

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

This Agreement is made and entered into as of the 20 day of April, 2018 (the "Effective Date") by and between the CITY OF DEL REY OAKS, a municipal corporation hereinafter called ("CITY"), and HINDERLITER, de LLAMAS AND ASSOCIATES a California Corporation, hereinafter called ("CONTRACTOR").

I. RECITALS

WHEREAS, sales, use and transactions tax (sometimes collectively referred to herein as "sales and use tax") revenues can be increased through a system of continuous monitoring, identification and correction of allocation errors, 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 services referenced herein;

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

II. SERVICES

The CONTRACTOR will perform the following services:

A. ALLOCATION AUDIT AND RECOVERY

1. CONTRACTOR shall conduct initial and on-going sales and use tax audits to identify and correct distribution and allocation errors, and to proactively affect favorable registration, reporting or formula changes thereby generating previously unrealized sales, use and transactions tax income for the CITY and/or recovering misallocated tax from previously properly 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. CONTRACTOR shall initiate contacts with state agencies, and 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.
3. CONTRACTOR shall (i) prepare and submit to the California Department of Tax and Fee Administration information for the purpose of correcting allocation errors that are identified and (ii) follow-up with individual businesses and the California Department of Tax and Fee Administration to promote recovery by the CITY of back or prospective quarterly payments that may be owing.
4. If during the course of its audit, CONTRACTOR finds businesses located in the CITY that are properly reporting sales and use tax but have the potential for modifying their operation to provide an even greater share to the CITY, CONTRACTOR may so advise CITY and work with those businesses and the CITY to encourage such changes.

III. REPORTS

CONTRACTOR shall provide annually when data is available from California Department of Tax and Fee Administration, PDF reports showing regional, county and CITY trends for the quarterly and annual periods, top sales tax generators and business types showing California Department of Tax and Fee Administration payments by major business group and administrative fees.

IV. 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 California Department of Tax and Fee Administration. 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 or transactions and use tax records of the California Department of Tax and Fee Administration 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 & 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 California Department of Tax and Fee Administration 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.

V. OWNERSHIP OF MATERIALS, CONFIDENTIALITY

- A. Software Use. HdL hereby provides authorization to the CITY to access HdL's Sales Tax website. The website shall only be used by authorized CITY staff. No access will be granted to any 3rd party without explicit written authorization by HdL. 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 use, rights of the CITY to sell said software use or rights to use said software use for the benefits 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 HdL'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 HdL 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.

VI. CONSIDERATION

- A. CONTRACTOR shall be 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") 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 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 consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION. 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 City Administrator or his designated representative on the Sales Tax Audit Authorization form. 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.

- B. Above sum 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 CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION representatives.
- C. CONTRACTOR shall make available the annual reports for a fee of **\$850** per year, invoiced annually (hereafter referred to as "fee"). There are no extra charges for ongoing upgrades in the software or refresher training.
- D. Any invoices not paid in accordance with the Thirty (30) day payment terms, shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.

- E. CONTRACTOR unilaterally retains the right to divide any recovery bills in excess of \$25,000 over a one (1) year period (Four (4) quarterly billings).
- F. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for the audit fee (including, without limitation, a detailed listing of any corrected misallocations), which shall be paid by CITY no later than 30 days following the invoice date.

VII. 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.

VIII. CITY MATERIALS AND SUPPORT

CITY shall adopt a resolution in a form acceptable to the California Department of Tax and Fee Administration 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'S authorization to examine the confidential sales tax records of the CITY by maintaining CONTRACTOR'S name on the CITY 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 California Department of Tax and Fee Administration and audit fees due the CONTRACTOR have been paid.

IX. TERMINATION

This Agreement may be terminated by either party by giving 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 California Department of Tax and Fee Administration. 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.

X. 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.

XI. COOPERATIVE AGREEMENT

It is intended any other public agency (e.g., city, county, district, public authority, public agency, municipality, or other political subdivision of California) located in the state of California shall have an option to procure identical services as set forth in this Agreement. The City of Del Rey Oaks shall incur no responsibility, financial or otherwise, in connection with orders for services issued by another public agency. The participating public agency shall accept sole responsibility for securing services or making payments to the vendor.

