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AGREEMENT FOR SALES TAX AUDIT AND INFORMATION SERVICES

THIS AGREEMENT is made and entered into this 15th day of July, 1996, by and between the City of Merced, a municipal corporation hereinafter referred to as "City" and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called "Contractor".

I. RECITALS

WHEREAS, sales tax revenues can be increased through: a system of continuous monitoring, identification and correction of "point of sale" allocation errors; and

WHEREAS, an effective program of sales tax management will improve identification of sales tax opportunities as they relate to economic development and provide for more accurate sales tax forecasting; and

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

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

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 data base that identifies the name, address and quarterly allocations of the major sales tax producers within the City for the most current and previous four quarters from the date of this Agreement. Major sales tax producers are defined as those businesses meeting a quarterly revenue threshold determined by City. Since 100% of the business outlets registered with the Board of Equalization are tracked monthly, this major producers data base is designed to highlight the activities of major businesses. A second data base covering the same period will be established showing total sales tax receipts for each business category identified by the Board of Equalization. These data bases will be utilized to generate special reports to the City on: major sales tax producers by rank and category, analysis of sales tax activity by category and business districts or redevelopment areas specified by City, analysis of reporting aberrations, and per capita and outlet comparisons with state wide sales.

2. Contractor shall provide up-dated reports each quarter identifying changes in sales by major outlets and by category, area growth and decline comparisons, and current graphics, tables, and top 100 listings. Quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments will be identified.

3. Contractor will additionally provide an analysis for the City or its Redevelopment Agency 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 will provide annual reports for City's City Manager and City Council identifying historical growth comparisons with state, county, selected city averages and C.P.I. indices, top producer listings, and make up and volatility of the economic base. Annual reconciliation worksheets to assist Finance Officers with budget forecasting will also be provided.

5. Contractor shall make available to City Staff the HdL DATA computer program and data base containing sellers permit information for all in-city business outlets registered with the Board of Equalization. In addition, Contractor shall process for City the monthly registration and allocation files provided by the Board in magnetic media. Printouts of registration changes and dollars allocated by business name and number will be provided from these files on a monthly basis.

B. Allocation Audit and Recovery

1. Contractor shall conduct an initial and on-going sales tax audit in order to identify and correct "point-of-sale" distribution errors and thereby generate previously unrealized sales tax income for the City. Common errors that will be monitored and corrected include: transposition errors resulting in misallocations, erroneous consolidation of multiple outlets, misreporting of "point of sale" from the wrong location, delays

in reporting new outlets, misidentifying transactions as a "use tax" rather than a "sales tax," 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 manner to encourage local business retention and expansion.

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

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

5. Contractor acknowledges that it will be performing the above referenced services for other taxing entities within the State of California. In the event it determines that tax has been misallocated to the City, Contractor will inform the City at least thirty (30) days in advance of taking any steps to cause

the reallocation of taxes in order to provide the City an opportunity to review and comment on Contractor's audit.

C. On Going Consultation

Contractor shall work with City and City Redevelopment Agency Staffs on questions related to tenant mix alternatives for maximum sales tax returns, advise City business license staff on utilization of reports to enhance business license collection efforts, provide sales tax projections on specific projects for redevelopment negotiation and city budget purposes, and provide sample reports, letters and programs to enhance the sales tax base through improved economic development efforts.

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 contractual agreement.

A. Contractor is authorized by this Agreement to examine sales 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 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 & Tax 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 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. PROPRIETARY INFORMATION

In performing its duties under this contract, Contractor will produce reports, technical information and other

compilations of data to City. These reports, technical information and compilations of data are derived by Contractor using methodologies, formulae, programs, techniques and other processes designed and developed by Contractor at a substantial expense. Contractor's reports, technical information, compilations of data, methodologies, formulae, programs, techniques and other processes designed and developed by Contractor shall be referred to as Proprietary Information. Contractor's Proprietary Information is not generally known by the entities with which Contractor competes.

Contractor desires to protect its Proprietary Information. Accordingly, City agrees that neither it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will at any time during or after the term of the Agreement, directly or indirectly use any of Contractor's Proprietary Information for any purpose not associated with Contractor's activities. Further, City agrees that it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will disseminate or disclose any of Contractor's Proprietary Information to any person or organization not connected with Contractor, without the express written consent of Contractor. The City also agrees that it will undertake all necessary and appropriate steps to maintain the proprietary nature of Contractor's Proprietary Information.

V. CONSIDERATION

A. Contractor shall establish the sales tax and audit data bases and shall provide the monthly and quarterly updates referenced above for a fee of \$525.00 per month, invoiced quarterly (hereafter referred to as "monthly fee").

B. Contractor shall be further paid 15% of all new Sales and/or Use tax revenue received by the City as a result of audit and recovery work performed by Contractor (hereafter referred to as "audit fees"). New sales 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 the 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 (8) 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 accomplished by the Finance Officer or his designated representative on the Sales Tax Audit Authorization form, a copy of which is attached as "Exhibit A." City shall pay audit fees upon Contractor's submittal of evidence of State Fund Transfers and payments to City from businesses identified in the audit and approved by the City.

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

VI. 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 provide copies of the monthly

allocation reports received for the most recent five quarters from the execution of this Agreement and to continue to provide 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 percentage reimbursements due the Contractor have been paid.

VII. TERMINATION

This Agreement may be terminated 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. Compensation

for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

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.

VIII. 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.

IX. NON-ASSIGNMENT

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

X. ATTORNEY'S FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

XI. GOVERNING LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.

XII. 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 defend 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.

XIII. INSURANCE

During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full Workers' Compensation Insurance shall be provided with a limit of at least \$100,000 for any one person.

b. General Liability and Automobile Insurance. Contractor shall obtain and keep in full force and effect, a commercial, general liability and automobile policy or policies of at least \$500,000 combined limit for bodily injury and property damage; provided that the City, its officers, employees and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by City or other named insureds will be called on to cover a loss covered thereunder.

c. Professional Liability Insurance. Contractor shall carry professional liability insurance in the a minimum amount of \$500,000.

d. Certificate of Insurance. Contractor shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation.

XIV. 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 West 18th Street
Merced, CA 95340

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.

ATTEST:

CITY OF MERCED
A Municipal Corporation

BY: Carol Bregman
Deputy City Clerk

BY: [Signature]
City Manager

APPROVED AS TO FORM:

HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation

BY: [Signature]
City Attorney

BY: [Signature]

LLAMASASOC

FUNDS/RESOURCES VERIFIED

[Signature] 8-7-96
FINANCE OFFICE DATE

Vendors 7387
\$ 6,300 - funds available
8-6-96 DMH
001-0701-512-17-00
PD# 030659