

**CITY OF CHULA VISTA
CONSULTANT SERVICES AGREEMENT
WITH HINDERLITER, DE LLAMAS AND ASSOCIATES
TO PROVIDE SALES AND USE TAX AND TRANSACTIONS TAX AUDIT & INFORMATION
SERVICES**

This Agreement is entered into effective as of July 1, 2023 (“Effective Date”) by and between the City of Chula Vista, a chartered municipal corporation (“City”) and HINDERLITER, DE LLAMAS AND ASSOCIATES, [A California Corporation] (“Consultant”) (collectively, the “Parties” and, individually, a “Party”) with reference to the following facts:

RECITALS

WHEREAS, Hinderliter, de Llamas and Associates (HdL) has extensive experience in providing sales tax analysis to many local cities; and

WHEREAS, the City requires the service of HdL to provide sales and use tax services to assist in economic and business development and revenue projections as well as transactions tax services to effectively monitor Measure P & Measure A revenues; and

WHEREAS, continuous monitoring, identification and correction of allocation errors and reporting deficiencies will help maximize sales tax revenues; and

WHEREAS, an effective review program can provide for more accurate budget forecasting and financial planning; and

WHEREAS, City desires the combination of data entry, report preparation, and data analysis necessary to effectively manage both its general sales and use tax Measure “A” and Measure "P" transactions and use tax base for recovery of revenues either unreported or erroneously allocated to other jurisdictions: and

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

WHEREAS, In order to procure these services Contractor was chosen based on Contractor’s unique qualifications including tax audit and California Department of Tax and Fee Administration (CDTFA) Document preparation; on this basis, Contractor was awarded the contract on professional services basis under the authority of Chula Vista Municipal Code Section 2.56.110.H.2 as the Purchasing Agent has determined it to be impractical and the City’s interest is materially better served by applying a different purchasing procedure |

WHEREAS, Consultant warrants and represents that it is experienced and staffed in a manner such that it can deliver the services required of Consultant to City in accordance with the time frames and the terms and conditions of this Agreement.

[End of Recitals. Next Page Starts Obligatory Provisions.]

OBLIGATORY PROVISIONS

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Consultant hereby agree as follows:

1. SERVICES

1.1 Required Services. Consultant agrees to perform the services, and deliver to City the “Deliverables” (if any) described in the attached Exhibit A, incorporated into the Agreement by this reference, within the time frames set forth therein, time being of the essence for this Agreement. The services and/or Deliverables described in Exhibit A shall be referred to herein as the “Required Services.”

1.2 Reductions in Scope of Work. City may independently, or upon request from Consultant, from time to time, reduce the Required Services to be performed by the Consultant under this Agreement. Upon doing so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating a corresponding reduction in the compensation associated with the reduction.

1.3 Additional Services. Subject to compliance with the City’s Charter, codes, policies, procedures and ordinances governing procurement and purchasing authority, City may request Consultant provide additional services related to the Required Services (“Additional Services”). If so, City and Consultant agree to meet and confer in good faith for the purpose of negotiating an amendment to Exhibit A, to add the Additional Services. Unless otherwise agreed, compensation for the Additional Services shall be charged and paid consistent with the rates and terms already provided therein. Once added to Exhibit A, “Additional Services” shall also become “Required Services” for purposes of this Agreement.

1.4 Standard of Care. Consultant expressly warrants and agrees that any and all Required Services hereunder shall be performed in accordance with the highest standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.

1.5 No Waiver of Standard of Care. Where approval by City is required, it is understood to be conceptual approval only and does not relieve the Consultant of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the Consultant or its subcontractors.

1.6 Security for Performance. In the event that Exhibit A Section 5 indicates the need for Consultant to provide additional security for performance of its duties under this Agreement, Consultant shall provide such additional security prior to commencement of its Required Services in the form and on the terms prescribed on Exhibit A, or as otherwise prescribed by the City Attorney.

