

**AGREEMENT FOR SALES, USE AND TRANSACTIONS TAX AUDIT
AND INFORMATION SERVICES
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
HINDERLITER, DE LLAMAS AND ASSOCIATES
FOR FISCAL YEARS 2016-2017 THROUGH 2019-2020**

This Agreement, entered into this 24th day of May, 2017, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Hinderliter, De Llamas and Associates, a California corporation, hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, sales, use and transactions tax (collectively referred to herein as "sales and use tax") revenues can be increased through a system of continuous monitoring, identification and correction of allocation errors; and

WHEREAS, COUNTY, by and through its County Administrative Office, desires to retain a qualified professional firm to provide sales and use tax audit services ("tax management services") that will improve identification of economic opportunities, provide for more accurate sales and use tax forecasting and assist in related revenue collections; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR represents that it has the experience, qualifications, programs, equipment and personnel required to deliver the tax management services required by COUNTY.

NOW THEREFORE, the parties mutually agree as follows:

1. CONTRACTOR OBLIGATIONS:

- A. **Tax Management Services.** CONTRACTOR agrees to furnish the tax management services described in Exhibit A – Scope of Services, which is attached hereto and incorporated herein by reference. CONTRACTOR shall obtain any and all licenses, permits and approvals as may be required by law for the performance of the tax management services required by this Agreement.
- B. **Service Authorization.** CONTRACTOR shall obtain COUNTY approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where payment of the percentage fee required hereunder will be expected. Said approval shall be deemed given when the Humboldt County Administrative Officer, or designee thereof, signs a Sales Tax Audit Authorization Form, which is attached hereto as Exhibit B and incorporated herein by reference.
- C. **Grant of Software License.** CONTRACTOR hereby grants to COUNTY a non-exclusive and non-transferable license to use of CONTRACTOR's Sales Tax website by authorized

COUNTY staff. Access to CONTRACTOR's Sales Tax website shall not be granted to any third-party without explicit written authorization by CONTRACTOR. The license to use of the Sales Tax website granted hereunder shall expire, and all COUNTY staff website logins shall be de-activated, upon the expiration or termination of this Agreement.

- D. **Optional Services.** CONTRACTOR agrees to provide certain optional services not otherwise specified herein pursuant to a written amendment to this Agreement. CONTRACTOR shall be compensated for the provision of such optional services according to the terms and conditions of such amendment.

2. **COUNTY OBLIGATIONS:**

- A. **Authorization to Examine Confidential Sales Tax Records.** COUNTY shall adopt a resolution in a form acceptable to the State Board of Equalization, and in compliance with Section 7056 of the California Revenue and Taxation Code, which authorizes CONTRACTOR to examine COUNTY's confidential sales tax records. COUNTY agrees to continue CONTRACTOR's authorization to examine COUNTY's confidential sales tax records by maintaining CONTRACTOR's name on the above-referenced 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 owed to CONTRACTOR have been paid.
- B. **Provision of Necessary Information and Assistance.** COUNTY agrees to provide any information or assistance that may readily be available, including, without limitation, business license records and current contact information for businesses located in Humboldt County.
- C. **License, Permits, Fees and Assessments.** COUNTY shall assist CONTRACTOR in obtaining any and all licenses, permits and approvals that may be required by law for the performance of the tax management services required by this Agreement. COUNTY shall absorb all fees, assessments and taxes which are necessary for any licenses, permits and/or approvals that are required to be issued by COUNTY.
- D. **Compliance with Software License Restrictions.** COUNTY shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble or attempt to derive the source code of the software used to operate CONTRACTOR's Sales Tax website. The license to use CONTRACTOR's Sales Tax website granted hereunder shall not imply ownership by COUNTY of the software related thereto, or any right of COUNTY to sell said software or the use of same, or any right to use said software for the benefit of others.

3. **TERM:**

This Agreement shall begin on July 1, 2016 and shall remain in full force and effect until June 30, 2020, unless sooner terminated as provided herein.

4. **TERMINATION:**

- A. **Breach of Contract.** If, in the opinion of COUNTY, CONTRACTOR fails to adequately perform the services required hereunder, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or other law applicable to its performance hereunder, COUNTY may terminate this Agreement immediately, upon notice.