XII. NON-ASSIGNMENT

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

XIII. ATTORNEY'S FEES

If any party hereto brings an action or proceeding under this Agreement or to declare rights hereunder, the Prevailing Party in any such proceeding, action, or appeal thereon shall be entitled to recover all reasonable fees, costs and expenses, including reasonable attorneys' fees. Such fees, costs and expenses may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. "Prevailing Party" shall mean and include, without limitation, a party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other party of its claim or defense.

XIV. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to its choice of laws provisions). If any legal action is necessary to enforce or interpret this Agreement, the parties agree that such action shall be brought in the Superior Court for the State of California, County of Monterey, or the U.S. District Court for the Central District of California, Western Division. The parties hereby submit to the exclusive jurisdiction of such courts and waive any other venue to which either party might be entitled by domicile or otherwise.

XV. SEVERABILITY; NO WAIVER

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. If any of the provisions of this Agreement shall be deemed to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination shall enforce the remaining

provisions of this Agreement, and shall reduce such extent, duration, scope, or other provision and shall enforce them in their reduced form for all purposes contemplated by this Agreement. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

XVI. INSURANCE

CONTRACTOR shall maintain the policies set out below, and in amounts of coverage not less than those indicated herein. Additionally, where required by CITY, CONTRACTOR shall name the CITY as an additional insured on CONTRACTOR'S comprehensive general liability policy and provide a Certificate of Insurance.

1. Worker's Compensation and Employer's Liability. In accordance with applicable law.
2. Comprehensive General Liability. Bodily injury liability in the amount of \$1,000,000 for each person in any one accident, and \$1,000,000 for injuries sustained by two or more persons in any one accident. Property damage liability in the amount of \$1,000,000 for each accident, and \$2,000,000 aggregate for each year of the policy period.
3. Comprehensive Automobile Liability. Bodily injury liability coverage of \$1,000,000 for each accident.
4. Errors and Omissions. In addition to any other insurance required by this Agreement, CONTRACTOR shall provide and maintain, during the term of this Agreement, professional liability insurance in the amount of \$1,000,000 as evidenced by a Certificate of Insurance.

XVII. INDEMNIFICATION

To the further extent allowed by law, including California Civil Code Section 2782.8, 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.

Notwithstanding the foregoing, CONTRACTOR shall not be liable for the defense or indemnification of the CITY for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the CITY.

XVIII. NOTICES

All notices sent by a party under this Agreement shall be in writing and shall be deemed properly delivered to the other party as of the date of receipt, if received on a business day prior to 3:00 PM local time, or otherwise on the next business day after receipt, provided delivery occurs personally, by courier service, or by U.S. mail to the other party at its address set forth below, or to such other address as either party may, by written notice, designate to the other party. Notices to CONTRACTOR shall be sent to HINDERLITER, de LLAMAS and ASSOCIATES, 1340 Valley Vista Drive, Suite 200, Diamond Bar, CA 91765; and notices to CITY shall be sent to CITY OF DEL REY OAKS, 650 Canyon Del Rey Road, Del Rey Oaks, CA 93940.

XIX. ENTIRE AGREEMENT; ETC.

This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement may not be amended or modified except in writing signed by each of the parties hereto. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

XX. COUNTERPARTS; AUTHORITY TO SIGN

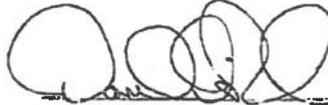
This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signature pages of this Agreement transmitted by facsimile or sent by email in portable document format (PDF) will have the same legal effect as an original executed signature page. Each of the persons signing on behalf of a party hereto represents that he or she has the right and power to execute this Agreement on such party's behalf.

SEE SIGNATURES ON NEXT PAGE

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 their behalf.

CITY:

CITY OF DEL REY OAKS



City Manager



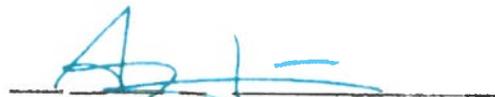
City Clerk

CONTRACTOR:

HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation

By: 
Andrew Nickerson, President

APPROVED AS TO FORM:



City Attorney