

**TAX AUDIT, ANALYSIS, FORECASTING, AND REPORTING SERVICES  
AGREEMENT BETWEEN HINDERLITER, DE LLAMAS AND ASSOCIATES AND  
CITY OF SANTA ANA**

THIS AGREEMENT is made and entered into on this 16th day of July, 2024 by and between Hinderliter, de Llamas and Associates, ("Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California ("City").

**RECITALS**

- A. On February 8, 2024, the City issued Request for Proposal No. 24-010 ("RFP") by which it sought qualified contractors to provide special skill and knowledge in the field of providing audit, revenue recovery, analysis, forecasting, and reporting services for various tax revenues.
- B. Consultant submitted a responsive proposal that was among those selected by the City. Consultant represents that Consultant is able and willing to provide such services to the City, as described in the scope of work that was included in the RFP.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

**NOW THEREFORE**, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

**1. SCOPE OF SERVICES**

Consultant shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in **Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E**, attached hereto and incorporated by reference.

**2. COMPENSATION**

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in **Exhibit A, Exhibit B, Exhibit C, Exhibit D, and Exhibit E**. The total amount to be expended during the term of this Agreement shall not exceed \$1,077,784.
- b. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. City and Consultant agree that all payments due and owing under this Agreement shall be made through Automated Clearing House (ACH) transfers. Consultant agrees to execute the City's standard ACH Vendor Payment Authorization and provide required

documentation. Upon verification of the data provided, the City will be authorized to deposit payments directly into Consultant's account(s) with financial institutions. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by City.

### **3. TERM**

This Agreement shall commence on the date first written above for a **three (3) year term** with the option for the City to grant up to **two 1-year** renewals, exercisable by a writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 15, below.

### **4. INDEPENDENT CONTRACTOR**

Consultant shall, during the entire term of this Agreement, be construed to be an independent Consultant and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

### **5. OWNERSHIP OF MATERIALS**

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

### **6. INSURANCE**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or subcontractors.



## **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with combined limit of \$1,000,000.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident, policy, employee for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant’s profession, with limit no less than \$2,000,000 per occurrence or claim, \$4,000,000 aggregate.

Insurance requirements above can be met with primary and umbrella/excess insurance policies. If Consultant maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### ***Additional Insured Status***

City, its City Council, officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL and Automobile Liability policy(ies) with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations.

#### ***Primary Coverage***

For any claims related to this contract, the selected Proposer’s insurance coverage shall be primary coverage as respects City, its City Council, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its City Council, officers, officials, employees, agents, or volunteers shall not contribute with it.

#### ***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, suspended, voided, reduced in coverage or in limits, non-renewed by the carrier, or materially changed except after thirty (30) days prior written notice has been given to City. Ten (10) days prior written shall be provided to City for policy cancellation or non-renewal due to non-payment of premium.

### ***Waiver of Subrogation***

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against City by virtue of the payment of any loss under the CGL, Automobile Liability, Worker's Compensation and/or Professional Liability insurance policies. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from any insurer(s).

### ***Severability***

A severability of interest provision must apply for all the additional insureds, ensuring that Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

### ***Certificate Holder***

Certificate Holder on each Evidence of Insurance certificate shall be: City of Santa Ana, 20 Civic Center Plaza, Santa Ana, CA 92701.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by City. City may require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state of California with a current

A.M. Best rating of no less than A:VII, unless otherwise acceptable to City .

### ***Claims Made Policies***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

### ***Verification of Coverage***

Consultant shall furnish City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the policies listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them.



City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

***Special Risks or Circumstances***

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**7. INDEMNIFICATION**

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

**8. INTELLECTUAL PROPERTY INDEMNIFICATION**

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

**9. RECORDS**

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created



pursuant to this Agreement during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

#### **10. CONFIDENTIALITY**

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

#### **11. CONFLICT OF INTEREST CLAUSE**

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

#### **12. NON-DISCRIMINATION**

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

#### **13. EXCLUSIVITY AND AMENDMENT**

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each

party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

#### **14. ASSIGNMENT**

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other contractors retained by City.

#### **15. TERMINATION**

This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

#### **16. WAIVER**

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

#### **17. JURISDICTION - VENUE**

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.



## **18. PROFESSIONAL LICENSES**

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

## **19. NOTICE**

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

City Clerk  
City of Santa Ana  
20 Civic Center Plaza (M-30)  
P.O. Box 1988  
Santa Ana, CA 92702-1988  
Fax: 714- 647-6956

With courtesy copies to:

Executive Director, Finance & Management  
Services Agency  
City of Santa Ana  
20 Civic Center Plaza (M-15)  
P.O. Box 1988  
Santa Ana, California 92702

To Consultant:

Richard Andrew Nickerson  
Chief Executive Officer  
Hinderliter, De Llamas & Associates  
120 S. State College Boulevard, Suite 200  
Brea, CA, 92821  
Fax: (714) 845-7364

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been



deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

## **20. REVENUE AND TAXATION CODE REQUIREMENTS**

Pursuant to California Revenue and Taxation Code Section 7056, the following provisions are required in this Agreement:

- a. Consultant is required to disclose information contained in, or derived from, those sales and use tax records or transaction and use tax records only to an officer or employee of the City who is authorized by Resolution to examine the information.
- b. Consultant is prohibited from performing consulting services for a retailer during the term of this Agreement.
- c. Consultant is prohibited from retaining the information contained in, or derived from, those sales and use tax records and transactions and use tax records, after this Agreement expires.

