



## REPORT TO CITY COUNCIL

Approved by:

Roger Sanchez, Director of Financial Services

  
Arnoldo Rodriguez, City Manager

Council Meeting of: May 20, 2020

Agenda Number:         D-5        

### SUBJECT:

Contract with Hinderliter, deLlamas & Associates (HdL) Companies to Provide Financial Consulting Services

### RECOMMENDATION:

Adopt Resolutions:

1. Approving a contract with HdL Companies for sales, use, and transactions tax audit and information services, business license tax discovery, and business license tax audit services; and
2. Authorizing the examination of sales, use, and transaction tax records on file with the California Department of Tax and Fee Administration (CDTFA) by designated City officials and HdL Companies.

### SUMMARY:

Staff recommends approval of a contract with HdL Companies for sales, use, and transactions tax audit and information services/business license tax discovery/business license tax audit services. Previously, the City contracted for similar services with Avenu Insights & Analytics (Avenu), formerly known as MuniServices, LLC. While the services offered by HdL and Muni are comparable, HdL has emerged as an industry leader with a robust reporting service and has earned a stellar reputation among other municipalities. There is an additional cost associated with the change from Avenu to HdL Companies of approximately \$2,400 annually.

### DISCUSSION:

The primary services proposed in the contemplated agreement with HdL Companies are sales and use tax services, which include audit, recovery and continuous follow-up of the sales and use tax data. The objective is to identify and correct sales and use tax reporting errors. These errors are identified through thorough and complex analysis of ongoing data to determine discrepancies in reporting values by individual vendors and sectors, as well as monitoring the opening and closing of businesses that should

be reporting sales and use tax. The vendor will follow through on these identified errors by working with the California Department of Tax and Fee Administration (CDTFA) to correct and redirect the tax revenue to the City. In addition, included as part of these services, the vendor will provide sales tax projections that the City may utilize to prepare financial forecasts, annual budgets, and budget amendments.

Worth noting is that Section 7056 of the State of California Revenue and Taxation Code gives local agencies the ability to examine sales, use, and transactions tax records of the Board of Equalization, provided that the examination of confidential tax information is authorized by a resolution of the Council. The required resolution should permit "any duly authorized officer or employee of the city or other person designated by that resolution, to examine all of the sales or transactions and use tax records of the board pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the city." Furthermore, the law restricts the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. The second resolution contemplated with this report designates the City's representatives who are authorized to perform such examination of records. If approved, the designated representatives will be:

- City Manager
- Director of Financial Services
- Any additional City personnel designated in writing by the City Manager
- HdL Companies

### ***Background***

Avenu has provided sales tax services for the City since 1995. They provide sales, use, and transaction tax audit and consulting services. The term of the contract is for 3 years beginning June 7, 2017, with automatic renewal for the subsequent 3-year term if neither party has canceled the contract.

Considering that the City has employed Avenu since 1995, staff begun to explore services provided by other vendors to ensure that services rendered met, or exceeded industry standards. More recently, as the COVID-19 pandemic grew, firms such as HdL hosted informational webinars and provided information to local jurisdictions, free of charge, to better understand the potential fiscal impacts of this global pandemic. Such information has proved invaluable as the City has attempted to quantify projected revenue decreases and forecast the City's financial position.

As part of its ongoing assessment process, staff requested a proposal from HdL and notified Avenu of its intent to not renew the contract when it expires June 7, 2020.

### ***Proposed Agreement***

Staff is recommending that Council entertain a three-year agreement with HdL. HdL currently serves 49 counties and 333 cities in California. This enables HdL to compile the most extensive database in the State. Thus, HdL has more access to data regarding misallocated revenue than any other company, aiding in the efficient recovery of such funds for local jurisdictions.