- B. **Without Cause.** COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice to CONTRACTOR which specifies the effective date of such termination. Upon the presentation of such notice, CONTRACTOR may continue to work through the effective date of termination.
- C. **Compensation Upon Termination.** In the event this Agreement is terminated, CONTRACTOR shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.

5. **COMPENSATION:**

- A. **Audit Fees.** CONTRACTOR shall be paid fifteen percent (15%) of all new and recovered sales, transactions and/or use tax revenue received by COUNTY as a result, in whole or in part, of the tax management services provided by CONTRACTOR pursuant to the terms and conditions of this Agreement, including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the California 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 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 (8) consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. 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 State Board of Equalization representatives. CONTRACTOR unilaterally retains the right to divide any recovery bills in excess of Twenty-Five Thousand Dollars (\$25,000.00) over a one (1) year period (four (4) quarterly billings).
- B. **Additional Services.** Any additional services not otherwise provided for herein shall not be provided by CONTRACTOR, or compensated by COUNTY, without written authorization by COUNTY. All unauthorized costs and expenses shall be the responsibility of CONTRACTOR.

6. **PAYMENT:**

- A. **Invoices.** CONTRACTOR shall submit to COUNTY itemized quarterly invoices showing all formula calculations and amounts due for the audit fee, including, without limitation, a detailed listing of any corrected misallocations. Invoices shall be in a format approved by the Humboldt County Administrative Officer, or a designee thereof, and shall include backup documentation as specified by the Humboldt County Auditor-Controller, including, without limitation, evidence of State Fund Transfers and payments to COUNTY from businesses identified in such invoices. CONTRACTOR shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Payment for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement will be made within thirty (30) days after the receipt of approved invoices. All invoices submitted by CONTRACTOR shall be sent to COUNTY at the following address:

COUNTY: Humboldt County Administrative Office
Attention: Elishia Hayes, Senior Administrative Analyst
825 Fifth Street, Room 112
Eureka, California 95501

- B. Late Payments.** Any invoices not paid on a timely basis shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.

7. **NOTICES:**

All notices required to be given pursuant to the terms and conditions of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County Administrative Office
Attention: Amy S. Nilsen, County Administrative Officer
825 Fifth Street, Room 112
Eureka, California 95501

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES
Attention: Andrew Nickerson
1340 Valley Vista Drive, Suite 200
Diamond Bar, California 91765

8. **RECORD RETENTION AND INSPECTION:**

- A. Maintenance and Preservation of Records.** CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom.

- B. Inspection of Records.** Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONTRACTOR hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any duly authorized local, state and/or federal agencies. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

- C. Audit Exceptions.** In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost

of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. **MONITORING:**

CONTRACTOR agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONTRACTOR's records, programs or procedures, at any time, as well as the overall operation of CONTRACTOR's programs, in order to ensure compliance with the terms and conditions of this Agreement. CONTRACTOR will cooperate with a corrective action plan, if deficiencies in CONTRACTOR's records, programs or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONTRACTOR pursuant to the terms and conditions of this Agreement.

10. **CONFIDENTIALITY REQUIREMENTS:**

A. **Confidential Information.** In the performance of this Agreement, either party may receive, be exposed to or acquire information that is confidential under local, state or federal laws and regulations, including, without limitation:

1. Confidential proprietary information which includes, without limitation: CONTRACTOR's computer or data processing programs, applications, routines, subroutines, techniques or systems; desktop or web-based software; and business processes.
2. Confidential taxpayer information contained in, or derived from, sales or transactions and use tax records of the State Board of Equalization, which includes, without limitation, the amount and source of income, profits, losses, expenditures or any particular thereof and any other information pertaining to any retailer or any other person required to report to the State Board of Equalization.
3. Confidential personal information, which includes, without limitation, names, social security numbers, driver license numbers, identification card numbers, financial account numbers or other identifying number, symbol or particular.

B. **Use and Disclosure of Confidential Information.** Each party hereby agrees to protect all confidential proprietary, taxpayer or personal information in accordance with any and all local, state and federal laws, regulations policies, procedures and standards, including, but not limited to, Section 7056 of the California Revenue and Taxation Code which is incorporated into this Agreement as Exhibit C and made part hereof as if set forth in full.