## **21. MISCELLANEOUS PROVISIONS**

- d. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

*[signatures on following page]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

**ATTEST:**

**CITY OF SANTA ANA**


\_\_\_\_\_  
Jennifer L. Hall  
City Clerk


\_\_\_\_\_  
Alvaro Nuñez  
Acting City Manager

**APPROVED AS TO FORM:**


SONIA R. CARVALHO  
City Attorney

**CONSULTANT:**

By:   
\_\_\_\_\_  
Andrea Garcia-Miller  
Assistant City Attorney

<p>DocuSigned by:  _____ D4C882557670418... Robert Gray Vice President</p>
--

RECOMMENDED FOR APPROVAL:

  
\_\_\_\_\_  
Kathryn Downs  
Executive Director  
Finance and Management Services Agency



## **EXHIBIT A**

### **SALES & USE TAX (BRADLEY-BURNS ALLOCATION) AND TRANSACTIONS & USE TAX (SANTA ANA MEASURE X)**

#### **SECTION I: SCOPE OF SERVICES**

##### **1. SALES AND USE TAX ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS**

- 1.1 Identify and advise the City of legislation potentially impacting City revenue, including pending legislation. Hinderliter, de Llamas and Associates (“HdL”) may be required to coordinate with the City’s contracted federal and state legislative advocacy consultants.
- 1.2 Establish a special database identifying the name, address, and quarterly allocations of all sales tax producers within the City. This database will be utilized to generate special reports to City on major sales tax producers by rank and category (i.e., top 100 tax payers), sales tax activity by categories, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.
- 1.3 Provide periodic updated reports to City 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. HdL shall meet quarterly by in person or virtually with City.
- 1.4 Shall additionally provide following each calendar quarter a summary analysis for City to share with Council Members, Chamber 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 individual tax records.
- 1.5 Establish a special database with California Department of Tax and Fee Administration (“CDTFA”) registration data for businesses within applicable district boundaries holding sellers’ permit accounts.
- 1.6 Periodically license for the limited, non-exclusive, non-transferable use by City’s staff certain of HdL’s web-based sales, use and/or transactions tax program(s) containing sellers permit, registration, allocation and related information for business outlets within City’s jurisdiction registered with the CDTFA.
- 1.7 Provide periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.

##### **2. ALLOCATION AND AUDIT RECOVERY SERVICES**

- 2.1 Conduct (when mutually agreed with City) initial and on-going sales and use tax audits of businesses to help identify and correct distribution and allocation errors, and to proactively affect favorable registration, reporting or formula changes thereby generating previously unrealized sales and use tax income for the City and/or recovering misallocated tax from 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.
- 2.2 Initiate contacts with the CDTFA and sales management and accounting officials in companies that have businesses where a probability of error exists to endeavor to help verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted



in a professional and courteous manner.

- 2.3 Prepare and submit to the CDTFA information for the purpose of correcting any identified allocation errors, and follow-up with individual businesses and the CDTFA to promote recovery by the City of back or prospective quarterly payments that may be owing.
- 2.4 If, during the course of its audit, HdL finds businesses located in the City's jurisdiction that are properly reporting sales and use tax but have the potential for modifying their operation to provide an even greater share to City, HdL may so advise City and collaborate with those businesses and City to encourage such changes.

### 3. TRANSACTIONS TAX ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS

- 3.1 HdL shall establish a database containing all applicable Department of Tax and Fee Administration (CDTFA) registration data for each business within the Measure "X" 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.
- 3.2 HdL 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.
- 3.3 HdL shall advise and work with City staff on planning and economic questions related to maximizing revenues, preparation of revenue projections and general information on transactions and use tax questions.
- 3.4 HdL shall make available to City the HdL proprietary software program and Measure "X" 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.

### 4. DEFICIENCY/ALLOCATION REVIEWS AND RECOVERY

- 4.1 HdL 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. 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 "X" City boundaries, and therefore subject to transactions tax.
  - b. Review of any significant one-time use tax allocations to ensure that there is 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 "X" Transactions Tax District.
- 4.2 HdL 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.
- 4.3 HdL 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.

## 5. TECHNICAL ASSISTANCE AND SUBJECT MATTER EXPERTISE (OPTIONAL)

5.1 HdL may provide additional hours of general consulting to be utilized on an as-needed basis at the City's request. Such assistance may include (i) technical questions and other issues related to sales, use and transactions tax, (ii) utilization of reports to enhance business license collection efforts, (iii) sales tax projections for proposed annexations, economic development projects and budget planning, (iv) negotiating/review of tax sharing agreements, (v) establishing purchasing corporations, (vi) meeting with taxpayers to encourage self-assessment of tax obligations, and (vii) other sales, use or transactions tax revenue-related matters.

