



REQUEST FOR BOARD ACTION

ITEM NO. 19.

DATE OF REQUEST: May 3, 2010

REQUESTED BY: Coby S. Heath, Tax Assessor

SHORT TITLE: Resolution Authorizing a Contact Renewal with Turner Business Appraisers for Tax Auditing Purposes

BACKGROUND: Pender County contracted with Turner Business Appraisers, Inc. to provide business personal property auditing and appraisal services for the Tax Assessor's Office since October 5, 2005. The company audits and appraises business personal property of taxpayers to insure accurate reporting. The contract with Turner Business Appraisers, Inc. is due for renewal by the Board of County Commissioners. The proposed contract has a month-to-month cancelation term in lieu of annual renewal. A copy of the proposed contract is attached.

SPECIFIC ACTION REQUESTED: To consider a resolution to renew the proposed contract with Turner Business Appraisers, Inc. A copy of the proposed contract is attached.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

MB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that

the proposed renewal contract with Turner Business Appraisers, Inc. for tax auditing services is hereby authorized. The Chairman/County Manager are authorized to execute all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Brown ___ Blanchard ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman 05/03/10
Date

ATTEST 05/03/10
Date

**STATE OF NORTH CAROLINA
COUNTY OF PENDER**

Business Personal Property Audit Contingent Fee Agreement

Between Pender County (hereinafter called "Customer") and Turner Business Appraisers, Inc. (hereinafter called "Contractor") a Corporation authorized to transact business in North Carolina.

Terms and Conditions

Section 1 – Services

- A. In accordance with the charges, terms and conditions contained in this agreement, TBA agrees to furnish North Carolina General Statutes (NCGS) audit services on certain of the County's business personal property taxpayers. Audits to be performed by TBA shall include services to verify the accuracy in taxpayer's listing and shall be selected and assigned by the COUNTY ASSESSOR. Audits will be performed in compliance with all statutes applicable within The North Carolina Machinery Act, specifically; NCGS 105-283, Uniform Appraisal Standards; NCGS 105-317.1, Appraisal Elements For Reconciling to True Value; and NCGS 105-312, "Discovered Property" procedures. Customer shall pay all charges due under the schedules in effect.
- B. The Contractor shall perform all work in accordance with the North Carolina State Board of Equalization and Review Rules. Furthermore, the Contractor agrees to perform audit services in compliance with any and all requirements made by the North Carolina Department of Property Assessments.
- C. It will be the Contractor's responsibility to: (schedule each audit, prepare all necessary written and verbal correspondence throughout the audit process, make copies of all necessary documents needed to complete the audit, physically inspect the taxpayers personal property, corroborate the accuracy of the taxpayers tangible personal property tax returns by comparing said returns to the taxpayers accounting records and to send detailed written audit results to both the Customer and the taxpayer).
- D. The Contractor will defend the results from audits it performs throughout the appeals process. If permitted by the Customer the Contractor shall act as the Customer's expert witness before administrative appeal bodies. However, the Contractor shall not be responsible for defending items outside the scope of the audit such as appraisal or legal issues.
- E. The Contractor will prepare reports in connection with audit activity including reports on each audit. The report will be issued at least quarterly to the Assessor of Property.

- F. Training will be provided to any employee of the Customer that the Assessor deems appropriate. Customer employees may accompany the Contractor on any audit, provided the Customer shall be responsible for the travel related expenses of said employee.

Section 2 – Term of Agreement

- A. The Term of this Agreement shall continue in effect, hereafter, on a month-to-month basis, cancelable by either party upon thirty days (30) written notice.
- B. If through any cause, Contractor or Customer fails to fulfill its obligation as provided by this agreement, or materially violates any of the covenants or stipulations within this agreement, and such failure continues for thirty (30) days after written notice thereof by a party, either party may thereupon have the right to terminate this agreement immediately upon giving written notice to the other party. Said notice shall be delivered to the party personally or mailed by certified mail to the mailing address as specified herein. In the event of such termination, the Contractor shall be entitled to receive just and equitable compensation for all work performed as of the termination date.