HdL is specialized in sales and use tax analysis and has exhaustive experience identifying and correcting "point of sale" allocation errors, misallocations, and other misreported sales transactions that result in recovered sales tax revenues for the City. Their specialized services include providing quarterly updates to the City through a confidential quarterly sales tax report that identifies changes in sales by major outlets, by category, and areas of growth. Additionally, HdL provides non-confidential quarterly news-

letters with economic and sales tax trends by major groups without disclosing confidential information. It should be noted that the confidentiality of information is governed by CDTFA through the California Revenue and Taxation Code, and any reports produced designated as confidential or non-confidential are designated as such in compliance with the Code.

The proposed services are comparable to existing services, albeit audit methods and techniques may differ. The proposal includes sales and use tax audit services, at a 15 percent contingency rate. The 15 percent is charged on sales and use taxes recovered on behalf of the City limited to a period of 8 consecutive quarters, which includes prior periods up to the time of discovery.

Similar to the current agreement, the proposal includes sales and use tax consulting services, which include a quarterly report on detailed sales tax information. The data provided in the report include sales tax producers, economic trends, legislation, and forecasts. The monthly rate for this service is \$500 (\$6,000 annually).

Additionally, the proposal includes the auditing and monitoring of the local sales tax Measure K. HdL will audit, monitor, report, and consult with the City on Measure K for an additional \$200 per month (\$2,400 annually) and a contingency fee of 25 percent on revenue recovered through audits and monitoring activities. This contingency fee is on a retroactive basis only, therefore limiting the fee.

The costs for each consultant are summarized in Table 1.

<b>Table 1: Comparison Overview</b>		
<i>Scope of Services</i>	<i>Avenu</i>	<i>HdL</i>
Sales and Use Tax Audit and Monitoring services	15%	15%
Sales Tax Analytics and Reporting	\$5,932.88	\$6,000.00 (subject to annual CPI adjustment)
Local Tax Auditing and Monitoring	Included above	\$2,400 (25% counting fee)
Business License Audits and Monitoring	32%	35%
<b>Consulting Hourly Rates:</b>		
Principal	\$200 per hour	\$325 per hour
IT Support	\$150 per hour	\$295 per hour
Senior Analyst	\$125 per hour	\$245 per hour
Analyst	\$100 per hour	\$195 per hour
Optional: Transaction Tax Audit/Monitoring	32%	35%

There is an additional cost of approximately \$2,400 per year associated with the change to HdL Companies. This cost is for Measure K sales tax auditing, monitoring, and reporting services.

Additionally, the proposed scope of services includes sales and use tax management services, which provides City staff access to the sales tax database, detailed quarterly reports to include top sales tax producers, legislative updates, budget projections, and continual monitoring. Consulting services include assisting City staff in maximizing sales and use tax revenue. Both of these services will include Measure K local sales tax.

Another service included is the auditing and monitoring of business license transaction tax revenue. This service includes the audit and review of businesses who are potentially out of compliance with the City's business license regulations. The consultant will charge a 35 percent contingency fee on all recovered revenue.

While the fees for HdL exceed those of Avenu, staff expects to receive optimum sales tax services and projections. HdL's team has extensive economic development, finance, and local government experience that allows them to analyze the City's revenue in detail and provide relevant, useful, and timely information and financial strategies. As a result, staff is recommending that the Council approve a contract with HdL.

**FINANCIAL IMPACT:**

The fiscal impact is not fully known at this time; however, there are additional fees of approximately \$2,400 annually. The contract will result in an increase in sales tax revenue by way of sales tax error corrections and business license compliance efforts. The fees noted as contingency fees will be paid from recovered revenues the City would not have otherwise received.

**CONSISTENCY WITH THE VISION MADERA 2025 PLAN:**

Although approval of the item is not specifically addressed in the Vision 2025 Plan, the requested action will provide the City with analytical data and redirected sales and use tax revenue and enhanced business license revenue, assisting in achieving the Vision Statement of a well-planned City.

**ALTERNATIVES:**

Council may elect to not approve the contract and continue with Avenu or not retain sales and use tax consulting services.