## 6. CONFIDENTIALITY INFORMATION

6.1 Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a city, county or district may authorize persons other than such city, county or district's officers and employees to examine state sales and use tax records. The following conditions specified in Section 7056-(b)(1) of the State of California R&T Code are hereby made part of this Agreement:

- a. HdL is authorized by this Agreement to examine sales, use or transactions and use tax records of the CDTFA provided to City pursuant to contract under the Bradley-Burns Uniform Local Sales and Use Tax Law R&T Code Section 7200 *et seq.*
- b. HdL is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of City who is authorized by City resolution provided to the CDTFA to examine the information.
- c. HdL is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- d. HdL 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 the CDTFA 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 HdL 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.

## 7. SOFTWARE USE AND PROPRIETARY INFORMATION

7.1 Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a city, county or district may authorize persons other than such city, county or district's officers and employees to examine state sales and use tax records. The following conditions specified in Section 7056-(b)(1) of the State of California R&T Code are hereby made part of this Agreement:

- a. Software Use. HdL hereby provides authorization to City to access HdL'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 HdL. 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.

- b. 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 HdL’s business, including without limitation: HdL’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 shall survive any expiration or termination of this Agreement or otherwise. The terms of this Section shall not apply to any information that is public information.

## SECTION II: FEES & CHARGES

### 1. SALES AND USE TAX AND ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS

- 1.1 Fees for performing the sales tax and economic analysis/forecasting Services as described above shall initially be \$833.33 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 payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.
- 1.2 Fees may be increased once every fiscal year (as defined by the City, the period running from July 1<sup>st</sup> through June 30<sup>th</sup> the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%).
- 1.3 Fees for performing the allocation and audit recovery Services described above shall be 15% of all new, increased and recovered sales and use tax revenue received by the City as a result, in whole or in part, of the allocation audit and recovery services (hereafter referred to as “audit fee”). The fee shall be paid notwithstanding any related City assistance, work in parallel, and/or incurrence of attorneys’ fees or other costs or expenses in connection, with the relevant services.
- 1.4 The fee described above include, without limitation, State fund transfers received for back quarter reallocations and monies received in the second eight (8) consecutive reporting quarters following completion of HdL’s allocation audit and confirmation of the corrections by the CDTFA.
- 1.5 These fees shall be paid by City upon HdL’s submittal of evidence of HdL’s relevant services in support thereof, including, without limitation, copies of relevant communications between HdL and the CDTFA and/or taxpayers.

### 2. TRANSACTIONS TAX AND ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS

- 2.1 Fees shall be paid \$166.66 monthly billed quarterly for the transaction district tax reports that we include with the quarterly sales tax analyses. The monthly fee shall be invoiced quarterly in arrears and payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.
- 2.2 Fees may be increased once every fiscal year (as defined by the City, the period running from



July 1st through June 30th the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%).

3. ALLOCATION AND AUDIT RECOVERY SERVICES

3.1 Fees shall be paid 15% of the initial amount of new transactions or use tax revenue received by the City because of audit and recovery work performed by HdL, (hereafter referred to as "audit fees"). New revenue shall not include any amounts determined and verified by City or HdL to be increment attributable to causes other than HdL's work pursuant to this agreement. In the event, HdL is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, it shall be HdL'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 HdL and confirmation of corrections by the California Department of Tax and Fee Administration but shall not apply prospectively to any future quarter. HdL shall provide City with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

4. TECHNICAL ASSISTANCE AND SUBJECT MATTER EXPERTISE (OPTIONAL)

4.1 Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.

4.2 Fees may be increased once every fiscal year (as defined by the City, the period running from July 1st through June 30th the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%).

5. GENERAL PROVISIONS RELATING TO FEES

5.1 Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by the City.

5.2 Fees will be invoiced monthly to City for services performed during the prior month. Fees will be netted out of City's monthly revenue disbursement to the extent that HdL has commercially reasonable means to do so. Payment by City for any outstanding balance shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.

## **EXHIBIT B**

### **NON-REGULATORY BUSINESS LICENSE TAX**

#### **SECTION I: SCOPE OF SERVICES**

##### **1. BUSINESS LICENSE TAX ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS**

- 1.1 Identify and advise City of legislation potentially impacting City revenue, including pending legislation.
- 1.2 Prepare biannual revenue estimates and include assumptions. Represent the City for the purpose of obtaining information from businesses to assist with preparation of revenue estimates. Schedule biannual meetings with staff to review the estimates and assumptions.
- 1.3 Provide business audit services in accordance with the City's municipal code (Chapter 21), based on a plan and schedule mutually agreed upon by the City and Hinderliter, de Llamas and Associates ("HdL") with a minimum of 1 audit per year.
- 1.4 Represent the City for the purpose of examining records related to the applicable tax revenue. Schedule meetings with staff as needed.
- 1.5 Prepare documents to facilitate recovery of revenue and applicable penalties and interest, including requests for corrective action. This includes the identification, auditing, and discovering procedures to detect and recover unreported and/or underreported business license taxes (i.e., cross-referencing information with Sales Tax data to ensure licensing compliance).
- 1.6 Provide comparative information with other cities having a non-regulatory BLT.
- 1.7 When appropriate, provide recommended changes in business license policies/procedures to improve business license tax collection.

