

AGREEMENT FOR SALES, USE AND TRANSACTIONS TAX AUDIT
AND INFORMATION SERVICES

This Agreement is made and entered into as of the 3rd day of July, 2012 by and between the City of Redlands, a municipal corporation (“City”), and Hinderliter, De Llamas and Associates, a California corporation (“Contractor”). City and Contractor are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

RECITALS

WHEREAS, sales, use and transactions tax revenues can be increased through a system of continuous monitoring, identification and correction of allocation errors; and

WHEREAS, an effective program of sales and use tax management will improve identification of economic opportunities; provide for more accurate sales and use tax forecasting; assist in related revenue collections; and

WHEREAS, City desires the combination of data entry, report preparation and analysis necessary to effectively manage its sales and use tax base; recover revenues erroneously allocated to other jurisdictions and allocation pools; and maximize its financial and economic planning; and

WHEREAS, Contractor has the programs, equipment and personnel required to deliver the sales and use tax related services referenced herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, City and Contractor agree as follows:

AGREEMENT

ARTICLE 1 - SERVICES

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 of Redlands for the most current and all quarters back to fiscal year 1984-1985 or earlier, if City has prior historical sales tax data available on computer readable magnetic media. This database will be utilized to generate special reports to City on: major sales tax producers by rank and category, sales tax activity by categories, business districts areas, 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; and quarterly reconciliation worksheets to assist City's Finance Director with budget forecasting.
3. Contractor shall additionally provide a quarterly summary analysis for 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 the HdL sales tax computer software program and database containing sellers permit and quarterly allocation information for all in-City business outlets registered with the Board of Equalization and update quarterly. The 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 an initial and on-going sales and use tax audit to identify and correct distribution errors and thereby generate previously unrealized sales tax income for 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 City are recovered.
4. If during the course of its audit, Contractor finds businesses located in the City of Redlands that are properly reporting sales tax but have the potential for modifying their operation to provide an even greater share to City, Contractor shall so advise City and upon request, shall work with those businesses and City to encourage such changes.

C. ON GOING 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 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.

ARTICLE 2 - CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation Code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a city may authorize persons other than city officers and employees to examine State Sales and Use Tax records. The following conditions specified in Section 7056 (b) (1) of the State of California Revenue and Taxation Code are hereby made part of this agreement:

- A. Contractor is authorized by this Agreement to examine sales, use or transactions and use tax records of the Board of Equalization provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. Contractor is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of City who is authorized by resolution to examine the information.
- C. During the term of this Agreement, Contractor is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015.
- D. Contractor is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Board of Equalization records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate Contractor as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b) (1) of the Revenue and Taxation Code.

ARTICLE 3 - PROPRIETARY SOFTWARE

A. OWNERSHIP OF MATERIALS, CONFIDENTIALITY.

1. Software License. Contractor hereby provides a license to City to use Contractor's Software. The software shall only be used by City. City shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the software. The license granted hereunder shall not imply ownership by City of said software, rights of City to sell said software, or rights to use said software for the benefits of others. This license is not transferable. Upon termination, the software license shall expire, all copies of the software shall be removed from City's computers and network, and all digital copies deleted or otherwise destroyed.
2. City Data. Contractor acknowledges that the account data generated by City during the course of City operations is the property of City. At the termination of this Agreement, City data will be made available to City in a format acceptable to both City and Contractor.
3. Proprietary Information. As used herein, the term "proprietary information" means any information which relates to Contractor's computer or data processing programs; data processing applications, routines, subroutines, techniques or systems; or business processes. City shall hold in confidence and shall not disclose to any other party any Contractor proprietary information in connection with this Agreement, or otherwise learned or obtained by City in connection with this Agreement. The obligations imposed by this paragraph shall survive any expiration or termination of this Agreement. The provisions of this Article 3 shall not apply to any information that is public information.

ARTICLE 4 - CONSIDERATION

- A. 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 \$650.00 per month, invoiced quarterly (hereafter referred to as "Monthly Fee").
- B. Contractor shall be further paid 15% of all new sales, transactions and/or use tax revenue received by City as a result 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 other than Contractor's work pursuant to this Agreement. In the event that Contractor is responsible for an increase in the tax reported by businesses already properly making tax payments to City, it shall be Contractor's responsibility to separate and support the incremental amount attributable 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.

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" to this Agreement. 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 City.