**ATTACHMENTS:**

1. Resolution approving an agreement with HdL Companies
  - a. Exhibit A: Agreement for sales, use, and transactions tax audit and information services/business license tax discovery/business license tax audit services
2. Resolution authorizing the examination of sales, use, and transaction tax records on file with the California Department of Tax and Fee Administration by designated City officials and HdL Companies

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA, CALIFORNIA, APPROVING AN AGREEMENT WITH HINDERLITER, DE LLAMAS & ASSOCIATES (HdL) COMPANIES FOR SALES, USE AND TRANSACTIONS TAX AUDIT AND INFORMATION SERVICES/BUSINESS LICENSE TAX DISCOVERY/BUSINESS LICENSE TAX AUDIT SERVICES**

**WHEREAS**, the City of Madera (City) is desiring to obtain services related to local tax compliance discovery and audit services; and

**WHEREAS**, HdL Companies is a consulting firm that provides such services ; and

**WHEREAS**, an agreement has been prepared between the City and HdL Companies that will provide the City with sales, use, and transactions tax audit services and information services, business license tax discovery, and business license tax audit services; and

**WHEREAS**, said agreement is in the best interests of the City and HdL Companies.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA** hereby resolves, finds, determines, and orders as follows:

1. The above recitals are true and correct.
2. The Agreement with HdL Companies, a copy of which is attached to this resolution as Exhibit A, is approved.
- 4.
5. This resolution is effective immediately upon adoption.

\* \* \* \* \*

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA AUTHORIZING EXAMINATION OF SALES, USE AND TRANSACTIONS TAX RECORDS ON FILE WITH THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION BY DESIGNATED CITY OFFICIALS AND HINDERLITER, DE LLAMAS & ASSOCIATES COMPANIES**

**WHEREAS**, pursuant to Madera Municipal Code Section 8-2.04, the City of Madera entered into a contract with the California Department of Tax and Fee Administration (CDTFA) to perform all functions incident to the administration and collection of the local sales and use taxes; and

**WHEREAS**, the City Council of the City of Madera deems it desirable and necessary for authorized representatives of the City to examine confidential sales, use, and transactions tax records of the CDTFA pertaining to sales, use, and transactions taxes collected by the CDTFA for the City pursuant to that contract; and

**WHEREAS**, the City deems it necessary for authorized representatives of the City to examine confidential sales, use, and transactions tax records of the Board pertaining to sales, use and transactions taxes; and

**WHEREAS**, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of CDTFA records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from sales, use, or transactions tax records of the CDTFA; and

**WHEREAS**, Section 7056 of the California Revenue and Taxation Code requires that any person designated by the City shall have an existing contract to examine City's sales, use, and tax records.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MADERA HEREBY RESOLVES, FINDS, AND ORDERS AS FOLLOWS:**

**Section 1.** That the City Manager, Director of Financial Services, or other officer or employee of the City designated in writing by the City Manager to California Department of Tax and Fee Administration (hereafter referred to as CDTFA) is hereby appointed to represent the City with authority to examine all of the sales, use, and transactions tax records of the CDTFA pertaining to sales, use, and transactions taxes collected for the City by the CDTFA pursuant to the contract between the City and CDTFA. The information obtained by examination of CDTFA records shall be used for purposes related to the collection of the City's sales, use, and transactions taxes by the CDTFA pursuant to the contract.

**Section 2.** That the City Manager, Director of Financial Services, or other officer or employee of the City designated in writing by the City Manager to the CDTFA, is also hereby appointed to represent the City with the authority to examine those sales, use, and transactions tax records of the CDTFA for purposes related to the following governmental functions of the City:

- (a) City administration
- (b) Revenue management and budgeting

- (c) Community and economic development
- (d) Business license tax administration

The information obtained by examination of CDTFA records shall be used only for those governmental functions of the City listed above.

**Section 3.** That Hinderliter, deLlamas & Associates Companies is hereby designated and authorized to examine all of the sales, use, and transactions tax records of the CDTFA pertaining to all sales, use, and transactions taxes collected for the City by the CDTFA.