##### **2. COMPLIANCE SERVICES (OPTIONAL)**

- 2.1 Activities under this task are deemed optional and must therefore be pre-approved by the City before work may commence.
- 2.2 Identify and register businesses which are subject to licensure or taxation, collect known debt as pertains to business license or tax, and identify under-reported tax liability.
- 2.3 Discovery Services
  - a. Develop a list of businesses subject to City licensure or taxation.
  - b. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
  - c. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to City upon request.
  - d. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
  - e. Remit revenue to City no less than monthly, along with all business applications and any additional documentation.
- 2.4 Collection Services
  - a. Identify businesses subject to City licensure or taxation which have known debt to City and have failed to pay within an appropriate time frame.
  - b. Notify businesses of their options to comply or dispute their non-compliant status.



- c. Provide businesses with detailed invoicing and options to pay via website, mail and phone.  
Remit revenue to City no less than monthly.

### 3. ONLINE PAYMENT PROCESSING

3.1 HdL's services include PCI compliant payment processing services which supports both credit card and eCheck transactions.

#### 3.2 City Responsibilities

- a. As a condition to its receipt of the Service, City shall execute and deliver any and all applications, agreements, certifications or other documents required by HdL's payment processor, networks or other third parties whose consent or approval is necessary for the processing of Transactions by HdL's payment processor. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
- b. City hereby grants HdL the full right, power and authority to request, receive and review any data or records reflected in a Transaction report. City represents and warrants that it has the full right and authority to grant these rights.

## SECTION II: FEES & CHARGES

### 1. BUSINESS LICENSE TAX ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS

1.1 Fees for performing the economic analysis/forecasting services as described above shall be \$15,000 per year. This fee will be waived in the event that the City opts to utilize Compliance Services outlined in Section 2 as described above and HdL will instead charge the fees outlined in the following section.

### 2. COMPLIANCE SERVICES (OPTIONAL)

2.1 Fees for performing Compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).

- a. Fees for performing discovery Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.
- b. In the event that City discovers a non-compliant business and reports the business to HdL (including a calculation of all taxes/fees due), HdL will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
- c. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
- d. Fees for performing audit Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.
- e. After a business is brought to compliance, HdL will not be entitled to collect a portion of the renewal charges paid to the City.

2.2 HdL recognizes City's authority to waive or reduce the tax/fee debt of a business. Should City decide to do so for a business whose deficiency was identified by HdL, HdL shall be entitled to compensation in the amount of one-half (1/2) of the fees HdL would have otherwise earned.

Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a City voluntary election to waive, and thus, HdL would not be entitled to compensation related thereto under this provision.

- 2.3 The fee shall be paid notwithstanding any related City assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant services.
- 2.4 Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by City.
- 2.5 Fees will be invoiced monthly to City for services performed during the prior month. Fees will be netted out of City's monthly revenue disbursement to the extent that HdL has commercially reasonable means to do so. Payment by City for any outstanding balance shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.

### 3. PAYMENT PROCESSING

- 3.1 HdL will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or City funded model, as directed by City. City may switch between these models upon written request to HdL. Fees for each of these payment processing models are detailed here.
- 3.2 Taxpayer funded model – City authorizes HdL to collect each convenience fee from the taxpayer at time of payment.
  - a. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
  - b. ACH/eCheck processing - \$2.50 per transaction
- 3.3 City funded
  - a. Credit and debit card processing – 2.9% of transaction amount
  - b. ACH/eCheck processing - \$0.75 per transaction
- 3.4 Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
- 3.5 HdL reserves the right to review and adjust pricing related to payment processing services once every fiscal year (as defined by the City, the period running from July 1st through June 30th the following year). HdL will communicate any fee adjustments to the City in writing, with sixty (60) days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.



## **EXHIBIT C**

### **BUSINESS LICENSE TAX FOR CANNABIS BUSINESS**

#### **SECTION I: SCOPE OF SERVICES**

##### **1. PREPARE BIENNIAL MARKET ANALYSIS AND REVENUE ESTIMATES**

- 1.1 Hinderliter, de Llamas and Associates (“HdL”) shall prepare a brief market analysis of the cannabis industry in the City of Santa Ana including information and updates regarding pending legislation or regulatory changes that may impact the City’s cannabis program/revenues. HdL will also prepare biannual revenue estimates to inform City budgeting decisions. The analysis shall focus primarily on the cannabis retail sector and shall consider factors including the population of the City and the surrounding service area, average sales, leakage to licensed retailers in other nearby jurisdictions and the presence of unlicensed cannabis delivery services.
- 1.2 To inform this analysis, HdL shall work with the City to develop a questionnaire that will be provided to licensed cannabis businesses to help identify trends in pricing, sales and consumer preferences, along with other relevant information or observations the businesses may want to share. HdL shall engage with cannabis businesses on the City’s behalf as may be requested to discuss the information requests and to glean additional information or understanding where possible. Responses from this questionnaire will be used in conjunction with empirical data derived from other sources to provide the City with forward-looking projections for gross receipts and resulting City revenues.
- 1.3 HdL’s analysis shall also include a comparison of the City’s cannabis tax rates and revenues with those from other nearby or comparable jurisdictions. This analysis may be used by the City to inform budgeting decisions as well as discussions about possible changes to current cannabis business tax rates or related regulatory requirements.
- 1.4 It is anticipated that HdL’s analysis shall be provided in the form of a biannual 4 to 6-page memo for internal use by City staff. The actual length, format, content and use of the analysis shall be determined in consultation with City staff and may vary as needed or requested by the City. HdL will provide one initial draft report for staff to review and critique plus one iterative draft that will incorporate any requested revisions prior to providing the final report. Any additional drafts, iterations or documentation that may be requested by the City would be in addition to the costs shown in HdL’s Cost Proposal. HdL’s subject matter expert shall be available to meet with City staff biannually to review and discuss the analysis and revenue projections as well as any observations or recommended actions. This proposal assumes that such meetings would be conducted remotely.

