



Contract Number

SAP Number

Finance and Administration

Department Contract Representative Amanda Trussell
Telephone Number 909-387-4773

Contractor Hinderliter, de Llamas & Associates
Contractor Representative Andrew Nickerson
Telephone Number (714) 879-5000
Contract Term 08/25/2020-09/30/2025
Original Contract Amount _____
Amendment Amount _____
Total Contract Amount _____
Cost Center 1161161000

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino desires the services of a contractor to examine, analyze, and report on County sales and use tax revenue through a system of continuous monitoring, identification and correction of revenues erroneously allocated to other jurisdictions. The goal is to establish an effective program of sales tax examination and analysis that will improve identification of sales tax opportunities as they relate to economic development and to provide for accurate sales tax forecasting; and

WHEREAS, the County conducted a competitive process to find Contractor(s) to provide these services, and

WHEREAS, the County finds Contractor qualified to provide services related to sales and use tax revenue; and

WHEREAS, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

A. DEFINITIONS

A.1 California Department of Tax and Fee Administration (CDTFA) – Beginning July 1, 2017, the CDTFA assumed all previous statutory tasks of the State Board of Equalization (BOE), and performs administrative functions for the BOE.

A.2 Consumer Price Index – West Urban (CPI-WU): a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. The West Region is comprised of the following thirteen states: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

A.3 Date of Correction - the quarter in which the taxpayer has correctly reported the local tax and the CDTFA distributes the local tax properly to County, based on the taxpayer's reporting together with any prior period reallocations.

A.4 Date of Knowledge (DOK) – the quarter during which Contractor notifies CDTFA of the existence of a misallocation. Once a DOK is established, it preserves the County's right to reallocations for all improperly allocated funds for three economic quarters prior to the quarter in which the DOK is established, and for all subsequent economic quarters until correction or final adjudication of the inquiry. If the County, or Contractor, fails to pursue any level of appeal prior to correction or final adjudication, the matter is deemed abandoned, and the right to receive corrected allocations for the prior periods is extinguished.

A.5 Sales Tax Reports – reports of the County's share of the Bradley Burns' Sales and Use Tax Revenue, at both the summary and detail level, using detail data received from CDTFA; also includes reports on Proposition 172 sales tax revenues and possible realignment.

A.6 State Board of Equalization (BOE) – The state agency which administers the following programs, property taxes, special taxes, and the tax appellate program.

B. CONTRACTOR RESPONSIBILITIES

B.1 Project Plan

Contractor agrees to utilize steps described below, or such other steps as Contractor identifies, in order to maximize the County's sales, transactions, and use tax revenue by detecting and documenting misallocations of sales and use tax activity within the limitation of administrative recoverability:

- Acquire CDTFA records and compare them to relevant and available public and private data sources to develop a comprehensive electronic inventory of every business in the County.
- Augment the electronic database with physical canvassing of every commercial and industrial area of the County to find taxable nexus within the County that is not properly being allocated to the County, and conduct this physical canvassing as part of the initial audit and periodically "as needed" or as requested by County to supplement the audit.
- Process quarterly registration and allocation files provided by the CDTFA. Printouts of registration changes and dollars allocated by business name and number are to be provided from these files on a quarterly basis.
- Identify and correct the sales/use tax reporting errors of businesses, the transactions of which, based on the location of their activities, are not properly registered to the County.
- Identify and correct the reporting of businesses that are improperly reporting local tax (e.g. classifying sales tax as use tax). Provide the County and the CDTFA reports addressing each taxpayer reporting error individually, including the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure, and if available, estimated sales/use tax revenue which should be forthcoming to the County.
- Pursue revenue owed to the County that it is not currently receiving due to inaccurate policy, regulatory and legislative tax applications.

B.2 Conduct Audits

Contractor will perform Sales and Use Tax Audit (SUTA) services to maximize the County's income and minimize the cost of lost revenue by finding sales and use taxes that should be allocated to the County but were misallocated to another jurisdiction or the countywide pool, and

have the misallocation corrected with the CDTFA within the statute of limitations on recoverability. Specific audit types include:

Taxable Nexus Field Audit: focuses on those businesses located in San Bernardino County from which the County has not been receiving sales and use tax revenue. The “initial” and “periodic” (as needed, or at the County’s request) Taxable Nexus Field Audits include a physical canvassing within the County’s borders and unincorporated areas in addition to the commercial and industrial areas of the County, and an evaluation of sales and use tax-generating businesses located within the County.

