

**CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT
BY AND BETWEEN
THE CITY OF VICTORVILLE
AND
HINDERLITER, DE LLAMAS AND ASSOCIATES
FOR
SALES AND USE TAX AUDIT SERVICES, PROJECT ESC25-010**

THIS CONSULTANT/PROFESSIONAL SERVICES PROVIDER AGREEMENT (hereinafter "Agreement"), dated this 7th day of August, 2024, for reference purpose only, is made and entered into by and between THE CITY OF VICTORVILLE, a municipal corporation located in the County of San Bernardino, State of California, hereinafter referred to as the "City", and Hinderliter, De Llamas and Associates, a California corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter referred to individually as a "Party" and collectively referred to as the "Parties."

RECITALS:

WHEREAS, the City requires Consultant/Professional Services Provider Agreement for **Sales and Use Tax Audit Services**; and

WHEREAS, Consultant represents that it is fully qualified to perform the consulting and/or professional services required for performance under this Agreement by virtue of its experience and the training, education and expertise of its principals and its employees; and

WHEREAS, in light of the facts set forth above, the City desires to retain the services of a qualified Consultant to provide, on an independent contractor basis, **Sales and Use Tax Audit Services**; and

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS, AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth fully herein.

Section 2. SCOPE OF SERVICES

Consultant shall provide to the City those services set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated as part of this Agreement by this reference.

Section 3. COMPENSATION

The City shall pay to Consultant a sum not to exceed **One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00)** for faithful performance of the services to be rendered under this Agreement, subject to the Proposal provisions of Section 4, below. No expense

reimbursements, including, but not limited to, reimbursements for travel, parking, lodging, and/or meals shall be paid to Consultant unless such expense reimbursements: (i) are specifically provided for and described by nature and type in Exhibit "A", below; (ii) appear on Consultant's monthly invoices to City; (iii) are supported by the appropriate receipts and other such documentation as the City shall require; and (iv) are directly related to the Scope of Services to be performed under this Agreement. In addition, any and all reimbursements shall be made in accordance with any City policy governing same.

Section 4. FEE SCHEDULE

The City shall pay Consultant as provided in the Cost Proposal, attached hereto as Exhibit "A" and incorporated as part of this Agreement by this reference. The provisions of Exhibit "A" notwithstanding, in order to receive payments, Consultant shall be required to submit to the City detailed monthly invoices which include, if applicable, a description of all services/tasks performed, the number of hours expended on each service/task, the name of the person performing the service/task, and expense reimbursement information, if any, as required by Section 3, above. Provided that services have been satisfactorily rendered, invoices shall be paid by the City approximately thirty (30) working days following receipt of Consultant's invoice.

Section 5. RESERVED

Section 6. TERM OF AGREEMENT

This Agreement shall be for an Initial Term commencing on **July 1, 2024** (the "Commencement Date") and expiring on **June 30, 2025** (the "Termination Date") (the "Term"), unless terminated earlier pursuant to Section 21 of this Agreement. From and after the Termination Date, and upon subsequent Agreement by the Parties, this Agreement may continue on a month-to-month basis until terminated pursuant to Section 21 below.

This Agreement may be extended for **Four (4)** additional one-year periods (hereinafter "Option Periods"), at the option of the City, subject to satisfactory performance as determined by the City. The City shall give Consultant sixty (60) days advance written notice prior to the expiration the initial Term and sixty (60) days advance written notice prior to the expiration date of each subsequently exercised Option Period, if any, should the City decide to exercise its option(s) to extend. In the event City does not give Consultant such written notice of its option to extend, this Agreement shall terminate at the end of the then-current Term or Option Period without further notice from either Party, unless terminated earlier pursuant to the provisions of Section 21 below. Should the City fail to give Consultant the sixty (60) days written notice of its intention to exercise any Option Period, the City may, in its sole discretion, elect to exercise any Option Period at a later date, following written inquiry from Consultant.