##### **2. ANNUAL BUSINESS LICENSE TAX AUDIT SERVICES**

- 2.1 HdL will conduct an annual revenue audit of at least three (3) cannabis businesses to verify the accuracy of the revenue reported and remitted to the City during the review period and will recommend a tax adjustment should the audit reveal any variances in reported revenue. Such audit services shall be conducted in accordance with the City’s Municipal Code (Chapter 21, Articles XII and XIII, and Sec. 40-106). As part of the audit process, HdL will conduct a risk-based review of each business using our proprietary methodology, which was developed to specifically address the unique challenges associated with auditing the cannabis industry. Our methodology allows audit staff to cross-analyze multiple business records to identify reporting

variances, discrepancies and outliers to produce the most accurate measure of gross receipts on behalf of the City.

- 2.2 To initiate the process, the City shall provide HdL with a list of all licensed cannabis businesses subject to audit. HdL shall work with the City to determine the appropriate review period for each business and to develop a schedule for conducting all audits. As the time for each audit approaches, HdL will prepare a notification letter informing the licensee of the impending audit and providing a list of all records and documentation the business is required to provide, including remote access to the business's point-of-sale (POS) system where applicable. HdL recommends that the notification letter be sent by the City to communicate HdL's authority to conduct the audit and to encourage cooperation by the business.
- 2.3 The full annual audit shall include:
  - a. Review Point-of-Sale (POS) system structure
  - b. Review inventory system (subject to METRC data)
  - c. Analyze and compare POS data with other available data sources, including:
    - City cannabis tax returns
    - State tax returns
    - Federal tax returns
    - METRC sales and inventory data
    - CDTFA data
    - Bank statements
    - Sales receipts
    - Other financial documents as available
  - d. Identify any variances or over/under reporting
  - e. Calculate any taxes or fees due to the City
  - f. Prepare and issue report
- 2.4 Where cannabis cultivation is taxed on a square-footage basis, the audit shall include one annual site inspection to verify compliance with maximum permitted canopy area. Square footage audits may also consider documented findings from inspections by the City, DCC or other agencies, where available.
- 2.5 A business that holds multiple state cannabis licenses shall be considered a single business for audit purposes, provided that all licenses are held and operated under the same name, ownership, location, and a single tax ID number. Any variation may indicate separate business entities requiring separate audits. Any such determination shall be made on a case-by-case basis in consultation with the City.

### 3. FISCAL COMPLIANCE SITE VISITS (OPTIONAL)

- 3.1 Activities under this task are deemed optional and must therefore be pre-approved by the City before work may commence.
- 3.2 HdL shall conduct on-site fiscal compliance site visits of at least three (3) commercial cannabis businesses subject to an audit outlined in Task 2 or as otherwise requested by the City. The site visits shall seek to verify that all documentation and record keeping is in accordance with the City's requirements. HdL audit inspectors may be accompanied by City staff, if so desired, to assist them in gaining an understanding of each operator's internal controls and their procedures for recording and reporting sales to the City.
- 3.3 Each site visit shall be conducted concurrent with the annual cannabis business license tax audit for the business as described under Task 2. The timing for the site visit shall be determined in consultation with the City. HdL recommends that the site visit occur after the business has



provided all requested documents and has provided HdL with remote access to the POS system for purposes of running sales reports. This timing will allow HdL's auditors to familiarize themselves with the business' POS system and general sales figures so as to develop a list of specific issues, questions or concerns to be investigated during the site visit.

3.4 Prior to the site visit, HdL shall provide the operator with a questionnaire regarding the business' reporting, internal controls and inventory tracking. The questionnaire shall be developed in coordination with the City to ensure that any specific topics desired by the City are included. Responses to the questionnaire shall be verified during the site visit. If HdL identifies any issues of fiscal non-compliance during the site visit, the information shall be recorded and incorporated into the audit. Depending upon the nature of the issue, HdL may also advise the business of recommended best practices for improved compliance.

