

CITY OF STOCKTON
STANDARD AGREEMENT

Agreement Number:

1. This Agreement is entered into between the City of Stockton ("City") and HINDERLITER DE LLAMAS & ASSOCIATES ("Contractor") to provide Sales and Use Tax and Transaction and Use Tax Services as set forth in Exhibit A to this Agreement.

2. The term of this Agreement is as follows, unless amended as described in Exhibit A and Exhibit C section 8:
Commences on: Terminates on: 6/30/2030

3. The maximum not to exceed amount to be paid to Contractor for the term of this Agreement, including if authorized, reimbursement of expenses, is: \$ 699,000

4. The complete Agreement consists of all the following Agreement documents which by reference are incorporated and made a part of this Agreement. The parties agree to comply with the terms and conditions of this Agreement.

- (a) Exhibit A – Statement of Work
- (b) Exhibit B – Insurance
- (c) Exhibit C – General Terms & Conditions
- (d) Exhibit D – Professional Services Special Terms & Conditions
- (e) Exhibit E – Compensation Schedule
- (f) Exhibit F – Timeline
- (g) Exhibit G - Special Funding Terms & Conditions

(If applicable check box) YES

IN WITNESS WHEREOF, the authorized parties have executed this Agreement.

CONTRACTOR

HINDERLITER DE LLAMAS & ASSOCIATES

Contractor's Name (if other than an individual, state whether a corporation, partnership, etc.):

Authorized Signature

Date

Printed Name and Title of Person Signing

Address

CITY OF STOCKTON

Steve Colangelo, Interim City Manager

Date

ATTEST:

Katherine Roland, CMC, CPMC, City Clerk

APPROVED AS TO FORM:

Lori M. Asuncion, City Attorney

BY:

EXHIBIT A

STATEMENT OF WORK

I. PURPOSE

Consultant shall examine all sales and use tax records of California Department of Tax and Fee Administration (CDTFA) pertaining to sales and use tax collected by the Department on behalf of the City, including three (3) District Transaction and Use Taxes.

Consultant shall identify potential misallocations and deficiencies by using its database for a review of the City's transactions and use tax data and the database shall be the basis for a thorough search for deficient or misallocated tax payments.

All work will be performed remotely.

1. PROJECT OBJECTIVES

- 1.1. Consultant shall perform ongoing sales tax audits to identify and correct "point of sales/delivery/use" distribution errors and thereby generate previously unrealized sales and use tax income for the City.
- 1.2. Consultant shall use its database for a review of the City's transactions and use tax data and the database shall be the basis for a thorough search for deficient or misallocated tax payments. Consultant shall compare all countywide payments, including direct allocations, county pool distributions and deficiency assessments to the City's transactions tax distributions to isolate all potential opportunities for revenue recovery.

2. PROJECT SCOPE

1. Sales and Use Tax Services

- 1.1. Using confidential taxpayer records as authorized by Revenue and Taxation Code Section 7056, Consultant shall find and correct errors that result in underpayments of tax to the City. Consultant shall employ a series of analyses, comparisons with other data sources and physical canvassing of the City to find, document and submit for correction all taxpayer errors that result in lost City revenue or could result in lost revenue in the future.
- 1.2. When errors are found, Consultant shall promptly file claims for their correction following CDTFA procedures and regulations. Thereafter, Consultant shall diligently work with the CDTFA to ensure the prompt recovery of all escaped revenues. Consultant shall provide regular documentation of errors to the City.

- 1.3. Consultant shall provide to the City reports that accurately depict the City's sales tax base, use tax collections and revenues. All reports, graphs, tables and revenue forecasts shall be designed by Consultant to enhance the City's capacity to plan for, expand and manage its various sales use and district tax revenues. Additionally, Consultant shall provide to the City reports identifying and comparing the retail composition of various sub-geographic-areas of the City.
- 1.4. Field Surveys Consultant shall conduct every 10-12 months field inventories of the City's business and industrial areas to identify businesses located within the City that appear to be underreporting revenues or are not on the CDTFA allocation rolls. Consultant shall, using the latest in mapping, GPS and digital recording technology, document not only the existence of sales tax producing businesses but also any relevant factors such as size, presence of a large stock of goods, will-call windows and any specific references to sales activity. This process shall identify a wide range of registration errors including erroneous consolidation of multiple outlets, misreporting of point of sale from an erroneous location and delays in reporting new outlets.
- 1.5. Tax Area Code (TAC) Review Consultant shall review every active account on the CDTFA's allocation rolls reporting \$50 or more in local tax to ensure proper TAC assignment. Consultant shall extensively use government and private sector mapping and GIS databases in this process because physical canvassing will not reveal businesses with missing or incomplete signage, or those that are home-based. Consultant shall perform a complete TAC review at least once every 9-12 months.
- 1.6. Deviation Assessment Consultant shall apply proprietary queries and analyses to its statewide allocation database to identify and review all accounts for which there has been a substantial deviation and change in allocation pattern. Consultant shall perform a deviation review every three (3) months. Consultant shall apply the review to direct allocations and to the county pools which allows for a much broader view and understanding of what has happened in any given quarter. Consultant shall cull well-founded leads from this process for faster processing and less time used in preparing submittals. Consultant shall use this process to lower recovery fees by reducing the amount of prior quarter revenue requiring redistribution.
- 1.7. Use Tax Errors and Opportunities: Consultant shall analyze the use tax allocation pools of the 58 counties and the state each quarter to identify instances where a taxpayer may have misidentified a transaction as use tax rather than sales tax. Consultant shall employ further specialized reviews and techniques to identify direct allocation opportunities of local

use tax. CDTFA Regulation 1802(d) allows for direct allocation of local use tax on qualifying individual sales or purchases over \$500,000. Out-of-state and foreign-based companies often have large transactions that meet the criteria for direct allocation under this section. Under Regulation 1699.6, businesses and organizations (including local government agencies) with aggregate purchases subject to use tax of least \$500,000 per year can apply for a Use Tax Direct Payment Permit, allowing for direct allocation of the corresponding local share. Finally, under a resolution adopted by CDTFA in December 1994, a construction contractor who enters into a contract equal to or greater than \$5,000,000 may elect to obtain a sub-permit for the jobsite resulting in a direct allocation of local use tax to the jurisdiction where the jobsite is located.

- 1.8. Regulation 1699 Evaluations CDTFA Regulation 1699 controls when and where a permit should be issued to a given business location. Wholesalers, contractors, processors, manufacturers, and other non-retail businesses that do not normally sell merchandise often conduct occasional sales, self-accrue use tax or are levied deficiency assessments by the state. Consultant shall use proprietary methods for finding companies that should be taking out permits so that those revenues are allocated to the City.
- 1.9. Development of Correction Data Consultant shall further cull preliminary lead lists developed through any of the aforementioned audit programs using a variety of programs and databases to reduce the need for taxpayer contact. Consultant shall contact appropriate management and accounting officials in the companies remaining in the audit database where a probability of error exists to verify whether current tax receipts accurately reflect the local sales activity. Consultant shall conduct taxpayer interviews in a business friendly, non-intrusive manner that emphasizes cooperation and protection of confidentiality. Consultant shall provide City a report of all contacts and the results thereof.
- 1.10. Consultant shall accompany telephone contacts by a written follow-up questionnaire concerning business activities, a specific one-time transaction or a written confirmation of Consultant findings. Consultant shall file the documentation with the petition to minimize CDTFA processing time. Consultant's documentation and follow-up shall lower City's fees by reducing the number of quarters requiring retroactive adjustment and ensures faster recovery of misallocated revenues.
- 1.11. To avoid potential conflicts with a City's in-house audit efforts, Consultant shall prepare a list of misallocated or underreporting businesses for City officials to review and authorize prior to Consultant submitting any invoices to taxpayer. Consultant shall use this line item,

account-level approval process to eliminate any misunderstandings or disagreements regarding what may be considered a valid audit "find."

- 1.12. Consultant shall prepare and submit to the CDTFA all information necessary to correct any allocation errors that are identified and follow up with the individual businesses and the CDTFA to ensure that all quarterly back payments due the City are recovered. Consultant shall prepare and submit petitions (CDTFA Form 549- S or 549-L) that notify the CDTFA of the existence and nature of the misallocation. Consultant shall include all relevant and available supporting documentation. Consultant shall send to City copies of all transmittal forms and correspondence with the CDTFA and taxpayers.
- 1.13. Consultant's shall monitor and follow-up on case inventory. Consultant shall update and review an aging report on a monthly basis and follow-up on cases that are taking an inordinate amount of time to correct. Consultant shall continuously check on the status of submittals made to CDTFA to ensure that corrections are being pursued. Consultant shall provide timely follow-up on cases to reduce the time it takes for the City to recover its revenue.
- 1.14. Consultant shall thoroughly research, vet and document cases prior to submittal to CDTFA. Consultant shall follow this process to ensure the fastest possible processing times and to reduce the number of cases that are initially disclaimed, and must be further researched and defended through a very lengthy CDTFA appeals process. When an appeal is required, Consultant shall provide the necessary expertise and access to competently and aggressively represent City interests.
- 1.15. Consultant shall establish the criteria for encouraging businesses to modify their reporting of sales tax to generate additional revenue for City. Consultant shall provide a report of contacts and results to City.

2. TRANSACTION AND USE TAX REPORTING SERVICES

- 2.1. Once data from the City's transactions tax is uploaded and processed by Consultant, several sophisticated and proprietary queries and analyses shall be applied by Consultant to identify potential misallocations and deficiencies. Consultant's shall utilize its Bradley-Burns Local Sales and Use Tax database for this process, which includes accountlevel registration and allocation data for all of San Joaquin County (incorporated cities and the unincorporated area) dating back to FY 1991-92. Consultant's database also includes both historical and current transactions tax data for over 100 individual districts for Consultant to utilize in its queries and analyses.

- 2.2. Consultant shall use its database for a review of the City's transactions and use tax data and the database shall be the basis for a thorough search for deficient or misallocated tax payments.
- 2.3. Consultant's shall use their database to provide City a quick generation of exception or "lead lists". Consultant's database shall provide legitimacy to requests for information and is utilized to enhance taxpayer cooperation by Consultant demonstrating that it already has specific information from the taxpayer's sales and use tax returns. Once a target list of potential point of sale/delivery/use errors is developed by Consultant, Consultant shall contact the appropriate tax paying company's personnel in sales, operations and accounting to determine if a reporting error exists.
- 2.4. Consultant shall provide a thorough initial audit and shall supplement with ongoing reviews of quarterly distribution reports as new data is released. Consultant shall compare all countywide payments, including direct allocations, county pool distributions and deficiency assessments to the City's transactions tax distributions to isolate all potential opportunities for revenue recovery.
- 2.5. The State Board of Equalization (BOE) Regulation 1828, governs the administrative process for recovery of misallocated transactions tax revenue (i.e revenue credited in error to the wrong district). Section (e) of this regulation limits redistributions to two (2) quarterly periods prior to the quarter in which BOE is made aware of the error. Recovery of deficient payments is limited by Section 6487 of the Sales and Use Tax Law to three years after the return is filed.
- 2.6. Consultant shall adhere to the above referenced statutes during both initial and ongoing reviews and shall target all missing revenue within reach. Consultant shall file all necessary documentation with CDTFA on a timely basis to secure the earliest possible date of knowledge of needed claims. Consultant shall actively monitor all outstanding claims and follow up with appropriate CDTFA staff as necessary to ensure prompt correction.
- 2.7. Adhering to all guidelines and deadlines stipulated by Regulation 1828, Consultant shall research, document and pursue negative findings. This includes formal appeals to the Sales and Use Tax Department, the Appeals Division and when/if necessary the elected Board Members.
- 2.8. Consultant shall include all necessary and relevant detail on invoices pertaining to audit claims to allow for quick and easy validation of claims with minimal disruption to City. Consultant shall create a Work Authorization to the City detailing audit findings and submittals to CDTFA, prior to any invoicing being submitted to taxpayer. Consultant shall provide billings that are easily verified through Consultant's paper trail, CDTFA responses, and Consultant's web-based sales tax application.

3. MAJOR DELIVERABLES

A. Consultant shall provide advice and consultation to maximize sales tax revenue generation. This advice and consultation shall include but not be limited to ongoing analysis, reports, legislative support, unlimited access to resources for sales and use tax related questions, as well as, training and support for an internal program designed to maximize use tax collections.

Reporting:

1. Provide monthly reports detailing:
 - a. Status of each account with customer pertinent Information
 - b. Monthly status of accounts, including assigned and current balance
 - c. Collection received during the month.
 - d. Percentage of recovery in comparison to the total dollar value of assigned accounts.
2. Provide the City an annual financial summary report as of June 30 (City's fiscal year end) including totals for receipts, net accounts receivable, total accounts receivable and collection percentage. This report should be submitted to the City no later than July 30th of each year.
3. Provide ad hoc reports as needed upon request, including but not limited to, collections, legal actions, adjustments, updated addresses, and corrections.

4. TASKS THAT SUPPORT THE DELIVERABLES

1. Consultant shall provide written sales and use tax reports on a quarterly basis within 30 days following receipt of the quarterly distribution report with separate reports for the District Transaction and Use Taxes. Reports shall include the following:
 - 1.1. Historical collections analysis
 - 1.2. Top 100 taxpayer historical information
 - 1.3. Economic category performance
 - 1.4. Business code classification
 - 1.5. Historical economic composition
2. Database, Reports and Training Consultant shall provide City staff web-based database access, training on software, access to computer files and written reports as follows:
 - 2.1. Consultant shall provide City staff with unlimited access to its database that contains all sales and use tax producers in Stockton in a format compatible with the City's computer operating system. This database, at a minimum shall include names, address, social security numbers or federal employer identification

numbers where available, sales tax allocations for each business, and a section to log notes manually.

- 2.2. Consultant shall provide updates to the database using the information obtained from the CDTFA. Consultant shall perform quarterly updates of sales tax permit records and distribution reports. Consultant shall provide monthly updates of registration control information. Consultant shall provide City quarterly updated web-based sales tax system to facilitate "in house" analysis and printing of reports. City will be allowed to search, print and export its sales tax data for a variety of financial, management and planning functions. City will have the ability to search all sales tax producers in the city by business name, address, CDTFA account number and current or historical sales tax allocations. Consultant's web application shall provide City access to the City's archived quarterly sales tax reports. Consultant's shall provide City access to data that is easily queried and exported to either comma delimited or native Excel formats, allowing for convenient use with standard applications such as the Microsoft Office suite. City will have to access the web application from all major operating systems, internet browser platforms, and device types (laptop, tablet, PC, mobile). City's will have to access archived quarterly sales tax reports can through the online sales tax application.
- 2.3. Consultant shall provide City access to Consultant's geo-area feature which supports use of address ranges, ensures the inclusion of all appropriate CDTFA registrations and allows City staff to create and modify geo areas without a separate GIS system. Consultant shall provide interfacing support with City's GIS by including accurately geocoded latitude and longitude for each business. This data includes all data fields including historical allocation information. Consultant shall provide the City the ability to quickly export data on demand using Consultant's Sales Tax Web Application. Consultant shall provide City access to City created shape files to define a Geo-area, which identifies related businesses by latitude and longitude.
- 2.4. Consultant shall provide City unlimited on-site, video or on-line web based training on the use of the software. Consultant shall provide City ongoing software upgrades at no additional charge.
- 2.5. Consultant shall provide City quarterly sales tax reports on both a cash and adjusted basis. Cash reports shall reconcile to CDTFA payments and are necessary for any revenue sharing agreements that the City might have in place. The adjusted reports shall shift payment aberrations (double-up payments, CDTFA audit adjustments, etc.) into the quarter where the sales occurred to accurately show the City's true economic trends. Consultant shall present the quarterly sales tax data in reports for major sales tax producers by both rank and category, analysis of sales tax activity by category, business or areas specified by the City.
- 2.6. Consultant's quarterly sales tax reports to the City shall include a listing of top sales tax producers and comparisons with both regional and statewide trends. Consultant shall provide retailer information in grouped form or in business by business detail. Consultant shall include tables in the quarterly information that

track year-to-date receipts and show comparisons with past periods to measure progress toward achieving the City's annual budgeted revenue amount. Consultant shall prepare City's sales and use tax projections for proposed development projects, respond to technical questions relating to CDTFA processes and regulations, and monitor revenue sharing agreements.

- 2.7. Consultant shall provide data analysis reports. The analysis shall be done in context with regional market areas, countywide and statewide trends to monitor and compare the City's economic performance by business category and geographical area. Consultant shall include, at no additional cost to City, a nonconfidential newsletter to support City's efforts to inform and engage the public.
 - 2.8. Consultant shall provide analysis of sales and use tax data and presentations to City. Consultant's analysis and presentations shall identify emerging retail trends, business retention needs, leveraging of economic clusters and reviewing successes in City jurisdictions with similar characteristics. Consultant shall prepare sales and use tax projections for proposed development projects, respond to technical questions relating to CDTFA processes and regulations, and monitors revenue sharing agreements.
 - 2.9. Budget Projections and Monitoring Consultant shall provide revenue projections at least two (2) times per year and multi-year projections upon request from the City. Consultant shall provide a comprehensive, detail-oriented method for projecting and monitoring City's sales and use tax revenues resulting in estimates that fall within 1% of actual receipts two-thirds of the time. Consultant shall make initial and mid-year projections by factoring out payment aberrations that skew the base revenue and factoring in known changes such as new or closed businesses. Consultant shall incorporate information from over 90 economic sources, as well as, information gathered from City meetings to develop economic factors to apply to individual retail business segments; the results are combined into a single estimate of anticipated revenue. Consultant shall enhance its projections by contacting builders of large scale development projects to better time, and estimate the value of potential use tax payments into its estimates. Consultant shall provide budget projections to City twice a year and as requested by City. Consultant shall provide City five-year forecasts on an annual basis.
3. Use Tax Maximization Program
 - 3.1. Consultant shall work with City to ensure that use tax from manufacturing and assembly plants, food processing, cold storage facilities, power/energy projects, medical, research and technical facilities, oil fields/refineries and extraction/mining industries are properly allocated to the City.
 - 3.2. Consultant shall review new business startups that might present potential self-assessed use tax opportunities, shall meet with contractors to advise on sub-permits and reporting procedures and provide materials and advice on purchasing companies and direct payment permits. Consultant shall monitor major construction projects to ensure that any use tax generated is properly allocated to the job site's host jurisdiction.

- 3.3. Consultant shall assist City with inserting provisions in conditional use permits and development agreements to guarantee that use tax maximization procedures are followed and shall monitor projects and subcontractors to make certain that sales tax is properly allocated back to City. Consultant shall use direct payment permits and purchasing corporations can where conditions offer mutual opportunities for the City to capture additional sales tax revenues and the participating company can increase control of sales and use tax liabilities.
4. Economic Development Benefits
 - 4.1. Consultant shall properly refine and organize sales tax data and the sales tax data analysis shall be used as a tool to assist in strengthening and expanding local economies. Data obtained by Consultant shall identify companies that are growing and may need expansion space, and shall identify which companies should be contacted as part of City's business retention program. Consultant shall geographically break out the data to produce patterns of industries that potentially share common customers, suppliers, technology and labor and therefore offer opportunities for attracting new businesses. The data shall expose retail areas that may be over saturated in some retail segments while also identifying voids and opportunities for additional retail development.
 - 4.2. Consultant shall correct address and business categorization deficiencies in CDTFA's published data by correcting addresses and re-categorizing merchants to differentiate brick and mortar retailers from "business to business" suppliers and on-line retailers.
 - 4.3. Consultant shall create and group businesses into additional categories and classifications, not provided by the CDTFA, to better track new and emerging economic trends. This process includes the breaking out of biotech/medical suppliers, online fulfillment centers, alternate energy and utility providers, wineries and marijuana dispensaries. Consultant's focused approach to data management shall allow City to more accurately compare the impact of trends in their jurisdiction with state and regional trends. On a regional basis, it shall provide City identification of true economic voids and opportunities to expand the City's tax base.
 - 4.4. Consultant shall provide accurate addressing for improved performance monitoring and comparison of specific economic areas such as shopping centers, downtown districts and auto malls with similar projects throughout California. Consultant shall analyze data throughout California to identify new trends and developments that might help City. Consultant's service includes analyses to identify retail voids and opportunities and an annual publication of retailers seeking expansion in the region and state.
 5. Legislative Updates
 - 5.1. Consultant shall prepare Legislative Updates for City to keep City informed on any changes that may impact local revenues. Consultant shall provide Issue Updates which are similar in nature but deal with specific issues such as Sales Tax Participation Agreements. Consultant shall present each issue in detail so that City is better equipped to handle questions on that topic from City community leaders.

- 5.2. Consultant shall retain Rebecca Marcus as a lobbyist to represent City's interests in matters before the CDTFA and the state legislature.
6. Consultation
- 6.1. Each quarter, Consultant shall analyze the City's data in detail and meet with appropriate City officials to review trends and discuss and make recommendations regarding the budget implications of the quarter's data.
- 6.2. Consultant shall provide "on-call" service to City to provide sales tax estimates for proposed projects, assist with budget projections and answer sales and use tax questions related to economic development, budgeting and related revenue collection. When requested by the City, Consultant shall meet with committees of the City Council and other groups to explain sales tax regulations and their importance to the City's tax base.
- 6.3. Consultant shall when requested by the City, conduct technical seminars for City personnel on California sales and use tax processes. Consultant seminars shall cover the fundamentals of direct payment permits, purchasing corporations and maximizing "use tax" from construction projects, to support in-house efforts to maximize use tax.
- 6.4. Consultant shall maintain close and positive relationships with members of the CDTFA and staff to quickly resolve policy issues unique to City. Consultant shall advocate regulation and legislative changes when they are of benefit to all City. For example, Consultant's work in the change of allocation of "use tax" for major construction projects, secured an Executive Order from the Governor to allow publishing of top taxpayers in public documents and the introduction of the problem of "point of sale" for warehouses to the CDTFA.

Transactions and Use Tax Management Program

1. Consultant shall provide the following services:
- 1.1. Economic Analysis
- 1.1.1. Consultant shall correct address and business categorization deficiencies in CDTFA's published data by correcting addresses and re-categorizing merchants to differentiate brick and mortar retailers from "business to business" suppliers and on-line retailers.
- 1.1.2. Consultant shall create and group businesses into additional categories and classifications, not provided by the CDTFA, to better track new and emerging economic trends. This process includes the breaking out of biotech/medical suppliers, online fulfillment centers, alternate energy and utility providers, wineries and marijuana dispensaries. Consultant's focused approach to data management shall allow City to more accurately compare the impact of trends in their jurisdiction with state and regional trends.
- 1.1.3. Consultant shall use the intelligence gleaned from quarterly sales tax meetings with 462 agencies to identify new trends and developments that might help the City. Consultant's bi-weekly Headlines enews service is included to keep City informed of trends and developments that may impact individual and regional economic strategies and goals.

Budget Projections and Monitoring

- 1.1.1. Consultant shall provide a comprehensive, detail-oriented method for projecting and monitoring transactions tax revenues. The California's economic base is divided into seven major economic segments. Initial and mid-year projections are made for each category by eliminating payment aberrations and including recent revenue impacts such as newly opened or closed businesses. Consultant shall incorporate information gathered from over 90 industry sources and from its quarterly client meetings across the state of California; the results are combined into a single estimate of anticipated revenue. Consultant shall provide City a single "most-likely" budget estimate and to stand-by that budget projection, explaining variances when they occur. Consultant shall provide City accurate estimates.
- 1.1.2. Consultant shall enhance its projections by contacting builders of large-scale development projects to determine the estimated timing and value of potential construction related revenue in its estimates. Consultant shall provide City Five-year forecasts on an annual basis.

Management Support

- 1.1.4. Each quarter, Consultant shall analyze City transactions and use tax data in detail and meet with appropriate officials to review trends and make recommendations regarding the economic and budget implications of that quarter's data.
- 1.1.5. Consultant shall provide "on-call" staff to provide transactions and use tax estimates for proposed projects and prepare budget projections. When requested by City, Consultant shall meet with City to explain transactions tax regulations and their importance to the City tax base.
- 1.1.6. Consultant shall maintain close and positive relationships with BOE Board Members and staff to quickly resolve policy issues unique to City. Consultant shall advocate regulation and legislative changes when they are of benefit to City. An example is the Consultant's work in the change of allocation of "use tax" for major construction projects, securing an Executive Order from the Governor to allow publishing of top taxpayers in public documents and the introduction of the problem of "point of sale" for warehouses to the CDFTA.

Reports, Transactions Tax Website and Training

- 1.1.1. Within one week of receiving new quarterly data, Consultant shall import the City's detailed transactions and use tax data into Consultant's web-based sales tax system to facilitate analysis and report preparations. Consultants shall provide City system access to search, print and export City transactions and use tax data for a variety of financial, management and planning functions. Consultant shall provide City the ability to search transactions tax producers by business name, address, CDFTA account number and current and historical allocations. Consultant shall provide City

access to the archived quarterly transactions and use tax reports through Consultant's online application. Consultant shall provide training on use of the Consultant's web-based application and ongoing upgrades shall be provided to City at no additional charge to City.

- 1.1.2. Consultant shall provide quarterly transaction tax reports on both a cash and adjusted basis. Consultant's cash reports shall reconcile to CDTFA payments while adjusted reports shall accurately provide economic trending data. Consultant shall provide reports on major tax producers and total tax receipts as requested by City. Consultant shall present the data in reports for major tax producers, by both rank and category, analysis of tax activity by category and business, district or specific areas that the City has specified, analysis of reporting aberrations and per capita and by number of outlet comparisons.
- 1.1.3. Consultant shall provide City additional quarterly reports that include reports by major retail outlets, business category, geo area growth and decline comparisons, historical revenue tables and top 100 taxpayer listings.
- 1.1.4. Consultant shall provide quarterly analysis that is done in context with regional market, countywide and statewide trends to better monitor and compare the economic performance by business category and geographical area. Consultant shall include a non-confidential newsletter to City to support City's efforts to inform and engage the public.
- 1.1.5. Unlike the Bradley-Burns Uniform local tax which is allocated basically to the "Point of Sale", transactions taxes are to the extent possible collected and allocated only to those residing or physically located within the Agency levying the tax. The difference often creates confusion and difficulties in projecting revenue trends. Consultant's reports shall be designed to overcome these problems and provide City with accurate revenue projections and planning forecasts.

5. INTERNAL AND EXTERNAL STANDARDS AND GUIDELINES

- 1.1 The California Department of Tax and Fee Administration (CDTFA) authorized by Revenue and Taxation Code Section 7056
- 1.2 Consultant shall prepare and submit petitions (CDTFA Form 549- S or 549-L) that notify the CDTFA of the existence and nature of the misallocation.
- 1.3 Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a City may authorize persons other than City officers and employees to examine State Sales and Use Tax records.
- 1.4 The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made a part of this Agreement.

- 1.5 Consultant 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 Sales and Use Tax Law.
- 1.6 Consultant is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information.
- 1.7 Consultant is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
- 1.8 Consultant is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement is expired. Information obtained by examination of 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 Consultant as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above in Section 7056 (b), (1) of the Revenue and Taxation Code.
- 1.9 City shall adopt a resolution of confidentially authorizing Consultant's access to the confidential database.
- 1.10 Regulation 1699 Evaluations CDTFA Regulation 1699 controls when and where a permit should be issued to a given business location
- 1.11 The State Board of Equalization (BOE) Regulation 1828, governs the administrative process for recovery of misallocated transactions tax revenue (i.e revenue credited in error to the wrong district). Section (e) of this regulation limits redistributions to two (2) quarterly periods prior to the quarter in which BOE is made aware of the error.
- 1.12 Recovery of deficient payments is limited by Section 6487 of the Sales and Use Tax Law to three years after the return is filed.

6. CRITERIA OF ACCEPTANCE FOR DELIVERABLES

- 6.1 Consultant shall provide City with quarterly reports.
- 6.2 Consultant shall provide revenue projections at least two (2) times per year and multi-year projections upon request from the City.

7. Notices

Pursuant to Exhibit C – General Terms and Conditions, Paragraph 15 – Notices, the mailing address for all required notices is as follows:

Contractor: Hinderliter De Llamas & Associates. Attn: Bobby Young 120 S. State College Blvd., St 200 Brea, CA 92821	City: City of Stockton Attn: City Manager 425 N. El Dorado Str Stockton, CA 95202
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Key Personnel

Hinderliter De Llamas & Associates			
Bobby Young	Director of Client Services	byoung@hdlcompanies.com	714-879-5000

City of Stockton, CA			
Brandon Sepulveda	Budget Office	Brandon.Sepulveda@stocktonca.gov	209-937-8820
Mario Caballero	Project Manager III	Mario.caballero@stocktonca.gov	209-937-8330
Procurement		procurement@stocktonca.gov	209-937-8357

8. TERM.

The term of the Agreement shall be up to 5 years or until the contract value reaches \$699,000. The total term of the Agreement including the extended term shall not exceed 5 years.

Exhibit B:
Insurance Requirements
(Professional Services)

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 by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT 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 **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 2. Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- 3. Workers' Compensation** insurance 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 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, **\$2,000,000** aggregate.

If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

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

Additional Insured Status

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

Umbrella or Excess Policy

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Contractor hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any

endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor 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. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

Claims Made Policies (Professional & Pollution only)

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 five (5) 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, the Contractor must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Special Risks or Circumstances

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

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton
Its Officers, Officials, Employees, and Volunteers
400 E Main St, 3rd Floor – HR
Stockton, CA 95202

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. **Goods, Equipment and Services.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A of the Agreement. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A of the Agreement.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish and maintain all facilities and equipment that may be required for furnishing services pursuant to this Agreement. If applicable, City shall furnish to Contractor only the facilities and equipment listed in Exhibit A to the Agreement.

3. **Compensation.** City shall pay Contractor for services rendered pursuant to this Agreement as described more particularly in Exhibit A and Exhibit E to the Agreement.

3.1 Invoices submitted by Contractor to City must contain a brief description of work performed, time spent and City reference number. Within thirty (30) days of receipt of Contractor's invoice, City will review invoice, and if acceptable make payment on approved invoice.

3.2 Upon completion of work and acceptance by City, Contractor shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Contractor fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

4. **Sufficiency of Contractor's Work.** All Contractor services, work, and deliverables shall be performed in a good and workmanlike manner with due diligence in accordance with the degree of skill normally exercised by similar contractors supplying services and work of a similar nature, and in conformance with applicable laws, codes and professional standards. Contractor's work shall be adequate and sufficient to meet the purposes of this Agreement.

5. **Ownership of Work.** All reports, work product, all other documents completed or partially completed by Contractor or its approved subcontractors, in performance of this Agreement, and if applicable, drawings, designs, and plan review comments shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor and its approved subcontractors agree

to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Contractor and its approved subcontractors shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

6. Timeliness. Time is of the essence in this Agreement. Further, Contractor acknowledges that the failure of Contractor to comply with the time limits described in Exhibit A and Exhibit F may result in economic or other losses to the City.

7. Changes. Both parties to this Agreement understand that it may become desirable or necessary during the term of this Agreement for City to modify the scope of services provided for under this Agreement. Any material extension or change in the scope of work shall be discussed with City and the change and cost shall be memorialized in a written amendment to the original contract prior to the performance of the additional work. Until the amendment is so executed, City will not be responsible to pay any charges Contractor may incur in performing such additional services, and Contractor shall not be required to perform any such additional services.

8. Amendment. No variation of the terms of this Agreement shall be valid unless an amendment is made in writing and signed by both parties.

9. Contractor's Status.

9.1 In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City. Contractor by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of City. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the City. No agent, officer or employee of the City is to be considered an employee of the Contractor. It is understood by both Contractor and City that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

9.2 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to City only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to City's

control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

9.3 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

9.4 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

10. Subcontractor.

10.1 Subcontractors shall not be recognized as having any direct or contractual relationship with City. Contractor shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Agreement. Subcontractors will be provided with a copy of the Agreement and be bound by its terms. Contractor is responsible to City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

10.2 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Contractor.

10.3 It is further understood and agreed that all Subcontractors must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Subcontractors personnel.

11. Termination.

11.1 Termination for Convenience of City. The City may terminate this Agreement at any time by mailing a notice in writing to Contractor. The Agreement shall then be deemed terminated, and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for the work actually completed at the time the notice of termination is received.

11. 2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

11.3 Funding- Non-Appropriation. It is mutually understood between the Parties that payment to the Contractor for performance shall be dependent upon the availability of appropriations by the City Council for the purposes of this Agreement. No legal liability on the part of the City for any payment may arise under this Agreement until funds are made available and until the Contractor has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the City loses funding for any reason, the City, in its sole discretion, shall have the option to either (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

12. Non-Assignability. The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

13. Indemnity and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify City of Stockton and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City of Stockton. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

14. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B to this Agreement and shall otherwise comply with the other provisions of Exhibit B to this Agreement.

15. Notices. All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed in Exhibit A to this Agreement.

16. Conformance to Applicable Laws. Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

17. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Such licenses, certificates and permits shall be maintained in full force and effect during the term of this Agreement.

18. **Records and Audits.** Contractor shall maintain all records regarding this Agreement and the services performed for a period of three (3) years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit. To the extent Contractor renders services on a time and materials basis, Contractor shall maintain complete and accurate accounting records, in a form prescribed by City or, if not prescribed by City, in accordance with generally accepted accounting principles, such records to include, but not be limited to, payroll records, attendance cards, time sheets, and job summaries.

19. **Confidentiality.** Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

20. **Conflicts of Interest.** Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Contractor's services under this Agreement. If such an interest arises, Contractor shall immediately notify the City.

21. **Waiver.** In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation. No payment, partial payment, acceptance, or partial acceptance by City shall operate as a waiver on the part of City of any of its rights under this Agreement.

22. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the Federal District Court of California, Eastern District, Sacramento Division.

23. **No Personal Liability.** No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

24. Severability. If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or city statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

25. Non-Discrimination. During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (including genetic characteristics), marital status, age, political affiliation, gender identity, gender expression, sex or sexual orientation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its officers, employees, agents, representative or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the City's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12990 (et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulation or Code of Federal Regulations. Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d). <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>. The City requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

26. Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

27. Taxes and Charges. Contractor shall be responsible for payment of all taxes, fees, contributions or charges applicable to the conduct of the Contractor's business.

28. Cumulative Rights. Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative of all other rights and remedies to which may be legally entitled.

29. Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

30. Heading Not Controlling. Headings used in this Agreement are for reference purposes only and shall not be considered in construing this Agreement.

31. Entire Agreement, Integration, and Modification.

31.1 This Agreement represents the entire integrated agreement between Contractor and the City; supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by a written Amendment signed by the Contractor and City Manager.

31.2 All Exhibits to this Agreement and this Agreement are intended to be construed as a single document.

32. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

33. Authority. The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

EXHIBIT D

PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS

1. Definitions. The following words and phrases have the following meanings for purposes of this Agreement:

1.1 "Services" means, collectively, the services, duties and responsibilities described in Exhibit A of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

1.2 "Deliverable" means quantifiable goods or services that will be provided upon completion of a project. A deliverable is any tangible material, work or thing delivered by one party to the other, including associated technical documentation. A deliverable can be tangible or intangible parts of the development process, and often are specified functions or characteristics of the project.

2. General. The following terms and conditions are applicable for the Professional Services only. The special conditions shall be read in conjunction with the Standard Agreement, General Terms and Conditions ("GTC") Exhibit C, and all other Exhibits identified in the Standard Agreement.

2.1 Where any portion of the GTC is in conflict to or at variance with any provisions of the Special Conditions of the Agreement, then unless a different intention stated, the provision(s) of the Special Conditions of the Agreement shall be deemed to override the provision(s) of GTC only to the extent that such conflict or variations in the Special Conditions of the Agreement are not possible of being reconciled with the provisions of the GTC.

2.2 In the case of modification of a part or provision of the GTC, the unaltered part or provision, or both shall remain in effect. The Special Conditions shall relate to a particular project and be peculiar to that project but shall not weaken the character or intent of the GTC.

3. Time for Performance.

3.1 Contractor shall perform the services according to the schedule contained in Exhibit F.

3.2 Timeliness of Performance i) Contractor shall provide the Services, and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Exhibit A and Exhibit F. ii) Neither Contractor nor Contractor's agents, employees nor subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other

losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

4. Standard of Performance

In addition to Exhibit C, Section 4 and 17, Contractor agrees as follows:

4.1 Contractor's Services shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor's profession currently practicing under similar conditions. Contractor shall comply with the profession's standard of performance, applicable laws, regulations, and industry standards. By delivery of completed work, Contractor certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. If Contractor is retained to perform services requiring a license, certification, registration or other similar requirement under California law, Contractor shall maintain that license, certification, registration or other similar requirement throughout the term of this Agreement.

4.2 Contractor acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Contractor agrees to be held to the standard of care of a fiduciary. Contractor shall assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Contractor must provide copies of any such licenses. Contractor remains responsible for the professional and technical accuracy of all Services or Deliverables furnished, whether by Contractor or its subcontractors or others on its behalf. All Deliverables must be prepared in a form and content satisfactory to the Using Agency and delivered in a timely manner consistent with the requirements of this Agreement.

4.3 If Contractor fails to comply with the foregoing standards, Contractor must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Contractor of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Contractor either under this Agreement, at law or in equity.

5. Compensation

5.1 In addition to Section 3 Compensation in Exhibit C – GTC, the Contractor shall be compensated for the services provided under this Agreement as follows:

5.1.1 Contractor shall be compensated for services rendered and accepted under this Agreement and shall be paid monthly, in arrears on a not to exceed

basis, based upon the rates set forth in Exhibit E attached hereto and made a part of this Agreement. Contractor may vary the compensation for each task in Exhibit E provided that the total project compensation listed in Exhibit E and the Standard Agreement is not exceeded.

6. Personnel

6.1 None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City. Any work or services subcontracted hereunder shall be specified by written agreement and shall be subject to each provision of this Agreement. Contractor shall provide subcontractor a copy of this fully executed Agreement.

6.2 Contractor agrees to assign only competent personnel according to the reasonable and customary standards of training and experience in the relevant field to perform services under this Agreement. Failure to assign such competent personnel shall constitute grounds for termination of this Agreement. The payment made to Contractor pursuant to this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers or employees are entitled to any salary or wages, or retirement, health, leave or other fringe benefits applicable to employees of the City. The City will not make any federal or state tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor. Contractor shall pay, when and as due, any and all taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6.3 Key Personnel: Because of the special skills required to satisfy the requirements of this Agreement, Contractor shall not reassign or replace key personnel without the written consent of the City, which consent the City will not unreasonably withhold. "key personnel" means those job titles and the persons assigned to those positions in accordance with the provisions of this Agreement. The City may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Contractor shall immediately suspend the services of the key person or persons and must replace him or them in accordance with the terms of this Agreement. A list of key personnel is found in Exhibit A, Scope of Services.

7. Reports and Information

Contractor shall at such times and in such forms as the City may require furnish the City such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters are covered by this Agreement as specified in Exhibit A and Exhibit E.

8. Findings Confidential

All of the reports, information, data, et cetera, prepared or assembled by the Contractor under this Agreement are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City. Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is required by applicable law or by proper legal or governmental authority, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by Contractor outside the scope of this Agreement or is rightfully obtained from third parties. Contractor shall give City prompt notice of any such legal or governmental demand and reasonably cooperate with City in any effort to seek a protective order or otherwise to contest such required disclosure.

9. Copyright

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Contractor for copyright purposes. Any such materials produced as a result of this Agreement that might be subject to copyright shall be the property of the City and all such rights shall belong to the City, and the City shall be sole and exclusive entity who may exercise such rights.

10. Deliverables

Contractor shall prepare or provide to the City various Deliverables. "Deliverables" include work product, such as written reviews, recommendations, reports and analyses, produced by Contractor for the City. The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement or for which the City intends to use the Deliverables. If the City determines that Contractor has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Contractor of its failure. If Contractor does not correct the failure, or if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement. Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve Contractor of its commitments under this Agreement.

11. Applicable Laws

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

EXHIBIT E

COMPENSATION SCHEDULE

The Contractor shall be compensated for the services identified in Exhibit A, Exhibit C, and Exhibit D to this Agreement as follows:

1. Project Price

1.1 The maximum the Contractor shall be paid on this Agreement is **\$699,000** (hereafter the “not to exceed” amount). The “not to exceed” amount includes all payments to be made pursuant to this Agreement, including City approved reimbursable expenses, if any. Nothing in this Agreement requires the City to pay for work that does not meet the Standard of Performance identified in Exhibit D section 4 or other requirements of this Agreement.

1.2 Standard Reimbursable Items: Only the reimbursable items identified in Exhibit A, C, and D (Compensation), shall be compensated to the Contractor. Reimbursable expenses will be reimbursed without markup. Fees plus reimbursable expenses shall not exceed the amount set forth in section 1.1 of this Exhibit and a copy of the original invoice for the items listed in i, ii or iii below shall be attached to the invoice submitted to the City for reimbursement. Payments shall be based upon work documents submitted by the Contractor to the City and accepted by the City as being satisfactory to City’s needs. The City shall not pay a markup on any of the items listed in i, ii or iii. Additionally, items such a telephone, fax, postage or freight are already included in the billable hourly rate. Contractor shall be reimbursed the direct expenses, which are the actual cost of the following items that are reasonable, necessary and actually incurred, by the Contractor in connection with the services:

- i. Expenses, fees or charges for printing, reproduction or binding of documents at actual costs with no markup added to the actual cost.
- ii. Any filing fees, permit fees, or other fees paid or advanced by the Contractor at actual costs with no markup added to the actual cost.
- iii. Travel expenses shall be reimbursed in accordance with the City’s travel policy, which is incorporated herein by reference. Reimbursement shall be made at actual costs with no markup added to the actual cost.

1.3 The Contractor shall be entitled to receive payments for its work performed pursuant to the Agreement. The City will pay Contractor based on invoices for acceptable work performed and approved until the “not to exceed” amount is reached. Thereafter, Contractor must complete services based on the Agreement without additional compensation unless there is a material change to the Statement of Work and Scope by a written Amendment.

1.4 If work is completed before the “not to exceed” amount is reached, the Contractor’s compensation will be based on the Contractor’s invoices previously submitted for acceptable work performed and approved.

1.5 Subcontractor Costs: Compensation for subcontractors shall be limited to the same restrictions imposed on the Contractor. Maximum markup Contractor may apply to subcontractor fees, minus reimbursable expenses, shall not exceed NA %.

2. Task Price. Below is the price for the services and reimbursable expenses as described in Exhibit A of this Agreement.

Task	Description	Task Price
1	Sales and Use Tax Estimated Annual Cost	\$121,000
2	Transaction and Use Tax Estimated Annual Cost	\$18,800
3		\$
TOTAL ANNUAL PRICE		\$139,800

3. Hourly Rates. The following is a list of hourly billable rates that Contractor shall apply for additional services requested of the Contractor. Contractor shall be compensated based on the hourly rates set forth below, on a time and material basis for those services that are within the general scope of services of this Agreement, but beyond the description of services required under Exhibit A, and all services are reasonably necessary to complete the standards of performance required by this Agreement. Any changes and related fees shall be mutually agreed upon between the parties by a written amendment to this Agreement.

Hourly Billable Rate Schedule

Title	Role on Project	Hourly Billable Rates
		\$
		\$
		\$
		\$
		\$
		\$
		\$

4. Additional Fees. Should an amendment to the Agreement be issued for additional services that require the following items, the unit prices are as follows:

Title	Unit Price
	\$

5. Invoice to Address. Each invoice submitted shall identify the specific task(s) listed in Exhibit A and this Exhibit, and the completed work product/deliverable for the agreed upon price listed in this Exhibit. Invoices shall be submitted to the below address:

City of Stockton Administrative Services Department
Attention: Budget Officer
425 N. El Dorado Street
Stockton, CA 95202