and

WHEREAS, TMA offers to provide access to and information from TaxScribe® to the COUNTY with assistance from the office of the Assessor and the Assessor’s staff (“Assessor”);

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

1. **Subscription Services.** TMA will provide the following services to the COUNTY.
 - a. **TaxScribe® Access.** TMA will provide access to the TaxScribe® online service, associated websites(s) and additional associated resources for the purpose of receiving, reviewing, and accepting forms set forth in Exhibit 1 submitted to the COUNTY by “TAXPAYERS,” defined as individuals or companies who have filed a form with the COUNTY through resources provided on the website TaxScribe® . During the term of this Agreement, forms submitted by TAXPAYERS via TaxScribe® with the COUNTY will be stored by TMA on the TaxScribe® related resources, and notifications of forms will be electronically communicated to the COUNTY. At any time during the term of this Agreement, the COUNTY will have access to all current year plus six prior years forms filed with the COUNTY via TaxScribe®, as well as ancillary reports, to be downloaded from the site either singly or in bulk transmission formats as described herein.
 - b. **TaxScribe® Technical Support.** TMA will provide to the COUNTY and TAXPAYER technical support for the subscription services via email and / or an online portal during the availability of forms for submission.
 - c. **TaxScribe® Training.** TMA will provide web-based training to designated County personnel on TaxScribe® online services. If COUNTY asks TMA to conduct on-site training at COUNTY’s facilities or any other training, and TMA agrees to provide such training, the COUNTY will pay TMA’s actual, reasonable expenses associated with that training,

including TMA's travel, food, lodging, and mileage.

- d. **TaxScribe® Updates.** TMA will provide scheduled or as needed updates to the TaxScribe® online service, associated websites(s) and additional associated resources. Updates may include general maintenance, feature updates, feature additions, or corrections for system flaws, bugs, or other like technical difficulties which are of no fault of the TAXPAYER or the COUNTY. A feature is any functional item which satisfies a requirement or is part of the systems design for intended use. Feature additions are provided at the discretion of TMA and must generally benefit all COUNTY subscribers.

2. **Subscription Fees.** Subscription Fees as set forth in Exhibit 1 are charged on an annual subscription basis and will be billed January 1 of each calendar year, with payment due within thirty (30) days of issuance of the bill to the COUNTY. If payment is not received by TMA within thirty (30) days from billing date, the 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.

3. **COUNTY Responsibilities.** The COUNTY agrees to the following responsibilities for the purpose of reliable performance of the site and the intended purpose.

- a. **TAXPAYER Non-Technical Support.** The COUNTY will be responsible for providing support to TAXPAYERS in regards to the processing and / or completion of forms for accuracy and completeness therein.
- b. **TAXPAYER Technical Support.** The COUNTY will be responsible for providing basic help desk, i.e. Tier 1, support to TAXPAYERS in regards to the TaxScribe® system. This includes such situations as access setup, password resets, general navigation, or referring TAXPAYER to TMA resources.
- c. **Delivery of TAXPAYER Information.** The COUNTY will be responsible for providing to TMA TAXPAYER information each calendar year preceding the year of service in accordance with the forms processing schedule. The electronic file must contain TAXPAYERS information to aid in finding and filing forms for their online listing account associated with the correct account numbers as proscribed by the COUNTY. This file will be sent to TMA through a Web Application Programming Interface (API), Secure File Transmission Protocol (SFTP) or another format deemed suitable by both parties. The file provided should provide account numbers, business names, and situs address at a minimum.
- d. **Timely Response to TAXPAYER Filings.** TMA will send to the Assessor or his/her designee electronic notification of form submissions. These electronic notifications will constitute the legal "Filing Date" of the referenced material, and it is incumbent on the COUNTY to review these notifications and draw down the full information from the provided resources in a timely manner. The COUNTY agrees that the date of electronic notification of form submission will be the date of such electronic notification.
- e. **Acceptable Formats.** The COUNTY agrees to accept the electronic information received from TMA in regards to forms in at least one of the following forms, 1) online form not necessarily in the same format as the North Carolina Department of Revenue recommended form but containing in aggregate the same information requested in that form 2) as image files which will visually appear the same as the North Carolina Department of Revenue

recommended form but which will be composed of electronic information received from the TAXPAYER, including the represented signature information (or a conformed signature) in place of a physical ink signature; 3) in a text file format, either downloaded or otherwise transmitted which will contain the same information but in various formats; or 4) a printed paper version of the image file which would include signatures replaced by the electronic equivalent in the TaxScribe® online service system. The COUNTY agrees that these may be acceptable forms of transmission, and agrees to accept such filings as legal submissions of TAXPAYER information related to business personal property filings or extension requests

d. New TAXPAYER Online Accounts. The COUNTY will be responsible for reviewing information on new online accounts through the use of TaxScribe® online service. This service will allow the COUNTY to add an account number to the new account through the portal prior to delivery of that account to the COUNTY by other supplied methods for integration with the COUNTY's native database. If the COUNTY fails to provide a new account number for accounts which are missing the same, data may be delivered to the COUNTY without this information in designated field or fields.

e. Resolution for Electronic Listing. The COUNTY will be responsible for passing a resolution to allow the electronic submission of forms listed in Exhibit 1 as provided in North Carolina General Statute 105-304 (a1).