3.5 The cost for this service includes all of the following:

- a. Scheduling and coordination of the site visit with the permittee and City staff.
- b. Fiscal compliance site visit to ensure that each business complies with all City reporting and remitting requirements and related regulatory protocols for all of the following:
  - Point of Sale (POS) inventory control
  - Accurate books and records maintained for a minimum of 5 years
  - A complete set of books, invoices, sales records, bills, bank statements and all other necessary records
  - Any other items as may be requested by the City
- c. Preparation of a supplemental report to be incorporated into the cannabis business license tax audit under Task 2. The report shall detail any findings of the site visit and provide recommendations for changes or improvements to the business' reporting, record-keeping and inventory tracking practices where needed.
- d. All travel costs associated with the inspection.
- e. All phone, email and other communications involved in preparing for, scheduling and coordinating the inspections and providing the report.
- f. The cost for this service assumes that all site visits would be scheduled consecutively to minimize travel time and expense. This cost does not include any follow-up site visits, re-inspection or review of any supplemental documents provided to address or contest any findings of fiscal non-compliance, nor does it include any assistance with the appeal of any enforcement action by the City. Any costs associated with such additional services would be billed at HdL's hourly rate.

#### 4. TECHNICAL ASSISTANCE AND SUBJECT MATTER EXPERTISE (OPTIONAL)

4.1 HdL may provide additional hours of general consulting to be utilized on an as-needed basis at the City's request. Such assistance may include technical assistance, subject matter expertise, education, participation in conference calls, responding to staff inquiries via phone and email, reviewing staff reports to the City Council, assisting with responses to inquiries from the public, or other issues as may be requested by the City.

### SECTION II: FEES & CHARGES

#### 1. BIENNIAL MARKET ANALYSIS AND REVENUE ESTIMATES

1.1 Assumes 2 biennial reports per year at \$12,000 each, with an estimated cost of \$24,000 per year.

2. ANNUAL CANNABIS BUSINESS TAX AUDITS

- 2.1 Assumes a standard 12-month review period, charged at \$10,000 per audit.
- 2.2 HdL may be called upon to provide testimony or provide documentation during Administrative Hearings. Services related to preparation and participation in these Hearings shall be billed at HdL's hourly rates outlined in the table below.

3. FISCAL COMPLIANCE SITE VISITS (OPTIONAL)

- 3.1 If requested by the City will be charged at \$2,500 per site visit.

4. TECHNICAL ASSISTANCE AND SUBJECT MATTER EXPERTISE (OPTIONAL)

- 4.1 Any additional services that are not specifically enumerated herein shall be billed at HdL's hourly rates outlined in the table below. HdL will not be asked to review any supplemental information provided by applicants or businesses and will not be a part of any enforcement or collection action.
- 4.2 Appeals, arbitration, or civil litigation resulting from the findings of an inspection and/or audit may call upon participation from HdL. Any such additional reports, documentation or assistance that may be required would be in addition to the costs shown in the table below.

5. CONFLICTS OF INTEREST AND NON-DISCLOSURE

- 5.1 HdL Companies works for the benefit of public agencies and has no private-sector clients in the cannabis industry. All cannabis business information will be kept confidential by HdL and will not be shared internally beyond those HdL employees who are required to have access for purposes of conducting the work contemplated herein, or for administrative purposes as necessary.

6. DRAFTS AND FINAL WORK PRODUCTS

- 6.1 All work products assume one initial draft for review and comment, one iterative draft to incorporate any desired changes, and one final draft for presentation or publication. Additional drafts requested by the client may result in additional charges at HdL's hourly rate.

7. SERVICES BILLED AT HOURLY RATE

- 7.1 Service objectives shown as being billed at HdL's hourly rate may be billed up to the maximum estimated hours. HdL will not exceed the maximum estimated hours without first notifying the City and receiving written approval in advance.

8. HOURLY RATES AND FEES FOR HDL STAFF

- 8.1 The hourly rates for HdL staff mentioned in the sections above as shown in the table below. Any additional services requested by the client that are not specifically described in this agreement would be billed at the standard rate for the assigned staff person.
- 8.2 Rates and fees may be increased once every fiscal year (as defined by the City, the period running from July 1st through June 30th the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%). HdL will communicate any rate and fee adjustments to the City in writing, with sixty (60) days advance notice



TITLE	RATE
Director of Compliance	\$300
Senior Policy Advisor	\$300
Audit Manager	\$300
Compliance Inspector	\$235
Compliance Inspector	\$235
Senior Auditor	\$250
Senior Auditor	\$250
Auditor	\$235
Auditor	\$235
Auditor	\$235
Audit Analyst	\$225
Audit Analyst	\$225
Compliance Administrator	\$200

## **EXHIBIT D**

### **HOTEL VISITORS TAX**

#### **SECTION I: SCOPE OF SERVICES**

##### **1. HOTEL VISITORS TAX ECONOMIC ANALYSIS/FORECASTING SERVICES/REPORTS**

- 1.1 Hinderliter, de Llamas and Associates (“HdL”) shall identify and advise the City of legislation potentially impacting City revenue, including pending legislation.
- 1.2 Prepare biannual revenue estimates and include assumptions. Represent the City for the purpose of obtaining information from hotels to assist with preparation of revenue estimates. Schedule biannual meetings with staff to review the estimates and assumptions.
- 1.3 Conduct a minimum of two (2) HVT audits per year in accordance with the City’s municipal code (Chapter 35, Article V), based on a mutually agreed upon plan and schedule. Represent the City for the purpose of examining records related to the applicable tax revenue. Schedule meetings with staff as needed.
- 1.4 Prepare documents to facilitate recovery of revenue and applicable penalties and interest, including requests for corrective action.
- 1.5 Provide comparative information with other cities having a Hotel Visitors Tax, commonly referred to as a Transient Occupancy Tax (TOT).