C. **Continuing Compliance with Confidentiality Laws.** Each party hereby acknowledges that local, state and federal laws, regulations and standards pertaining to confidentiality, data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning amending this Agreement to embody written assurances consistent with any applicable local, state and federal laws and regulations regarding confidentiality.

11. **NON-DISCRIMINATION COMPLIANCE:**

- A. **Professional Services and Employment.** In connection with the execution of this Agreement CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. **Compliance with Anti-Discrimination Laws.** CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

12. **NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:**

CONTRACTOR certifies by its signature below that it is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the forgoing certification is false or if CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.

13. **DRUG-FREE WORKPLACE CERTIFICATION:**

By executing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

- A. **Drug-Free Policy Statement.** Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.

- B. Drug-Free Awareness Program.** Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
1. The dangers of drug abuse in the workplace;
 2. CONTRACTOR's policy of maintaining a drug-free workplace;
 3. Any available counseling, rehabilitation and employee assistance programs; and
 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement.** Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:
1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
 2. Agree to comply with CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance.** Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and CONTRACTOR may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONTRACTOR violates the certification by failing to carry out the above-referenced requirements.

14. INDEMNIFICATION:

- A. Third-Party Software Indemnification.** CONTRACTOR agrees to defend, indemnify and hold harmless COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims that the services provided pursuant to the terms and conditions of this Agreement infringe or misappropriate any third-party's patent, copyright, trademark, trade secret or other intellectual property rights, and will be responsible for any adverse final judgment, or settlement to which COUNTY consents, resulting from such claims of infringement or misappropriation.
- B. General Indemnification.** Each party shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party and its agents, officers, officials, employees and volunteers.
- C. Comparative Liability.** Notwithstanding paragraph B above, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.

- D. **Effect of Insurance.** Acceptance of insurance required by this Agreement does not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to the services performed pursuant to the terms and conditions of this Agreement regardless if any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided by either party hereunder.

15. **INSURANCE REQUIREMENTS:**

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance, or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

- A. **General Insurance Requirements.** Without limiting CONTRACTOR's Indemnification obligations provided for herein, CONTRACTOR shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of the Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Best's rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Service Offices Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage. If a general aggregate is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile Liability/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omissions including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability. CONTRACTOR shall require that such coverage be incorporated into its professional services agreements with any other entities.

- B. **Special Insurance Requirements.** Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY, its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to property damage caused by explosion or collapse of structures or underground property damage, referred to as "XCU Hazards."
 - c. Is the primary insurance with regard to COUNTY.
 - d. Does not contain a pro-rata, excess only and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
2. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
3. The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
4. For claims related to this Agreement, CONTRACTOR's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR's insurance and will not be used to contribute therewith.
5. Any failure to comply with the provisions of this Agreement, including breach of warranties, shall not affect coverage provided to COUNTY, its agents, officers, officials, employees and volunteers.
6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.

- C. **Insurance Notices.** Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES
Attention: Andrew Nickerson
1340 Valley Vista Drive, Suite 200
Diamond Bar, California 91765

16. **RELATIONSHIP OF PARTIES:**

It is understood this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. CONTRACTOR shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

17. **COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:**

CONTRACTOR agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services provided pursuant to the terms and conditions of this Agreement. CONTRACTOR further agrees to comply with any and all applicable local, state and federal licensure and certification requirements.

18. **PROVISIONS REQUIRED BY LAW:**

This Agreement is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

19. **REFERENCE TO LAWS AND RULES:**

In the event any law, regulation, policy or procedure referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

20. **SEVERABILITY:**

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

21. ASSIGNMENT:

CONTRACTOR shall not delegate its duties or assign its rights hereunder, either in whole or in part, without COUNTY's prior written consent. Any assignment by CONTRACTOR in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

22. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

23. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or default. COUNTY shall have the right to demand repayment of, and CONTRACTOR shall promptly refund, any funds disbursed to CONTRACTOR which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement.

24. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

25. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement, including without limitation, changes in the statement of work, total cost and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties hereto.

26. STANDARD OF PRACTICE:

CONTRACTOR warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

27. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure sections 394 or 395.

28. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, data, surveys and reports prepared by CONTRACTOR pursuant to the terms and conditions of this Agreement shall become the property of COUNTY. However, CONTRACTOR may retain copies of such documents and data for its records. In the event of termination of this Agreement, for any reason whatsoever, CONTRACTOR shall promptly turn over all information, writings and documents pertaining to the services provided hereunder to COUNTY without exception or reservation.

29. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. CONTRACTOR shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the Humboldt County Administrative Office.

30. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification and confidentiality requirements set forth herein. CONTRACTOR shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

31. ATTORNEY'S FEES:

In the event either party commences any legal action or proceeding, including an action for declaratory relief, against the other party by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed, the prevailing party in said action or proceeding shall be entitled to recover its court costs and reasonable attorney's fees to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

32. SURVIVAL:

The duties and obligations of the parties set forth in Section 4(D) – Compensation Upon Termination, Section 8 – Record Retention and Inspection, Section 10 – Confidential Information and Section 14 – Indemnification shall survive the expiration or termination of this Agreement.

33. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority.

34. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

35. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

36. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

37. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all previous agreements, promises, representations, understanding and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

38. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) *CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND*
- (2) *SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.*

HINDERLITER, DE LLAMAS AND ASSOCIATES:

By:  _____ Date: 4/4/17

Name: Andrew Nickerson

Title: President

By:  _____ Date: 4/4/17

Name: Jeffrey Schmehr

Title: Chief Financial Officer

COUNTY OF HUMBOLDT:

By:  _____ Date: 5/24/17

AMY S. NUSEN
COUNTY ADMINISTRATIVE OFFICER

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By:  _____ Date: 5/2/17
Risk Management

LIST OF EXHIBITS:

- Exhibit A – Scope of Services
- Exhibit B – Sales Tax Audit Authorization Form
- Exhibit C – Section 7056 - Confidentiality Requirements

EXHIBIT A
SCOPE OF SERVICES
HINDERLITER, DE LLAMAS AND ASSOCIATES
FOR FISCAL YEARS 2016-2017 THROUGH 2019-2020

1. ALLOCATION AUDIT AND RECOVERY SERVICES:

- A. 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 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.
- B. 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.
- C. 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 owed to COUNTY are recovered.
- D. If during the course of its audit, CONTRACTOR finds businesses located in Humboldt County that are properly reporting sales tax but have the potential for modifying their operation to provide an even greater share to COUNTY, CONTRACTOR shall so advise COUNTY and upon request, shall work with those businesses and COUNTY to encourage such changes.
- E. Each quarter, CONTRACTOR shall provide COUNTY a sales tax data set that can be installed on any compatible personal computer. The HdL Software Program is Windows and DOS bases and contains all sellers permit registrations in the unincorporated areas, including current allocation data, street address, owner name and address. With the data set three reports will be included: the seven major business groups, the top 20 businesses for the quarter, and the top 20 deviating businesses. These services, the HdL Software Program and the reports will be provided at no cost to COUNTY

2. ONGOING CONSULTATION SERVICES:

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.

EXHIBIT B
SALES TAX AUDIT AUTHORIZATION FORM
HINDERLITER, DE LLAMAS AND ASSOCIATES
FOR FISCAL YEARS 2016-2017 THROUGH 2019-2020

Sales Tax Audit
Work Authorization No. ____

The following business or businesses, located in the County of Humboldt have been identified as having the potential for recovering or generating additional sales tax revenue to the County of Humboldt. 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 fifteen percent (15%) of the sales and/or use tax revenue received by County as a result of audit and recovery work performed by Contractor, as set forth in the Agreement for Sales Use and Transactions Tax Audit and Information Services, dated _____, 2017, by and between Contractor and County.

COUNTY OF HUMBOLDT:

By: _____

Date: _____

Name: _____

Title: _____

HINDERLITER, DE LLAMAS AND ASSOCIATES:

By: _____

Date: _____

Name: _____

Title: _____

EXHIBIT C
SECTION 7056 – CONFIDENTIALITY REQUIREMENTS

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 CITY may authorize persons other than CITY 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 CITY 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 CITY 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 CITY 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.