1.7 Compliance with Laws. In its performance of the Required Services, Consultant shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

1.8 Business License. Prior to commencement of work, Consultant shall obtain a business license from City.

1.9 Subcontractors. Prior to commencement of any work, Consultant shall submit for City’s information and approval a list of any and all subcontractors to be used by Consultant in the performance of the Required Services. Consultant agrees to take appropriate measures necessary to ensure that all subcontractors and

personnel utilized by the Consultant to complete its obligations under this Agreement comply with all applicable laws, regulations, ordinances, and policies, whether federal, state, or local. In addition, if any subcontractor is expected to fulfill any responsibilities of the Consultant under this Agreement, Consultant shall ensure that each and every subcontractor carries out the Consultant's responsibilities as set forth in this Agreement.

1.10 Term. This Agreement shall commence on the earlier to occur of the Effective Date or Consultant's commencement of the Required Services hereunder, and shall terminate, subject to Sections 6.1 and 6.2 of this Agreement, when the Parties have complied with all their obligations hereunder; provided, however, provisions which expressly survive termination shall remain in effect.

2. COMPENSATION

2.1 General. For satisfactory performance of the Required Services, City agrees to compensate Consultant in the amount(s) and on the terms set forth in Exhibit A, Section 4. Standard terms for billing and payment are set forth in this Section 2.

2.2 Detailed Invoicing. Consultant agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed, unless otherwise specified in Exhibit A. Invoicing shall begin on the first of the month following the Effective Date of the Agreement. All charges must be presented in a line item format with each task separately explained in reasonable detail. Each invoice shall include the current monthly amount being billed, the amount invoiced to date, and the remaining amount available under any approved budget. Consultant must obtain prior written authorization from City for any fees or expenses that exceed the estimated budget.

2.3 Payment to Consultant. Upon receipt of a properly prepared invoice and confirmation that the Required Services detailed in the invoice have been satisfactorily performed, City shall pay Consultant for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in Exhibit A and section 2.4, below. At City's discretion, invoices not timely submitted may be subject to a penalty of up to five percent (5%) of the amount invoiced.

2.4 INTENTIONALLY OMITTED

2.5 Reimbursement of Costs. City may reimburse Consultant's out-of-pocket costs incurred by Consultant in the performance of the Required Services if negotiated in advance and included in Exhibit A. Unless specifically provided in Exhibit A, Consultant shall be responsible for any and all out-of-pocket costs incurred by Consultant in the performance of the Required Services.

2.6 Exclusions. City shall not be responsible for payment to Consultant for any fees or costs in excess of any agreed upon budget, rate or other maximum amount(s) provided for in Exhibit A. City shall also not be responsible for any cost: (a) incurred prior to the Effective Date; or (b) arising out of or related to the errors, omissions, negligence or acts of willful misconduct of Consultant, its agents, employees, or subcontractors.

2.7 Payment Not Final Approval. Consultant understands and agrees that payment to the Consultant or reimbursement for any Consultant costs related to the performance of Required Services does not constitute a City final decision regarding whether such payment or cost reimbursement is allowable and eligible for payment under this Agreement, nor does it constitute a waiver of any violation by Consultant of the terms of this Agreement. If City determines that Consultant is not entitled to receive any amount of compensation already paid, City will notify Consultant in writing and Consultant shall promptly return such amount.

3. INSURANCE

3.1 Required Insurance. Consultant must procure and maintain, during the period of performance of Required Services under this Agreement, and for twelve months after completion of Required Services, the policies of insurance described on the attached Exhibit B, incorporated into the Agreement by this reference (the “Required Insurance”). The Required Insurance shall also comply with all other terms of this Section.

3.2 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions relating to the Required Insurance must be disclosed to and approved by City in advance of the commencement of work.

3.3 Standards for Insurers. Required Insurance must be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best’s rating of A V or better, or, if insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best’s rating of no less than A X. For Workers’ Compensation Insurance, insurance issued by the State Compensation Fund is also acceptable.

3.4 Subcontractors. Consultant must include all sub-consultants/sub-contractors as insureds under its policies and/or furnish separate certificates and endorsements demonstrating separate coverage for those not under its policies. Any separate coverage for sub-consultants must also comply with the terms of this Agreement.

3.5 Additional Insureds. City, its officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required in Exhibit B or as may otherwise be specified by City’s Risk Manager.. The general liability additional insured coverage must be provided in the form of an endorsement to the Consultant’s insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.

3.6 General Liability Coverage to be “Primary.” Consultant’s general liability coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance provided by Consultant and in no way relieves Consultant from its responsibility to provide insurance.

3.7 No Cancellation. No Required Insurance policy may be canceled by either Party during the required insured period under this Agreement, except after thirty days’ prior written notice to the City by certified mail, return receipt requested. Prior to the effective date of any such cancellation Consultant must procure and put into effect equivalent coverage(s).

3.8 Waiver of Subrogation. Consultant’s insurer(s) will provide a Waiver of Subrogation in favor of the City for each Required Insurance policy under this Agreement. In addition, Consultant waives any right it may have or may obtain to subrogation for a claim against City.

3.9 Verification of Coverage. Prior to commencement of any work, Consultant shall furnish City with original certificates of insurance and any amendatory endorsements necessary to demonstrate to City that Consultant has obtained the Required Insurance in compliance with the terms of this Agreement. The words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” or any similar language must be deleted from all certificates. The

required certificates and endorsements should otherwise be on industry standard forms. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

3.10 Claims Made Policy Requirements. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are required and are provided on a claims-made form, the following requirements also apply:

a. The “Retro Date” must be shown, and must be before the date of this Agreement or the beginning of the work required by this Agreement.

b. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the work required by this Agreement.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of this Agreement, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of the work required by this Agreement.

d. A copy of the claims reporting requirements must be submitted to the City for review.

3.11 Not a Limitation of Other Obligations. Insurance provisions under this section shall not be construed to limit the Consultant’s obligations under this Agreement, including Indemnity.

3.12 Additional Coverage. To the extent that insurance coverage provided by Consultant maintains higher limits than the minimums appearing in Exhibit B, City requires and shall be entitled to coverage for higher limits maintained.

4. INDEMNIFICATION

4.1. General. To the maximum extent allowed by law, Consultant shall timely and fully protect, defend, reimburse, indemnify and hold harmless City, its elected and appointed officers, agents, employees and volunteers (collectively, “Indemnified Parties”), from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorneys’ fees and court costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Consultant, its officials, officers, employees, agents, and contractors, arising out of or in connection with the performance of the Required Services, the results of such performance, or this Agreement. This indemnity provision does not include any claims, damages, liability, costs and expenses arising from the sole negligence or willful misconduct of the Indemnified Parties. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the Indemnified Parties which may be in combination with the active or passive negligent acts or omissions of the Consultant, its employees, agents or officers, or any third party.

4.2. Modified Indemnity Where Agreement Involves Design Professional Services. Notwithstanding the forgoing, if the services provided under this Agreement are design professional services, as defined by California Civil Code section 2782.8, as may be amended from time to time, the defense and indemnity obligation under Section 1, above, shall be limited to the extent required by California Civil Code section 2782.8.

4.3 Costs of Defense and Award. Included in Consultant's obligations under this Section 4 is Consultant's obligation to defend, at Consultant's own cost, expense and risk, and with counsel approved in writing by City, any and all suits, actions or other legal proceedings that may be brought or instituted against one or more of the Indemnified Parties. Subject to the limitations in this Section 4, Consultant shall pay and satisfy any judgment, award or decree that may be rendered against one or more of the Indemnified Parties for any and all related legal expenses and costs incurred by any of them.

4.4. Consultant's Obligations Not Limited or Modified. Consultant's obligations under this Section 4 shall not be limited to insurance proceeds, if any, received by the Indemnified Parties, or by any prior or subsequent declaration by the Consultant. Furthermore, Consultant's obligations under this Section 4 shall in no way limit, modify or excuse any of Consultant's other obligations or duties under this Agreement.

4.5. Enforcement Costs. Consultant agrees to pay any and all costs and fees City incurs in enforcing Consultant's obligations under this Section 4.

4.6 Survival. Consultant's obligations under this Section 4 shall survive the termination of this Agreement.

5. FINANCIAL INTERESTS OF CONSULTANT.

5.1 Form 700 Filing. The California Political Reform Act and the Chula Vista Conflict of Interest Code require certain government officials and consultants performing work for government agencies to publicly disclose certain of their personal assets and income using a Statement of Economic Interests form (Form 700). In order to assure compliance with these requirements, Consultant shall comply with the disclosure requirements identified in the attached Exhibit C, incorporated into the Agreement by this reference.

5.2 Disclosures; Prohibited Interests. Independent of whether Consultant is required to file a Form 700, Consultant warrants and represents that it has disclosed to City any economic interests held by Consultant, or its employees or subcontractors who will be performing the Required Services, in any real property or project which is the subject of this Agreement. Consultant warrants and represents that it has not employed or retained any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants and represents that it has not paid or agreed to pay any company or person, other than a bona fide employee or approved subcontractor working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further warrants and represents that no officer or employee of City, has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds hereof, or in the business of Consultant or Consultant's subcontractors. Consultant further agrees to notify City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement. For breach or violation of any of these warranties, City shall have the right to rescind this Agreement without liability.

6. REMEDIES

6.1 Termination for Cause. If for any reason whatsoever Consultant shall fail to perform the Required Services under this Agreement, in a proper or timely manner, or if Consultant shall violate any of the other covenants, agreements or conditions of this Agreement (each a "Default"), in addition to any and all other rights and remedies City may have under this Agreement, at law or in equity, City shall have the right to terminate this Agreement by giving five (5) days written notice to Consultant. Such notice shall identify the Default and the Agreement termination date. If Consultant notifies City of its intent to cure such Default prior to City's specified termination date, and City agrees that the specified Default is capable of being cured, City

may grant Consultant up to ten (10) additional days after the designated termination date to effectuate such cure. In the event of a termination under this Section 6.1, Consultant shall immediately provide City any and all "Work Product" (defined in Section 7 below) prepared by Consultant as part of the Required Services. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant may be entitled to compensation for work satisfactorily performed prior to Consultant's receipt of the Default notice; provided, however, in no event shall such compensation exceed the amount that would have been payable under this Agreement for such work, and any such compensation shall be reduced by any costs incurred or projected to be incurred by City as a result of the Default.

6.2 Termination or Suspension for Convenience of City. City may suspend or terminate this Agreement, or any portion of the Required Services, at any time and for any reason, with or without cause, by giving specific written notice to Consultant of such termination or suspension at least fifteen (15) days prior to the effective date thereof. Upon receipt of such notice, Consultant shall immediately cease all work under the Agreement and promptly deliver all "Work Product" (defined in Section 7 below) to City. Such Work Product shall be City's sole and exclusive property as provided in Section 7 hereof. Consultant shall be entitled to receive just and equitable compensation for this Work Product in an amount equal to the amount due and payable under this Agreement for work satisfactorily performed as of the date of the termination/suspension notice plus any additional remaining Required Services requested or approved by City in advance that would maximize City's value under the Agreement.

6.3 Waiver of Claims. In the event City terminates the Agreement in accordance with the terms of this Section, Consultant hereby expressly waives any and all claims for damages or compensation as a result of such termination except as expressly provided in this Section 6.

6.4 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may be amended, the provisions of which, including such policies and procedures used by City in the implementation of same, are incorporated herein by this reference. Upon request by City, Consultant shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

6.5 Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in San Diego County, State of California.

6.6 Service of Process. Consultant agrees that it is subject to personal jurisdiction in California. If Consultant is a foreign corporation, limited liability company, or partnership that is not registered with the California Secretary of State, Consultant irrevocably consents to service of process on Consultant by first class mail directed to the individual and address listed under "For Legal Notice," in section 1.B. of Exhibit A to this Agreement, and that such service shall be effective five days after mailing.

7. OWNERSHIP AND USE OF WORK PRODUCT

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems and any other materials or properties produced in whole or in part under this Agreement in connection with the performance of the Required Services (collectively "Work Product") shall be the sole and exclusive property of City. No

such Work Product shall be subject to private use, copyrights or patent rights by Consultant in the United States or in any other country without the express, prior written consent of City. City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, copyright or patent, in whole or in part, any such Work Product, without requiring any permission of Consultant, except as may be limited by the provisions of the Public Records Act or expressly prohibited by other applicable laws. With respect to computer files containing data generated as Work Product, Consultant shall make available to City, upon reasonable written request by City, the necessary functional computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. GENERAL PROVISIONS

8.1 Amendment. This Agreement may be amended, but only in writing signed by both Parties.

8.2 Assignment. City would not have entered into this Agreement but for Consultant's unique qualifications and traits. Consultant shall not assign any of its rights or responsibilities under this Agreement, nor any part hereof, without City's prior written consent, which City may grant, condition or deny in its sole discretion.

8.3 Authority. The person(s) executing this Agreement for Consultant warrants and represents that they have the authority to execute same on behalf of Consultant and to bind Consultant to its obligations hereunder without any further action or direction from Consultant or any board, principle or officer thereof.

8.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one Agreement after each Party has signed such a counterpart.

8.5 Entire Agreement. This Agreement together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter contained herein. All exhibits referenced herein shall be attached hereto and are incorporated herein by reference. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded.

8.6 Record Retention. During the course of the Agreement and for three (3) years following completion of the Required Services, Consultant agrees to maintain, intact and readily accessible, all data, documents, reports, records, contracts, and supporting materials relating to the performance of the Agreement, including accounting for costs and expenses charged to City, including such records in the possession of sub-contractors/sub-consultants.

8.7 Further Assurances. The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the Parties.

8.8 Independent Contractor. Consultant is and shall at all times remain as to City a wholly independent contractor. Neither City nor any of its officers, employees, agents or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents ("Consultant Related Individuals"), except as set forth in this Agreement. No Consultant Related Individuals shall be deemed employees of City, and none of them shall be entitled to any benefits to which City employees are entitled, including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Furthermore, City will not withhold state or federal income tax, social security tax or any other payroll tax with respect to any Consultant Related Individuals; instead, Consultant shall be solely

responsible for the payment of same and shall hold the City harmless with respect to same. Consultant shall not at any time or in any manner represent that it or any of its Consultant Related Individuals are employees or agents of City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatsoever against City, or bind City in any manner.

8.9 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, demands and requests to be sent to any Party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such Party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement at the places of business for each of the designated Parties as indicated in Exhibit A, or otherwise provided in writing.

8.10 Electronic Signatures. Each Party agrees that the electronic signatures, whether digital or encrypted, of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a Party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

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**SIGNATURE PAGE
CONSULTANT SERVICES AGREEMENT**

IN WITNESS WHEREOF, by executing this Agreement where indicated below, City and Consultant agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

HINDERLITER, DE LLAMAS AND
ASSOCIATES

CITY OF CHULA VISTA

BY: _____
|ANDREW NICKERSON |
|PRESIDENT |

BY: _____
|JOHN MCCANN |
|MAYOR |

|ATTEST

BY: _____
Kerry K. Bigelow, MMC
City Clerk |

APPROVED AS TO FORM

BY: _____
Jill D.S.Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney

EXHIBIT A
SCOPE OF WORK AND PAYMENT TERMS

1. Contact People for Contract Administration and Legal Notice

A. City Contract Administration:

Victor De La Cruz
276 4th Ave, Chula Vista, CA 91910
619-409-5959
vdelacruz@chulavistaca.gov

For Legal Notice Copy to:

City of Chula Vista
City Attorney
276 Fourth Avenue, Chula Vista, CA 91910
619-691-5037
CityAttorney@chulavistaca.gov

B. Consultant Contract Administration:

HINDERLITER, DE LLAMAS AND ASSOCIATES
120 S. State College Blvd., #200 Brea, CA 92821
714.879.5000
msoto-sanchez@hdlcompanies.com

For Legal Notice Copy to:

R. Andrew Nickerson
120 S. State College Blvd., #200 Brea, CA 92821
714-879-5000
anickerson@hdlcompanies.com

2. Required Services

A. General Description:

1. For Sales and Use Tax HdL will provide municipal sales and use tax auditing revenue recovery and reporting services. The auditing and reporting services will include written reports and quarterly briefings concerning revenue performance and projections, trend analysis, gains and declines as well as general assistance in managing the City's sales and use tax revenues. Revenue recovery services will include identifying misallocated or underreported tax revenues and ensuring the City receives such revenues.

2. For transactions and use tax revenues, Consultant will provide data entry, report preparation, and data analysis necessary to effectively manage its Measure "A" and Measure "P" transactions and use tax base recovery of revenues either unreported or erroneously allocated to other jurisdictions.

B. Detailed Description:

Sales Tax Services. The Consultant shall provide sales tax consulting services including, but not limited to, the following:

1. Information Services and Economic Analysis

- a. Provide a user-friendly software program accessible to City staff with an electronic database of the City's sales and use tax data. The software and database would be used to facilitate monitoring, analysis and forecasting of sales and use tax revenue. The program must have the ability to export all data to a spreadsheet, and can create and maintain subsets of the information based on geographic features.
- b. Provide training to City staff on the use of the software program described above.
- c. Provide written sales tax reports on a fiscal year quarterly basis to the City within one week following the receipt of the quarterly distribution report. Such reports would be provided during a quarterly meeting at the City with key City staff. These reports should include, but not be limited to, the following:
 1. Historical sales and use tax revenue trends of major industry groups within the City.
 2. Top sales tax generators ranked by the amount of sales and use tax produced.
 3. Analytical reports on sales trends using various categories and criteria.
 4. Comparisons to other local, county, and state jurisdictions.
 5. Sales and use tax projections updated quarterly.
 6. Information regarding state and federal legislative issues, including an analysis of the potential impact on the City of Chula Vista.
 7. Creation and provision of a non-confidential newsletter in electronic format each quarter for the City suitable for public dissemination.
 8. Other reports as mutually agreed upon.
- d. Provide assistance with sales and use tax revenue trends, analysis and related questions throughout the fiscal year; consultation on projections of sales and use tax revenue during the City's annual budget development process.

B. Revenue Recovery and Reporting

- a. Identify the specific procedures HdL will use to detect, correct, and recover misallocated revenue for the City.
- b. Monitor and analyze the quarterly distribution reports to ensure accuracy and detect any irregularities.
- c. Identify opportunities for the City to recover the local allocation on purchase transactions subject to tax and facilitate the recovery of such funds.

d. Assist the City with strategies to preserve and enhance sales and use tax generated by existing businesses within the City through innovative programs such as a sales tax education program or business to business program that would promote greater sales tax revenue for the City.

Transactions and Use Tax Services (Measure P & Measure A) - the Consultant shall provide consulting services including, but not limited to, the following:

DEFICIENCY/ALLOCATION REVIEWS AND RECOVERY

1. Consultant shall conduct on-going reviews to identify and correct unreported transactions and use tax payments and distribution errors thereby generating previously unrealized revenue for the City. Said reviews shall include:
 - a. Comparison of county-wide local tax allocations to transactions tax for brick and mortar stores and other cash register-based businesses, where clearly all transactions are conducted on-site within the Measure "A" & Measure "P" City boundaries, and therefore subject to transactions tax.
 - b. Review of any significant one-time use tax allocations to ensure that there are corresponding transaction tax payments for taxpayers with nexus within the City boundaries.
 - c. Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
 - d. Identification and follow-up with any potentially large purchasers of supplies and equipment (e.g. hospitals, universities, manufacturing plants, agricultural operations, refineries) to ensure that their major vendors are properly reporting corresponding transactions tax payments to the Measure "A" & Measure "P" Transactions Tax District.
2. Consultant will initiate, where the probability of an error exists, contacts with the appropriate taxpayer management and accounting officials to verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner so as to enhance City's relations with the business community.
3. Consultant shall prepare and submit to the California Department of Tax and Fee Administration (CDFTA) all information necessary to correct any allocation errors and deficiencies 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.

DATA BASE MANAGEMENT, REPORTS AND STAFF SUPPORT

1. Consultant shall establish a database containing all applicable California Department of Tax and Fee Administration (CDFTA) registration data for each business within the Measure "A" & Measure "P" District boundaries holding a seller's permit account. Said database shall also identify the quarterly transactions and use tax allocations under each account for the most current and previous quarters where available.
2. Consultant shall provide updated reports each quarter identifying changes in allocation totals by individual businesses, business groups and by categories. Quarterly aberrations due to State audits,

fund transfers, and receivables, along with late or double payments, will also be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will be included.

3. Consultant shall advise and work with City Staff on planning and economic questions related to maximizing revenues, preparation of revenue projections and general information on sales, transactions and use tax questions.
4. Consultant shall make available to City the HdL proprietary software program and Measure "P" database containing all applicable registration and quarterly allocation information for City business outlets registered with the California Department of Tax and Fee Administration (CDFTA). The database will be updated quarterly.
5. Consultant shall only disclose information contained in, or derived from those transactions and use tax records only to the officer or employee authorized by the City Manager or their designee to examine the information;

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 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, Use and Transactions 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. CONSULTANT is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. CONSULTANT 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. CONSULTANT 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. CONSULTANT 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 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.

Consultant is prohibited by this Agreement from retaining the information contained in or derived from those transactions and use tax records after that Agreement has expired

- 3. Term:** In accordance with Section 1.10 of this Agreement, the term of this Agreement shall begin July 1, 2023 and end on 06/30/2024 for completion of all Required Services.

4. Compensation:

A. Form of Compensation

- A. For Sales Tax Services, the fee for ongoing analysis, reports and access to the sales tax database is \$800 per month to be billed quarterly. The fee for audit services is 15% of all new sales and use tax revenue received by the City as a result of audit and recovery work performed by the Consultant. This fee applies to monies received in the first eight consecutive reporting quarters beginning with the receipt of the audit revenue and includes retroactive back quarter adjustments obtained by the Consultant.
- B. For Measure P & Measure A revenues - Consultant shall be paid \$200 monthly billed quarterly for the transaction district tax reports that are included with the quarterly sales tax analyses. Consultant shall be paid 25% of the initial amount of new transactions or use tax revenue received by the City as a result of audit and recovery work performed by Consultant (hereafter referred to as "audit fees"). New revenue shall not include any amounts determined and verified by City or Consultant to be increment attributable to causes other than Consultant's work pursuant to this Agreement. In the event that Consultant is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, it shall be Consultant'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 those specific quarters identified as being missing and/or deficient following completion of the audit by Consultant and confirmation of corrections by the State Board of Equalization but shall not apply prospectively to any future quarter.
- C. Consultant shall provide City with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.
- D. Consultant shall obtain prior approval from City for each specific business for which payment of audit fees will be expected. Said approval shall be deemed given when the City Manager or his/her designated representative, signs a Work Authorization form, a copy of which is attached as "Exhibit D." City shall pay audit fees upon Consultant's submittal of evidence of State fund transfers and payments to City from businesses identified in the audit and approved by the City.
- E. Above sum shall constitute full reimbursement to Consultant for all direct and indirect expenses incurred by Consultant in performing audits including the salaries of Consultant's employees, and travel expenses connected with contacting local and out-of-state businesses and the Board of Equalization Staff.

- F. Extra work beyond the Scope of Services set forth in this Agreement shall not be performed by Consultant or reimbursed or paid for by City unless such extra work is specifically authorized in writing by City Manager or his/her designated representative. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City and Consultant at the time the City's written authorization is given to Consultant for the performance of said services.

B. Reimbursement of Costs

None, the compensation includes all costs

Notwithstanding the foregoing, the maximum amount to be paid to the Consultant for services performed through June 30, 2024 shall not exceed 165,000.

5. Special Provisions:

Permitted Sub-Consultants: None

Security for Performance: None

Notwithstanding the completion date set forth in Section 3 above, City has option to extend this Agreement for one additional term, defined as a one-year increment. The City Manager or Director of Finance/Treasurer shall be authorized to exercise the extensions on behalf of the City. If the City exercises an option to extend, each extension shall be on the same terms and conditions contained herein, provided that the amounts specified in Section 4 above may be increased by up to 200,000 for each extension. The City shall give written notice to Consultant of the City's election to exercise the extension via the Notice of Exercise of Option to Extend document.

None

EXHIBIT B
INSURANCE REQUIREMENTS

Consultant shall adhere to all terms and conditions of Section 3 of the Agreement and agrees to provide the following types and minimum amounts of insurance, as indicated by checking the applicable boxes (x).

| | Type of Insurance | Minimum Amount | Form |
|-------------------------------------|--|---|---|
| <input checked="" type="checkbox"/> | General Liability: Including products and completed operations, personal and advertising injury | \$2,000,000 per occurrence for bodily injury, personal injury (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Agreement or the general aggregate limit must be twice the required occurrence limit Additional Insured Endorsement or Blanket AI Endorsement for City* Waiver of Recovery Endorsement | Insurance Services Office Form CG 00 01 <i>*Must be primary and must not exclude Products/Completed Operations</i> |
| <input checked="" type="checkbox"/> | Automobile Liability | \$1,000,000 per accident for bodily injury, including death, and property damage | Insurance Services Office Form CA 00 01 Code 1-Any Auto Code 8-Hired Code 9-Non Owned |
| <input checked="" type="checkbox"/> | Workers' Compensation Employer's Liability | \$1,000,000 each accident \$1,000,000 disease policy limit \$1,000,000 disease each employee Waiver of Recovery Endorsement | |
| <input checked="" type="checkbox"/> | Professional Liability (Errors & Omissions) | \$1,000,000 each occurrence \$2,000,000 aggregate | |

Other Negotiated Insurance Terms: [NONE]

EXHIBIT C
CONSULTANT CONFLICT OF INTEREST DESIGNATION

The Political Reform Act¹ and the Chula Vista Conflict of Interest Code² (“Code”) require designated state and local government officials, including some consultants, to make certain public disclosures using a Statement of Economic Interests form (Form 700). Once filed, a Form 700 is a public document, accessible to any member of the public. In addition, consultants designated to file the Form 700 are also required to comply with certain ethics training requirements.³

A. Consultant IS a corporation or limited liability company and is therefore EXCLUDED⁴ from disclosure.

B. Consultant NOT a corporation or limited liability company and disclosure designation is as follows:

APPLICABLE DESIGNATIONS FOR INDIVIDUAL(S) ASSIGNED TO PROVIDE SERVICES

(Category descriptions available at www.chulavistaca.gov/departments/city-clerk/conflict-of-interest-code.)

| Name | Email Address | Applicable Designation |
|--|-------------------------|---|
| Enter Name of Each Individual Who Will Be Providing Service Under the Contract – If individuals have different disclosure requirements, duplicate this row and complete separately for each individual | Enter email address(es) | <input type="checkbox"/> A. Full Disclosure <input type="checkbox"/> B. Limited Disclosure (select one or more of the categories under which the consultant shall file): <input type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. Justification: <input type="checkbox"/> C. Excluded from Disclosure |

1. Required Filers

Each individual who will be performing services for the City pursuant to the Agreement and who meets the definition of “Consultant,” pursuant to FPPC Regulation 18700.3, must file a Form 700.

2. Required Filing Deadlines

Each initial Form 700 required under this Agreement shall be filed with the Office of the City Clerk via the City's online filing system, NetFile, within 30 days of the approval of the Agreement. Additional Form 700 filings will be required annually on April 1 during the term of the Agreement, and within 30 days of the termination of the Agreement.

3. Filing Designation

The City Department Director will designate each individual who will be providing services to the City pursuant to the Agreement as *full disclosure*, *limited disclosure*, or *excluded from disclosure*, based on an analysis of the services the Consultant will provide. Notwithstanding this designation or anything in the Agreement, the Consultant is ultimately responsible for complying with FPPC regulations and filing requirements. If you have any questions regarding filing requirements, please do not hesitate to contact the City Clerk at (619)691-5041, or the FPPC at 1-866-ASK-FPPC, or (866) 275-3772 *2.

Pursuant to the duly adopted City of Chula Vista Conflict of Interest Code, this document shall serve as the written determination of the consultant’s requirement to comply with the disclosure requirements set forth in the Code.

Completed by: Victor De La Cruz

1 Cal. Gov. Code §§81000 *et seq.*; FPPC Regs. 18700.3 and 18704.

2 Chula Vista Municipal Code §§2.02.010-2.02.040.

3 Cal. Gov. Code §§53234, *et seq.*

4 CA FPPC Adv. A-15-147 (*Chadwick*) (2015); *Davis v. Fresno Unified School District* (2015) 237 Cal.App.4th 261; FPPC Reg. 18700.3 (Consultant defined as an “individual” who participates in making a governmental decision; “individual” does not include corporation or limited liability company).