The entity designated by this section meets all of the following conditions:

- a) has current access to the Bradley burns sales records;
- b) is required by that contract to disclose the information contained in, or derived from those sales, use, and transactions tax records only to an officer or employee authorized under Section 1 (or Section 2) of this resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales and transactions and use tax records after that contract has expired.

**BE IT FURTHER RESOLVED** that the information obtained by examination of CDTFA records shall be used only for purposes related to the collection of the City's sales, use, and transactions taxes by the CDTFA pursuant to the contracts between City and the CDTFA and for purposes relating to the governmental functions of City listed in Section 2 of this resolution.

**Section 4.** This resolution supersedes all prior sales, use, and transactions tax resolutions of the City adopted pursuant to subdivision (b) of the Revenue and Taxation Code Section 7056.

\*\*\*\*\*

**AGREEMENT FOR SALES, USE AND TRANSACTIONS TAX AUDIT AND  
INFORMATION SERVICES / BUSINESS LICENSE TAX DISCOVERY /  
BUSINESS LICENSE TAX AUDIT**

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”) by and between the CITY OF MADERA, 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”) and business license tax revenues can be increased through a system of continuous monitoring, identification and correction of errors, and

WHEREAS, an effective program of sales and use tax and business license tax management will improve identification of economic opportunities; provide for more accurate revenue forecasting; and assist in revenue collections; and

WHEREAS, CITY desires the combination of database management, report preparation and analysis necessary to effectively manage its sales and use tax base; the recovery of revenues erroneously under-reported, allocated to other jurisdictions and allocation pools; and to maximize its financial and economic planning; and

WHEREAS, CONTRACTOR has the programs, equipment and personnel required to deliver the sales and use tax related 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 (collectively, the “Services”):

### A. SALES TAX AND ECONOMIC ANALYSIS SERVICES

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 1998-1999 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 updated reports following each calendar quarter identifying changes in sales by individual businesses, business groups and categories and by geographic area. These reports may include, without limitation, quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments, and quarterly reconciliation worksheets to assist with budget forecasting. CONTRACTOR shall meet quarterly with CITY.
3. CONTRACTOR shall additionally provide following each calendar quarter a summary analysis for the CITY to share with Council Members Chambers of Commerce, other economic development interest groups and the public that analyze CITY’S sales tax trends by major groups, and geographic areas without disclosing confidential information.
4. CONTRACTOR shall make available to CITY staff CONTRACTOR’s web-based sales tax computer software program containing sellers permit and quarterly allocation information for all in-city business outlets registered with the Department of Tax and Fee Administration and updated quarterly. This software shall allow CITY staff to search businesses by street address, account number, business name, business type and keyword, arrange data by geographic area, and print out a variety of reports.

## B. ALLOCATION AUDIT AND RECOVERY SERVICES

1. CONTRACTOR shall conduct initial and on-going sales, use and transactions 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 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.

## C. DEFICIENCY/ALLOCATION REVIEWS AND RECOVERY

1. CONTRACTOR shall conduct on-going reviews to identify and correct unreported transactions and tax payments and distribution errors thereby generating previously unrealized revenue for the CITY. Said reviews shall include:
  - (i) 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 “K” CITY boundaries, and therefore subject to transactions tax.

- (ii) 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.
  - (iii) Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
  - (iv) 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 “K” Transactions Tax District.
2. CONTRACTOR 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. CONTRACTOR shall prepare and submit to the Department of Tax and Fee Administration all information necessary to correct any allocation errors and deficiencies that are identified and shall follow-up with the individual businesses and the California Department of Tax and Fee Administration to ensure that all back quarter payments due the CITY are recovered.

#### D. DATA BASE MANAGEMENT, REPORTS AND STAFF SUPPORT

1. CONTRACTOR shall establish a database containing all applicable Department of Tax and Fee Administration (CDTFA) registration data for each business within the Measure “K” 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR shall make available to CITY the HdL proprietary software program and Measure “K” database containing all applicable registration and quarterly allocation information for CITY business outlets registered with the Department of Tax and Fee Administration. The database will be updated quarterly.

