

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE January 7, 2014

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Authorize the Chief Executive Officer to Enter into a New Agreement with Hinderliter, De Llamas and Associates for Sales, Use and Transactions Tax Audit and Information Services

STAFF RECOMMENDATIONS:

1. Authorize the Chief Executive Officer, or designee, to enter into and sign a new agreement with Hinderliter, De Llamas and Associates for sales, use and transactions tax audit and information services.
2. Adopt a Resolution to authorize access to sales, use and transactions tax records pursuant to California Revenue and Taxation Code Section 7056 (b).

FISCAL IMPACT:

Under an existing agreement, Hinderliter, de Llamas and Associates (Hdl) provides sales, use and transactions tax audit and information services. The audit service provides a system of continuous monitoring, identification and correction of "point of sale" allocation errors in sales tax revenues for the County. These efforts result in recovery of additional sales tax revenues for the County. Hdl charges 15 percent on the sales tax revenues recovered and a flat monthly fee of \$650 per month for the information services which include reports, software and staff support. In the last five fiscal years Hdl has recovered \$2,393,000 at a cost of \$358,950. (Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2014-5

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST:

CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT (continued):

Due to a need to update the existing agreement to include certain standard provisions of the County and establish a term limit, a new agreement with Hdl is proposed. The cost of this engagement will still be 15 percent of all new and recovered sales, transactions and/or use tax revenue received by the County as a result of audit and recovery work performed. The monthly fee will be \$650 per month, or \$7,800 in the first year, and will increase annually by the percent change in the Consumer Price Index – All Urban Consumers for the surrounding statistical metropolitan area nearest to the County. It is anticipated that Hdl may recover up to \$2,600,000 in additional sales tax revenue over the proposed five-year term for an estimated cost of \$429,000 including the monthly fee. If requested by the County, the firm will also provide optional services beyond the scope of the agreement at the firm's hourly rates. The Chief Executive Office Operations and Services budget includes sufficient appropriations to fund the recommended agreement with Hdl.

DISCUSSION:

On March 23, 1993, the Board of Supervisors approved an agreement between the County and Hinderliter, de Llamas and Associates (Hdl) for sales tax audit and information services. At that time, the County generated sales tax revenues in excess of \$8 million annually. Hdl was engaged to provide the County with more detailed information and analysis on the source of this revenue in order to perform accurate revenue forecasting, economic planning and evaluation of commercial and industrial projects, annexations, incorporations, and redevelopment proposals.

Equally important was that with the State Board of Equalization having to monitor and audit over one million seller permit holders in California, and some companies having to file sales tax returns in as many as 46 states with 46 different sets of regulations, substantial opportunity for error in allocating the local share of sales tax existed. Under this 1993 agreement, which is still in effect today, Hdl provides continuous monitoring, identification and correction of allocation errors and an effective program of sales and use tax management in order to recover sales tax revenues for the County.

Having recovered over \$9 million of sales tax revenues to date, the engagement with Hdl has served the County well. At this time, there is a need to update the existing agreement to include the County's standard language regarding insurance, confidentiality and other provisions, and to specify a term of agreement. County Counsel opined that it is in the best interest of the County to enter into a new agreement as opposed to amending the current one, as well as to adopt a new resolution required by the California Revenue and Taxation Code 7056 (b). If approved by the Board of Supervisors, the new agreement will have an initial term of five years with an option for the County to extend it for one additional five-year period, and it will replace and terminate the existing agreement.

Approval to Authorize the Chief Executive Officer to Enter into a New Agreement with Hinderliter, De Llamas and Associates for Sales, Use and Transactions Tax Audit and Information Services

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Sales tax revenues for Stanislaus County currently are in excess of \$15 million annually and represent about 23.70 percent of the county's local tax revenues. With the increase in sales tax revenues and in the number of seller permits over the years, there is an even greater need to have more detailed information on the origins of sales tax generation and in identification and correction of allocation errors. Setting up and maintaining such a system requires a substantial investment in special computer programs, staff and training, which is generally not cost effective to perform on an in-house basis.

