

**A RESOLUTION AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT  
WITH ROBERT S. SEGAL, CPA FOR SALES TAX REALLOCATION AUDIT  
Draft Resolution No. 97/2011-12**

**BE IT RESOLVED** by the Board of Aldermen that:

- (1) The Town Manager is authorized to execute a contract with Robert S. Segal, CPA, for sales tax reallocation audit.

[Departmental Use Only]  
**TITLE Sales Tax Refund**  
**FY 2011**

**ORANGE COUNTY**

**SERVICES CONTRACT**

**NORTH CAROLINA**

This Services Agreement (hereinafter "Agreement"), made and entered into this            day of           , 20           , ("Effective Date") by and between Orange County, Town of Chapel Hill, Town of Carrboro and the Town of Hillsborough (collectively the "Client"), and Robert S. Segal, CPA, PA, (hereinafter, the "Provider").

#### **WITNESSETH:**

For the purpose and subject to the terms and conditions hereinafter set forth, the Client hereby contracts for the services of the Provider, and the Provider agrees to provide the following services to the Client in accordance with the terms of this Agreement, time being of the essence:

The services and/or materials (hereinafter referred to collectively as "Services") to be furnished under this Agreement are as follows: As provided in Provider's Letter of Agreement attached hereto and incorporated herein as Attachment A.

The term of this agreement rendered shall be from           .

Provider represents and agrees that Provider is qualified to perform and fully capable of performing and providing the services required or necessary under this Agreement in a fully competent, professional and timely manner to the satisfaction of the Client. Provider shall be responsible for all errors or omissions, in the performance of the Agreement. Provider shall correct any and all errors, omissions, discrepancies, ambiguities, mistakes or conflicts at no additional cost to the Client. Provider agrees that Provider shall be allowed to sub-contract with Dixon Hughes Goodman LLP any of the services to be provided in this Agreement, however shall Provider not assign any right or responsibility granted or required by this Agreement, without the prior written approval of the Client.

#### **SPECIFIC TERMS**

1. Payment: The Client agrees to pay at the rates specified for Services satisfactorily performed in accord with this Agreement. The amount to be paid by the Client shall be as provided in Attachment A and not to exceed Ninety Thousand Dollars (\$90,000) for each fiscal year in accordance with the period covered of the original refund claims filed by the non-profit organizations. Payment shall be made within thirty (30) days of an invoice properly submitted to Client. Should Provider fail to perform its duties under the terms of this Agreement, Client may, without fault or penalty, withhold any payment associated with the work to be performed until such time as said work is completed.

2. Non-waiver: Failure by Client at any time to require the performance by Provider of any of the provisions hereof shall in no way waive or affect the Client's right hereunder to enforce the same, nor shall any waiver by the Client of any breach be held to be a waiver of any succeeding breach or a waiver of this Non-Waiver Clause.

3. Independent Contractor: The Provider shall operate as an independent Provider, and the Client shall not be responsible for any of the Provider's acts or omissions. The Provider shall not be treated as an employee with respect to the Services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. The Provider understands that neither federal, nor state, nor payroll tax of any kind shall be withheld or paid by the Client on behalf of the Provider or the employees of the Provider.

4. Insurance: The Provider shall obtain, at its sole expense, all insurance needed to adequately insure itself during the performance of these services as required by the County's Risk Management Policy.

5. Indemnity: The Provider agrees to defend, indemnify, and hold harmless CLIENT from all losses, liabilities, claims, demands, suits, costs, damages or expenses (including reasonable attorney's fees) arising from bodily injury, including death, to any person or persons or damage to or destruction of any property caused in whole or in part by any negligent or intentional act or omission on the part of the Provider.

6. Termination: This Agreement may be terminated at any time by mutual written agreement of the parties or by the Client upon written notice to the Provider.

7. Entire Agreement: The parties have read this Agreement and agree to be bound by all of its terms, and further agree that it constitutes the complete and exclusive statement of the Agreement between the parties unless and until modified in writing and signed by the parties. Modifications may be evidenced by telefacsimile signature.

8. Governing Law: Both parties agree that this Agreement shall be governed by the laws of the State of North Carolina. Should either party initiate litigation to settle any dispute involving the terms of this Agreement such litigation shall be initiated in the General Court of Justice of North Carolina seated in Orange County, North Carolina.

9. Non Appropriation: Provider acknowledges that Client is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of Client's obligations under this Agreement, then this Agreement shall automatically expire without penalty to Client immediately upon written notice to Provider of the unavailability and non-appropriation of public funds.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties, by and through their authorized agents, have hereunder set their hands and seal, all as of the day and year first above written.

**ROBERT S. SEGAL, CPA PA**

By: \_\_\_\_\_  
Robert S. Segal, President

**ORANGE COUNTY**

By: \_\_\_\_\_ [SEAL]  
Frank Clifton, County Manager

Attest: \_\_\_\_\_  
Donna Baker, Clerk to the Board

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Clarence R. Grier, Finance Officer

Approved as to form.

\_\_\_\_\_  
John Roberts, County Attorney

**TOWN OF CHAPEL HILL**

By: \_\_\_\_\_ [SEAL]  
Roger Stancil, Town Manager

Attest: \_\_\_\_\_  
Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer

Approved as to form.

\_\_\_\_\_  
Town Attorney

**TOWN OF CARRBORO**

By: \_\_\_\_\_  
Matt Efird, Town Manager

[SEAL]

Attest: \_\_\_\_\_  
Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer

Approved as to form.

\_\_\_\_\_  
Town Attorney

**TOWN OF HILLSBOROUGH**

By: \_\_\_\_\_  
Eric Peterson, Town Manager

[SEAL]

Attest: \_\_\_\_\_  
Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Officer

Approved as to form.

\_\_\_\_\_  
Town Attorney

## LETTER OF AGREEMENT

Robert S. Segal, CPA, PA ("SEGAL") and Orange County, Town of Chapel Hill, Town of Hillsborough and Town of Carrboro (together referred to as "CLIENT") hereby enter into this Letter of Agreement whereby SEGAL shall serve as a consultant to CLIENT to examine and analyze the following revenue of CLIENT for the purpose of obtaining any tax refunds available in all prior years still open under the statute of limitations.

### **North Carolina Sales/Use Tax Reallocation** **For periods ending on or before June 30, 2013**

The Client agrees that the above listed revenue is not currently under tax refund evaluation by CLIENT and all refunds received will be eligible for full payment of fees to SEGAL at the contract rate stipulated below.

SEGAL will furnish CLIENT with a written report as to sales/use tax refunds discovered. SEGAL will then prepare the respective refund claims to achieve the refunds.

CLIENT agrees to pay SEGAL a fee in accordance with the following FEE SCHEDULE due to Segal's amending of refund returns upon the CLIENT'S receipt of documentation from the North Carolina Department of Revenue evidencing the additional sales/use tax revenue being transferred to the CLIENT.

#### **FEE SCHEDULE**

A sliding scale based on the sales and use tax adjustment based on point of delivery as follows:

Any adjustments obtained from UNC Hospital will be billed at 15%, all other adjustments obtained will be billed based on the schedule below:

00.0% if no additional adjustments are obtained,

20.0% for the first \$200,000 of additional adjustments obtained,

25.0% for the next \$200,000 of additional adjustments obtained,

30.0% for all additional adjustments obtained.

However, the total amount of fees is limited to \$90,000 for each fiscal year in accordance with the period of the original refund claim. The \$90,000 limit would apply to each fiscal year 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013.

CLIENT agrees that SEGAL shall invoice each entity (Orange County, Town of Chapel Hill, Town of Hillsborough and Town of Carrboro) for its pro-rata share of the fee based upon its percentage of that month's sales and use tax distribution from the state of North Carolina.

This agreement may be terminated by any party upon 60 days written notice to all of the other parties.

**SEGAL AGREES TO MAINTAIN IN STRICT CONFIDENCE ALL INFORMATION RECEIVED FROM CLIENT CONCERNING ITS EXPENSES AND METHODS OF DOING BUSINESS. FURTHERMORE, SEGAL ACTS AS A CONSULTANT ONLY AND DOES NOT RECEIVE ANY COMMISSIONS OR REMUNERATION OF ANY KIND FROM ANY VENDORS OR SERVICE PROVIDERS.**

**ROBERT S. SEGAL, CPA PA has contracted with DIXON HUGHES GOODMAN to assist with this project.**

SEGAL AGREES TO MAINTAIN IN STRICT CONFIDENCE ALL INFORMATION RECEIVED FROM CLIENT CONCERNING ITS EXPENSES AND METHODS OF DOING BUSINESS. FURTHERMORE, SEGAL ACTS AS A CONSULTANT ONLY AND DOES NOT RECEIVE ANY COMMISSIONS OR REMUNERATION OF ANY KIND FROM ANY VENDORS OR SERVICE PROVIDERS.

ROBERT S. SEGAL, CPA PA has contracted with DIXON HUGHES GOODMAN to assist with this project.

The persons signing below are authorized to do so on behalf of their respective organizations.

This Letter of Agreement shall be binding upon the parties hereto, their heirs, successors and assigns.

This Letter of Agreement is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**ORANGE COUNTY**

[SEAL]

\_\_\_\_\_  
Name, Title

ATTEST:

\_\_\_\_\_  
Clerk to the Board

This instrument has been pre-audited  
In the manner required by the Local  
Government Budget and Fiscal  
Control Act.

Approved as to form:

\_\_\_\_\_  
County Finance Officer

\_\_\_\_\_  
County Attorney

**TOWN OF CHAPEL HILL**

[SEAL]

\_\_\_\_\_  
Name, Title

ATTEST:

\_\_\_\_\_  
Clerk to the Board

This instrument has been pre-audited  
In the manner required by the Local  
Government Budget and Fiscal  
Control Act.

Approved as to form:

\_\_\_\_\_  
Town Finance Officer

[SEAL]

ATTEST:

\_\_\_\_\_  
Clerk to the Board

This instrument has been pre-audited  
In the manner required by the Local  
Government Budget and Fiscal  
Control Act.

\_\_\_\_\_  
Town Finance Officer

[SEAL]

ATTEST:

\_\_\_\_\_  
Clerk to the Board

This instrument has been pre-audited  
In the manner required by the Local  
Government Budget and Fiscal  
Control Act.

\_\_\_\_\_  
Town Finance Officer

[SEAL]

ATTEST:

Robert S. Segal  
Corporation Secretary

\_\_\_\_\_  
Town Attorney

**TOWN OF HILLSBOROUGH**

\_\_\_\_\_  
Name, Title

Approved as to form:

\_\_\_\_\_  
Town Attorney

**TOWN OF CARRBORO**

\_\_\_\_\_  
Name, Title

Approved as to form:

\_\_\_\_\_  
Town Attorney

**ROBERT S. SEGAL, CPA PA**

Robert S. Segal  
Robert S. Segal, President