#### E. CONSULTING AND OTHER OPTIONAL SERVICES

CONTRACTOR may, from time to time in its sole discretion, consult with CITY staff, including without limitation, regarding (i) technical questions and other issues related to sales, use and transactions tax; (ii) utilization of reports to enhance business license collection efforts; and (iii) sales tax projections for proposed annexations, economic development projects and budget planning. In addition to the foregoing optional consulting services, CONTRACTOR may, from time to time in its sole discretion, perform other optional Services, including without limitation, negotiating/review of tax sharing agreements, establishing purchasing corporations, and meeting with taxpayers to encourage self-assessment of use tax.

#### F. BUSINESS LICENSE TAX DISCOVERY

Enriched Data Portfolio / Lead Identification – Utilizing data provided by the City, as well as the HdL Enriched Data Portfolio (EDP), HdL’s team builds an enhanced listing of entities subjected to licensure or taxation including, but not limited to, those businesses physically located in the City, itinerant businesses, and entities participating in the sharing economy such as short-term rentals (STRs), drive sharing services and others. These entities are electronically matched to the existing files of the City using advanced data matching algorithms, allowing HdL staff to identify which entities are compliant and which entities require follow up.

Field Surveys – Experienced field crews, equipped with the most advanced tools available (mobile mapping/GPS systems, tablet computers pre-loaded with various City and state-wide databases, etc.) may canvass commercial areas of the City to develop and enhance the leads identified in the EDP. Field Surveys provide additional inventories of active businesses as well as to provide on-site verifications of data culled from other sources.

Exception Resolution – Records are reviewed by our skilled team members, filtering out records that may lead to erroneous contacts. This extra step allows staff to find additional revenues not otherwise identifiable through electronic means and assists in reducing potential complaints levied at City staff and management from pursuit of false positives.

Compliance Communication and Outreach – Upon exception resolution, HdL staff initiates contact with the identified entities through a series of City approved communication methods. HdL makes every effort to simplify the process for taxpayers and utilizes a variety of mediums for communication including mail, telephone, email and web-site access. Potential non-compliant entities are notified of their options to comply or dispute their non-compliant status. Initial notification packets include everything a business needs to become compliant and multiple methods of resolving their accounts.

Business Support Center – HdL operates a business support and service center where the business community can access expert staff during normal business hours. Businesses calling our toll-free line can expect minimal hold times along with access to a variety of options which include filing support, payment options, resolution of specific tax issues and other services designed to reduce the burden of registering and filing taxes. Our team of experts, including our resident Certified Revenue Officers (CRO), implements a business friendly and education centric approach to supporting the business community in all aspects of the management and compliance process.

Business Support Center Online – Businesses are encouraged to take advantage of the range of services available on-line, 24 hours a day, seven days a week. With *HdL Flex File*, businesses can choose to file their new business registration as well as make payments via our on-line filing portal. In addition to filing and paying for taxes, businesses can obtain copies of applications, general support and FAQs, schedule appointments and request copies of their tax registration all with the click of a button. Our on-line services underscore HdL's commitment to excellence in customer service and education by continually improving the registration and payment experience for the business community.

Document Submission / Processing – Whether the taxpayer chooses to respond by mail, email or our online filing website, each application submission is reviewed for completion and accuracy prior to processing. Any additional documentation needed to complete the approval of a submission, such as a home occupation permit, can also be requested or forwarded to other City departments either as a pre-requisite or as a courtesy to the business. All submissions are filed and stored electronically and made available to the City via standard reporting processes or upon request.

Invoicing – Once an application is approved, invoices are forwarded to the taxpayer indicating detailed tax calculations and balances owed. Taxpayers are provided the opportunity to pay their balances via mail, online, or over the phone services. Taxpayers will also have continued access to our Business Support Center for any questions or disputes arising from the invoice process.