Hdl has 30 years of experience and specialize in providing sales and property tax audit and information services to local agencies throughout California, and appears to be the only such company to have taken special efforts at this scale to accommodate the need of county government. Hdl's audit and management support activities are enhanced by the largest privately held database in California. This includes constantly updated registration data for every seller in California, allocation data for 502 of the state's 538 agencies and 43 transactions tax districts and business data for 668,000 businesses. Hdl provides sales, use and transactions tax reporting and auditing services through contracts with 44 of the state's largest counties and maintains the database of over 96% of all taxable retail sales in California. The firm has stated that to date they have recovered a cumulative total of \$1.08 billion in new sales and use tax revenues for client agencies statewide. As such, the County will continue to benefit from Hdl's expertise and resources.

Under the proposed new agreement, the firm will continue to provide the same services as in the existing agreement. In addition, if requested by the County, Hdl will provide optional services beyond the scope of the agreement at the firm's hourly rates. Optional services include negotiating and/or review of tax sharing agreements, establishing purchasing corporations and meeting with taxpayers to encourage self-assessment of use tax.

As the continued engagement with the firm fulfills the need to obtain ongoing sales tax information and recovery of new sales tax revenue with no risk or additional investment by the County, it is recommended the new agreement be approved and the resolution adopted.

POLICY ISSUES:

Approval of this agenda item supports the Board's priority of Efficient Delivery of Public Services by increasing sales taxes revenues through a proven system of continuous monitoring, identification and correction of allocation errors as well as providing an effective program for revenue forecasting and collection.

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STAFFING IMPACT:

There will be no staffing impact as a result of this continued engagement. Existing staff of the Chief Executive Office will coordinate the work effort with the consultant.

CONTACT PERSON:

Cynthia Thomlison, Deputy Executive Officer. Telephone: 209-652-3357

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA

Date: January 7, 2014

2014-5

On motion of Supervisor Chiesa Seconded by Supervisor O'Brien
and approved by the following vote,
Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini
Noes: Supervisors: None
Excused or Absent: Supervisors: None
Abstaining: Supervisor: None

THE FOLLOWING RESOLUTION WAS ADOPTED:

Item # *B-1

A RESOLUTION AUTHORIZING EXAMINATION OF SALES, USE AND TRANSACTIONS TAX RECORDS

WHEREAS, pursuant to Title 4, Chapter 4.16 of the Stanislaus County Code, the County of Stanislaus entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local sales, use and transactions taxes; and

WHEREAS, the County Board of Supervisors of the County of Stanislaus deems it desirable and necessary for authorized representatives of the County to examine confidential sales, use and transactions tax records of the State Board of Equalization pertaining to sales, use and transactions taxes collected by the Board for the County pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales, use and transactions tax records of the Board:

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS HEREBY RESOLVES AS FOLLOWS:

Section 1. That the Chief Executive Officer, Auditor-Controller and Treasurer-Tax Collector, or other officers or employees of the County, designated in writing to the State Board of Equalization (hereafter referred to as Board) by the Chief Executive Officer, Auditor-Controller or Treasurer-Tax Collector, are hereby appointed to represent the County of Stanislaus with authority to examine sales and use tax records of the Board pertaining to sales, use and transactions taxes collected for the County by the Board pursuant to the contract between the County and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of County sales, use and transactions taxes by the Board pursuant to that contract.

Section 2. That the Chief Executive Officer, Auditor-Controller and Treasurer-Tax Collector, or other officers or employees of the County, designated in writing to the Board by the Chief Executive Officer, Auditor-Controller or Treasurer-Tax Collector, are hereby appointed to represent the County of Stanislaus with authority to examine those sales, use and transactions tax records of the Board, for purposes related to the following governmental functions of the County:

a. Business License Tracking	e. Redevelopment
b. Tax Sharing Agreements	f. Revenue Management and Budgeting
c. Economic Development	g. County Administration
d. Economic Forecasting	

The information obtained by examination of Board records shall be used only for those governmental functions of the County listed above.


