

**SECOND AMENDMENT TO
AGREEMENT FOR SALES, USE AND TRANSACTIONS TAX
AND INFORMATION SERVICES**

THIS SECOND AMENDMENT TO AGREEMENT is made and entered into this 5th day of August, 2013 by and between the CITY OF MERCED, a municipal corporation hereinafter called CITY, and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called CONTRACTOR.

I. RECITALS

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 and assist in related revenue collections; and

WHEREAS, CITY has adopted Resolution No. 2005-144 authorizing CONTRACTOR to examine its sales, use and transactions records and has entered into an agreement for CONTRACTOR to ensure that all sales and use tax due the city is properly allocated to the CITY; and

WHEREAS, CITY wishes to amend its agreement to obtain additional reporting and management services;

THEREFORE, CITY and CONTRACTOR, for the consideration hereinafter described, mutually agree as follows:

II. 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 fiscal year 1992-1993 or earlier, 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.

III. 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 the CITY who is authorized by resolution to examine the information.
- C. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.

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 the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the 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.

IV. OWNERSHIP OF MATERIALS, CONFIDENTIALITY.

A. Software Use. CONTRACTOR hereby provides authorization to the CITY to access CONTRACTOR'S Sales Tax website if the 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 3rd party without explicit written authorization by CONTRACTOR. The 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 the 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 of this agreement the software use authorization shall expire, and all CITY staff website logins shall be de-activated.

B. 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;

desktop or web-based software; 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 the CITY in connection with this Agreement. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

V. 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 \$550.00 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 annually following the month of the Effective Date by the percentage increase in the "CPI" for the preceding twelve month period. In no event shall the monthly fee be reduced by this calculation. 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 cease to be published, any reasonably comparable index selected by CONTRACTOR.
- B. CONTRACTOR shall invoice CITY for any optional services rendered to CITY in accordance with section III above on a monthly or a quarterly basis, at CONTRACTOR's option. Any such invoices shall be payable by CITY no later than 30 days following invoice date.

- C. Any invoices not paid on a due and timely basis shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.

VI. 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 OF MERCED
678 W 18th Street
Merced, CA 95340

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



Janet Amore
City Clerk

CITY:

CITY OF MERCED

Russley R. Hunt
acting
Mayor - City Manager

CONTRACTOR:

HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation

RAC

APPROVED AS TO FORM:

16 April 7/1/13
City Attorney

v-9387 196686 PO#: 110315
FUNDS/ACCOUNTS VERIFIED
Russley R. Hunt 7-313
FINANCE OFFICE DATE
Funds Available. 7/3/13
001-0701-512-17-00
\$6,600.00 W