

**PROFESSIONAL SERVICES AGREEMENT
SALES AND USE TAX AND TRANSACTION AND USE TAX SERVICES
HINDERLITER, DE LLAMAS & ASSOCIATES**

THIS AGREEMENT is entered into this ____ day of _____ 2018, between the CITY OF STOCKTON, a municipal corporation ("City"), and **Hinderliter, de Llamas & Associates whose address is 1340 Valley Vista Dr., Suite 200 Diamond Bar, CA 91765** and telephone number is **909-861-4335** ("Consultant").

RECITALS

A. Consultant is qualified to and experienced in facilitating collaboration, teamwork and strategic planning efforts for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide **Sales and Use Tax and Transaction and Use Tax services** to City described in **Exhibit A**. Consultant shall provide said services at that time, place and in the manner specified in **Exhibit A**.

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

3. **Term.** This Agreement shall commence on the date written above and shall expire on **June 30, 2023**; provided, however the parties may agree to change either the commencement or expiration date.

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit A**. The payments shall be made on a monthly basis, in accordance with the fee schedule attached as **Exhibit B**, and upon receipt and approval of Consultant's invoice. Total compensation for fixed fee services, contingency fees, and reimbursement for costs shall not exceed **\$1,000,000 for the term of this Agreement**.

a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City reference number. Payment shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

b. Upon completion of work and acceptance by City, Consultant shall have ninety (90) 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 Consultant 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.

5. **Sufficiency of Consultant's Work.** All reports, drawings, designs, plan review comments and work product of Consultant shall be adequate and sufficient to meet the purposes for which they are prepared.

6. **Ownership of Work.** All reports, work product, and all other documents completed or partially completed by Consultant in the performance of this Agreement shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees 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 Consultant shall replace them at its own expense. Consultant 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.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

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

10. **Non-Assignability.** The Consultant 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. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Consultant shall hold harmless, defend at its own expense, and indemnify the City of

Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

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

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

Consultant: Hinderliter, de Llamas & Associates 1340 Valley Drive, Suite 200 Diamond Bar, CA 91765	City: City Manager City of Stockton 425 N. El Dorado Street Stockton, CA 95202
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14. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant 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.

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

16. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three 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.

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

18. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other

representative of the City. Consultant 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 Consultant's services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver.** In the event either City or Consultant 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.

20. **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.

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

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

Kurt Wilson, City Manager

ATTEST:

Bret Hunter, City Clerk

APPROVED AS TO FORM:
John M. Luebberke, City Attorney

Deputy City Attorney

**HINDERLITER, DE LLAMAS &
ASSOCIATES**

By: 

Signature

Andrew Nickerson

Print name

Title: _____
President

*[If Consultant is a corporation
signature(s) must comply with
Corporations Code §313.]*

**EXHIBIT A
SCOPE OF WORK**

A. STATEMENT OF WORK

The Consultant shall provide, at a minimum, the following Sales and Use Tax services including access to Consultant's web-based database, Consultant's Sales and Use Tax software, training and applicable reporting.

1. SALES AND USE TAX SERVICES

Consultant shall examine all sales and use tax records of the 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.

1.1 Audit Methodology

- 1.1.1** 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.
- 1.1.2** 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.
- 1.1.3** 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.
- 1.1.4** 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.

1.2 Identification of Errors and Revenue Maximization Opportunities

Consultant shall employ the following audit techniques and programs to achieve the highest audit and recovery results:

1.2.1 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 under-reporting 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.

1.2.2 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.

1.2.3 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.

1.2.4 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.

1.2.5 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.

1.3 Recovery of Misallocated Revenue**1.3.1 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.

1.3.2 Documentation

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.

1.3.3 City Review:

To avoid potential conflicts with a City's in-house audit efforts, Consultant shall prepare a list of misallocated or under-reporting 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."

1.3.4 Preparation and Submittal of Corrections

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.

1.3.5 Continuous Follow-up

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.

1.3.6 Appeals

Consultant shall thoroughly research, vet and document cases prior to submittal to CDFTA. 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 CDFTA appeals process. When an appeal is required, Consultant shall provide the necessary expertise and access to competently and aggressively represent City interests.

1.3.7 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.**1.4 Management Services**

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.

1.4.1 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:

1.4.1.1 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.

1.4.1.2 Consultant shall provide updates to the database using the information obtained from the CDFTA. 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.

- 1.4.1.3 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.
- 1.4.1.4 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.
- 1.4.1.5 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:

- a. Historical collections analysis
 - b. Top 100 taxpayer historical information
 - c. Economic category performance
 - d. Business code classification
 - e. Historical economic composition
- 1.4.1.6 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.
- 1.4.1.7 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.
- 1.4.1.8 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.
- 1.4.1.9 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.

1.4.2 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.

1.4.3 Use Tax Maximization Program

1.4.3.1 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.