Permits Audit: focuses on the identification and correction of improperly registered permits for companies having point-of-sale or use operations in the County. Wholesalers, contractors, manufacturers and other non-retail businesses frequently do not hold a sales or use tax permit properly registered to the County in which they are located because their business operations do not include a point-of-sale qualifying activity. However, these companies will often generate local sales and use tax from the CDTFA audit deficiency assessments, new or changed operations, or the self-accrual of use tax on purchases through direct payment permits.

Deficiency Assessment Audit: the CDTFA audits taxpayers for sales and use tax compliance, and it is not uncommon for the taxpayer to receive a substantial deficiency assessment due to underpayments and/or under collections. In many cases, the County’s local allocation portion of the deficiency assessment is distributed in error to the State pool, county pools, or other jurisdictions. Contractor has developed proprietary criteria and techniques to detect and correct CDTFA deficiency assessment misallocations.

Accounts Payable Audit: enables Contractor to prepare the documentation to facilitate the issuance of a direct payment permit (use tax) to the County, where feasible, and provide technical assistance in preparing and filing the tax returns. These audits will include, upon request of the County, a review of the County’s purchases to identify opportunities for the County to capture the 1% local sales tax on purchases subject to use tax.

Quarterly Distribution Report (QDR) Audit: the CDTFA issues a QDR every three months with the local allocation amount reported by permit number. The audit focuses on those accounts where a substantial change in sales and use tax revenue allocation for a particular business entity is observed in a given quarter. This audit is conducted each quarter as counties may only recover misallocated revenue for three quarters prior to the CDTFA being notified of the reporting error.

Use Tax Audit: services are designed to not only capture use tax revenue through the review of past purchase activity by the businesses in the County but to assist in establishing new processes and procedures designed to prevent the pooling of these revenues and increase the direct allocation to the County. The audit focuses on identifying taxpayers purchasing tangible personal property directly from out-of-state retailers where the transactions are subject to use tax (rather than sales tax) which is often collected by the vendor which in turn remits to the CDTFA for distribution. These audits include Contractor’s proprietary techniques used to identify purchases made by businesses located in the County from out-of-state vendors that are in excess of \$500,000. The local tax for these transactions is typically allocated through the statewide or countywide pools, however, Contractor’s audits work to redirect the local use tax allocation to the County.

Use Tax Accrual Audits: in certain conditions the purchaser may elect to self-accrue the use tax and remit it directly to the CDTFA for distribution. This can involve both purchases made by the County itself, or working directly with businesses and construction contractors and developers to establish the practice of self-accrual and direct remittance of the use tax to the CDTFA. This can involve assisting the County and the taxpayers, where applicable, in obtaining a Direct Payment Permit to assist in this practice and enhance County revenues.

B.3 Business Cooperation Program

Contractor will provide the Business Cooperation Program (BCP), to identify and seek cooperation from local businesses to self-accrue their use tax to the County, and work with contractors on major construction projects. Contractor shall work with County and its designated partners' staff on questions related to tenant mix alternatives for maximum sales returns; if applicable, advise County business license staff on utilization of reports to enhance business license collection efforts; provide sales tax projections on specific projects for development negotiation and budget purposes; and provide sample reports, letters, and programs to enhance the sales tax base through improved economic development efforts.

B.4 Correct Reporting Errors

Contractor will represent County for purpose of examining CDTFA records pertaining to sales, transaction, and use tax to identify errors and omissions. Procedures for documenting and correcting misallocations are summarized as follows:

- Assist County with strategies to preserve and enhance sales and use tax revenue generated by existing businesses within the County.
- Contractor will provide work sessions to County staff to develop an internal allocation reviewing program to detect and correct retail misallocations, at County's request.
- Monitor and analyze the quarterly distribution reports to ensure ongoing reporting accuracies.
- Coordinate with the business and CDTFA to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/use tax improperly distributed in prior quarters.
- Contact personnel in sales, operations, and /or tax accounting at each target business to coordinate with the taxpayer and CDTFA to make the necessary corrections and collect eligible back quarter's amounts.
- Respond to negative findings by the CDTFA with timely reconfirmation documentation in order to preserve the County's original Dates of Knowledge (DOK).
- Represent the County as necessary in the appeals of rejected misallocation inquiries under the CDTFA process set forth in Regulation 1807.

B.5 Pursue Corrections through CDTFA Appeals

Contractor will comply with applicable rules and regulations governing CDTFA as they currently exist, or as they may be changed from time-to-time. Contractor will submit a written inquiry, reply to negative CDTFA response(s), and pursue appeals through the CDTFA appeal process for accounts on the County's behalf for which there is an established Date of Knowledge (DOK), and an appeal is warranted, or at the County's request.

B.6 Sales and Use Tax Data

Provide a combination of data entry, report preparation, and data analysis necessary to effectively analyze and report on the municipal sales tax base and recover revenues erroneously allocated to other jurisdictions and allocation pools.

- Contractor will provide County with sales and use tax data through its updated sales tax system to facilitate "in-house" analysis and printing of reports. The system allows County staff to search, print and export sales tax data for a variety of financial, management and planning functions. The system provides the ability to search all sales tax producers by business name, address, CDTFA account number and current or historical sales tax allocations. The web application also provides access to archived quarterly sales tax reports.
- Contractor will provide the County with a minimum of three years of historical sales and use tax information. (Although, it is likely the County will have many more years of data provided by Contractor at no extra charge.)
- Contractor will provide County with a five-fiscal year sales and use tax forecast each quarter that integrates business-level adjustments based on business-by-business projections, microeconomic trends, macroeconomic trends, sales and use tax

anomalies, future developments, and threatened business, and integrates those adjustments into three forecast scenarios.

- Contractor will provide County with a non-confidential summary page so the County may post a sales tax outlook on its website, if desired.

B.7 Track Audit Findings and Revenue Allocation

The County will receive ad hoc reports, custom reports, geo-area analysis, and any other reports upon request. Contractor will also provide the following:

Audit Update Report: Quarterly reports addressing each taxpayer reporting error individually submitted to the CDTFA on the County's behalf, which includes the business name, address, telephone number, California sales tax permit number, individual(s) contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure and, if available, estimated sales and use tax revenue which should be forthcoming to the County.

Open Account Status Report: Bi-annual status report containing detailed information on sales and use tax inquiries filed with the CDTFA on behalf of the County. These status reports will include a list of accounts filed with the CDTFA including taxpayer name and address, Date of Knowledge (DOK), and sales and use tax permit number, current status of accounts including estimate of amount of local sales and use tax due the County, plus any additional information that may be requested by the County to be included in the report.

Sales Tax Audit Invoice Progress Report: Detailed listing of accounts corrected to which the contingency fee applies, along with supporting documentation.

Other Documents/Reports: Documents included in the quarterly invoice package that show the recovered amount, what economic period the recovery is for, the taxpayer names, and permit numbers.

B.8 Sales Tax Analysis and Reporting Services

Establish an effective program of sales tax examination and analysis that will improve identification of sales tax opportunities as they relate to economic development and provide for accurate sales tax forecasting, including Proposition 172 sales tax revenues. Reports will contain summary and detail information including State and County Pool revenue, State administrative fee deductions, current and future budget projections (including disclosure of any one-time amounts), and be provided on a cash basis and on an adjusted basis for each quarter. Reports on the adjusted basis should show when the sales and use tax revenue would normally have been received if not for late payments, amended returns, audit findings, point of sale location corrections, or other payment aberrations. Reports should provide summary information for the County share and city share of sales and use tax revenue, for each city in the County, summarized by individual city/unincorporated county area, and further broken down by point of sale, State Pool, and County Pool for each city/unincorporated county area. In addition, Contractor shall produce reports that provide analysis for the County or its designated partner agencies (i.e. Successor Agency to former Redevelopment Agencies; JPA's, etc.) to share with Chambers of Commerce and other economic development interest groups that analyze County sales tax trends by major groups, and geographic areas without disclosing confidential information. Each report that is produced must include a header or footer that discloses if the information is confidential or not confidential.

Contractor will provide the County with the following tools for economic analysis.

Quarterly Analysis: Quarterly, a principal of the firm shall analyze the County's data in detail and meets with appropriate County officials to review trends and discuss and make recommendations regarding the budget implications of the year's data. Analysis of sales tax data and presentations to County staff are to be led by seasoned professionals, whose experience and knowledge adds

value by identifying emerging retail trends, business retention needs, leveraging of economic clusters and reviewing successes in client jurisdictions with similar characteristics.

Budget Projections: Contractor will develop a comprehensive, detail-oriented method for projecting and monitoring sales and use tax revenues.

Reports: Contractor will report to the County on a quarterly basis and the report shall feature a general analysis regarding statewide trends that may affect the County's sales and use tax, plus a specific analysis of the County's sales and use tax composition, changes, and performance. The quarterly specialized reports will provide comprehensive analysis of the County's sales and use tax economic base and performance with a minimum of three years of history. Contractor will also provide ad hoc analysis at the County's request, geo-areas, custom reports, information and consulting services such as revenue forecasting and revenue presentations. The primary reports are:

- Management summary – Executive summary reviewing current performance, economic trends and audit results.
- Charts – County composition pie chart, revenue by segment bar chart, historical performance line chart, ten largest segments line chart, six categories line chart.
- Allocation Summary – Reconciles CDTFA advances, clean up payments, and pool allocations with budget projections to assist the County with revenue forecasting and receipt monitoring.
- Cash Analysis – Quarterly aberrations due to CDTFA audits, fund transfers, and other causes are identified and analyzed for budget planning and revenue forecasting purposes.
- Top 100 Five Year – Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- Top 100 Detail – Sales tax performance of the County's top 100 sales tax accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- Economic Category Performance – an analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.
- Significant Change Analysis – a report reflecting magnitude of change, indicating which key businesses grew or declined, measured in absolute dollars and percentages.
- Business Code Classification – shows the various business codes assigned by the CDTFA and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- Historical Economic Composition – data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by category and segment is also shown to indicate trends in sales tax composition and performance.

Web-based System: Contractor will provide County with sales and use tax data through their updated sales tax system to facilitate "in-house" analysis and printing of reports. The system allows County staff to search, print and export sales tax data for a variety of financial, management and planning functions. The system provides the ability to search all sales tax producers by business name, address, CDTFA account number and current or historical sales tax allocations. The web application also provides access to archived quarterly sales tax reports.

Quarterly Sales Tax Review Meetings, Forecasting & Consulting/Sales Tax Revenue Projections

The Contractor will schedule quarterly meetings at the County's earliest convenience to review the County's latest sales and use tax activity and provide updated sales and use tax forecasts, including Proposition 172 sales tax revenues. These meetings allow the County to meet with the Contractor on an individualized basis to provide consulting services. Contractor will meet with County representatives as frequently as desired to discuss consulting reports that explain the revenue received from the CDTFA which includes cash receipt analysis, regional

comparison report, quarterly changes report, per capita charts, historical trend analysis, top 100 businesses, and any other topic deemed necessary by the County. The reports include a five-year fiscal sales and use tax forecast, which examines one-time corrections, business openings and closing, and regional trends that may affect sales and use tax cash flow and budget forecasts.

B.9 Legislative and Regulatory Support/Reports

Contractor will be available to the County to assist or attend meetings and present updates on potential regulatory or legislative proposals that may impact the County, including analyses on proposed laws or trends. Contractor has a dedicated Government Relations team that provides local government advocacy, policy, regulatory, and legislative consulting support and expertise at no additional fee. The Government Relations team also advocates client positions with CDTFA Board members and their high level staff on appeals.

B.10 Cooperation in Transition

Upon request by the County, Contractor agrees to cooperate with a contractor designated by the County in the event a transition is needed between the two contractors. Cooperation may be sharing of status of activities and sharing of information (which shall not include sharing of proprietary information or information which is prohibited from being disclosed.)

B.11 Compliance with California Revenue and Taxation Code

Contractor and County agree that Contractor is experienced in the analysis of sales, transactions, and use tax revenue and that it fully understands the requirements of the California Revenue and Taxation Code (Code) in order to complete its responsibilities under this Contract. In accordance with Section 7056 of the Code, Contractor specifically agrees as follows:

(i) Contractor meets all of the following conditions:

- a) This Contract permits Contractor to examine those sales and use tax records of the County;
- b) Contractor is required to disclose information contained in, or derived from, those sales and use tax records only to the officer or employee authorized under the County's Resolution 20- [REDACTED], adopted pursuant to Section 7056 of the Code (attached hereto as Exhibit "A");
- c) Contractor is prohibited from performing consulting services for a retailer during the term of this Contract; and
- d) Contractor is prohibited from retaining the information contained in, or derived from those sales and use tax records after this Contract has expired.

(ii) The information obtained by examination of board records shall be used only for purposes related to the collection of County sales and use taxes by the board pursuant to this Contract and for purposes relating to the governmental functions of the County listed in Section 2 of Resolution 20- [REDACTED].