4. **Access to Information.** Notwithstanding anything in this Agreement to the contrary, COUNTY will have no right under or in connection with this Agreement to receive, have access to or view via TaxScribe® forms or any other information filed with any county or governmental entity other than the COUNTY.

5. **No Conflict of Interest.** Notwithstanding anything in this Agreement to the contrary, COUNTY acknowledges and agrees that neither this Agreement nor TMA's performance of its obligations under this Agreement constitutes or creates any conflict of interest, including any conflict of interest which would (i) prohibit TMA from auditing, or otherwise impact TMA's ability to audit, tax listings, statements, filings, and returns filed with the COUNTY (regardless of whether they are filed via TaxScribe®, or (ii) prohibit TMA from bidding upon, or otherwise impact TMA's qualifications to bid upon, any proposal to audit tax listings, statements, filings, and returns filed with the COUNTY (regardless of whether they are filed via TaxScribe®).

6. **Ownership.** All rights to and title in the TaxScribe® software, including all ownership, copyright, patent, trademark, service mark, trade secret, and other proprietary rights, belong to TMA. TMA reserves all rights not specifically granted to COUNTY in this Agreement.

7. **Expenses.** Except as otherwise provided in this Agreement, all expenses incurred by TMA in performing Services under this Agreement including, but not limited to, travel, food, lodging, mileage, salaries, etc. of TMA staff shall be the responsibility of TMA. Furthermore, except as otherwise provided in this Agreement, all expenses incurred by COUNTY in performing its obligations under this Agreement shall be the responsibility of COUNTY.

8. **Warranties.** TMA represents and warrants to COUNTY that (i) TMA has the power and authority to execute, deliver, and perform this Agreement, and (ii) TMA will perform the Services in a professional

and workmanlike manner in accordance with this Agreement. COUNTY represents and warrants to TMA that COUNTY has the power and authority to execute, deliver, and perform this Agreement.

9. **Disclaimers; Limitations.**

- a. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7 ABOVE, TMA HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, AS TO TMA'S SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.
- b. **Limitation of Liability.** TMA will not be liable for any incidental or consequential damages arising out of or relating to this Agreement, or a breach of this Agreement, even if TMA was advised of the possibility of such damages and whether or not such damages arise in contract, tort, or other theory of liability. TMA's liability under any this Agreement will not exceed the aggregate amount COUNTY has paid TMA pursuant to this Agreement, regardless of the theory of recovery.

10. **Content of Information.**

- a. **Pass-through Role.** COUNTY acknowledges and agrees that TMA's role through providing TaxScribe® Online Services is as a transfer of data and a service to both the TAXPAYER and the COUNTY. TMA in no way provides a review of or recommendations on the content of that information. TMA will correct any errors that are due to system flaws, bugs, or other like technical difficulties which are of no fault of the TAXPAYER or the COUNTY.
- b. **Indemnity.** COUNTY will indemnify and hold harmless, and at TMA's election defend, TMA and its affiliates and their respective directors, officers, shareholders, managers, employees, and agents from and against all loss, liability, claim, damage, and expense (including costs of investigation and defense and reasonable attorneys' fees and expenses), whether or not involving a third-party claim, arising out of or related to any of the following: (i) any breach of this Agreement by COUNTY, (ii) the failure by a TAXPAYER to provide accurate or complete information or tax records to TMA or the COUNTY and any modifications to such information, (iii) the failure by a TAXPAYER to comply with any applicable local, state, federal, or other law related to property taxes, including the failure to file required listings, statements, returns, and other filings on a timely basis or the failure to pay all required taxes on a timely basis, and (iv) any local, state, federal, or other taxes (including property taxes) arising from or related to any listings, statements, returns, or other filings made by a TAXPAYER via TaxScribe® or any bills, appeals, assessments, or reassessments arising from or related to such filings.

11. **Availability of Resources.** Except as provided below, it will be the responsibility of TMA to maintain TaxScribe® online service on TMA owned and managed server resources, provide internet connectivity to those servers, and consistent availability of these sites to the general public. The COUNTY does not have any responsibility for providing server resources, software assistance, or other availability resources for the use of the site beyond providing technical assistance on the native software formats used by the COUNTY in relation to the service level agreements. TMA will use commercially reasonable

efforts and methods to ensure the availability of these website resources, but cannot control acts of God, power interruptions, or other catastrophic events which may impact availability, and COUNTY understands and agrees that there may be instances where TMA needs to interrupt the Services without notice in order to perform system maintenance or protect the integrity of the Services. TMA will, however, use commercially reasonable procedures to limit interruptions and announce any scheduled downtimes.

12. **Term and Cancellation.** The initial term of this Agreement will commence on the Effective Date and will expire on December 31 of the following year. Upon the expiration of the initial term and each renewal term, the term of this Agreement will automatically renew for consecutive one-year periods, unless either party provides the other with notice of non-renewal at least 30 days before the expiration of the then-current period, in which case the Agreement will expire effective at the end of the then-current period. Additionally, if either party fails to cure a material breach of this Agreement within 30 days after the other party gives it written notice of the breach, the non-breaching party may terminate this Agreement by giving the breaching party written notice of termination.

13. **Notices.** All notices with respect to this Agreement, including any cancellation notices, should be sent to:

Tax Management Associates, Inc.
Contract Management
5121 Parkway Plaza Blvd.
Charlotte, NC 28217

Rutherford County

14. **Governing Law.** This Agreement and any related disputes will be governed by and construed in accordance with the laws of the state of North Carolina, except that no choice of law doctrine will be used to apply the laws of another jurisdiction. The United Nations Convention on the International Sale of Goods will not apply.

15. **Transfer.** Neither party will have the right to assign or transfer this Agreement or any of its rights under this Agreement without the prior written consent of the other party, except that a party may assign or transfer this Agreement in connection with a sale or transfer of all or substantially all of the assets or business (to which this Agreement relates) of such party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and the permitted assigns and transferees of each party. No assignment releases the assignor from its liability under this Agreement. Any attempted assignment which is not in compliance with this **Section 14** will be void.

16. **Relationship of Parties.** Each party will be and act as an independent contractor. The parties do not intend for this Agreement to create, and this Agreement will not be construed to create, any joint venture, partnership, or agency relationship between the parties so as to render either party liable to the other party for anything more than the performance of its respective obligations hereunder.

17. **Force Majeure.** Neither party will be liable for any breach or delay resulting from any cause beyond its reasonable control, including acts of God, war, insurrection, the public enemy, acts or omissions of any government, labor disputes or strikes, failure of power supply, or changes in the law. A party claiming excused performance due to a force majeure event will give the other party prompt written notice of such force majeure event.

18. **Survival.** Upon any expiration or termination of this Agreement, the parties will have no further obligations under this Agreement except the following obligations shall survive expiration or any

termination of this Agreement: (i) the obligations of a party with respect to any breach by such party of this Agreement prior to such expiration or termination and (ii) the obligations contained in **Section 11**.

19. **General**. Any waiver of a breach of this Agreement must be in an express writing signed by the waiving party, and no waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision. The term “including” in this Agreement will not be construed to be limiting. The unenforceability of any provision of this Agreement will not affect the enforceability of any other provisions of this Agreement, which will remain in full force and effect. If any of the covenants or provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope, or otherwise, the court making such determination will reduce such extent, duration, scope, or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement. Section headings in this Agreement are provided for convenience only and will not affect its construction or interpretation. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission will constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or other electronic will be deemed to be their original signatures for any purpose whatsoever. This Agreement is the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, between the parties with respect to the subject matter. This Agreement can only be amended by a writing both parties sign. Except as expressly provided in this Agreement, the use of the terms “hereunder,” “hereof,” “hereto,” “herein,” and words of similar import shall refer to this Agreement as a whole and not to any particular Section or clause of this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

Execution

The parties have expressed their agreement to these terms by causing this Agreement to be executed by their duly authorized officer or agent. This Agreement shall be effective as of the Effective Date.

Tax Management Associates, Inc.

RUTHERFORD COUNTY

By:

By:

Title:

Title:

Date:

Date:

EXHIBIT 1

TaxScribe® Online Services

- ☐ TMA Application Gateway
 - ↳ Online gateway for clients of Tax Management Associates whose purpose is to provide secure and single point of access to all client specific TMA online services.
- ☐ BizLink (bizlink.taxscribe.com)
 - ↳ Online application public portal whose purpose is to collect data and attachments, generate related documents, and communicate messages.
 - County is provided a branded portal, e.g. bizlink.taxscribe.com/st/county
- ☐ BizWorks (bizworks.taxscribe.com)
 - ↳ Online application for COUNTY whose purpose is to receive data and attachments, generate related documents, communicate messages, as well as facilitate and / or automate processing workflows.
- ☐ TaxScribe® Dynamic and Relational databases
 - ↳ Secure online data storage shared between BizLink and BizWorks
 - County is restricted to County specific data
- ☐ NCPTS Connector
 - ↳ Web API for the transmission of data between TaxScribe® and Farragut NCPTS.
- ☐ TaxScribe® Quality Assurance
 - ↳ Quality Assurance (QA) purpose is to allow COUNTY to preview a release prior to implementation and may also be used to research support issues.

Forms

- ☐ North Carolina Business Personal Property Listing
- ☐ North Carolina Business Personal Property Extension

Subscription Fee(s)

TaxScribe® Online Services, Support, and Forms	\$15,000.00
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