



CONTRACT NUMBER MA-017-14011477
WITH
HINDERLITER DE LLAMAS AND ASSOCIATES DBA HDL COMPANIES
FOR
SALES & USE TAX TRANSACTION AUDIT SERVICES

This Agreement, hereinafter referred to as “Contract” to provide Sales & Use Tax Transaction Audit Services is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as “County,” and Hinderliter de Llamas and Associates, with a place of business at 1340 Valley Vista Drive #200, Diamond Bar, CA 91765 hereinafter referred to as “Contractor,” which are sometimes referred to as “Party”, or collectively as “Parties.”

RECITALS

WHEREAS, Contractor responded to an Invitation for Bids (IFB),” for Sales and Use Tax Transaction Audit Services; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the Scope of Work; and

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
- B. **Entire Contract:** This Contract, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County’s Purchasing Agent or his designee, hereinafter “Purchasing Agent.”
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Intentionally Omitted

- E. **Delivery:** Time of delivery of services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.

- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.
- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.
- P. **Insurance Provision:** Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this contract. In addition, all subcontractors performing work on behalf of contractor pursuant to this contract shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the

state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days' notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a “separation of insureds” clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

If the contractor fails to maintain insurance acceptable to the County for the full term of this contract, the County may terminate this contract.

- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials, and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph “HH” below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County’s specific written approval.
- S. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and

confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "HH" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** Intentionally Omitted
- X. **Pricing:** The Contract bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. **Severability:** If any term, covenant, condition, or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this

Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.

FF. Authority: The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

GG. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification Provisions: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure goods from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A.
2. **Contract Term:** This Contract shall commence on June 24, 2014 upon approval by the County and execution of all necessary signatures, and continue for three (3) calendar years from that date, unless otherwise terminated by County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for one (1) additional two (2) year term. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees

to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.

5. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this contract without penalty.
6. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

7. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-Contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

8. **Authorization Warranty:** The contractor represents and warrants that the person executing this contract on behalf of and for the contractor is an authorized agent who has actual authority to bind the contractor to each and every term, condition and obligation of this agreement and that all requirements of the contractor have been fulfilled to provide such actual authority.

9. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - i. Terminate the Contract immediately, pursuant to Section K herein;
 - ii. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - iii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - iv. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
10. **Contractor – Change in Ownership:** The Contractor agrees that if there is a change in ownership prior to completion of this contract, the new owner will be required, under terms of sale, to assume this contract and complete it to the satisfaction of the County.
11. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
12. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.
13. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The contractor shall not, during the period of this contract, employ any County employee for any purpose.
14. **Conflict with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.
15. **Contingent Fees:** The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the contractor or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

For breach or violation of this warranty, the County shall have the right to terminate this contract in accordance with the termination clause and at its sole discretion to deduct from the

contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the contractor.

16. **Contractor Bankruptcy/Insolvency:** If the contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the contractor's insolvency, the County may terminate this contract.
17. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
18. **Contractor's Power and Authority:** The Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold the County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the County under this Contract.
19. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of seven years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
20. **Correspondence to Buyer - Contract:** Any correspondence related to the terms, prices and conditions of this contract must be directed to the agency/department purchasing division to the attention of the assigned DPA. Correspondence not directed though the DPA for resolution will not be regarded as valid.

County of Orange
Attn: Kari Tune
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705

21. **County Of Orange Child Support Enforcement [Within Ten (10) Days Of Notification Of Selection For Award Of Contract]:** In order to comply with the child support enforcement requirements of the County of Orange, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
 - a. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
 - b. In the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
 - c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - d. A certification that the contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

22. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
23. **Default:** In case of default by Contractor, the County of Orange may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.

24. **Disputes – Contract:**

- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section

shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

25. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
 - c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:

- a. The Contractor has made false certification, or
 - b. The Contractor violates the certification by failing to carry out the requirements as noted above.
26. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at http://www.edd.ca.gov/Payroll_Taxes/FAQ_California_Independent_Contractor_Reporting.htm.

27. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.
28. **Entire Contract:** This Contract and all of its attachments comprise the entire Contract between the Contractor and the County. Additional or new terms contained in this Contract, which vary from the Contractor's proposal, are deemed accepted by the Contractor by execution of this Contract or other commencement of performance hereunder. All previous proposals, offers, discussions, preliminary understandings and other communications relative to this Contract, oral or written, are hereby superseded, except to the extent that they have incorporated into this Contract. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this Contract shall be considered valid unless specifically agreed to in writing by both Parties.
29. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

30. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Contractor Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction without payment of additional compensation.
31. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
32. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this contract, interpretation and clarification as necessary shall be determined by the County's assigned buyer. If disagreement exists between the Contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
33. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
34. **News/Information Release:** The contractor agrees that it will not issue any news releases in connection with either the award of this contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the County through the County's project manager.
35. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of

mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: HDL Companies
Attention: Andrew Nickerson
1340 Valley Vista Drive #200
Diamond Bar, CA 91765

For County: County Executive Office
Attention: Mitch Tevlin, Project Manager
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701

36. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
37. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the articles of this Contract, and then the exhibits and attachments.
38. **Project Manager, County:** The County shall appoint a project manager to act as liaison between the County and the Contractor during the term of this Contract. The County's project manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's project manager shall have the right to require the removal and replacement of the contractor's project manager and key personnel. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.
39. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this contract. The County's project manager and the Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
40. **Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
41. **Validity:** The invalidity in whole or in part of any provision of this contract shall not void or affect the validity of any other provision of the contract.
42. **Waivers - Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

- Contract Signature Page -

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

***Hinderliter de Llamas and Associates dba HDL Companies**

Print Name	Title
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Signature	Date
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Print Name	Title
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Signature	Date
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*** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President

The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

County of Orange, a political subdivision of the State of California

Print Name	Title
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Signature	Date
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ATTACHMENT A

Scope of Work

1. PROJECT

Contractor will perform an annual audit of local sales and use tax reporting by businesses located within the unincorporated areas of Orange County, with the goal of recovering or generating new revenue for the County. The Contractor will take the necessary action to correct reporting errors. The audit will determine whether:

- 1.1 "Point of Sales" are being misreported using the business's administrative office address or other location rather than to the unincorporated location where the principal negotiations or orders are initiated.
- 1.2 Multiple retail and chain outlets are being reported as one location rather than broken out for each taxing jurisdiction.
- 1.3 Sales are being misreported as "use tax" transactions rather than "Point of Sales" transaction.
- 1.4 Miscoding of allocations exists due to zip code, boundary, or other jurisdiction confusion.
- 1.5 Other omissions exist due to zip code, boundary or other jurisdiction confusion.

2. TECHNICAL APPROACH

Contractor will identify and correct errors, and recover sales and use tax as follows:

- 2.1 **Establishment of County Unincorporated Database:** Using Contractor-supplied software, Contractor will establish a database of all seller permit registrations in the County that include a minimum of six quarters of sales tax allocations history. If the County has received sales tax allocations on computer tape or diskette, the history will be extended as far back as such electronic computer media is available.
- 2.2 **Identification of Sales Tax Misallocations:** Contractor shall inventory each geographic area within the unincorporated County boundaries to identify businesses from which the County is not receiving its share of sales tax revenue. In performing the inventory, Contractor shall use a variety of methods to ensure no misallocations remain undetected. These methods include:
 - 2.2.1 **Field Survey:** Contractor shall conduct a survey of the County to identify businesses physically located in the unincorporated area that are not on the State Board of Equalization registration lists or that appear to be underreporting revenues.

2.2.2 Computer Analysis: Using Contractor-supplied software, Contractor will search, in its entirety, the State of California registration database to identify businesses whose addresses are inconsistent with the State Board of Equalization's allocation codes.

2.2.3 Cross Directory Analysis: Contractor shall use a wide variety of business, trade, industrial, and telephone cross directories to identify order desks and sales offices in the County that are not identified as being registered to the County on the State Board of Equalization's registration allocation list.

2.3 Development of Correction Data: Contractor shall further review businesses identified in the initial survey to eliminate those properly registered and allocated but that have erroneous addresses, operate under other names, or involve recent changes in ownership or location.

Contractor will then contact the remaining businesses on the preliminary list either by telephone or by using Contractor's field personnel, to determine the nature of sales activities and confirm whether there are factors that may involve sales tax. If the preliminary contact suggests that a misallocation exists or that further follow up is required, Contractor will obtain additional data including the name of the key contact for the sales activity, the name of the person preparing the quarterly sales tax return for the business, and the length of time the business has been located at that specific address in the County. Contractor will enter this data, plus a description of the business and nature of the misallocation, into a special computer program for future reference and processing.

2.4 County Review: Contractor shall transfer the preliminary list of misallocations and/or under-reporting businesses to a Work Authorization for review and authorization by authorized County officials. Authorized County officials include the following:

2.4.1 County Financial Officer

2.4.2 Director, County Budget Office

2.4.3 Manager, County Executive Office (CEO) Budget Development Services (Project Manager)

2.4.4 Assistant Auditor-Controller/Central Operations

2.4.5 Manager, Auditor-Controller/General Accounting

2.4.6 Manager, Auditor-Controller/General Accounting/Special Projects

The above authorized County officials are responsible for the development and monitoring of the sales and use tax revenue budget; thus, disclosure of information contained in or derived from the sales and use tax records to these County officials is required. Upon authorization, Contractor will complete its analysis of those businesses and initiate correction of errors. Some of the more common types of errors that the Contractor will identify and correct may be, but are not limited to:

- 2.4.7 Sales misreported as “use tax” transactions that are distributed to State pools rather than to “Point of Sales” for the County.
- 2.4.8 “Point of Sale” transactions misreported to administrative office addresses or other locations outside the unincorporated area of the County rather than to the location within the County where principal negotiations or orders are initiated.
- 2.4.9 Misallocations occurring because sales from multiple retail outlets, order desks, or offices are credited to a single location outside the County rather than to sublets located within the unincorporated area of the County.
- 2.4.10 New registrations, accounting adjustments, and additional sales tax assessments that have been miscoded to other jurisdictions or to allocation pools.
- 2.4.11 Erroneous distribution of the sales of construction material and fixtures to allocation pools because the sales are misidentified as installation rather than “over-the-counter” sales.
- 2.4.12 Misallocations that occur due to zip code, boundary or other jurisdictional confusion or because of failure of new addresses to be picked up in the State Board of Equalization registration rolls.
- 2.4.13 Misallocation by companies who are self-imposing a use tax for materials taken out of inventory and misreporting the usage as taking place at locations other than the County.

2.5 Research for Prior Knowledge:

Contractor shall review all misallocations for potential retroactive payments beyond the three-quarter limit established by the State Board of Equalization. Contractor shall do this through interviews with the tax preparer and a review of the State’s files for evidence of prior knowledge as established in Revenue and Taxation Code Section 7209.

2.6 Preparation and Submittal of Corrections:

Upon approval of the Work Authorization by the County Project Manager, Contractor will begin the correction process. For complex use tax or other sales tax issues requiring more follow up, Contractor will perform, at Contractor’s expense, the necessary steps for correction including meeting business officials outside the State of California and/or reviewing all related tax files at the State Board of Equalization offices in Sacramento.

Contractor will furnish the County Project Manager with copies of all transmittal forms and correspondence with the State Board of Equalization and taxpayers as well as copies of all State Board of Equalization verifications.

2.7 Ongoing Analysis:

After completion of the initial audit in no more than 180 days, Contractor, during the remaining period of the Contract, shall analyze each subsequent quarter’s allocation to identify and correct new reporting, registration, or accounting errors to ensure the County

continues to receive all sales and use tax revenues to which it is entitled. Contractor will submit listings of all subsequent errors to the authorized County officials for approval prior to initiating correction. Contractor will continue to perform such ongoing monitoring and correction until such time as this Agreement is terminated or expires.

Contractor shall analyze any significant taxpayer assessments or reporting adjustments imposed by the State to ensure correct allocation to the County and will continuously update the initial database to ensure sales tax from new businesses, relocations, and changes in marketing are properly allocated to the County.

Prior to examining the sales and use tax records of individual taxpayers, Contractor shall prepare a proposed listing of businesses from the initial survey and submit the list to the County Project Manager for approval.

Businesses with allocation errors will be transferred to a Work Authorization. The County Project Manager will review these businesses and approve the Work Authorization permitting Contractor to complete its analysis and initiate correction of errors.

3. DELIVERABLES

3.1 Final Report: Upon completion of the audit, Contractor shall provide the County Project Manager a final report outlining the following:

3.1.1 Total number of businesses audited

3.1.2 Total number of businesses determined to have misreported information

3.1.3 A listing by business of errors reported to the State Board of Equalization including:

3.1.3.1 Name, location, and identification number

3.1.3.2 State Board of Equalization documentation of sales and/or use tax paid during the preceding four quarters

3.1.3.3 Type of corrective action

3.1.3.4 Copy of adjustment documentation submitted to the State Board of Equalization

3.1.3.5 Documentation from the State Board of Equalization verifying completion of the change

3.1.3.6 Estimate of total annual additional revenue to be generated

3.1.3.7 Estimate of additional revenue to be generated during each subsequent billing cycle.

3.2 Restrictions

- 3.2.1 Contractor is prohibited from performing consulting services for a retailer during the term, inclusive of any renewal terms or extensions of the Contract.
- 3.2.2 Contractor is prohibited from disclosing information contained in, or derived from, sales of transactions and use tax records except to an officer or employee of the County who is authorized by resolution to examine the information.
- 3.2.3 Contractor is prohibited from retaining the information contained in, or derived from, the sales and use tax records after the Contract has expired or been terminated.
- 3.2.4 Information obtained by examination of State Board of Equalization records as permitted pursuant to resolution and this Contract shall only be used for the specific purposes set forth in this Contract.
- 3.2.5 All reports, drawings, designs, graphics, and other relevant work or materials developed hereunder shall become and remains the property of the County, and may be used by the County as it may require without any additional costs to the County. This data shall not be used by the Contractor without the express written consent of the County.

4. SUPPLEMENTAL SERVICES:

Contractor shall, at the County's option and at no additional cost to the County, provide the following data services during the term of the Contract:

- 4.1 **Top Sales Tax Generators Report:** This quarterly report shall reflect the County's top sales tax generators listed in descending order of dollar contribution and shall note percentage of total County "Point of Sale" revenue that the business represents. The initial database for each geographic area will include all preceding quarters for which the County has readable computer files.
- 4.2 **Quarterly Analysis by Category of Businesses:** This analysis shall include per capita and per outlet comparisons with State and County averages.
- 4.3 **Budget Reconciliation:** Contractor shall provide a quarterly analysis reconciling Point of Sale and pool allocations against the County's budgeted sales tax projections for improved monitoring of its sales tax projections and mid-year adjustments.
- 4.4 **Major Business Analysis:** Contractor shall provide a quarterly analysis of all major County businesses in a format that identifies State Board of Equalization accounting adjustments, fund transfers, and other reporting aberrations that impact the County projections and that should be factored into revenue forecasts. This report shall include State and County pool allocations.

- 4.5 Quarterly Economic Summary:** Contractor shall prepare for general distribution a quarterly newsletter summarizing the County's sales tax highlights. The newsletter shall be designed and presented in a manner that is non-confidential in nature.
- 4.6 Public Safety Sales Tax (Proposition 172) Summary:** Contractor shall prepare a multi-year trend analysis of Proposition 172 receipts for the County compared to Statewide receipts. The summary shall include a historical summary, current quarter and forecast of the County's pro-rata factor based on State allocations. In addition, Contractor shall provide analysis of State adjustments and period-over-period variances.
- 4.7 Special Reports and Ongoing Consultation:** Contractor shall provide staff for questions relating to sales tax including "on call" staff to assist in estimating sales tax revenue on proposed projects, providing second opinions on sales tax estimates contained in economic studies, assisting with budget projections, helping to identify types of potential sales tax generators appropriate to the scale of specific plans, providing negotiators' advice on key points to maximize potential sales tax revenues, and projecting the impact of proposed incorporations and annexations.

Contractor shall provide the County Project Manager, quarterly, a variety of specialized graphs and reports from contractor's database that are tailored to the County's specific needs.

5. COUNTY SUPPLIED ITEMS/SUPPORT

- 5.1 Resolution:** County will provide Contractor with a copy of the Resolution adopted by the Board of Supervisors and submitted to the State Board of Equalization pursuant to California Revenue and Taxation Code Section 7056 authorizing Contractor to view confidential sales tax data. In the event that a resolution providing Contractor with authority under California Revenue and Taxation Code section 7056 is not passed or adopted by the County Board of Supervisors granting authority to review records to the Contractor, County may terminate this Contract immediately without penalty.
- 5.2 Sales Tax Allocation Data:** County will provide Contractor with loan of sales tax allocation data that the County has received on diskette or other computer media. If for any reason the data cannot be used, the County will provide Contractor with a letter to the State Board of Equalization requesting the data and six quarters of historical data. Contractor will pay all costs for the Board of Equalization to process and deliver said data.
- 5.3 Audit Authorization:** County will provide Contractor with a letter of authorization to perform said audit that may be shared with taxpayers requesting to see said authorization.
- 5.4 County Maps (Optional):** County, at County's option, may furnish Contractor access to official County maps for Contractor to resolve boundary problems.

County will not provide Contractor preferential parking while Contractor is on County sites during Contractor's performance of duties and obligations set forth in the Agreement. Contractor is responsible for all costs related to parking, telephone, and fax communications relevant to this Contract.

ATTACHMENT B

Project Schedule

1. Project Schedule

1.1 Thirty Days – Field Survey

Contractor will conduct a field survey within 30 days after receiving County’s current information and at least six prior quarters’ registration and allocation data.

1.2 Thirty Days – Listing Of Businesses

Within 30 days after completion of the field survey, Contractor will prepare a proposed listing of businesses to be audited and submit the list to the County Project Manager for approval.

1.3 One Hundred Twenty Days – Initial Report

Within 120 days from commencement of the audit project, Contractor will provide the County Project Manager a completely prepared and thorough initial report for County review and approval.

1.4 Sixty Days – Audit Completion

Contractor will finalize the initial sales tax audit report within 60 days of submitting the Initial Report.

ATTACHMENT C Revenue Percentage

1. Shared Revenue Fixed Percentage Contract

This is a Shared Revenue Fixed Percentage Contract between the County and the Contractor for professional services; specifically as further set forth herein, for performing an audit of sales and use tax revenues occurring within the unincorporated areas of the County for the County Executive Office. Contractor's percentage of shared revenues shall be as set forth herein and shall be the only percentage Contractor will receive on the actual sales tax revenue recovered as a result of this Contract. County agrees to compensate Contractor for the shared revenue fixed percentage as set forth herein.

The Contractor agrees to accept the specified compensation as full compensation for performing all services and furnishing all staff and materials called for, and for any reasonably foreseeable difficulties under the responsibility of the Contractor which may arise or be encountered in the performance of the work and services until acceptance of the services relevant to the audit of the sales tax revenues occurring within the unincorporated areas of the County as set forth in Attachment A, Scope of Work, and for risks connected with the work and services, and for performance by the Contractor of all its duties and obligations hereunder.

The fixed percentage as set forth herein shall include the fee and all expenses related to the performance of work and services required to meet the tasks, services, and deliverables as set forth in Attachment A, Scope of Work.

The fixed percentage as set forth herein shall be firm for the term of the Contract.

Revenue Amount	
15%	Shared Revenue Fixed Percentage
6	Additional Quarters

ATTACHMENT D

Payment/Compensation

1. Total Contractor Fixed Percentage

Contractor's shared revenue fixed percentage shall be 15 percent (%) which shall be the Contractor's percentage share of actual sales tax revenue recovered for all fund transfers and 6 additional quarters.

Contractor's shared revenue fixed percentage rate shall be as set forth herein and shall be the percentage due Contractor on additional quarterly sales tax revenue recovered and received by the County as a result of audit and recovery services performed by the Contractor including those amounts to be backfilled from the Sales and Use Tax Compensation Fund as established in Section 97.678 of the California Revenue and Taxation Code.

Contractor's shared revenue fixed percentage rate, as set forth herein shall be Contractor's total compensation as full compensation for the services and performance by the Contractor of contractor's duties and obligations as set forth within this Contract.

2. Invoicing Instructions

Contractor shall bill quarterly in arrears for contractor's fixed percentage of recovered revenues of incremental increases in sales and use tax revenue, which are directly attributable to the contractor's performance relevant to contractor's duties and obligations as set forth in the Contract.

As a condition of payment of any bill, the County Project Manager must receive invoice in an acceptable format. Proper references must be made to the Contract number and Contractor's Federal I.D. number. In addition, sufficient description relevant to receipt of incremental increases in sales tax revenue, which are directly related to Contractor's performance, must appear on the invoice document.

3. Acceptable Billing Format

Contractor may invoice on standard invoice forms or Company letterhead, but the following references must be made:

- a) Contractor's name and address;
- b) Contractor's remittance address;
- c) Contractor's Federal Tax I.D. Number;
- d) Name of County Agency/Department;
- e) Delivery address;
- f) MA/DO/PO/CT Number;
- g) Date of order/service;
- h) Product/Service description, quantity, and prices;
- i) Sales tax, if applicable;

The responsibility for providing an acceptable invoice rests with the Contractor. Invoices shall cover recovered revenues not previously invoiced. Invoices shall be mailed to County Project Manager at the following address:

Mitch Tevlin, Project Manager
County Executive Office
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701

County Project Manager is responsible for approval of invoices and subsequent submittal of invoices to County Auditor-Controller for payment. Contractor shall not disclose confidential information in the invoices. Any and all confidential information contained in, or derived from, those sales or transactions and the use tax records shall only be disclosed by Contractor to an officer or employee of the County who is authorized by resolution to examine such information.

4. Payment

Payment shall be made within 30 days after receipt of valid invoice.

Payments made by the County shall not preclude the right of County from thereafter disputing any items or services involved or invoiced under this Contract, and shall not be construed as acceptance of any part of the services.