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Agreement Assignability

Without the prior written consent of the County, the Contract is not assignable by Contractor either in whole or in part.

C.3 Agreement Modification

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

C.4 Air, Water Pollution Control, Safety and Health

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.5 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

C.6 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.7 Background Checks for Contractor Personnel

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform sales tax and use analysis; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor's sole expense, on all its personnel providing Services. If requested by the County, Contractor shall provide the results of the background check of each to the County. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Contractor personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

C.8 Binding Contract

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.9 Change of Address

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.10 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.11 Compliance with County Policy

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to

disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.12 Confidentiality

Contractor shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Contract, except for statistical information not identifying any participant. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out the Contractor's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

C.13 Conflict of Interest

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant. County acknowledges that Contractor works for other government entities.

C.14 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other contractors for the same or similar services. The County does not guarantee or represent that the Contractor will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

C.15 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

C.16 County Representative

The Chief Executive Officer or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the

Services/Scope of Work by Contractor. The County of San Bernardino Board of Supervisors must approve all amendments to this Contract.

C.17 Damage to County Property

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County.

C.18 Debarment and Suspension

Contractor certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.19 Disclosure of Criminal and Civil Proceedings

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail. In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail. For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.20 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- C.20.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.20.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.20.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as

part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Contractor has with the County, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

C.21 Employment Discrimination

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, genetic information, medical condition, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.22 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.23 Former County Administrative Officials

Contractor agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.24 Improper Consideration

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract. The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process

once a contract has been awarded. Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.25 Improper Influence

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

C.26 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.27 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Contractor certifies that at the time the Contract is signed, the Contractor signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Contractors are cautioned that making a false certification may subject the Contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C.28 Key Personnel

The County shall have the right to review and disapprove personnel for assignment to County projects. County shall have the right to order removal of any person(s) assigned by the Contractor by giving verbal or written notice to the Contractor to such effect, if it is in the best interest of the County to do so.

C.29 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.30 Licenses, Permits and/or Certifications

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.31 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is

terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.32 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

C.33 Nondisclosure

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor’s agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.34 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give written and telephonic notice thereof, including all relevant information with respect thereto, to the other party.

C.35 Ownership of Documents

All documents, data, products, graphics, and reports prepared by Contractor pursuant to the Contract shall be considered property of the County upon payment for services (and product, if applicable). All such items shall be delivered to County at the completion of work under the Contract. Unless otherwise directed by County, Contractor may retain copies of such items. Notwithstanding this provision, nothing in this agreement transfers ownership of Contractor’s software or data to the County.

C.36 Primary Point of Contact

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

C.37 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

C.38 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor’s relationship with County may be made or used without prior written approval of the County.

C.39 Representation of the County

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

C.40 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.41 Subcontracting

Contractor shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to County. At County's request, Contractor shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

- 41.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 41.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 41.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities, C. General Contract Requirements and G. Insurance and Indemnification.

C.42 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

C.43 Termination for Convenience

The County and the Contractor each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Contractor for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports, but not including Contractor's software and any data Contractor owns or leases.

C.44 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.45 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning

this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

D. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION REQUIREMENTS

Contractor shall comply with the following conditions of the California Department of Tax and Fee Administration (CDTFA):

D.1 Contractor is required to disclose information contained in, or derived from, sales, transaction, and use tax records of the CDTFA only to specific County officers or employees authorized to examine such information as named in the County's Confidentiality Resolution on file with the CDTFA.

D.2 Contractor is prohibited from performing consulting services for a retailer during the term of this contract.

D.3 Contractor is prohibited from retaining information contained in or derived from the sales and use tax records after the Contract has expired.

E. TERM OF CONTRACT

This Contract is effective as of August 25, 2020 and expires September 30, 2025 but may be terminated earlier in accordance with provisions of this Contract.

F. COUNTY RESPONSIBILITIES

F.1 Provide to Contractor its "Confidentiality Resolution" that has been adopted by the Board of Supervisors and filed with the CDTFA.

F.2 Request Accounts Payable Audit, periodic canvassing audits, ad hoc analysis, revenue forecasting, and revenue presentations, and any additional reporting requirements, as needed.