ARTICLE 5 - CITY MATERIALS AND SUPPORT

City shall adopt a resolution, in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing Contractor to examine the confidential sales tax records of City. City further agrees to provide any information or assistance that may readily be available such as business license records within the City and to provide Contractor with proper identification for contacting businesses. City further agrees to continue Contractor authorization to examine the confidential sales tax records of the City by maintaining Contractor's name on City's Resolution or by providing copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the State Board of Equalization and audit fees due Contractor have been paid.

ARTICLE 6 - LICENSE, PERMITS, FEES AND ASSESMENTS

Contractor shall obtain such licenses, permits and approvals (collectively, the "Permits") as may be required by law for the performance of the services required by this Agreement. City shall assist Contractor in obtaining such Permits, and City shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by City.

ARTICLE 7 - TERMINATION

This Agreement may be terminated for convenience by either Party by giving thirty (30) days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, Contractor may continue to work through the date of termination. Upon termination as provided herein, Contractor shall be paid the value of all tax analysis and reporting work performed less payments previously made by City. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses

identified by Contractor which make tax payments after termination of this Agreement as a result of Contractor's work. After City receives said tax payments for such businesses, Contractor shall be paid the Audit Fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by Contractor and confirmation of corrections by the State Board of Equalization. All documents, data, surveys and reports prepared by Contractor pursuant to this Agreement shall be considered the property of the City and upon payment for services performed by Contractor, such documents and other identified materials shall be delivered to City by Contractor.

ARTICLE 8 - INDEPENDENT CONTRACTOR

Contractor shall perform the services hereunder as an independent contractor and shall furnish such services in his own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of Contractor be considered as an employee of City.

ARTICLE 9 - NON-ASSIGNMENT

This Agreement is not assignable either in whole or in part by Contractor without the written consent of City.

ARTICLE 10 – ATTORNEYS' FEES

In the event any action is commenced to enforce or interpret any of the terms or provisions of this Agreement the prevailing party shall, in addition to costs and any other relief, be entitled to recover its reasonable attorneys' fees, including fees for use of in-house counsel by a Party.

ARTICLE 11 - GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 12 - INSURANCE

All insurance required by this Agreement shall be maintained by Contractor for the duration of its performance of its Services. Contractor shall not perform any services unless and until all required insurance listed below is obtained by Contractor. Contractor shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the services.

- A. Contractor shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of this Agreement in accordance with the laws of the State of California, with an insurance carrier acceptable to City.

- B. Contractor shall secure and maintain in force throughout the term of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- C. Contractor shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made.
- D. Contractor shall secure and maintain business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability throughout the term of this Agreement. This coverage shall include all Contractor owned vehicles used in connection with Contractor's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured.
- E. Contractor shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by Contractor's and its officers', employees' and agents' negligent acts or omissions, or Contractor's willful misconduct, in performing the services.

ARTICLE 13 - INDEMNIFICATION

Contractor hereby agrees to, and shall hold City, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from Contractor's willful or negligent acts, errors or omissions or those of its employees or agents. Contractor agrees to and shall indemnify and defend, including reasonable attorneys fees. City and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions.

City hereby agrees to, and shall hold Contractor, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from City's negligent acts, errors or omissions under this Agreement. City agrees to and shall defend Contractor and its officers, agents and employees from

any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions.

ARTICLE 14 - NOTICE

All notices required by this Agreement shall be given to City and Contractor in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

CITY: City Clerk
City of Redlands
P.O. Box 3005
35 Cajon Street
Redlands, CA 92373

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF REDLANDS

CONTRACTOR

Pete Aguilar, Mayor

HINDERLITER, DE LLAMAS &
ASSOCIATES, A California Corporation

ATTEST:

Sam Irwin, City Clerk

SAMPLE

SAMPLE

EXHIBIT A

Sales Tax Audit

Work Authorization No. _____

The following business or businesses, located in the City of Redlands, have been identified as having the potential for generating additional sales tax revenue to the City of Redlands. Contractor is hereby authorized to contact the given business(s) and the State Board of Equalization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board of Equalization, to modify allocation formulas, and to return previous misallocated revenue that may be due to City.

Contractor's compensation shall be 15% of the new sales and/or use tax revenue received by the City as a result of audit and recovery work performed by Contractor, as set forth in the Agreement between Contractor and City.

CITY OF REDLANDS

By: _____

Date: _____

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: _____

Date: _____