Section 7. INDEPENDENT CONTRACTOR STATUS

It is the express intention of the Parties that Consultant is an independent contractor and not an employee, agent, joint venture, or partner of the City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the City and Consultant or any employee or agent of Consultant. Both Parties acknowledge that Consultant is not an employee for state or federal tax purposes or any other purpose. Consultant shall retain the right to perform services for others during the term of this Agreement.

Section 8. **REPRESENTATIONS AND ACKNOWLEDGMENTS
REGARDING INDEPENDENT CONTRACTOR'S STATUS OF
CONSULTANT**

a. Consultant represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools, or facilities, unless otherwise provided under a separate Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage, or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(2) The City will not hire, supervise, or pay any employees or assistants working for Consultant pursuant to this Agreement. Nothing contained in this Agreement shall prevent the City from hiring Consultant's employees or assistants after termination of this Agreement.

(3) Nothing in this Agreement shall be interpreted to imply that Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(4) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(5) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(6) Unless deemed necessary under certain circumstances, Consultant is not required to perform the services set forth in this Agreement at City Hall or on City-owned property.

(7) Other than attendance at required public meetings and public hearings, and complying with the provisions of the Proposal set forth in Exhibit A and any procedural

requirements set forth by law, Consultant is not required to perform the services set forth in this Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

Section 9. NOT AGENT OF THE CITY

a. Nothing contained in this Agreement shall be deemed, construed, or represented by the City or Consultant or by any third person to create the relationship of principal and agent.

b. Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

Section 10. LICENSES AND PERMITS

Consultant represents that it has obtained and will maintain at all times during the Initial Term (and during the Option Period, if applicable) of this Agreement all business licenses, including but not limited to a City of Victorville business license, professional licenses or certifications, or permits necessary for performing the services described in this Agreement.

Section 11. STANDARD OF PERFORMANCE; WARRANTY

a. Consultant agrees to perform all services required by this Agreement in a professional and competent manner, in accordance with the degree of skill and diligence which is normally employed by reputable professionals performing similar services under similar conditions in the same or similar locality. Such services shall also be performed in a manner which is reasonably satisfactory to Carmen Cun, Director of Finance/City Treasurer, or her designee.

b. By executing this Agreement, Consultant warrants that it:

(1) Has thoroughly investigated and considered the services and work to be performed;

(2) Has investigated the issues regarding the scope of services to be provided;

(3) Has carefully considered how the services and related work should be performed; and

(4) Fully understands the facilities, difficulties and restrictions associated with performance of the services required by this Agreement.

Section 12. FAMILIARITY WITH WORK

Should Consultant discover any latent or unknown conditions materially differing from those inherent in the services or as represented by the City, Consultant shall immediately inform the City of such fact and shall not provide any services, except at Consultant's risk, until written

instructions are received from Carmen Cun, Director of Finance/City Treasurer, or her designee.

Section 13. CONFLICTS OF INTEREST

Consultant covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Consultant's services under this Agreement. Consultant further covenants that in the performance of services under this Agreement, no officer, employee or agent of Consultant having such interest shall be employed by it. In the event the City determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Consultant may result in termination of this Agreement by the City.

Section 14. COMPLIANCE WITH LAWS

Consultant shall comply with all local, state, and federal laws and regulations applicable to the services to be rendered hereunder, including any rule, regulation, or bylaw governing the conduct or performance of Consultant or its employees, officers, or board members.

Section 15. COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY INSURANCE

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Commercial General Liability Insurance, of not less than One Million Dollars (\$1,000,000) per occurrence, and Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, personal injury, death, loss, or damage resulting from the acts or omissions of the Consultant or its officers, employees, servants, volunteers, and agents and independent contractors.

b. Consultant shall further procure and maintain, at its own expense, during the Initial Term of this Agreement, (and during the Option Period, if applicable), Commercial Vehicle Liability Insurance covering personal injury and property damage, of not less than One Million Dollars (\$1,000,000) combined single limit, covering any vehicle utilized by Consultant or its officers, employees, servants, volunteers, agents and independent contractors in performing the services required by this Agreement.