Section 3 – Charges

- A. **Schedule:** Limited to 28 % of taxes from resulting discoveries, including penalties & interest isolated to the current year plus any applicable previous years pursuant to NCGS 105-312. TBA shall not receive any future revenues generated from discoveries. All expenses incurred by TBA in performing audits under this Agreement including, but not limited to, travel, food, lodging, mileage, salaries, etc. shall be the responsibility of TBA.

Clause for audits requiring an appraisal of value as defined by USPAP:

- 1. If the Contractor anticipates that an audit will require an appraisal utilizing a method other than the traditional North Carolina trending tables then the Contractor will notify the County immediately. If the County and the Contractor agree in writing for Contractor to proceed with said audit then charges shall be \$400 for said audit in lieu of the 28% contingency fee discussed in Section 3(a).
- B. **Payment:** Due immediately upon collection of discovered tax by the County. The County agrees to furnish TBA a monthly statement of collections from discovered taxes. TBA will prepare a monthly invoice based upon the collections report, which shall be due upon receipt by the County. If the Contractor does not receive payment within forty-five (45) days from the date of the invoice, the unpaid balance of the invoice will be subject to additional charges in the amount of one (1) percent per month until payment is received.

- B. The fees above include all cost associated with the Contractor's performance of services including, but not limited to, salaries, employee benefits, travel, food, lodging, and defense of the audit results through the appeals process.

Section 4 – Indemnification

- A. Customer agrees that proprietary rights to the business personal property audit system shall remain with the Contractor, and that customer will not sell or lease the system to any other person, company, taxing jurisdiction, or permit access to the System, except for employees of the customer authorized to do so by the Contractor. Despite the fact the Contractor retains proprietary rights, the Contractor will make the results of its work available to the Customer, as the results are generated.
- B. To the fullest extent permitted by laws and regulations, the Contractor shall indemnify and hold harmless the Customer and its officials, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including, but not limited to, fees and charges of engineers or architects, attorneys and other professionals and costs related to court action or arbitration) arising out of or resulting from the performance of this contract or the actions of the Contractor or its officials, employees or Contractors under this contract or under the contracts entered into in connection with this contract.

Section 5 – General

- A. The laws of the State of North Carolina will govern this agreement.
- B. It is expressly understood by the Contractor that under the provisions of North Carolina General Statute, the Contractor and the Contractor's employees are subject to the State Confidentiality Statutes and the penalties contained therein and the Contractor agrees to abide by such statutes. Further the Contractor shall hold the Customer harmless from any liability, which may result from an action involving the Contractor or its employees or agents regarding confidentiality of taxpayer records, or any violation of such statutes by the Contractor.
- C. The Contractor agrees that no employee of the Contractor will consult with or answer any questions regarding any aspect of an audit being performed, except with authorized Customer officials and the taxpayer under audit, unless otherwise directed to do so by the Customer. At all times, the Contractor agrees that the Contractor and the Contractor's employees will conduct their services in a professional and courteous manner.
- D. The customer acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions.
- E. In the unlikely event of disputes arising out of this agreement, all parties agree to submit unsettled matters to a non-binding arbitration hearing before three

arbitrators, one selected by each party and a third selected by mutual agreement of the first two.

F. This is the entire agreement; there are no oral terms.

Section 6 – Notices

Notices to be given or submitted by either party to the other, pursuant to this agreement, shall be sufficiently given or made in writing and sent by certified mail, postage pre-paid.

IN WITNESS WHEREOF, the parties have executed this agreement for the purposes stated herein, on the day below written.

Accepted: Turner Business Appraisers, Inc.
PO Box 17213
Charlotte, N.C. 28227-17213

Accepted: Pender County
PO Box 64
Burgaw, NC 28425

Authorized
Signature _____

Authorized
Signature _____

Name Jim H. Turner, CPA

Name _____

Title President

Title _____

Date _____

Date _____

County Clerk (SEAL)

This contract has been approved as to legal form by the Pender County Attorney's Office
by _____

This instrument has been pre-audited in the manner required by the local government
budget and fiscal control act. Finance Officer:
