

## REPORT TO CITY COUNCIL

**DATE:** SEPTEMBER 14, 2016  
**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL  
**FROM:** GREG RAMIREZ, CITY MANAGER *GR*  
**BY:** CHRISTY PINUELAS, DIRECTOR OF FINANCE *CP*  
**SUBJECT:** REQUEST TO AMEND CONSULTANT SERVICES AGREEMENT  
HINDERLITER, DE LLAMAS & ASSOCIATES FOR SALES TAX  
MANAGEMENT AND AUDIT SERVICES FOR THREE ADDITIONAL  
YEARS, ENDING OCTOBER 1, 2019

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The City utilizes a consulting service to provide sales tax management and audit services on revenues distributed from the State Board of Equalization (BOE). The management services include providing quarterly reports that assist with budget forecasting and detailed analysis to assist with business retention/expansion programs and financial strategies. Furthermore, audits are performed to ensure that the City is receiving the correct allocation of sales tax.

The current contract expires in October 2016, but allows the City to have a three-year extension.

Hinderliter de Llamas & Associates (HdL) has provided timely and accurate reporting, and, staff would like to recommend that the City extend the contract to provide sales tax management and audit services.

The fee for these consulting services is \$4,200 annually. Also, there is a 15% fee on any revenue for 8 quarters going forward. They provide online reporting that is available approximately 15 days following the end of the quarter.

Finally, HdL provides an economic development report annually indicating businesses that would fit into our business environment. Staff is recommending a total of \$20,000 annually.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

### RECOMMENDATION

Staff recommends the City Council approve the first amendment to the Agreement for Consultant Services with Hinderliter, de Llamas & Associates, for the performance of sales tax management and audit services for three additional years, ending October 1, 2019.

WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT: Hinderliter, de Llamas & Associates

RESPONSIBLE PRINCIPAL OF CONSULTANT: Attn: Andy Nickerson

CONSULTANT'S ADDRESS: 1340 Valley Vista Drive Suite 200  
Diamond Bar CA 91765

CITY'S ADDRESS: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301  
Attn: City Manager

PREPARED BY: Christy Pinuelas

COMMENCEMENT DATE: October 1, 2013

TERMINATION DATE: October 1, 2019

CONSIDERATION: Amendment Amount: \$60,000

Total Contract Price  
Not to Exceed: \$20,000 /yr

**FIRST AMENDMENT TO AGREEMENT BETWEEN  
CITY OF AGOURA HILLS AND HINDERLITER, de LLAMAS & ASSOCIATES**

THIS FIRST AMENDMENT is made and entered into as of October 1, 2016, by and between the City of Agoura Hills, a municipal corporation (hereinafter referred to as "City"), and Hinderliter, de Llamas & Associates, Corporation (hereinafter referred to as "Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. This Amendment is made with the respect to the following facts and purposes:

a. On October 1, 2013, the City and Consultant entered into that certain Agreement entitled "Agreement for Consultant Services between The City of Agoura Hills and Hinderliter de Llamas & Associates", in the amount of sixty thousand dollars and zero cents (\$60,000.00).

b. The parties now desire to extend the term of the agreement to October 1, 2019, increase the payment in the amount of sixty thousand dollars and zero cents (\$60,000.00), increase the contingency in the amount of six thousand and zero cents (\$6,000.00), and to amend the Agreement as set forth in this Amendment.

2. Section One of the Agreement entitled "**TERM**" is hereby amended to read as follows:

"This Agreement shall remain and continue in effect until tasks herein are completed, but in no event later than October 1, 2016 unless sooner terminated pursuant to the provisions of this Agreement."

3. Section Five of the Agreement entitled "**PAYMENT**" at paragraph "a" is hereby amended to read as follows:

"The City agrees to pay Consultant monthly, in accordance with the payment rates and schedules and terms set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B, other than the payment rates and schedule of payment, are null and void. The First Amendment amount shall not exceed sixty thousand dollars and zero cents (\$60,000.00), for additional consulting for a total Agreement amount of one hundred twenty thousand dollars and zero cents (\$120,000.00).

4. Except for the changes specifically set forth herein, all other terms and conditions of the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have caused this FIRST Amendment to Agreement to be executed the day and year first above written.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
Harry Schwarz,  
Mayor

**ATTEST:**

\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Candice K. Lee,  
City Attorney

**CONSULTANT**

Hinderliter, de Llamas & Associates  
1340 Valley Vista Drive Suite 200  
Diamond Bar, CA 91765  
Andy Nickerson  
anickerson@hdlcompanies.com

By: 

Print Name: Andrew Nickerson

Title: President

By: 

Print Name: Jeffrey Schmehr

Title: Chief Financial Officer

**[Signatures of Two Corporate Officers Required]**



## **EXHIBIT A**

### **SERVICES**

The CONTRACTOR shall perform the following services:

#### **A. SALES TAX AND ECONOMIC ANALYSIS**

1. CONTRACTOR shall establish a special database that identifies the name, address and quarterly allocations of all sales tax producers within the CITY for the most current and all quarters back to 1989, if the CITY has prior historical sales tax data available on computer readable magnetic media. This database will be utilized to generate special reports to the CITY on: major sales tax producers by rank and category, sales tax activity by categories, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.

2. CONTRACTOR shall provide up-dated reports each quarter identifying changes in sales by individual businesses, business groups and categories and by geographic area. Quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments will be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will also be included.

3. CONTRACTOR shall additionally provide a quarterly summary analysis for the CITY to share with Chambers of Commerce and other economic development interest groups that analyze CITY'S sales tax trends by major groups, and geographic areas without disclosing confidential information.

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

#### **B. ALLOCATION AUDIT AND RECOVERY**

1. CONTRACTOR shall conduct initial and on-going sales and use tax audits to identify and correct distribution errors and thereby generate previously unrealized sales tax income for the CITY. Common errors that will be monitored and corrected include: transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; misreporting of "point of sale" to the wrong location; delays in reporting new outlets; misallocating use tax payments to the allocation pools or wrong jurisdiction and erroneous fund transfers and adjustments.

2. CONTRACTOR will initiate contacts with the appropriate sales management and accounting officials in companies that have businesses where a probability of error exists to verify whether current tax receipts accurately reflect the local

sales activity. Such contacts will be conducted in a professional and courteous manner so as to enhance CITY'S relations with the business community.

3. CONTRACTOR shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors that are identified and shall follow-up with the individual businesses and the State Board of Equalization to ensure that all back quarter payments due the CITY are recovered.

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

### C. ONGOING CONSULTATION

Throughout the term of this agreement, CONTRACTOR shall advise and work with CITY Staff on technical questions related to sales, use and transactions tax; advise CITY 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

### PAYMENT RATES AND SCHEDULE

#### **Fixed Fee for Services**

CONTRACTOR shall establish the sales and transactions tax databases, shall provide the ongoing reports and analysis and shall make available the computer software program and databases referenced above for a fee of \$350.00 per month, commencing with the month of the Effective Date (hereafter referred to as "monthly fee"). The monthly fee shall be invoiced quarterly in arrears, and shall be payable no later than 30 days after invoice date. The monthly fee shall increase every 12<sup>th</sup> month following the month of the Effective Date (each such month, an "Adjustment Month") by the percentage increase (if any) in the CPI for the second month preceding the Adjustment Month over the CPI for the 14<sup>th</sup> month preceding the Adjustment Month; provided, however, that in no event shall the monthly fee be reduced below the monthly fee that was payable for the month immediately preceding the Adjustment Month. For purposes of this Agreement, the "CPI" shall mean the Consumer Price Index - All Urban Consumers for the surrounding statistical metropolitan area nearest CITY, All Items (1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or, if such index should ceased to be published, any reasonably comparable index selected by CONTRACTOR.

#### **Base Contingent Fee Services**

CONTRACTOR shall be further paid 15% of all new sales, transactions and/or use tax revenue received by the CITY as a result, in whole or in part, of audit and recovery work performed by CONTRACTOR (hereafter referred to as "audit fees"), including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the Revenue and Taxation Code. New sales, transactions and/or use tax revenue shall not include any amounts determined by CITY or CONTRACTOR to be increment attributable to causes unrelated to CONTRACTOR'S work pursuant to this agreement. In the event that CONTRACTOR is responsible, in whole or in part, for an increase in the tax reported by businesses already properly making tax payments to the CITY, it shall be CONTRACTOR'S responsibility to separate and support the incremental amount that is attributable, in whole or in part, to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees, which shall be payable no later than 30 days following invoice date.

CONTRACTOR shall obtain CITY approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval shall be deemed given when the City Manager, or his designated representative, signs a Sales Tax Audit Authorization form, a copy of which is attached as "Exhibit A." CITY shall pay audit fees upon CONTRACTOR'S submittal of evidence of State Fund Transfers and payments to CITY from businesses identified in the audit and approved by the CITY. The audit fees shall be payable on new tax revenues received from approved businesses as a consequence, in whole or in part, of the audit, and even if CITY, of its own volition, assists with the audit, works in parallel with the audit, and/or expends attorney's fees or other out-of-pocket costs in connection with any of the foregoing.

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

#### **OPTIONAL SERVICES**

Optional services beyond the scope of this Agreement are available at CONTRACTOR's hourly rates as in effect from time to time. Optional services include, but are not limited to, negotiating/review of tax sharing agreements, establishing purchasing corporations and meeting with taxpayers to encourage self-assessment of use tax. Hourly rates are exclusive of expenses. The hourly rates in effect at the time of the execution of this Agreement are as follows:

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

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