G. FISCAL PROVISIONS

G.1 During Year 1 and 2 of the contract compensation for the Sales and Use Tax Audit will be a 32% contingency fee. This fee applies to the audit recovery of prior quarters only, and no prospective quarters. A prior quarter is defined as one in which local sales or use tax was initially allocated to an incorrect jurisdiction, or to the county pools, and subsequently corrected by the CDTFA. For Year 3 through Year 5 of the contract the contingency fee will be 35%, with all other terms remaining the same. The contingency fee percentage will be determined by the quarterly period in which in the invoice was sent to the County, regardless of when the petition to CDTFA was filed. For Quarterly Distribution Report audit misallocations detected and corrected, Contractor compensation will only include the quarters in which the misallocation actually occurred.

G.2 Compensation for the HDL Management Services is an annual fixed fee of five thousand dollars (\$5,000.00), paid in equal quarterly payments. The annual fee will be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index-West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-WU for the month in which the Contract is fully signed with the first adjustment to occur at the beginning of the calendar year following the first full calendar year of service. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).

G.3 Contractor shall provide County itemized quarterly invoices, in arrears, for services performed under this Contract within twenty (20) days of the end of the previous quarter.

G.4 The parties acknowledge that services performed by Contractor, during the term of this Contract, may result in corrections of misallocations and other revenue receipts after cessation of services performed for the County. County agrees to pay Contractor per the terms of the Contract for services begun before termination or expiration of the Contract, which result in revenues received after the termination or expiration. Contractor will, within ninety (90) days after the expiration or termination, provide County with a list of accounts submitted but not yet corrected as of the expiration or termination ("completion list"). Contractor is allowed to continue working those

accounts on the completion list for 24 months to obtain a correction, and if additional time is needed, on a case-by-case basis, the parties can negotiate additional extensions. Contractor is also entitled to payment for corrections of misallocations that occur after termination that are on the completion list. In addition, Contractor is entitled to payment after termination for accounts that have been corrected before termination but that still have forward quarters left to bill at the time of termination.

- G.6** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.
- G.7** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered (if applicable) or equipment and/or parts supplied to the County pursuant to the Contract.
- G.8** Costs for services under the terms of this Contract shall be incurred only during the Contract period except as approved by County.

H. INDEMINIFICATION AND INSURANCE REQUIREMENTS

H.1 Indemnification

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Contractor indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

H.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

H.3 Waiver of Subrogation Rights

The Contractor shall require the carriers of required coverages, except for errors and omissions insurance, to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

H.4 Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

H.5 Severability of Interests

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage

for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

H.6 Proof of Coverage

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department (10 days for cancellation due to nonpayment of premium), and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

H.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "AVII".

H.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

H.9 Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

H.10 Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

H.11 The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the Contract term the following types of insurance with limits as shown:

H.11.1 Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Contractor and all risks to such persons under this contract. If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

H.11.2 Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

H.11.3 Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

H.11.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

H.11.5 Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits or Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits. If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

I. RIGHT TO MONITOR AND AUDIT

- I.1** The County, State and Federal government shall have absolute right, if the persons meet the requirements of section 7056 of the Revenue and Taxation Code, to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

I.2 All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later, and County will take all necessary steps under section 7056(b) of the Revenue and Taxation Code to allow Contractor to retain information per this requirement.

J. CORRECTION OF PERFORMANCE DEFICIENCIES

J.1 Material failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

J.2 In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
- b. Withhold funds pending duration of the breach; and/or
- c. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- d. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor, except the payment obligation in G.4. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

K. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

*County of San Bernardino Administrative Office
385 North Arrowhead Ave, 4th Floor
San Bernardino, CA 92415
Attn: Amanda Trussell*

*Hinderliter, de Llamas & Associates
120 S. State College Blvd., Suite 200
Brea, CA 92821*

Notice shall be deemed communicated five (5) County working days from the time of mailing if mailed as provided in this paragraph.

L. ENTIRE AGREEMENT

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

COUNTY OF SAN BERNARDINO

►

Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

Hinderliter, de Llamas & Associates

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Andrew Nickerson

(Print or type name of person signing contract)

Title President/ CEO

(Print or Type)

Dated: _____

Address 120 S. State College Blvd., Suite 200

Brea, CA 92821

FOR COUNTY USE ONLY

Approved as to Legal Form
► _____
Penny Alexander-Kelley, Chief Assistant County Counsel

Reviewed for Contract Compliance
► _____

Reviewed/Approved by Department
► _____
Robert J. Saldana, Deputy Executive Officer

Date _____

Date _____

Date _____