Section 3. That Hinderliter, de Llamas & Associates is hereby designated to examine the sales, use and transactions tax records of the Board pertaining to sales, use and transactions taxes collected for the County by the Board. The person or entity designated by this section meets all of the following conditions:

- (a) has an existing contract with the County to examine those sales, use and transactions tax records;
- (b) is required by that contract to disclose information contained in, or derived from, those sales, use and transactions tax records only to the officer or employee authorized under Sections 1 or 2 of this resolution to examine the information;
- (c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- (d) is prohibited by that contract from retaining the information contained in, or derived from those sales, use and transactions tax records, after that contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of County sales, use and transactions taxes by the Board pursuant to the contract between the County and the Board and for purposes relating to the governmental functions of the County listed in section 2 of this resolution.

Section 4. That this resolution supersedes all prior resolutions of the Board of Supervisors of the county of Stanislaus adopted pursuant to subdivision (b) of Revenue and Taxation Code Section 7056.

ATTEST: **CHRISTINE FERRARO TALLMAN, Clerk**
Stanislaus County Board of Supervisors,
State of California



File No.

**AGREEMENT FOR SALES, USE AND TRANSACTIONS TAX AUDIT AND
INFORMATION SERVICES**

This Agreement is made and entered into as of the 7th day of January, 2014 (the “Effective Date”) by and between the COUNTY OF STANISLAUS, a municipal corporation hereinafter called COUNTY, and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called CONTRACTOR.

I. RECITALS

WHEREAS, sales, use and transactions tax revenues can be increased through: a system of continuous monitoring, identification and correction of allocation errors, and

WHEREAS, an effective program of sales and use tax management will improve identification of economic opportunities; provide for more accurate sales and use tax forecasting; and assist in related revenue collections; and

WHEREAS, COUNTY desires the combination of data entry, report preparation and analysis necessary to effectively manage its sales and use tax base; recover revenues erroneously allocated to other jurisdictions and allocation pools; and maximize its financial and economic planning; and

WHEREAS, CONTRACTOR has the programs, equipment and personnel required to deliver the sales and use tax related services referenced herein;

THEREFORE, COUNTY and CONTRACTOR, for the consideration hereinafter described, mutually agree as follows:

II. SERVICES

The CONTRACTOR shall perform the following services:

A. SALES TAX AND ECONOMIC ANALYSIS

1. CONTRACTOR shall establish a special database that identifies the name, address and quarterly allocations of all sales tax producers within the COUNTY for the most current and all quarters back to fiscal year 1992-1993 or earlier, if the COUNTY has prior historical sales tax data available on computer readable magnetic media. This database will be utilized to generate special reports to the COUNTY on: major sales tax producers by rank and category, sales tax activity by categories, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.
2. CONTRACTOR shall provide up-dated reports each quarter identifying changes in sales by individual businesses, business groups and categories and by geographic area. Quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments will be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will also be included.
3. CONTRACTOR shall additionally provide a quarterly summary analysis for the COUNTY to share with Chambers of Commerce and other economic development interest groups that analyze COUNTY'S sales tax trends by major groups, and geographic areas without disclosing confidential information.

4. CONTRACTOR shall make available to COUNTY Staff the HdL web-based sales tax computer software program containing sellers permit and quarterly allocation information for all in-county business outlets registered with the Board of Equalization and update quarterly. Software shall allow county staff to search business by street address, account number, business name, business type and keyword; arrange data by geographic area and print out a variety of reports.

B. ALLOCATION AUDIT AND RECOVERY

1. CONTRACTOR shall conduct initial and on-going sales and use tax audits to identify and correct distribution errors, thereby generating previously unrealized sales tax income for the COUNTY and/or recovering misallocated sales tax from previously properly registered taxpayers. Common errors that will be monitored and corrected include, but are not limited to: transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; misreporting of “point of sale” to the wrong location; delays in reporting new outlets; misallocating use tax payments to the allocation pools or wrong jurisdiction and erroneous fund transfers and adjustments.
2. CONTRACTOR will initiate contacts with the appropriate sales management and accounting officials in companies that have businesses where a probability of error exists to verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner so as to enhance COUNTY’S relations with the business community.
3. CONTRACTOR shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors that are identified and shall

follow-up with the individual businesses and the State Board of Equalization to ensure that all back quarter payments due the COUNTY are recovered.

4. If during the course of its audit, CONTRACTOR finds businesses located in the COUNTY that are properly reporting sales tax but have the potential for modifying their operation to provide an even greater share to the COUNTY, CONTRACTOR shall so advise COUNTY and upon request, shall work with those businesses and the COUNTY to encourage such changes.

C. ONGOING CONSULTATION

Throughout the term of this agreement, CONTRACTOR shall advise and work with COUNTY Staff on technical questions related to sales, use and transactions tax; advise COUNTY Business License staff on utilization of reports to enhance business license collection efforts; provide sales tax projections for proposed annexations, economic development projects and budget planning; and generally serve as support staff on sales, use and transactions tax related issues. As part of ongoing consultation, the CONTRACTOR shall meet with the COUNTY at least once in every three months to discuss reports mentioned in Section II.A.2 and quarterly summary analysis mentioned in Section II.A.3 of this Agreement. Ongoing consultation services shall exclude optional services specified below in Section III of the Agreement.

III. OPTIONAL SERVICES

At the request of the COUNTY, optional services beyond the scope of this Agreement are available at CONTRACTOR's hourly rates as in effect from time to time. Optional services include, but are not limited to, negotiating/review of tax

sharing agreements, establishing purchasing corporations and meeting with taxpayers to encourage self-assessment of use tax. The hourly rates in effect at the time of the execution of this Agreement are as follows:

Principal	\$225 per hour
Programmer	\$195 per hour
Senior Analyst	\$150 per hour
Analyst	\$ 75 per hour

CONTRACTOR may change such hourly rates from time to time upon not less than 30 days' prior written notice to COUNTY.

IV. CONFIDENTIALITY

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. This section specifies the conditions under which a COUNTY may authorize persons other than COUNTY officers and employees to examine State Sales and Use Tax records.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this agreement:

- 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. 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. The resolution shall designate the CONTRACTOR as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.
- E. The CONTRACTOR agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

V. OWNERSHIP OF MATERIALS, CONFIDENTIALITY.

- A. Software Use. CONTRACTOR hereby provides authorization to the COUNTY to access CONTRACTOR'S Sales Tax website . The website shall only be used by authorized COUNTY staff. No access will be granted to any 3rd party without explicit written authorization by CONTRACTOR. The COUNTY shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by COUNTY of said software, or any right of the COUNTY to sell said

software or the use of same, or any right to use said software for the benefit of others. This software use authorization is not transferable. Upon termination of this agreement the software use authorization shall expire, and all COUNTY staff website logins shall be de-activated.

- B. Proprietary Information. As used herein, the term “proprietary information” means any information which relates to CONTRACTOR’S computer or data processing programs; data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; or business processes. COUNTY shall hold in confidence and shall not disclose to any other party any CONTRACTOR proprietary information in connection with this Agreement, or otherwise learned or obtained by the COUNTY in connection with this Agreement. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

VI. CONSIDERATION

- A. CONTRACTOR shall establish the sales and transactions tax databases, shall provide the ongoing reports and analysis and shall make available the computer software program and databases referenced above for a fee of **\$650.00** per month, commencing with the month of the Effective Date (hereafter referred to as “monthly fee”). The monthly fee shall be invoiced quarterly in arrears, and shall be payable no later than 30 days after invoice date. The monthly fee shall increase annually following the month of the Effective Date by the percentage increase in the “CPI” for the preceding twelve month period. In no event shall the monthly fee be reduced by this calculation. For purposes of this Agreement, the “CPI” shall mean the Consumer Price Index - All Urban Consumers for the surrounding statistical

metropolitan area nearest COUNTY, All Items (1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or, if such index should ceased to be published, any reasonably comparable index selected by CONTRACTOR.

