

REPORT TO CITY COUNCIL

DATE: SEPTEMBER 28, 2022
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: NATHAN HAMBURGER, CITY MANAGER
BY: CHRISTY TRUELSEN, DIRECTOR OF FINANCE
SUBJECT: APPROVAL OF FIRST AMENDMENT TO AGREEMENT BEWEEN THE CITY OF AGOURA HILLS AND HdL COMPANIES

The purpose of this item is to seek City Council approval for the City to amend an agreement for consultant services with HdL Companies to provide sales tax consulting services to the City of Agoura Hills.

In October 2019, the City entered in to an agreement for sales tax consulting services with HdL Companies for three years ending October 1, 2022. The agreement provided an option to extend for an additional three years. HdL Companies has completed the first three years and staff is now recommending an extension for the agreement through October 1, 2025.

Staff is recommending a total of \$20,000 annually and the six-year amended contract is \$120,000. This 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 HdL Companies, for the performance of sales tax consulting services, commencing October 1, 2022.

Attachment: HdL Companies First Amendment to Agreement for Consultant Services

FIRST AMENDMENT TO AGREEMENT FOR CONSULTING SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONTRACTOR: HdL Companies

RESPONSIBLE PRINCIPAL OF CONTRACTOR: Attn: Andy Nickerson

CONSULTANTS ADDRESS: 120 s. State College Blvd. Ste
200
Brea, CA, 92821

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

PREPARED BY: Christy Truelsen

COMMENCEMENT DATE: 10/1/2022

TERMINATION DATE: 10/1/2025

CONSIDERATION: Amendment Amount: \$60,000

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

**FIRST AMENDMENT TO AGREEMENT BETWEEN
CITY OF AGOURA HILLS AND HdL COMPANIES**

Sales Tax Consulting

THIS FIRST AMENDMENT is made and entered into as of October 1, 2022, by and between the City of Agoura Hills, a municipal corporation (hereinafter referred to as "City"), and HdL Companies (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, 2019, the City and Consultant entered into that certain Agreement entitled "Agreement for Consultant Services Between the City of Agoura Hills and HdL Companies", in the amount of Sixty Thousand Dollars and Zero Cents (\$60,000.00).

b. The parties now desire to add scope of work, extend the term of the agreement to October 1, 2025, and increase the payment in the amount of Sixty Thousand dollars and zero cents (\$60,000.00), and to amend the Agreement as set forth in this Amendment.

2. Section 1 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, 2025 unless sooner terminated pursuant to the provisions of this Agreement."

3. Section 3 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 A, Scope of Services, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. The FIRST Amendment amount shall not exceed Sixty Thousand dollars and zero cents (\$60,000.00), for additional sales tax consultant services for a total Agreement amount of One hundred twenty thousand dollars and zero cents (\$120,000.00).

4. Exhibit A to the Agreement is hereby amended by adding thereto the items set forth on Attachment "A" to this Amendment, which is attached hereto and incorporated herein as though set forth in full.

5. 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

CONSULTANT

HdL Companies
120 S. State College Blvd., Ste 200
Brea, CA 92821

Deborah Klein Lopez, Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

APPROVED AS TO FORM:

Candice K. Lee,
City Attorney

DocuSigned by:

By: Andrew Nickerson
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Print Name: Andrew Nickerson

Title: President

DocuSigned by:

By: Richard Park
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Print Name: Richard Park

Title: CFO

[Signatures of Two Corporate Officers Required]

ATTACHMENT A

Attached hereto and incorporated herein is the additional scope of work and associated cost as provided by the Contractor.

SCOPE OF SERVICES

1. Sales, and Use Tax and Economic Analysis/Forecasting Services/Reports

- 1.1. Establish a special database identifying the name, address, and allocations of Client's sales tax producers. This database will be utilized to generate special reports to Client on major sales tax producers by rank and category, sales tax activity by categories, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.
- 1.2. Provide periodic updated reports to Client identifying changes in sales by individual businesses, business groups and categories, and by geographic area. These reports may include, without limitation, aberrations due to State audits, fund transfers, and receivables, along with late or double payments, and reconciliation worksheets to assist with budget forecasting.
- 1.3. Provide periodic summaries for Client to share with others if it so desires (including the general public) that analyze Client's sales tax trends by major groups and geographic areas without disclosing confidential individual tax records.
- 1.4. Periodically license for the limited, non-exclusive, non-transferable use by Client's staff certain of Consultant's web-based sales, use and tax program(s) containing sellers permit, registration, allocation and related information for business outlets within Client's jurisdiction registered with the CDTFA.
- 1.5. Provide periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.

