

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

This Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”) by and between the COUNTY OF SONOMA, a municipal corporation hereinafter called (“COUNTY”), and HINDERLITER, de LLAMAS AND ASSOCIATES a California Corporation, hereinafter called (“CONTRACTOR”).

### **I. RECITALS**

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

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

WHEREAS, COUNTY desires the combination of data entry, report preparation and analysis necessary to effectively manage its sales and use tax base; the recovery of revenues erroneously 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, COUNTY 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 COUNTY for the most current and all quarters back to fiscal year 1991-1992 or earlier, if the COUNTY has prior historical sales tax data available on computer readable magnetic media. This database will be utilized to generate special reports to the COUNTY 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 COUNTY.
3. CONTRACTOR shall additionally provide following each calendar quarter a summary analysis for the COUNTY to share with Council Members Chambers of Commerce, other economic development interest groups and the public that analyze COUNTY'S sales tax trends by major groups, and geographic areas without disclosing confidential information.
4. CONTRACTOR shall make available to COUNTY staff CONTRACTOR's web-based sales tax computer software program containing sellers permit and quarterly allocation information for all in-County business outlets registered with the Department of Tax and Fee Administration and updated quarterly. This software shall allow COUNTY 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 COUNTY 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 COUNTY of back or prospective quarterly payments that may be owing.

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

### C. CONSULTING AND OTHER OPTIONAL SERVICES

CONTRACTOR may, from time to time in its sole discretion, consult with COUNTY 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.

## III. CONSIDERATION

- A. CONTRACTOR shall provide the sales tax and economic analysis Services described in Section II-A above for a fee of **\$450.00** 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 COUNTY 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 COUNTY, 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 COUNTY 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 COUNTY 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. COUNTY 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 BOE 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 COUNTY, 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 invoice COUNTY for any consulting and other optional Services rendered to COUNTY in accordance with Section II-C 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 COUNTY no later than 30 days following the invoice date. COUNTY shall not be invoiced for any consulting Services totaling less than an hour in any month. Extra work or other optional Services shall not be performed by CONTRACTOR or reimbursed or paid for by COUNTY unless such extra work is specifically authorized in writing by COUNTY's designated representative. CONTRACTOR shall be compensated for any additional services in the amounts and in the manner as agreed to by the COUNTY and CONTRACTOR at the time the COUNTY's written authorization is given to CONTRACTOR for the performance of said services. 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 COUNTY.

- D. Any invoices not paid in accordance with the Thirty (30) day payment terms, shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.
- E. CONTRACTOR unilaterally retains the right to divide any recovery bills in excess of \$25,000 over a one (1) year period (Four (4) quarterly billings).
- F. CONTRACTOR shall provide COUNTY 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 COUNTY no later than 30 days following the invoice date.

#### **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 COUNTY may authorize persons other than COUNTY 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 COUNTY 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 COUNTY 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 termination of this Agreement.. 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 COUNTY 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 COUNTY to access CONTRACTOR'S Sales Tax website if COUNTY chooses to subscribe to the software and reports option. The website shall only be used by authorized COUNTY staff. No access will be granted to any third party without explicit written authorization by CONTRACTOR. COUNTY 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 COUNTY of said software, or any right of COUNTY 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 COUNTY 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, COUNTY 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 COUNTY 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. COUNTY MATERIALS AND SUPPORT**

COUNTY 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 COUNTY. COUNTY further agrees to provide any information or assistance that may readily be available such as business license records within the COUNTY and to provide CONTRACTOR with proper identification for contacting businesses. COUNTY further agrees to continue CONTRACTOR’s authorization to examine the confidential sales tax records of the COUNTY by maintaining CONTRACTOR’s name on the COUNTY 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. COUNTY shall assist CONTRACTOR in obtaining such Permits, and COUNTY shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by COUNTY.

## **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, COUNTY shall continue to timely pay CONTRACTOR’s invoices for Services performed and not paid for prior to termination. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses

identified by CONTRACTOR which make tax payments after termination of this Agreement as a result of CONTRACTOR's work. After COUNTY receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "CONSIDERATION."

## **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 COUNTY.

## **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 County of Sonoma 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 COUNTY.

## **XI. INSURANCE**

CONTRACTOR shall maintain the policies set out below, and in amounts of coverage not less than those indicated herein. Additionally, CONTRACTOR shall name the COUNTY 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. A copy of such Certificate shall be provided to COUNTY annually.

## **XII. INDEMNIFICATION**

CONTRACTOR hereby agrees to, and shall hold COUNTY, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from CONTRACTOR'S willful or negligent acts, errors or omissions or those of its employees or agents. CONTRACTOR agrees to and shall defend COUNTY and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions.

COUNTY hereby agrees to, and shall hold CONTRACTOR, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from COUNTY'S negligent acts, errors or omissions including misuse or improper disclosure of confidential information contained in reports submitted by contractor under this Agreement. COUNTY agrees to and shall defend CONTRACTOR and its officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions and/or misuse or improper disclosure of confidential information.

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 COUNTY or to enlarge in any way the liability of CONTRACTOR or the COUNTY 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 COUNTY 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 Sonoma 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.

\_\_\_\_\_  
COUNTY (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 Sonoma. The parties hereby submit to the exclusive jurisdiction of such court 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 COUNTY shall be sent to COUNTY OF SONOMA, 585 Fiscal Drive, Suite 101F, Santa Rosa, CA 95403.

## **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.

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.

COUNTY:  
COUNTY OF SONOMA

\_\_\_\_\_  
County Administrative Officer

CONTRACTOR:  
HINDERLITER, de LLAMAS & ASSOCIATES  
A California Corporation

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