##### **2. OPERATIONS MANAGEMENT SERVICES**

- 2.1 Activities under this task are deemed optional and must therefore be pre-approved by the City before work may commence.
- 2.2 Establish and maintain database of Client lodging providers.
- 2.3 Receive and process registrations, tax returns and payments in a timely fashion.
- 2.4 Provide lodging providers multiple options for submitting registrations, tax returns, payments, or support requests (including via website, email, mail, phone, and fax. Consultant tax specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 2.5 Remit revenue to Client no less than monthly.
- 2.6 Provide Client staff access to website portal offering lodging provider registry inquiry and reporting capabilities.
- 2.7 Endeavor to ensure accurate filings of returns by consistently monitoring returns, providing compliance audits, and educating lodging providers as mutually agreed to by Client and Consultant.
- 2.8 Provide analysis reports monthly and annually provide revenue trends and key insights on Client lodging providers.

##### **3. ONLINE PAYMENT PROCESSING**

- 3.1 Consultant’s services include PCI compliant payment processing services which supports both credit card and eCheck transactions.
- 3.2 Client Responsibilities
  - a. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by HdL’s payment processor, networks or other third parties whose consent or approval is necessary for the processing of Transactions by HdL’s payment processor. “Network” is an entity or



association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.

- b. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

## SECTION II: FEES & CHARGES

### 1. FEES FOR SERVICES

- 1.1 Fees for performing the services outlined above shall be \$950.00 per year for each filing property. The City in its sole discretion may opt out of individual tasks listed above; however, HdL will be entitled to full compensation of the fee presented here. Adjustment to the fee must be done in writing and agreed upon between the City and HdL.
- 1.2 Fees for performing discovery Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.
- 1.3 Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by the City
- 1.4 Fees may be increased once every fiscal year (as defined by the City, the period running from July 1st through June 30th the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%).
- 1.5 Fees will be invoiced monthly to City for services performed during the prior month. Fees will be netted out of City's monthly revenue disbursement to the extent that HdL has commercially reasonable means to do so. Payment by City for any outstanding balance shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.

### 2. PAYMENT PROCESSING

- 2.1 Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or Client funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.
- 2.2 Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
  - a. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
  - b. ACH/eCheck processing - \$2.50 per transaction
- 2.3 Client funded
  - a. Credit and debit card processing – 2.9% of transaction amount
  - b. ACH/eCheck processing - \$0.75 per transaction
- 2.4 Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.

2.5 Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.



## **EXHIBIT E**

### **UTILITY USERS TAX FOR ELECTRIC, GAS & TELECOMMUNICATIONS SERVICES**

#### **SECTION I: SCOPE OF SERVICES**

##### **1. SUPPORT & INDUSTRY MONITORING SERVICES**

- 1.1 Hinderliter, de Llamas and Associates (“HdL”) shall actively monitor federal and state industry and legislative events which may impact UUT revenues, keep the City informed, and make recommendations regarding advocacy or other response as appropriate.
- 1.2 Prepare biannual revenue estimates and include assumptions. Represent the City for the purpose of obtaining information from utility providers to assist with preparation of revenue estimates. Schedule biannual meetings with staff to review the estimates and assumptions
- 1.3 Provide analysis reports on the utility provider community and reporting details including utility trends, provider trends, revenue trends, and revenue forecasting utilizing the City provided data.
- 1.4 Ordinance and Filing Procedure Review – analysis of UUT ordinances and the City procedures to identify possible deficiencies, areas subject to legal challenge, or missing best practice provisions.

##### **2. AUDIT SERVICES**

###### **2.1 Overall Tasks**

- a. HdL shall conduct audits in accordance with the City’s Municipal Code (Chapter 35, Article VI), based on an agreed-to plan and schedule. The audits will include corresponding franchise fees as applicable. HdL shall represent the City for the purpose of examining records related to the applicable tax and fee revenue. Schedule meetings with staff as needed
- b. HdL shall contact the City’s staff and obtain documentation required to kick off the project.
- c. Review the City’s municipal code related to utility users’ tax to understand the definition of gross revenues and the determination of utility users’ taxes.
- d. Prepare initial data requests to the utility companies and the City requesting information related to the review period. During the project, if needed, prepare additional data requests and submit them to the utility companies.
- e. Execute non-disclosure agreements (NDAs) with the utility companies, if required.
- f. Correspond with the utility companies and the City, as required via phone and email, to obtain documentation, resolve issues, and obtain any appropriate assistance.

###### **2.2 Review of Utility Users’ Taxes**

- a. Verify that the accounting methodologies and procedures used by the Companies accurately identify billed revenues generated within the City during the review period subject to the utility users’ taxes. Investigate any inconsistencies and provide recommendations, if applicable.
- b. Review payments to the City and recalculate the utility users’ taxes for the review period.
- c. On a test basis, reconcile billed revenues submitted as supporting documentation with the tax payments to revenues recorded on the audited financial statements or equivalent reporting information.