Registry Update – Upon collection of all requirements which may include the payment, application and/or other documentation, HdL will prepare a Registry Update package to include payment as well as copies of all taxpayer correspondence and other relevant information. Data in the City registry file stored in the HdL Prime Software Suite is updated daily with packages from the Compliance Management Services. Once completed, the business will be processed through the standard processes approved through the HdL Operations Management Component.

#### G. BUSINESS LICENSE TAX AUDITS

Analysis & Selection – Audit candidates are selected using a variety of selection methodologies developed by our audit team using decades of business license tax audit experience. Preliminary analysis reports on each business selected are shared with the City prior to moving through the audit phases.

Audit Notification & Scheduling – Businesses selected by HdL and approved by the City are sent a letter notifying them of a scheduled Compliance Analysis Audit. Every effort is made to promote a positive experience for the taxpayer. A detailed description of the requirements and relevant documentation required for the audit is provided to the business 2 weeks in advance of the proposed audit date. If the business is unable meet the audit date selected by the City all efforts to reschedule the audit to a more accommodating date will be made. Businesses are also afforded the opportunity to schedule flexible appointment times by contacting the Business Support Center or visiting our online support center.

Compliance Analysis & Audit – The HdL audit team will audit the financial records of the business to determine compliance with business tax regulations. HdL validates taxing variables such as gross receipts and other relevant information for determining compliance. In addition to identifying underreporting issues, the HdL Audit Program will also focus on other compliance related issues such as assuring correct classifications, multiple location allocation, apportionment issues, and identifying business to business relationships that may create tax liability for 3<sup>rd</sup> parties.

Audit & Compliance Report – Upon completion of the audit and analysis, and prior to additional actions, a compliance report will be generated and reviewed with the City. The report will indicate specific results of the review and recommended future actions. Documentation that substantiates the findings in the report will be included with the report to assist the City and HdL in determining next step of the process.

Deficiency and Commendation Notification – Upon final review of the audit and analysis report businesses that are found to have deficiencies will be notified of the findings as well as the payment and appeal processes. HdL will also work with businesses found to be deficient to explain the current findings and educate taxpayers on proper future filing procedures to prevent future errors and deficiencies. Businesses found compliant, will be sent a commendation letter thanking them for their compliance.

Invoicing & Collections – Business found to be underreporting are invoiced through the standard City approved collections process. Balances are collected and remitted along with supporting documentation to the City through the approved remittance processes.

### III. CONSIDERATION

- A. CONTRACTOR shall provide the sales tax and economic analysis Services described in Section II-A above for a fee of **\$500** per month, commencing with the month of the Effective Date (hereafter referred to as “monthly fee”). The monthly fee shall be invoiced quarterly in arrears and shall be paid by CITY no later than 30 days after the invoice date. 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 be further paid **15%** of all new and recovered sales, use and transactions tax revenue received by the CITY as a result, in whole or in part, of the allocation audit and recovery services described in Section II-B above (hereafter referred to as “audit fee”), including without limitation, any reimbursement or other payment from any state fund and any point of sale misallocations.

1. The audit fee shall be paid even if CITY assists, works in parallel with, and/or incurs attorneys' fees or other costs or expenses in connection with any of the relevant Services. Among other things, the audit fee applies to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the allocation audit by CONTRACTOR and confirmation of corrections by the California Department of Tax and Fee Administration. CITY shall pay audit fees upon CONTRACTOR'S submittal of evidence of CONTRACTOR'S work in support of recovery of subject revenue, including, without limitation, copies of CDTFA 549-S petition forms of any other correspondence between CONTRACTOR and the Department of Tax and Fee Administration or the taxpayer.
  2. For any increase in the tax reported by businesses already properly making tax payments to CITY, it shall be CONTRACTOR's responsibility to support in its invoices the audit fee attributable, in whole or in part, to CONTRACTOR's Services.
- C. CONTRACTOR shall be paid **\$200** monthly billed quarterly for the transaction district tax reports that we include with the quarterly sales tax analyses. CONTRACTOR 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 CONTRACTOR (hereafter referred to as "audit fees"). New revenue shall not include any amounts determined and verified 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 those specific quarters identified as being missing and/or deficient following completion of the audit by CONTRACTOR and confirmation of corrections by the California Department of Tax and Fee Administration but shall not apply prospectively to any future quarter. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.
- D. CONTRACTOR shall invoice CITY for any consulting and other optional Services rendered to CITY in accordance with Section II-E above based on the following hourly rates on a monthly or a quarterly basis, at CONTRACTOR's option. All such invoices shall be payable by CITY no later than 30 days following the invoice date. CITY shall