Section 16. WORKERS' COMPENSATION INSURANCE

a. Consultant shall procure and maintain at its own expense, during the Initial Term of this Agreement (and during the Option Period, if applicable), Workers' Compensation Insurance, providing coverage as required by the California State Workers' Compensation Law.

b. If any class of employees employed by the Consultant pursuant to this Agreement is not protected by the California State Workers' Compensation Law, Consultant shall provide adequate insurance for the protection of such employees to the satisfaction of the City.

Section 17. PROFESSIONAL LIABILITY INSURANCE

a. **Professional Liability Insurance or Errors and Omissions insurance** as appropriate to Consultant's profession shall be required and written on a policy form specifically designed to provide coverage for and protect against the negligent acts, errors and omissions of the Consultant in the performance of the services required by this Agreement. A minimum limit of \$1,000,000 per claim and in the aggregate must be provided.

Section 18. ADDITIONAL INSURED

Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, all insurance policies, except for the Workers' Compensation and Professional Liability, shall be endorsed to name the City and its officers, employees, servants, volunteers, agents and independent contractors, including, without limitation, the City Attorney, as Additional Insureds.

Section 19. WAIVER OF SUBROGATION RIGHTS

Consultant shall require the carriers of all required insurance policies, with exception to Professional Liability, to waive all rights of subrogation against the City and its officers, employees, servants, volunteers, agents, and independent contractors and subcontractors. Each policy of insurance shall be endorsed to reflect such waiver.

Section 20. PROOF OF INSURANCE COVERAGE; REQUIRED ENDORSEMENTS

a. Consultant shall secure from a good and responsible company or companies authorized to transact insurance business in the State of California, the policies of insurance required by this Agreement and furnish to the City Clerk certificates of insurance evidencing the required coverage, and policy endorsements at least one (1) business day prior to the commencement of any services to be performed under this Agreement.

b. The policies and certificates of insurance shall be endorsed to provide that in the event of cancellation or amendment of any required insurance policy for any reason whatsoever, the City shall be notified by mail, postage prepaid, not less than thirty (30) days before the cancellation or amendment is effective. In the case of cancellation for non-payment, ten (10) days advance written notice shall be given.

c. Each policy and certificate of insurance shall be endorsed to provide that the policy shall not be terminated or expire without first providing thirty (30) days written notice to the City of such termination or expiration.

d. Each policy and certificate of insurance shall be endorsed to provide that the policy will be maintained throughout the Initial Term (and during the Option Period, if applicable), of this Agreement.

e. The commercial general liability and vehicle liability policies shall be endorsed to contain the following provision: "For any claims related to this contract, the **Consultant's Insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or

volunteers shall be excess of the Consultant's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies."

Section 21. TERMINATION OR SUSPENSION

a. This Agreement may be terminated or suspended without cause by either Party at any time, provided that the Party initiating the termination provides the other Party at least thirty (30) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

b. This Agreement may be terminated or suspended with cause by either Party at any time, provided that the Party initiating termination provides the other Party at least ten (10) days advance written notice of such termination or suspension. In the event of such termination, the City shall only be liable for payment under the payment provisions of this Agreement for satisfactory services rendered or supplies actually furnished prior to the effective date of termination.

Section 22. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 23. INDEMNIFICATION

a. Except as set forth in Subsection b of this Section 23, and to the fullest extent permitted by law, Consultant shall immediately defend, indemnify, and hold harmless the City, its officers, employees, representatives, and agents (the "City Indemnitees"), from and against those actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and reasonable attorneys' fees, for any personal injuries, deaths, or property damage, including property owned by the City (collectively "Claims") which may arise out of Consultant's negligence or willful misconduct in the performance of the services described in this Agreement, unless such Claims are proven to be caused by the negligence or willful misconduct of the City Indemnitees.

b. The provisions of this Subsection b apply only in the event that Consultant is a design professional within the meaning of California Civil Code section 2782.8 ("Design Professional"). The term Design Professional, as defined in said section, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(1) Notwithstanding the provisions of Subsection a above, to the extent that the services to be provided under this Agreement are those of a Design Professional, Consultant's duty to indemnify, hold harmless, and defend the City Indemnitees shall be limited to the extent that any Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, its officers, agents, employees or subconsultants in the performance of the services described in this Agreement.

(2) In no event shall the costs of defense charged to Consultant exceed the Consultant's proportionate percentage of fault, except as otherwise set forth in said Civil Code

section 2782.8, the provisions of which are incorporated into this Agreement by this reference. Nothing in this Subsection b shall be construed to require Consultant to provide indemnification for Claims caused by the active negligence or willful misconduct of the City Indemnitees.

c. The City does not and shall not waive any rights that it may have against Consultant under this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions of this Section 23 shall apply regardless of whether said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost, or expense described herein.

d. The obligation to indemnify and defend, as set forth in this Section 23, is binding on the successors, assigns, or heirs of Consultant and shall survive the expiration or any early termination of this Agreement.

Section 24. REPORTS

Upon request by **Carmen Cun, Director of Finance/City Treasurer, or her designee** or as otherwise required by this Agreement, including but not limited to, the Scope of Services set forth in Exhibit "A", Consultant shall prepare and submit reports to the City concerning Consultant's performance of the services required by this Agreement.

Section 25. RECORDS

a. Consultant shall keep such books and records as shall be necessary to perform the services required by this Agreement and enable **Carmen Cun, Director of Finance/City Treasurer, or her designee**, to evaluate the cost and the performance of such services.

b. Books and records pertaining to costs shall be kept and prepared in accordance with generally accepted accounting principles.

c. **Carmen Cun, Director of Finance/City Treasurer, or her designee**, shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

d. Records and supporting documents pertaining to the use of funds paid to Consultant hereunder shall be retained by Consultant and made available to **Carmen Cun, Director of Finance/City Treasurer, or her designee**, for purposes of performing an audit for a period of five (5) years from the date of termination of this Agreement.

Section 26. RESERVED

Section 27. CONFIDENTIALITY; OWNERSHIP OF WORK

a. Any and all documents and information obtained from the City or prepared by Consultant for the City shall be kept strictly confidential unless otherwise provided by applicable law. All City data, documents and information shall be returned to the City upon termination of the Agreement.

b. Any drawings, specifications, reports, records, documents, or other materials prepared by Consultant in the performance of services under this Agreement shall not be

released publicly without the prior written approval of **Carmen Cun, Director of Finance/City Treasurer, or her designee**, or as required by applicable law.

c. Consultant shall not disclose to any other entity or person any information regarding the activities of the City, except with the prior written approval of **Carmen Cun, Director of Finance/City Treasurer, or her designee**, or as required by applicable law.

d. All original documents, reports, designs, computer files and all other materials prepared by Consultant in the course of performing the services pursuant to this Agreement, whether completed or in progress, are the property of the City and shall be surrendered to the City upon the completion of Consultant's services or when requested by **Carmen Cun, Director of Finance/City Treasurer, or her designee**. Such materials may be used, reused or otherwise disposed of by the City without the permission of Consultant.

e. Consultant's covenants under this Section 27 shall survive the termination of this Agreement.

Section 28. PRINCIPAL REPRESENTATIVES

a. **Andrew Nickerson, President, or his designee**, is designated as the principal representative of Consultant for purposes of communicating with the City on any matter associated with the performance of the services set forth in this Agreement.

b. **Carmen Cun, Director of Finance/City Treasurer, or her designee** shall be the principal representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

c. Either Party may designate another individual as its principal representative by giving written notice of such designation to the other Party.

Section 29. MODIFICATIONS AND AMENDMENTS; EXTRA SERVICES

a. This Agreement may be modified or amended only by a written instrument signed by both Parties.

b. During the Initial Term, the City may request that the Consultant perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the City to be necessary for the proper completion of **Sales and Use Tax Audit Services**, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. A written instrument signed by both Parties shall be required to authorize performance of and payment for Extra Services.

Section 30. ENTIRE AGREEMENT

a. This Agreement supersedes any and all prior or contemporaneous Agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and Agreements between the Parties with respect to the subject matter of this Agreement, and each Party to this Agreement

may become due to Consultant or to its successor(s), or for any breach of any obligation of the terms of this Agreement.

Section 34. REVIEW BY ATTORNEYS

Each Party hereto has had its attorney(s) review this Agreement and all related documents. Each Party hereto has consulted with its attorney(s) and has negotiated the terms of this Agreement based on such consultation.

Section 35. WAIVER

a. No waiver shall be binding unless executed in writing by the Party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of such provision or any of the remaining provisions of this Agreement.

Section 36. ASSIGNMENT

This Agreement shall not be assigned by either Party without prior written consent of the other Party.

Section 37. CARE OF WORK

The performance of services by Consultant or the payment of money by the City shall not relieve Consultant from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to the City, when such incomplete, inaccurate or defective work is due to the negligence of Consultant.

Section 38. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 39. SUCCESSORS, HEIRS, AND ASSIGNS

Except as otherwise expressly provided herein, this Agreement shall be binding upon the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties to this Agreement and, likewise, shall inure to the benefit of the successors, endorsees, assigns, heirs, and personal representatives of each of the Parties.

Section 40. GENDER

In this Agreement, unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall include one another.

Section 41. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs, or sections contained herein is declared invalid, void, or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair, or invalidate any of the remaining sentences, clauses, paragraphs, or sections contained herein.

Section 42. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the Parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 43. DEFAULT

a. Failure or delay by any Party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the Party who is otherwise claimed to be in default by the other Party commences to cure, correct, or remedy the alleged default within fifteen (15) days after receipt of written notice specifying such default and shall diligently complete such cure, correction, or remedy, such Party shall not be deemed to be in default hereunder.

b. The Party claiming that a default has occurred shall give written notice of default to the Party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured Party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default by any Party to this Agreement may remain uncured for more than fifteen (15) days following written notice, as provided above, the injured Party shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings.

Section 44. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default of any other default by the other Party.

Section 45. VENUE

All proceedings involving disputes over the terms, provisions, covenants, or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in San Bernardino County, California.

Section 46. ATTORNEYS' FEES

In the event any action, suit, or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement, or as a result of any alleged breach of any provision of this Agreement, the prevailing Party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorneys' fees, from the losing Party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 47. EFFECTIVENESS OF AGREEMENT

This Agreement shall not be binding upon the City, until signed by the authorized representative(s) of Consultant, approved by the City's Risk Manager, and executed by the authorized City personnel or Mayor.

Section 48. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT

a. Each of the Parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the Parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the Parties each purports to represent.

Section 49. COUNTERPARTS


This Agreement may be executed by the Parties in counterparts, and when executed by each of the Parties, each counterpart shall be deemed to be a part of this Agreement.

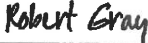
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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates written below.

THE CITY OF VICTORVILLE

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: 
Elizabeth Becerra,
Mayor

By: ^{DocuSigned by:} 
D4C862657826418...
Robert Gray,
Vice President

Dated: 10-09-24

Dated: 8/7/2024 | 1:59 PM PDT

ATTEST:


By: 
Jennifer Thompson,
City Clerk

Dated: 10/10/2024

By: ^{Signed by:} 
AT14E3A0828841D...
Sandra Bostick,
Risk Manager

Dated: 10/8/2024 | 12:23 PM PDT

APPROVED AS TO STANDARD FORM:

By: ^{DocuSigned by:} 
B899CFE322E82C...
Andre de Bortnowsky,
City Attorney

Dated: 10/8/2024 | 12:43 PM PDT

Certificate Of Completion

Envelope Id: 689DAF7632DB4A91B51CC62F364C6088

Status: Completed

Subject: HDL Companies - Agreement for Sales & Use Tax, ESC25-010 & Amendment for Measure P Use & Sales Tax,

Source Envelope:

Document Pages: 26

Signatures: 2

Envelope Originator:

Certificate Pages: 4

Initials: 0

Elizabeth Salcido

AutoNav: Enabled

esalcido@victorvilleca.gov

Envelopeld Stamping: Enabled

IP Address: 24.182.14.221

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Record Tracking

Status: Original

Holder: Elizabeth Salcido

Location: DocuSign

8/7/2024 1:23:41 PM

esalcido@victorvilleca.gov

Signer Events

Robert Gray

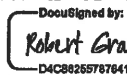
Rgray@hdlcompanies.com

Vice President

HdL

Security Level: Email, Account Authentication (None)