- d. Identify each revenue type or source that the Companies did not include in the determination of the utility users' taxes remitted to the City for the review period and verify correctly excluded.
- e. Reconcile revenues reported to the City to the revenues on third party billing data on a test basis, depending on the findings noted and accuracy of the sample quarters tested.
- f. Obtain a sample of customer bills and verify the calculation of the tax on the bill.
- g. For each year, summarize every category of revenues reported to the City and reconcile these revenues to the utility users' taxes.

#### 2.3 Procedures specific to Telecommunication Utility Users' Taxes

- a. Review the following, as applicable: enhanced service revenues, private line revenues, equipment lease and sales revenues, installation and maintenance agreement charges, late fees, non-sufficient funds fees, E911 charges, sales taxes, and state and federal USF charges. Determine that these items are appropriately treated in the determination of the gross revenues reported to the City.
- b. Review the allocations of any bundled products consistent with accounting requirements (Accounting Standards Codifications 605 and 606) to ascertain the correct amount subject to the UUT is being determined.
- c. Identify any exempt telecommunications revenues and determine if the customer meets the requirements for exempt status.
- d. Determine whether gross revenues generated from Indefeasible Right of Use ("IRU") agreements were correctly included in the revenue base to determine UUT payments to the City.
- e. Obtain a list of the reseller lease agreements. Determine whether revenues from reseller lease agreements were correctly included in the telecommunications revenue base to determine the UUT payments to the City or whether the reseller self-reports.
- f. Review the allocation percentage and method utilized to calculate allocated revenues, such as the long-distance revenues between intrastate and interstate.

#### 2.4 Summarize Results and Issue Reports

- a. Analyze utility users' taxes reported to the City by category of revenues.
- b. Calculate under/overpayment of the amount due to the City, interest charges and applicable fees on under/overpayments of the utility users' taxes.
- c. Submit final reports to the City. The reports will include HdL findings, including a recalculation of the utility users' taxes and determination of any deficiencies plus applicable interest due to the City.

### 3. TECHNICAL ASSISTANCE AND SUBJECT MATTER EXPERTISE (OPTIONAL)

- 3.1 HdL may provide additional hours of general consulting to be utilized on an as-needed basis at the City's request. Such assistance may include technical assistance, subject matter expertise, education, participation in conference calls, responding to staff inquiries via phone and email, reviewing staff reports to the City Council, assisting with responses to inquiries from the public, or other issues as may be requested by the City.

## SECTION II: FEES & CHARGES

### 1. SUPPORT & INDUSTRY MONITORING SERVICES

- 1.1 Fees for performing support and industry monitoring services, including support & industry monitoring and operations management shall be charged at \$3,000.00/month.



- 1.2 Fees will be invoiced monthly to City for services performed during the prior month. Payment by City for any outstanding balance shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.
- 1.3 Fees may be increased once every fiscal year (as defined by the City, the period running from July 1st through June 30th the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%). .
- 1.4 Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by the City.

## 2. AUDIT SERVICES

- 2.1 HdL will perform reviews of the reports of utility users' taxes (cable, electric, gas, telecommunications as appropriate – collectively Companies) concerning the utility users' taxes (UUT) payments to the City for an hourly rate of \$200 per hour, not to exceed \$25,000.00 per review. It is possible for a single company to require multiple reviews (with separate budgets), i.e. Verizon/Frontier for wireline services and cellular service.
- 2.2 If the City takes legal action to collect underpayments identified by HdL, any additional services, e.g. expert testimony, by HdL will be provided at an agreed hourly rate of \$250.00 per hour.
- 2.3 The City will be invoiced monthly for services performed during the prior month. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures
- 2.4 Fees may be increased once every fiscal year (as defined by the City, the period running from July 1st through June 30th the following year) with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the fees will be equal to the greater of two percent (2%) or the actual CPI Change, but in no event may exceed an increase of five percent (5%). HdL will communicate any fee adjustments to the City in writing, with sixty (60) days advance notice.






# Consultant Agreement\_HdL Associates RFP 24-010 - CAO approved - 6-27-24(409067.1) a

Final Audit Report

2024-07-08

Created:	2024-07-08
By:	Kristin Andrade (kandrade@santa-ana.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAmDbN-1glAfnlwOoVP5xqbnFyzQDUK2pV

## "Consultant Agreement\_HdL Associates RFP 24-010 - CAO approved - 6-27-24(409067.1) a" History

-  Document created by Kristin Andrade (kandrade@santa-ana.org)  
2024-07-08 - 5:40:10 PM GMT
-  Document emailed to Kathryn Downs (kdowns@santa-ana.org) for signature  
2024-07-08 - 5:40:42 PM GMT
-  Email viewed by Kathryn Downs (kdowns@santa-ana.org)  
2024-07-08 - 5:44:34 PM GMT
-  Document e-signed by Kathryn Downs (kdowns@santa-ana.org)  
Signature Date: 2024-07-08 - 5:44:45 PM GMT - Time Source: server
-  Agreement completed.  
2024-07-08 - 5:44:45 PM GMT