not be invoiced for any consulting Services totaling less than an hour in any month. The hourly rates in effect as of the Effective Date are as follows:

Principal	\$325 per hour
Programmer	\$295 per hour
Senior Analyst	\$245 per hour
Analyst	\$195 per hour

CONTRACTOR may change such hourly rates from time to time upon not less than 30 days' prior written notice to CITY.

- E. 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.
- F. 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).
- G. 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.
- H. Tax and Fee Administration Fee:
  - 1. Business License Tax Discovery **35%** of revenues collected
  - 2. Business License Tax Audit **35%** of revenues collected

#### **IV. CONFIDENTIALITY; OWNERSHIP/USE OF INFORMATION**

- A. 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. Section 7056 specifies the conditions under which a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.
- B. 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:

1. CONTRACTOR 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 Revenue and Taxation Code section 7200 et.seq.
  2. 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.
  3. 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.
  4. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales, use or transactions and use tax records, after this Agreement has expired. Information obtained by examination of 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.
- C. Software Use. CONTRACTOR hereby provides authorization to CITY to access CONTRACTOR'S Sales Tax website if CITY chooses to subscribe to the software and reports option. The website shall only be used by authorized CITY staff. No access will be granted to any third party without explicit written authorization by CONTRACTOR. CITY shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by CITY of said software, or any right of CITY to sell said software or the use of same, or any right to use said software for the benefit of others. This software use authorization is not transferable. Upon termination or expiration of this Agreement, the software use authorization shall expire, and all CITY staff website logins shall be de-activated.
- D. Proprietary Information. As used herein, the term "proprietary information" means all information or material that has or could have commercial value or other utility in

CONTRACTOR's business, including without limitation: CONTRACTOR'S (i) computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; (iii) business processes; (iv) marketing plans, analysis and strategies; and (v) materials and techniques used; as well as the terms and conditions of this Agreement. Except as otherwise required by law, CITY shall hold in confidence and shall not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by CITY in connection with this Agreement. The obligations imposed by this Section IV-D shall survive any expiration or termination of this Agreement or otherwise. The terms of this Section IV-D shall not apply to any information that is public information.

## **V. 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 any audit fee owing to CONTRACTOR has been paid.

## **VI. LICENSE, PERMITS, FEES AND ASSESSMENTS**

CONTRACTOR shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the Services. 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.

## **VII. TERMINATION**

This Agreement may be terminated for convenience 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 perform Services through the

date of termination. Following termination of this Agreement, CITY shall continue to timely pay CONTRACTOR's invoices for Services performed and not paid for prior to termination. Anything to the contrary herein notwithstanding (and without limitation on the foregoing sentence), CITY shall continue to pay to CONTRACTOR the audit fee for tax payments received by CITY after termination of this Agreement from (i) state fund transfers for back quarter reallocations and the first eight consecutive calendar quarters following completion of the allocation audit by CONTRACTOR and confirmation of corrections by the California Department of Tax and Fee Administration; and (ii) businesses identified by CONTRACTOR pursuant to Section III-B-2 above, to the extent such businesses commence or continue to make increased tax payments during the first 24 months following termination of this Agreement.

## **VIII. INDEPENDENT CONTRACTOR**

CONTRACTOR shall perform the services hereunder as an independent contractor and shall furnish such services in its 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. 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 Madera 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.