Signature



Signature Adoption: Pre-selected Style
Using IP Address: 98.152.155.130

Timestamp

Sent: 8/7/2024 1:32:43 PM

Viewed: 8/7/2024 1:40:11 PM

Signed: 8/7/2024 1:59:20 PM

Electronic Record and Signature Disclosure:
Accepted: 8/7/2024 1:40:11 PM
ID: 8a83146a-3e5e-4c30-a7f4-7cc5b231cd2a

In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

Intermediary Delivery Events

Status

Timestamp

Certified Delivery Events

Status

Timestamp

Carbon Copy Events

Status

Timestamp

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent

Hashed/Encrypted

8/7/2024 1:32:43 PM

Certified Delivered

Security Checked

8/7/2024 1:40:11 PM

Signing Complete

Security Checked

8/7/2024 1:59:20 PM

Completed

Security Checked

8/7/2024 1:59:20 PM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure


Certificate Of Completion

Envelope Id: 6E3225DFCB77497084F55039E9865186	Status: Completed
Subject: Complete with Docusign: HDL Agreement for Sales & Use Tax	
Source Envelope:	
Document Pages: 64	Signatures: 2
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Elizabeth Salcido
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	esalcido@victorvilleca.gov
	IP Address: 24.182.14.221


Record Tracking

Status: Original	Holder: Elizabeth Salcido	Location: DocuSign
10/8/2024 10:17:59 AM	esalcido@victorvilleca.gov	

Signer Events

Signer Events	Signature	Timestamp
Sandra Bostick sbostick@victorvilleca.gov Security Level: Email, Account Authentication (None)	 Signed by: A1E4E3A9622641D...	Sent: 10/8/2024 10:24:23 AM Viewed: 10/8/2024 12:22:50 PM Signed: 10/8/2024 12:23:30 PM
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Electronic Record and Signature Disclosure:
Accepted: 5/4/2023 11:05:23 AM
ID: 53399de6-7230-46b3-9520-235d899f6fae

Andre de Bortnowsky, City Attorney andre@gdblawoffices.com Partner Security Level: Email, Account Authentication (None)	 DocuSigned by: BB99CFEF922E42C...	Sent: 10/8/2024 12:23:34 PM Viewed: 10/8/2024 12:42:35 PM Signed: 10/8/2024 12:43:40 PM
	Signature Adoption: Pre-selected Style Using IP Address: 24.43.91.238	

Electronic Record and Signature Disclosure:
Accepted: 9/14/2021 8:07:41 AM
ID: 89fd4926-8d5b-469d-a54e-529db0d246c7

In Person Signer Events

Editor Delivery Events

Agent Delivery Events

Intermediary Delivery Events

Certified Delivery Events

Carbon Copy Events

Lexy Benitez-Fanslow lexy@gdblawoffices.com Security Level: Email, Account Authentication (None)	<div style="border: 1px solid black; padding: 5px; display: inline-block;">COPIED</div>	Sent: 10/8/2024 12:43:43 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

Witness Events

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	10/8/2024 10:24:23 AM
Certified Delivered	Security Checked	10/8/2024 12:42:35 PM
Signing Complete	Security Checked	10/8/2024 12:43:40 PM
Completed	Security Checked	10/8/2024 12:43:43 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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EXHIBIT A

SCOPE OF SERVICES/FEE SCHEDULE

EXHIBIT A

SERVICES AND FEE SCHEDULE, PROJECT ESC25-010

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

- 1.1. Establish a special database identifying the name, address, and quarterly allocations of all sales tax producers within the City. 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, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.
- 1.2. Provide periodic updated reports to City identifying changes in sales by individual businesses, business groups and categories, and by geographic area. These reports may include, without limitation, quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, and quarterly reconciliation worksheets to assist with budget forecasting. Consultant shall meet quarterly by in person or virtually with City.
- 1.3. Shall additionally provide following each calendar quarter a summary analysis for City to share with Council Members, Chamber of Commerce, other economic development interest groups and the public that analyze City's sales tax trends by major groups and geographic areas without disclosing confidential individual tax records.
- 1.4. Establish a special database with California Department of Tax and Fee Administration ("CDTFA") registration data for businesses within applicable district boundaries holding seller's permit accounts.
- 1.5. Periodically license for the limited, non-exclusive, non-transferable use by City's staff certain of Consultant's web-based sales, use and/or transactions tax program(s) containing sellers permit, registration, allocation and related information for business outlets within City's jurisdiction registered with the CDTFA.
- 1.6. 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 (when mutually agreed with City) initial and on-going sales and use tax audits of businesses to help identify and correct distribution and allocation errors, and to proactively affect favorable registration, reporting or formula changes thereby generating previously unrealized sales and use tax income for the City and/or recovering misallocated tax from registered taxpayers. Common errors that will be monitored and corrected include but are not limited to: 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. Such contacts will be conducted in a professional and courteous manner.
- 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 promote recovery by the City of back or prospective quarterly payments that may be owing.
- 2.4. If, during the course of its audit, Consultant finds businesses located in the City's jurisdiction that are properly reporting sales and use tax but have the potential for modifying their operation to provide an

even greater share to City, Consultant may so advise City and collaborate with those businesses and City to encourage such changes.

3. Consulting and Other Optional Services

Consultant may from time to time in its sole discretion, consult with City's staff, including without limitation, regarding (i) technical questions and other issues related to sales and use tax, (ii) utilization of reports to enhance business license 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 and use tax revenue-related matters.

FEEES

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 \$960 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 paid by City no later than 30 days after the invoice date.

4.2. Consultant may change the non-hourly Fees established above 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), as reported by the U.S. Bureau of Labor Statistics (the "CPI Change").

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 the City as a result, in whole or in part, of the allocation audit and recovery services (hereafter referred to as "audit fee"). The fee shall be paid notwithstanding any related City assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.

5.2. The Fee described above 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 of the corrections by the CDTFA.

5.3. These Fees shall be paid by City 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 City's authority to waive or reduce the tax/fee-related debt of a business. Should City 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 City 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. A 30 days' prior written notice to City will be given.

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 City.
- 7.2. Fees will be invoiced monthly to City 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 City'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 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.

The following conditions specified in Section 7056-(b)(1) of the State of California R&T Code are hereby made part of this Agreement:

- 8.1. Consultant is authorized by this Agreement to examine sales, use or transactions and use tax records of the CDTFA provided to City pursuant to contract under the Bradley-Burns Uniform Local Sales and Use Tax Law R&T Code Section 7200 et.seq.
- 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 City who is authorized by City resolution provided to the CDTFA to examine the information.
- 8.3. Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 8.4. Consultant is prohibited from retaining the information contained in or derived from those sales, use or transactions and use tax records after this agreement has expired. Information obtained by examination of the CDTFA records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the Consultant 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.

9. Software Use and Proprietary Information

Software Use. Consultant hereby provides authorization to City to access Consultant's Sales Tax website if City chooses to subscribe to the software and reports option. The website shall only be used by authorized City staff. No access will be granted to any third party without explicit written authorization by Consultant. City shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by City of said software, or any right of City to sell said software or the use of same, or any right to use said software for the benefit of others. This software use authorization is not transferable. Upon termination or expiration of this Agreement, the software use authorization shall expire, and all City staff website logins shall be deactivated.

Proprietary Information. As used herein, the term "proprietary information" means all information or material that has or could have commercial value or other utility in Consultant's business, including without limitation: Consultant's (i) computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; (iii) business processes; (iv) marketing plans, analysis and strategies; and (v) materials and techniques used; as well as the terms and conditions of this Agreement. Except as otherwise required by law, City shall hold in confidence and shall not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary

information provided, learned of or obtained by City in connection with this Agreement. The obligations imposed by this Section shall survive any expiration or termination of this Agreement or otherwise. The terms of this Section shall not apply to any information that is public information.