- B. CONTRACTOR shall be further paid **15%** of all new and recovered sales, transactions and/or use tax revenue received by the COUNTY as a result, in whole or in part, of audit and recovery work performed by CONTRACTOR (hereafter referred to as “audit fees”), including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the Revenue and Taxation Code. In the event that CONTRACTOR is responsible, in whole or in part, for an increase in the tax reported by businesses already properly making tax payments to the COUNTY, it shall be CONTRACTOR’S responsibility to separate and support the incremental amount that is attributable, in whole or in part, to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. CONTRACTOR shall provide COUNTY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees, which shall be payable no later than 30 days following invoice date.

CONTRACTOR shall obtain COUNTY approval prior to beginning the work of correcting tax reporting methodology or “point of sale” for specific businesses where said payment of the percentage fee will be expected. Said approval shall be deemed given when the County Administrator, or his designated representative, signs a Sales Tax Audit Authorization form, a copy of which is attached as “Exhibit A.” COUNTY shall pay audit fees upon CONTRACTOR’S submittal of evidence of State Fund Transfers and payments to COUNTY from businesses identified in the

audit and approved by the COUNTY. The audit fees shall be payable on all new and/or recovered tax revenues received from approved businesses as a consequence, in whole or in part, of the audit, and even if COUNTY, of its own volition, assists with the audit, works in parallel with the audit, and/or expends attorneys fees or other out-of-pocket costs in connection with any of the foregoing.

The above sums shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR'S employees, and travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

- C. CONTRACTOR shall invoice COUNTY for any optional services rendered to COUNTY in accordance with section III above on a monthly or a quarterly basis, at CONTRACTOR's option. Any such invoices shall be payable by COUNTY no later than 30 days following invoice date.
- D. Any invoices not paid on a due and timely basis shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.

VII. COUNTY MATERIALS AND SUPPORT

COUNTY shall adopt a resolution in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales tax records of COUNTY. COUNTY further agrees to provide any information or assistance that may readily be available such as business license records within the COUNTY and to provide CONTRACTOR with proper identification for contacting businesses. COUNTY further agrees to continue

CONTRACTOR'S authorization to examine the confidential sales tax records of the COUNTY by maintaining CONTRACTOR'S name on the COUNTY Resolution or by providing copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the State Board of Equalization and audit fees due the CONTRACTOR have been paid.

VIII. LICENSE, PERMITS, FEES AND ASSESSMENTS

CONTRACTOR shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. COUNTY shall assist CONTRACTOR in obtaining such Permits, and COUNTY shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by COUNTY.

IX. TERMINATION

This Agreement shall be for a five-year term, beginning January 1, 2014 and ending December 31, 2018. The COUNTY shall have the option to extend this Agreement for a second five-year term by giving a written notice to the CONTRACTOR at least 30 days prior to December 31, 2018. This Agreement may be terminated for convenience by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, CONTRACTOR may continue to work through the date of termination. Upon termination as provided herein, CONTRACTOR shall be paid the value of all tax analysis and reporting work performed less payments previously made by COUNTY. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by CONTRACTOR which make tax payments after termination of this Agreement as a

result of CONTRACTOR'S work. After COUNTY receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

All documents, data, surveys and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the COUNTY and upon payment for services performed by CONTRACTOR, such documents and other identified materials shall be delivered to COUNTY by CONTRACTOR.

X. INDEPENDENT CONTRACTOR

CONTRACTOR shall perform the services hereunder as an independent contractor and shall furnish such services in its own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of CONTRACTOR be considered as an employee of COUNTY.

XI. NON-ASSIGNMENT

This Agreement is not assignable either in whole or in part by CONTRACTOR without the written consent of COUNTY.

