

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS
 DATE: 9/16/14

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

610



FROM: Executive Office

SUBMITTAL DATE:
 September 15, 2014

SUBJECT: Approval of Amended and Restated Agreement with Hinderliter, de Llamas & Associates for Sales & Use Tax Auditing and Consulting Services [\$1,250,000 – General Fund Sales & Use Tax Revenue]

- RECOMMENDED MOTION:** That the Board of Supervisors:
1. Approve the amended and restated agreement with Hinderliter, de Llamas & Associates (HDL) for Sales and Use Tax Auditing and Consulting Services for \$250,000 annually, for five years, renewable annually in one year increments in accordance with Ordinance 459; and,
 2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to sign amendments that do not change the substantive terms of the Agreement and to exercise renewal options.

BACKGROUND:
 On May 6, 2014, the Board of Supervisors approved a new five-year contract with Hinderliter, de Llamas & Associates. Subsequently, it came to the Executive Office's attention the Board of Equalization (BOE) requires such agreements have specific language authorizing sales tax consultants such as HdL to review, audit, and handle confidential sales tax returns and associated data on behalf of the County. The attached amended and restated agreement conforms the BOE's requirement, and is consistent with the authorization delegated by Board of Supervisors' Resolution No. 2014-093.

Denise C. Harden
 Denise C. Harden
 Principal Management Analyst

(Continued on Page 2)

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$	\$		\$	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 250,000	\$ 250,000	\$ 1,250,000	\$ 250,000	

SOURCE OF FUNDS: General Fund Sales & Use Tax Revenue
 Budget Adjustment: NA
 For Fiscal Year: FY 14/15

C.E.O. RECOMMENDATION: APPROVE
 BY: *Ivan M. Chand*
 County Executive Office Signature Ivan M. Chand 9/23/2014

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 02/07/89 #3.4;
 11/20/01 #3.9; 05/06/14 #3-5
 District: ALL
 Agenda Number:

3-3

Departmental Concurrence

Purchasing: *Mark Seiler*
 Mark Seiler, Assistant Director

DATE: September 15, 2014

PAGE: 2 of 2

BACKGROUND:

Price Reasonableness

When businesses do not correctly report sales or use tax to the California Board of Equalization ("BOE"), such revenue may not be properly credited to Riverside County. The County therefore retains expert services for auditing sales and use tax returns filed with the BOE; filing petitions to amend or correct such filings; and tracking recovery of such sales and use tax revenue owed the County. Since 1990, the County has recovered over \$107 million in sales and use tax revenue through this effort.

County Purchasing issued a formal Request for Proposal (RFP) EOARC-028 on behalf of the Executive Office to obtain competitive proposals from qualified bidders to provide services. RFP's were sent to seven (7) potential bidders and advertised on the County Purchasing website. The County of Riverside received two responsive proposals submitted by two firms.

The evaluation team consisting of personnel from the Executive Office reviewed the proposals based on the criteria listed in the RFP including: overall responsiveness to and understanding of the RFP requirements; experience, ability and references; resumes, licenses, certifications and credentials; company financials; overall fees; and, clarifications, exceptions, and deviations posed by the bidders relative to the RFP. The evaluation committee recommends awarding the contract to Hinderliter, de Llamas & Associates (HDL) as the most responsive and responsible bidder.

The evaluation team reviewed and compared the compensation terms proposed by both bidders across multiple jurisdictions and found the all-inclusive compensation structure proposed by HDL to be reasonable. In consideration of the relative size of the County's sales and use tax portfolio, for its routine services HDL agreed to be compensated quarterly at a rate of 15 percent of the first \$1,000,000 in total amount recovered it achieves on behalf of the County; 10 percent of the portion recovered between \$1,000,001 and \$2,500,000, and 5 percent of the portion recovered above \$2,500,001. This tiered rate structure is competitive relative other jurisdictions.

Impact on Citizens and Businesses

This contract will benefit the citizens and businesses of Riverside County by ensuring sales and use tax revenues owed are allocated accurately to the County of Riverside to support public services, and that sales and use tax filing and allocation errors are resolved and recovered timely in the most efficient and cost effective manner.

SUPPLEMENTAL:

Additional Fiscal Information

The amount the County has paid annually for such recovery services over the previous five years ranges from \$345,000 in FY 2010/11 to \$192,000 in FY 2012/13. Although the estimated annual cost is \$250,000, the actual amount will vary relative to the amount of sales and use tax revenue recovered on behalf of the County in any given year.

AMENDED AND RESTATED
PROFESSIONAL SERVICE AGREEMENT

for

SALES AND USE TAX AUDITING AND CONSULTING SERVICES

between

COUNTY OF RIVERSIDE

and

HINDERLITER, de LLAMAS & ASSOCIATES (HDL)



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This amended and restated Agreement is made and entered into this ____ day of ____, 2014, by and between HINDERLITER, de LLAMAS & ASSOCIATES (HDL), (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"), and supersedes and replaces that certain agreement dated May 6, 2014.

The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of two pages, at the rates stated in Exhibit B, Payment Provisions, consisting of one page.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products to COUNTY outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR'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 for a term beginning January 1, 2014, and continuing in effect through June 30, 2015, with the option to renew for four additional years in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance under this Agreement upon signature by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by the COUNTY to CONTRACTOR, including all expenses, are set forth in Exhibit B. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted rate and shall have no obligation

to purchase any specified amount of services or products. Work based upon the hourly rates stated in Exhibit B may be done by CONTRACTOR only after prior written approval by the COUNTY Purchasing Agent. Such written approval shall include the tasks to be done, the hourly rates that will apply, and the total not-to-exceed cost to the COUNTY for such work.

Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement.

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

COUNTY OF RIVERSIDE EXECUTIVE OFFICE
4080 LEMON STREET 4TH FLOOR
RIVERIDE, CA 92501
ATTN: DENISE HARDEN

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to address (above); Agreement number (EOARC-94682-001-03/15); detail of services rendered and products provided; and invoice total.
- b) Invoices shall be rendered in arrears.

3.4 The COUNTY obligation for payment of this Agreement 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 each year unless funds are appropriated for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing and this Agreement shall be deemed terminated, 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 or her designee are the only authorized COUNTY representatives who may at any time, by written order, alter 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 CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work that results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he or she may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR 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 CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress 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, CONTRACTOR 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 CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR'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 CONTRACTOR, or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever

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

7. **Conduct of Contractor**

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

7.2 The CONTRACTOR 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 CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 Neither the CONTRACTOR nor its employees shall offer gifts, gratuity, favors, or 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 CONTRACTOR shall provide adequate

cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR 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 CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement payment rate to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR 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 CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) 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 CONTRACTOR 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 CONTRACTOR 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 sub-contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; excepting that this provision shall not require the approval of employment contracts between the CONTRACTOR 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 amicably any disputes 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 not resolved at that level shall be decided by the COUNTY Purchasing Department's Compliance Contract Officer who shall furnish a 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 CONTRACTOR 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 share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR 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. CONTRACTOR 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. Non-Discrimination

CONTRACTOR shall not 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 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. §1210 et seq.) and all other applicable laws or regulations.

14. Records and Documents

CONTRACTOR 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 CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

15. Confidentiality

15.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement, including but 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 contractors, subcontractors or suppliers in advance of official announcement.

15.2 The CONTRACTOR shall protect from unauthorized disclosure all legally protected information with which they have contact or obtain copies of in any format pursuant to services rendered and products produced under this Agreement, except for general statistical information not identifying any party as defined by applicable law. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR 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.

15.3 Furthermore, Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization, and specifies the conditions under which a COUNTY may authorize persons other than COUNTY officers and employees to examine State Sales and Use Tax records. Information obtained by examination of Board of Equalization records shall be used only for purposes related to collection of local

sales and use tax or for other governmental functions of the COUNTY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. Such resolution shall designate the CONTRACTOR as authorized to examine sales and use tax records and certify that this Agreement meets the conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code, which are hereby made part of this agreement as follows:

- (a) CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Board of Equalization provided to COUNTY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- (b) CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the COUNTY who is authorized by resolution to examine the information.
- (c) CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
- (d) CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired.

15.4 If the Board of Equalization finds any information obtained by CONTRACTOR pursuant to subdivision (b) of Section 7056 of the Revenue and Taxation Code has been disclosed by CONTRACTOR to any person not authorized or designated by resolution of the COUNTY or has been used by CONTRACTOR for purposes not permitted by subdivision (b), and the Board of Equalization imposes on CONTRACTOR conditions on access to the Board of Equalization's sales and use tax records the Board of Equalization considers reasonable in order to protect the confidentiality of those records, COUNTY may consider such restrictions as grounds for termination as provided under Section 5.2 of this Agreement.

16. 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 CONTRACTOR in connection with this Agreement.

17. 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

COUNTY OF RIVERSIDE EXECUTIVE OFFICE
4080 LEMON STREET 4TH FLOOR
RIVERSIDE, CA 92501
DENISE HARDEN

CONTRACTOR

HINDERLITER, de LLAMAS & ASSOCIATES
1340 VALLEY VISTA DRIVE, SUITE 200
DIAMOND BAR, CA 91765
ANDREW NICKERSON

18. Force Majeure

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

19. 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 Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR 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 CONTRACTOR to timely submit the data and/or certificates 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 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 CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR 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.

20. Hold Harmless/Indemnification

20.1 CONTRACTOR 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 (individually and collectively hereinafter

referred to as Indemnites) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, 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 or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnites in any claim or action based upon such alleged acts or omissions.

20.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their 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 CONTRACTOR'S indemnification to Indemnites as set forth herein.

20.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

20.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnites herein from third party claims.

20.5 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 CONTRACTOR from indemnifying the Indemnites to the fullest extent allowed by law.

21. Insurance

21.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage listed below during the term of this Agreement, with respect to which only, the COUNTY hereunder includes the County of Riverside, its agencies, districts, special districts, and departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds:

A. Workers' Compensation. If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as

prescribed by the laws of the State of California. Such policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident, and be endorsed to waive subrogation in favor of the County of Riverside.

B. Commercial General Liability. Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. 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.

C. Vehicle Liability. If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, CONTRACTOR 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, and such policy shall name the COUNTY as an Additional Insured. 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.

D. Professional Liability. Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor'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 Contractor'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 CONTRACTOR 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 CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. General Insurance Provisions - All lines. 1) 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.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence, each such retention 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, CONTRACTOR'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.

3) CONTRACTOR shall cause CONTRACTOR'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, and 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. CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original 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.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance 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.

5) 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; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required

under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

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

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

22. General

22.1 CONTRACTOR 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.

22.2 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.

22.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR 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 CONTRACTOR.

22.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

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

22.6 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.

22.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

22.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR 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 CONTRACTOR shall comply with the more restrictive law or regulation.

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

22.10 CONTRACTOR 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).

22.11 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.

22.12 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 pertaining to it, whether oral or in writing. In addition, this agreement supersedes and supplants all prior agreements between the parties for the same or similar services. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

BOARD OF SUPERVISORS
4080 LEMON STREET 4TH FLOOR
RIVERSIDE, CA 92501

CONTRACTOR:

HINDERLITER, de LLAMAS & ASSOCIATES
1340 VALLEY VISTA DRIVE, SUITE 200
DIAMOND BAR, CA 91765

Signature: _____

Print Name: JEFF STONE

Title: CHAIRMAN OF THE BOARD

Dated: _____

Signature:  _____

Print Name: ANDREW NICKERSON

Title: PRESIDENT

Dated: 8-7-14

FORM APPROVED COUNTY COUNSEL

BY: 
NEAL R. KIPNIS

DATE

**EXHIBIT A
SCOPE OF SERVICES**

CONTRACTOR REQUIREMENTS FOR THE COUNTY

1. Sales Tax Audits

- a) Monitor COUNTY sales and use tax receipts for allocation errors such as, but not limited to, the following:
 - i) Misallocations due to jurisdiction miscoding;
 - ii) Misallocations that occur due to zip code, boundary, or jurisdictional discrepancies;
 - iii) Point of sale revenues misreported to administrative offices or other locations;
 - iv) Misallocations resulting from sales at multiple retail outlets, order desks, or offices being credited to a single location;
 - v) Sales from warehouses that function as points of sale, but which are not properly identified as such;
 - vi) Misallocations of sales misreported as use tax transactions;
 - vii) Misallocations of use tax transactions that exceed \$500,000 that are not properly allocated to the host agency;
 - viii) Construction-related sales characterized as product installation rather than product sales; and,
 - ix) Under reporting of transaction and use tax, as applicable; and,
- b) Monitor sales and use tax reporting and allocations pertaining specifically to construction of solar power plants in Riverside COUNTY, as required;
- c) Interface with the Board of Equalization on behalf of COUNTY to file requests for corrections of misallocations; and,
- d) Maintain records on behalf of COUNTY of all such contacts and filings with the Board of Equalization.

2. Management Information, Analysis, and Support – In a user-friendly format, provide reports, graphs, tables, and analyses including, but not limited to, the following:

- a) Quarterly statistical analyses and reports on sales tax trends by business, business type, and strategic economic areas;
- b) Monitor performance of specific retail and industrial components with comparisons to regional and statewide trends;
- c) Monitor sales and use tax agreements with other agencies and private developers;
- d) Provide staff support on sales and use tax related issues, including budget projections, legislative proposals, litigation support, sales tax voids and opportunities, and incorporations and annexations; and,
- e) Provide training and advisement to staff and taxpayers to maximize sales and use tax payments through the encouragement of taxpayer options to report taxes from specific types of construction projects to the construction site and through direct payment permits.

3. **Revenue Forecasting** – Provide periodic COUNTY estimates of potential current and future year sales and use tax revenues based on industry-specific assessment of local and regional sales trends from analyses of multiple data sources and historic statewide sales and use tax data trends.
4. **Data Services** – Maintain and provide access to a database that allows the COUNTY to review quarterly sales tax data relevant to the COUNTY.

EXHIBIT B
PAYMENT PROVISIONS

1. Tiered Recovery Fees :
 - a. For each reallocation instance CONTRACTOR shall receive fifteen percent (15%) on the first \$1,000,000 of sales and/or use tax revenue received by COUNTY through payments processed by the BOE for taxpayer misallocations as a result of the approved contingency work performed by CONTRACTOR;
 - b. For each reallocation instance CONTRACTOR shall receive ten percent (10%) on amounts from \$1,000,001 to \$2,500,000 of sales and/or use tax revenue received by the COUNTY through payments processed by the BOE for taxpayer misallocations as a result of the approved contingency work performed by CONTRACTOR; and
 - c. For each reallocation instance, CONTRACTOR shall receive five percent (5%) on amounts over \$2,500,001 of sales and/or use tax revenue received by the COUNTY through payments processed by the BOE for taxpayer misallocations as a result of the approved contingency work performed by CONTRACTOR.

2. Optional Staff Services outside of scope of work.
 - a. Principal: \$225 per hour inclusive
 - b. Programmer: \$195 per hour inclusive
 - c. Senior Analyst: \$150 per hour inclusive
 - d. Analyst: \$75 per hour inclusive