2. Allocation and Audit Recovery Services

- 2.1. Conduct (as and when mutually agreed with Client) initial and on-going sales, use and tax audits of businesses to help identify and correct distribution and allocation errors, and to help effect favorable registration, reporting or formula changes thereby generating previously unrealized sales, use tax income for Client and/or recover misallocated tax from registered taxpayers. Common errors to be monitored and corrected include transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; formula errors; 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.
- 2.2. Initiate contacts with the CDTFA and sales management and accounting officials in companies that have businesses where a probability of error exists to endeavor to help verify whether current tax receipts accurately reflect the local sales activity.
- 2.3. Prepare and submit to the CDTFA information for the purpose of correcting any identified allocation errors, and follow-up with individual businesses and the CDTFA to advocate for Client recovery of back or prospective payments that may be owing.
- 2.4. If, during the course of its audit, Consultant finds businesses located in Client's jurisdiction that are properly reporting sales, use taxes but have the potential for modifying their operation to provide an even greater share to Client, Consultant may so advise Client and collaborate with those businesses and Client to encourage such changes.

3. Consulting and Other Optional Services

From time to time in its sole discretion, consult with Client's staff, including without limitation, regarding (i) technical questions and other issues related to sales, use and transactions tax, (ii) utilization of reports to enhance collection efforts, (iii) sales tax projections for proposed annexations, economic development projects and budget planning, (iv) negotiating/review of tax sharing agreements, (v)

establishing purchasing corporations, (vi) meeting with taxpayers to encourage self-assessment of tax obligations, and (vii) other sales, use or transactions tax revenue-related matters.

FEES

4. Sales, and Use Tax and Economic Analysis/Forecasting Services/Reports

- 4.1. Fees for performing the sales tax and economic analysis/forecasting Services as described above shall initially be **\$460** per month.
- 4.2. Consultant may change the non-hourly Fees established above upon at least 30 days' prior written notice to Client (but not more than once a year). Any such change must be with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"), and be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.

5. Allocation and Audit Recovery Services

- 5.1. Fees for performing the allocation and audit recovery Services described above shall be **15%** of all new, increased and recovered sales and use tax revenue received by Client as a result, in whole or in part, of such Services, including without limitation, any reimbursement or other payment from any State fund and any point of sale misallocations. These Fees shall be paid notwithstanding any related Client assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
- 5.2. The Fees described in Section 5.1(a) include, without limitation, State fund transfers received for back quarter reallocations and monies received in the first eight (8) consecutive reporting quarters following completion of Consultant's allocation audit and confirmation by the CDTFA of the relevant corrections.
- 5.3. These Fees shall be paid by Client upon Consultant's submittal of evidence of Consultant's relevant Services in support thereof, including, without limitation, copies of relevant communications between Consultant and the CDTFA and/or taxpayers.
- 5.4. Consultant recognizes Client's authority to waive or reduce the tax/fee-related debt of a business. Should Client decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a Client voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.

6. Consulting and Other Optional Services

- 6.1. Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.
- 6.2. Consultant may change the rates for its hourly Fees from time to time in its sole discretion upon at least 30 days' prior written notice to Client.

7. General Provisions Relating to Fees

- 7.1. Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.

7.2. Fees will be invoiced monthly to Client for Services performed during the prior month. To the extent that Consultant has commercially reasonable means to do so, Fees will be netted out of Client's monthly revenue disbursement.

8. Confidentiality Information

Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a California city, county or district may authorize persons other than such city, county or district's officers and employees to examine state sales and use tax records.

Notwithstanding anything to the contrary set forth in this Schedule A to the MSA, the MSA itself, or otherwise, the following conditions specified in Section 7056-(b)(1) of the R&T Code are hereby incorporated into and made part of this Schedule A to the MSA:

- 8.1. Consultant is hereby authorized by Client under this Schedule A to the MSA to examine sales or transactions and use tax records of the CDTFA provided to Client pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with R&T Code Section 7200) and the Transactions and Use Tax Law (commencing with R&T Code 7251).
- 8.2. Consultant is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of Client who is authorized by Client resolution provided to the CDTFA to examine the information.
- 8.3. During the term of this Schedule A to the MSA, Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015).
- 8.4. After the term of this Schedule A to the MSA has expired, Consultant is prohibited from retaining the information contained in or derived from those sales or transactions and use tax records.

Information obtained by examination of CDTFA records shall be used only for purposes related to the collection of local sales or transactions and use taxes by the CDTFA pursuant to this Schedule A to the MSA, or for purposes related to other governmental functions of Client as set forth by resolution of the Client adopted pursuant to R&T Code Section 7056(b). Such resolution shall designate Consultant and its personnel as authorized to (i) examine such sales or transactions and use tax records and (ii) certify that this Section 8 to Schedule A to the MSA meets the requirements set forth in R&T Code Section 7056(b)(1).