XII. ATTORNEY'S FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

XIII. GOVERNING LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.

XIV. INSURANCE

A. CONTRACTOR shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

1. General Liability. Commercial general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by CONTRACTOR under this Agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Professional Liability Insurance. Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the CONTRACTOR's work under this Agreement.

3. Automobile Liability Insurance. If the CONTRACTOR or the CONTRACTOR's officers, employees, agents or representatives utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury and property damage liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

 4. Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the CONTRACTOR certifies under section 1861 of the Labor Code that the CONTRACTOR is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the CONTRACTOR will comply with such provisions before commencing the performance of the work of this Agreement.
- B. Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (i) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (ii) the CONTRACTOR shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the CONTRACTOR agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense

expenses related to or arising out of the CONTRACTOR's defense and indemnification obligations as set forth in this Agreement.

- C. The CONTRACTOR shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds regarding: (i) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the CONTRACTOR, including the insured's general supervision of its subcontractors; (ii) services, products and completed operations of the CONTRACTOR; (iii) premises owned, occupied or used by the CONTRACTOR; and (iv) automobiles owned, leased, hired or borrowed by the CONTRACTOR. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the CONTRACTOR.

- D. The CONTRACTOR's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the CONTRACTOR's insurance and shall not contribute with CONTRACTOR's insurance.

- E. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials and employees.

- F. The CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- G. Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The CONTRACTOR shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.
- H. Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide of no less than A-:VII; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance.
- I. CONTRACTOR shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.
- J. At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify

coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

- K. The limits of insurance described herein shall not limit the liability of the CONTRACTOR and CONTRACTOR's officers, employees, agents, representatives or subcontractors.

XV. Nondiscrimination

During the performance of this Agreement, CONTRACTOR will comply with Title VII of the Civil Right Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, gender (including gender identity and gender expression), national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, sexual orientation, age, religion, political affiliation, or any other non-merit factors, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement. CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

XVI. INDEMNIFICATION

CONTRACTOR hereby agrees to, and shall hold COUNTY, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from CONTRACTOR's willful or negligent acts, errors or omissions or those of its employees or agents. CONTRACTOR agrees to and shall indemnify and defend, including reasonable attorneys fees, COUNTY and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions.

COUNTY hereby agrees to, and shall hold CONTRACTOR, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from COUNTY'S negligent acts, errors or omissions under this Agreement. COUNTY agrees to and shall defend, including reasonable attorneys fees, CONTRACTOR and its officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions.

XVII. PRIOR AGREEMENTS

This Agreement replaces and terminates any prior existing agreements between the COUNTY and the CONTRACTOR.

XVIII. NOTICE

All notices required by this Agreement shall be given to COUNTY and CONTRACTOR in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

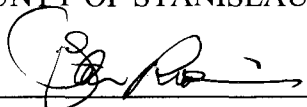
COUNTY: COUNTY OF STANISLAUS
1010 10th Street 6th Floor
Modesto, CA 95354

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

COUNTY:


COUNTY OF STANISLAUS



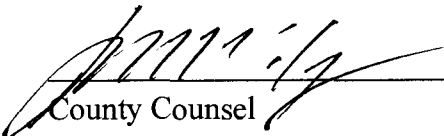
Chief Executive Officer

CONTRACTOR:

HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation



APPROVED AS TO FORM:



County Counsel

SAMPLE

SAMPLE

EXHIBIT A
Sales Tax Audit
Work Authorization No. _____

The following business or businesses, located in the County of Stanislaus, have been identified as having the potential for recovering or generating additional sales tax revenue to the County of Stanislaus. Contractor is hereby solely authorized to contact the given business(s) and the State Board of Equalization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board of Equalization, to modify allocation formulas, and to return previous misallocated revenue that may be due to County.

Contractor's compensation shall be 15% of the sales and/or use tax revenue received by the County as a result of audit and recovery work performed by Contractor, as set forth in the Agreement between Contractor and County.

COUNTY OF STANISLAUS

By: _____

Date: _____

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: _____

Date: _____