## **X. NON-ASSIGNMENT**

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

## **XI. 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.

## **XII. INDEMNIFICATION**

With respect to losses, claims, liens, demands and causes of action arising out of the CITY's use of the results of CONTRACTOR's services as provided to the City pursuant to this Agreement, CONTRACTOR hereby agrees to protect, defend, indemnify, and hold the CITY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments , penalties, interest, court costs, legal fees, and all other expenses incurred by the CITY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the CITY).

CITY hereby agrees to protect, defend, indemnify, and hold CONTRACTOR free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character arising from CONTRACTOR's performance or lack of performance under this Agreement including, but not limited to, the amounts of judgments , penalties, interest, court costs, legal fees, and all other expenses incurred by CONTRACTOR arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the CONTRACTOR).

Each party to this Agreement agrees to investigate, handle, respond to, provide defense for, and defend at its sole expense any such claims, demand, or suit for which it has agreed to indemnify the other party pursuant to this paragraph. Each party also agrees to bear all other costs and expenses related to its indemnity obligation, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the CITY or to enlarge in any way the liability of CONTRACTOR or the CITY but is intended solely to provide for indemnification of each party from liability for damages or injuries to third persons or property arising from this contract or agreement on the terms set forth in this paragraph.

### **XIII. IRREPARABLE HARM**

CONTRACTOR and CITY each understands and agrees that any breach of this Agreement by either of them may cause the other party hereto irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that such other party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any further breach and for such other relief as such other party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to such other party at law or in equity. The parties hereto expressly waive the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction hereunder for the posting of a bond.

### **XIV. DISPUTE RESOLUTION**

The Parties agree to make a diligent, good faith attempt to resolve any claim, controversy or dispute arising out of or relating to this Agreement or concerning the breach or interpretation thereof. If a dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, the parties agree to resolve the dispute pursuant to the following procedures. Each Party shall designate an authorized representative to negotiate the dispute and said representative will attempt to resolve the dispute by any means within their authority.

If the issue remains unresolved after thirty (30) days, the Parties will resolve any remaining dispute through (non-binding) arbitration. The non-binding arbitration process will provide for the selection by both Parties of a disinterested third person arbitrator within thirty (30) days. If the Parties cannot agree upon an arbitrator, then a single neutral arbitrator will be appointed pursuant to Section 1281.6 of the Code of Civil Procedure. The place of the arbitration shall be in Madera County, California. The arbitrator will follow the substantive

laws of the State of California, including rules of evidence, and the arbitrator's decision will be supported by substantial evidence. The arbitrator will have no power, authority or jurisdiction to award any punitive or exemplary damages. The award will be made within six (6) months, and the prevailing Party will be entitled to an award of reasonable attorneys' fees, CONSULTANT and expert witness fees, and any and all costs for services rendered to or for such prevailing Party. If non-binding arbitration does not result in settlement of the dispute within six (6) months, either Party may pursue other legal remedies for a determination of the dispute.

This provision is not intended to, nor shall it be construed to, change the time periods for filing any claim or action under Government Code Sections 900, et seq. This dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either party initiating litigation. By executing this Agreement, you are agreeing to the dispute resolution process described in this section and are giving up any rights you might possess to have the dispute litigated in a court or by jury trial.

\_\_\_\_\_  
CITY (initial)

\_\_\_\_\_  
CONSULTANT (initial)

## **XV. 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 law 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 Madera, or the U.S. District Court for the Eastern District of California. 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.

## **XVI. ATTORNEYS' 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.

#### **XVII. 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.

#### **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, 120 S. State College Blvd., Suite 200, Brea, CA 92821; and notices to CITY shall be sent to CITY OF MADERA, 205 W Fourth Street, Madera, CA 93637.

#### **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.

**XXI. COMPLIANCE WITH ALL LAWS**

Contractor shall comply with all local, state, and federal laws in the performance of this Agreement.

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 MADERA

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Clerk

CONTRACTOR:  
HINDERLITER, DE LLAMAS & ASSOCIATES  
A California Corporation

By: \_\_\_\_\_  
Andrew Nickerson, President

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney