

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

612



**SUBMITTAL DATE:**  
March 16, 2010

**FROM:** County Auditor-Controller

**SUBJECT:** Sole Source Agreement with DS and Associates, LLC

**RECOMMENDED MOTION:** That the Board of Supervisors:

Approve and execute the Agreement with DS & Associates, LLC and the County of Riverside for Sales and Use Tax consulting services for an amount not to exceed \$250,000, with a completion date of December 31, 2010, and;

Authorize the County of Riverside Purchasing Agent, in accordance with Ordinance 459.4 to exercise the renewal option for one additional year and sign amendments that do not change the substantive terms of agreement.

*Robert E. Byrd*  
Robert E. Byrd  
County Auditor-Controller

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 100,000	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	09/10

<b>SOURCE OF FUNDS:</b> Refunds of over charged sales and use taxes paid.	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE

BY: *Rob Rockwell*  
Rob Rockwell

**County Executive Office Signature**

FISCAL PROCEDURES APPROVED  
 ROBERT E. BYRD, AUDITOR-CONTROLLER  
 DATE: 4/8/10  
 BY: Samuel Wong  
 SAMUEL WONG  
 Departmental Controller  
 Purchasing: Billy Cornett, Purchasing Manager  
 FORM APPROVED COUNTY COUNSEL  
 DALE A. GARDNER  
 DATE: 4/16/10  
 BY: Dale Gardner  
 Dept't Recomm.:  Consent  Policy  
 Per Exec. Ofc.:  Consent  Policy

**Prev. Agn. Ref.:** | **District:** | **Agenda Number:**

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

2.24

**BACKGROUND:** Auditor Controller began working with DS and Associates, LLC in 2008 under an existing contract for \$25,000 to investigate the possibility of overpayments of sales and use tax. Given the company's experience with hospitals we felt it was prudent to have an independent review of the taxes paid on items purchased by the hospital. Items used by the hospital have complex rules related to sales and use taxation.

The contract also includes a training aspect as once the firm finds the over payments, the County must be taught how to detect possible over payments in the future and work with vendors to not pay any more tax then the County should.

During this same time, the County was undergoing a sales and use tax audit by the state Board of Equalization. Based on the findings from the state, Auditor Controller requested DS and Associates, LLC to review the state's findings and other items of tax paid during that time to see if the liability to the state could be reduced or eliminated.

DS and Associates, LLC was also asked to review other areas where in their experience, sales or use tax was likely over paid. These areas include such items as software purchases, warranties, and food sales among other items.

We have been notified by the state Board of Equalization that they are preparing to begin a new audit of our sales and use taxes as well. We have asked DS and Associates, LLC to assist us during this audit and possibly help reduce any tax liability we may encounter as a result of the audit.

All of these areas of review have resulted in many more refunds than we were originally expecting. As the refunds are processed by the vendors and the state Board of Equalization, we expect to see refunds up to or exceeding \$1,000,000. These refunds still require significant extra work and could be lost if not properly documented and researched. This is where DS and Associates, LLC will help us to realize the refunds and ensure the claims are properly supported and filed timely. All payments to the vendor will be paid out of refunds received.

To date we have received just over \$200,000 in refunds with another \$450,000 applied for.

The total contract amount is \$250,000. However, as the contract runs through December 2010 with an option to run through December 2011, I only expect \$100,000 to be expended during this fiscal year. The remainder will be expended, if at all, as refunds are received.

**PROFESSIONAL SERVICE AGREEMENT**

**for**

**TAX CONSULTING**

**between**

**COUNTY OF RIVERSIDE**

**and**

**DS and ASSOCIATES, LLC**



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This Agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between DS and Associates, LLC.,(herein referred to as "CONSULTANT"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

**1. Description of Services**

**1.1** CONSULTANT shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of one page and Exhibit B, Consultant Rates, consisting of one page.

**1.2** CONSULTANT represents and maintains that it is skilled to perform all services, duties and obligations required by this Agreement to fully and adequately complete the project. CONSULTANT shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. CONSULTANT further represents and warrants that it has all licenses, permits, qualifications and approvals of whatever nature is legally required to practice its profession/service. CONSULTANT further represents that it shall keep all such licenses and approvals in effect during the term of this Agreement. CONSULTANT Is Not To Perform Services Outside Of The Contract.

**1.3** Acceptance by the COUNTY of the CONSULTANT's performance under this Agreement does not operate as a release of CONSULTANT's responsibility for full compliance with the terms of this Agreement.

**2. Period of Performance**

**2.1** This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through December 31, 2010, with option to renew for one additional year, unless terminated earlier. CONSULTANT shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

**3. Compensation**

**3.1** The COUNTY shall pay the CONSULTANT for services performed, products provided and expenses incurred in accordance with the terms of Exhibit A, Scope of Work. Maximum payments by COUNTY to CONSULTANT shall not exceed two hundred fifty thousand dollars (\$250,000) including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit A, COUNTY shall not be responsible for payment of any of CONSULTANT's expenses related to this Agreement.

**3.2** CONSULTANT's fee will be twenty-five percent (25%) of the refunds received by COUNTY under this agreement up to \$250,000. Any refunds found over \$1,000,000 the County will be not

charged the 25% fee. Value ("VALUE") includes CONSULTANT identified tax refunds, credits and/or audit assessment reductions, including interest and/or penalties, actual or offered for COUNTY. All fees are due upon recognition and/or receipt of the VALUE. No fees will be due if COUNTY does not recognize and/or receive VALUE under this agreement.

**3.3** CONSULTANT shall be paid only in accordance with an invoice submitted to COUNTY by CONSULTANT within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONSULTANT only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Auditor Controller  
4080 Lemon Street, 11<sup>th</sup> Floor  
Riverside, CA 92501  
Attn: Jennifer Fuller

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (ACARC-94282-001-12/11); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.
- c) In accordance with California Government Code Section 926.10, COUNTY is not allowed to pay excess interest and late charges.

**3.4** The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONSULTANT in writing; and this Agreement shall be deemed terminated and have no further force and effect.

**4. Alteration or Changes to the Agreement**

**4.1** The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee are the only authorized COUNTY representatives who may at any time, by written order, make alterations to this

Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

**4.2** Any claim by the CONSULTANT for additional payment related to this Agreement shall be made in writing by the CONSULTANT within 30 days of when the CONSULTANT has or should have notice of any actual or claimed change in the work which results in additional and unanticipated cost to the CONSULTANT. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONSULTANT pursuant to the claim. Nothing in this section shall excuse the CONSULTANT from proceeding with performance of the Agreement even if there has been a change.

**5. Termination**

**5.1.** COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONSULTANT stating the extent and effective date of termination.

**5.2** COUNTY may, upon five (5) days written notice, terminate this Agreement for CONSULTANT's default, if CONSULTANT refuses or fails to comply with the terms of this Agreement or fails to make progress so as to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

**5.3** After receipt of the notice of termination, CONSULTANT shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

**5.4** After termination, COUNTY shall make payment only for CONSULTANT's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

**5.5** CONSULTANT's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONSULTANT; or in the event of CONSULTANT's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONSULTANT shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

**6. Ownership/Use of Contract Materials and Products**

The CONSULTANT agrees that all materials, reports or products in any form, including electronic, created by CONSULTANT for which CONSULTANT has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONSULTANT agrees not to release or circulate in whole or part such materials, reports or products without prior written authorization of the COUNTY.

**7. Conduct of CONSULTANT**

7.1 The CONSULTANT covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONSULTANT's performance under this Agreement. The CONSULTANT further covenants that no person or sub-CONSULTANT having any such interest shall be employed or retained by CONSULTANT under this Agreement. The CONSULTANT agrees to inform the COUNTY of all the CONSULTANT's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONSULTANT shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONSULTANT is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONSULTANT or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

**8. Inspection of Service; Quality Control/Assurance**

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONSULTANT shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONSULTANT's conformity with the terms of this Agreement. If any services performed or products provided by CONSULTANT are not in conformance with the terms of this Agreement, the COUNTY shall have the



right to require the CONSULTANT to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONSULTANT immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONSULTANT any costs incurred by the COUNTY because of the CONSULTANT's failure to perform.

**8.2** CONSULTANT shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess or evaluate CONSULTANT's performance under this Agreement at any time upon reasonable notice to CONSULTANT.

#### **9. Independent CONSULTANT**

The CONSULTANT is, for purposes relating to this Agreement, an independent CONSULTANT and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONSULTANT (including its employees, agents and sub-CONSULTANTS) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONSULTANT shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONSULTANT in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

#### **10. Subcontract for Work or Services**

No contract shall be made by the CONSULTANT with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONSULTANT and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

#### **11. Disputes**

**11.1** The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement which is not resolved by the parties shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONSULTANT shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

**11.2** Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall equally share the cost of the mediations.

**12. Licensing and Permits**

CONSULTANT shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONSULTANT warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

**13. Use By Other Political Entities**

The CONSULTANT agrees to extend the same pricing, terms and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONSULTANT; and COUNTY shall in no way be responsible to CONSULTANT for other entities' purchases.

**14. Non-Discrimination**

CONSULTANT shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex

in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. Seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

**15. Records and Documents**

CONSULTANT shall make available, upon written request by any duly authorized Federal, State or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONSULTANT's costs related to this Agreement. All such books, documents and records shall be maintained by CONSULTANT for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONSULTANT shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

**16. Confidentiality**

**16.1** The CONSULTANT shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of CONSULTANTS, sub-CONSULTANTS or suppliers in advance of official announcement.

**16.2** The CONSULTANT shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONSULTANT shall not use such information for any purpose other than carrying out the CONSULTANT's obligations under this Agreement. The CONSULTANT shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONSULTANT shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

**17. Administration/Contract Liaison**

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONSULTANT in connection with this Agreement.

**18. Notices**

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

**COUNTY OF RIVERSIDE**

Purchasing and Fleet Services  
2980 Washington St.  
Riverside, CA 92504  
Attn: Walter Mack

**CONSULTANT**

DS and Associates, LLC  
4010 Watson Plaza Drive, Ste 190  
Lakewood, CA 90712  
Attn: Jacob Bholat

**COUNTY OF RIVERSIDE**

Auditor-Controller  
Ms. Jennifer Fuller  
4080 Lemon Street, 11<sup>th</sup> Floor  
Riverside, CA 92501

**19. Force Majeure**

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

**20. EDD Reporting Requirements**

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent CONSULTANT(s) form **DE 542** to the Employment Development Department. The CONSULTANT agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONSULTANT to timely submit the data and/or certificates required may result in the contract being awarded to another CONSULTANT. In the event a contract has been issued, failure of the CONSULTANT to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If

CONSULTANT has any questions concerning this reporting requirement, please call (916) 657-0529. CONSULTANT should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at [www.edd.ca.gov](http://www.edd.ca.gov).

**21. Hold Harmless/Indemnification**

**21.1** CONSULTANT shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability, claim, damage or action whatsoever, based or asserted upon any act or omission of CONSULTANT, its officers, employees, sub-CONSULTANTS, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death. CONSULTANT shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any such action or claim. With respect to any action or claim subject to indemnification herein by CONSULTANT, CONSULTANT shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONSULTANT's indemnification of COUNTY. CONSULTANT's obligations hereunder shall be satisfied when CONSULTANT has provided to COUNTY the appropriate form of dismissal (or similar document) relieving the COUNTY from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONSULTANT's obligations to indemnify and hold harmless the COUNTY.

**21.2** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONSULTANT from indemnifying the COUNTY to the fullest extent allowed by law.

**22. Insurance**

Without limiting or diminishing the CONSULTANT's obligation to indemnify or hold the COUNTY harmless, CONSULTANT shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

**22.1 Workers' Compensation**

If the CONSULTANT has employees as defined by the State of California, the CONSULTANT shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

### **22.2 Commercial General Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of CONSULTANT'S performance of its obligations hereunder. Policy shall name all Agencies, Districts, Special Districts, and Departments of the COUNTY of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

### **22.3 Vehicle Liability**

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONSULTANT shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name all Agencies, Districts, Special Districts, and Departments of the COUNTY of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

### **22.4 Professional Liability Insurance**

CONSULTANT shall maintain Professional Liability Insurance providing coverage for the CONSULTANT's performance of work included within this Agreement, with a limit of liability of not less than **\$1,000,000** per occurrence and **\$2,000,000** annual aggregate. If CONSULTANT's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONSULTANT shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3)

demonstrate through Certificates of Insurance that CONSULTANT has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this Agreement.

#### **22.5 General Insurance Provisions — All lines**

a) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the COUNTY Risk Manager. If the COUNTY's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b) The CONSULTANT must declare its insurance self-insured retentions. If such self-insured retentions exceed \$500,000 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONSULTANT'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c) CONSULTANT shall cause CONSULTANT'S insurance carrier(s) to furnish the COUNTY of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the COUNTY Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the COUNTY of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the COUNTY of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ***CONSULTANT shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.***

d) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

e) The COUNTY'S Reserved Rights—Insurance. If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work (such as the use of aircraft or watercraft) the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if, in the COUNTY Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONSULTANT has become inadequate.

f) CONSULTANT shall pass down the insurance obligations contained herein to all tiers of sub-CONSULTANTS working under this Agreement.

g) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

### **23. General**

**23.1** CONSULTANT shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

**23.2** Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

**23.3** In the event the CONSULTANT receives payment under this Agreement which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONSULTANT shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONSULTANT.

**23.4** CONSULTANT shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

**23.5** CONSULTANT shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The



CONSULTANT warrants that it has good title to all materials or products used by CONSULTANT or provided to COUNTY pursuant to this Agreement, free from all liens, claims or encumbrances.

**23.6** Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

**23.7** The COUNTY agrees to cooperate with the CONSULTANT in the CONSULTANT's performance under this Agreement, including, if stated in the Agreement, providing the CONSULTANT with reasonable facilities and timely access to COUNTY data, information and personnel.

**23.8** CONSULTANT shall comply with all applicable Federal, State and local laws and regulations. CONSULTANT will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONSULTANT shall comply with the more restrictive law or regulation.

**23.9** CONSULTANT shall comply with all air pollution control, water pollution, safety and health ordinances, statutes or regulations which apply to performance under this Agreement.

**23.10** CONSULTANT shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

**23.11** This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**23.12** This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

**COUNTY:**

Board of Supervisors  
County Administration Center  
4080 Lemon Street, 4<sup>th</sup> Floor  
Riverside, CA 92501

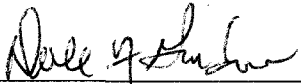
Signature: \_\_\_\_\_

Print Name: Marion Ashley

Title: Chairman of the Board

Dated: \_\_\_\_\_

County Counsel Approval



Dale A. Gardner

**CONSULTANT:**

Downey, Smith & Fier  
4010 Watson Plaza Drive, Ste 190  
Lakewood, CA 90712

Signature: \_\_\_\_\_

Print Name: Wade Downey

Title: Member

Dated: \_\_\_\_\_

**EXHIBIT A  
SCOPE OF SERVICE**

**1.0 SCOPE OF WORK**

This agreement covers the following taxes: sales, use, excise, local, and other miscellaneous taxes and credits; whether paid, accrued, or assessed, including interest and penalties. CONSULTANT shall review under this agreement all prior and current tax years open under the applicable statute of limitations, up to and including the maximum period allowed. CONSULTANT will review departments of the County of Riverside as designated by the Auditor-Controller. The agreement will relate to all claims produced during the agreement period from August 1, 2008 through December 31, 2011 and relating to tax periods of January 1, 2003 through September 30, 2009.

**2.0 REVIEW PROCESS**

CONSULTANT shall provide services in two integrated steps designated to provide COUNTY control and updates. Including:

**Step I – Initial Evaluation**

CONSULTANT shall perform an initial analysis of the COUNTY's tax payments to identify refunds or credits. During this step, the CONSULTANT shall conduct interviews, review tax filing and source documents, and perform technical research to support all claimed exemptions. CONSULTANT must communicate the results of their initial analysis prior to commencing Step II of the agreement to the COUNTY's Auditor-Controller. The period of performance for Step I to review one (1) designated agency by the COUNTY'S Auditor-Controller shall consist of no more than one week of research.

**Step II – Quantification & Representation**

CONSULTANT will prepare a report and/or audit schedules quantifying and documenting the refunds/credits, including any applicable interest. As necessary, CONSULTANT will retrieve, duplicate, and organize supporting source documents. CONSULTANT will complete and/or file on the COUNTY's behalf required claims for refunds or credits, or amended returns with the appropriate tax jurisdiction or vendor including representation before such party. CONSULTANT will work with COUNTY vendors to correct tax billing for the item or items determined to be exempt in order to avoid future overpayments. The period of performance for Step II to prepare one (1) designated agency reports and/or audit schedules quantifying and documenting the refunds/credits, including any applicable interests, assigned by the COUNTY'S Auditor-Controller shall not exceed three (3) months.

**3.0 TRAINING**

- a. As part of CONSULTANT fees, CONSULTANT will provide sales and use training to those County of Riverside departments designated by the COUNTY's Auditor-Controller where CONSULTANT pursues recoveries or adjustments. CONSULTANT's training includes PowerPoint slides, Sales & Use Tax Reference Manual specific to the COUNTY, and quizzes to ensure comprehension. During CONSULTANT's service period, CONSULTANT will also include access to CONSULTANT's toll-free information service (limited to one-hour research per month) that will assist COUNTY to correct any overpayments and increase future compliance accuracy. CONSULTANT shall be able to answer most taxability questions with little or no research.
- b. CONSULTANT shall provide two hour training for COUNTY's Regional Medical Center (RCRMC) Accounts Payable staff members including the reference guide and slides.
- c. CONSULTANT shall provide a two hour general training for COUNTY accounts payable staff members, purchasing staff members, and certain departmental staff members who will also include the reference guide and slides

EXHIBIT B  
CONSULTANT RATES

1. The Recovery Fee is 25% per Refund to the County.
2. Contract Maximum shall not exceed \$250,000.00.