1.4.3.2 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.

- 1.4.3.3 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.

1.5 Economic Development Benefits

- 1.5.1 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.
- 1.5.2 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.
- 1.5.3 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

- 1.5.4 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.

1.6 Legislative Updates

- 1.6.1 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.
- 1.6.2 Consultant shall retain Rebecca Marcus as a lobbyist to represent City's interests in matters before the CDTFA and the state legislature.

1.7 Consultation

- 1.7.1 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.
- 1.7.2 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.
- 1.7.3 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.

- 1.7.4 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.

2. TRANSACTION AND USE TAX REPORTING SERVICES

2.1 Transactions and Use Tax Audit Program

The following services shall be performed by Consultant:

- 2.1.1 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 account-level 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.
- 2.1.2 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.
- 2.1.3 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.

- 2.1.4 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.
- 2.1.5 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.
- 2.1.6 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.
- 2.1.7 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.
- 2.1.8 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.

2.2 Transactions and Use Tax Management Program

Consultant shall provide the following services:

2.2.1 Economic Analysis

2.2.1.1 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.

2.2.1.2 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.

2.2.1.3 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 e-news service is included to keep City informed of trends and developments that may impact individual and regional economic strategies and goals.

2.3 Budget Projections and Monitoring

2.3.1 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.

- 2.3.2 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.

2.4 Management Support

- 2.4.1 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.
- 2.4.2 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.
- 2.4.3 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.

2.5 Reports, Transactions Tax Website and Training

- 2.5.1 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.

- 2.5.2 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.
- 2.5.3 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.
- 2.5.4 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.
- 2.5.5 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.

3. INVOICING

Consultant shall provide quarterly invoices to the City that include the business name, audit period "start" date, permit number, local allocation amount received by the City and the amount due to the Consultant. Consultant shall provide applicable CDTFA quarterly distribution report documents to verify and cross-reference invoice amounts.

4. CONFIDENTIALITY REQUIREMENTS

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 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.
- 4.7 City shall adopt a resolution of confidentially authorizing Consultant's access to the confidential database.

**EXHIBIT B
FEE SCHEDULE**

- A. Pursuant with Paragraph 4 of this Agreement, Consultant shall be compensated for the Work described in Exhibit A as follows:

1. Sales and Use Tax

1.1 Sales and Use Tax Audit Services

The Sales and Use Tax Audit Service fee to be paid to Consultant for its services is **15% of all new sales and use tax revenue received by the City** (including reimbursement from the sales and use tax compensation fund outlined in Section 97.68 of the Revenue and Taxation Code) as a result of audit and recovery work performed by Consultant. This audit fee applies to monies received in the first eight (8) consecutive reporting quarters beginning with the receipt of the audit revenue and includes retroactive back quarter adjustments obtained by Consultant. Consultant shall not receive payment of the Sales and Use Tax Audit fee from City after the first eight (8) consecutive reporting quarters.

- 1.2 Audit fees shall be billed by Consultant only after completion of the audit, submittal of corrections to the CDTFA and receipt of revenues by the City. 100% of all new revenue generated by Consultant shall be remitted to the City after the completion of the first eight (8) consecutive reporting quarters. The fee in Section 1.1 Sales and Use Tax Audit Service constitutes the full reimbursement to Consultant and covers all direct and indirect costs incurred by Consultant under this Agreement. This includes all Consultant salaries, travel expenses and service contracting costs as well as the HdL Sales and Use Tax software to be delivered to the City under this Agreement.
- 1.3 Invoices shall be submitted only for recoveries previously approved by the City. Consultant shall not bill for audit revenues until the City has actually received said monies. Further, if during the billing cycle, a taxpayer receives a refund for overpayment of taxes generated during that cycle, Consultant shall credit back to City any proportionate share of the fee that may have been levied.
- 1.4 Invoices are submitted quarterly after the City has received the revenue from the audit correction. The invoice shall include a printout showing the name, address, and sales tax registration number of each company, audit period "start date", permit number, local allocation amount received by City, the amount due to the Consultant, and the

specific amount of revenue allocated by the CDTFA to the City for those businesses. If a misallocation correction involves additional revenue from a company that had already been partially allocating revenues to the City, the City and Consultant shall agree in a Work Authorization, prior to billing, the methodology for identifying the incremental revenue attributable to Consultant's work.

2. Sales and Use Tax Management Services, Quarterly Delivery Meetings and Web-Based Application

DESCRIPTION	FEE
Sales and Use Tax Management Services, Quarterly Delivery Meetings, and Web-based Application	\$850.00 per month

This fee includes City's access to the City's sales tax database through Consultant's web-based software and quarterly meetings with one of Consultant's principals. In preparation for each meeting, Consultant's principal analyzes the City's data in detail and meets with appropriate City officials to review trends, point out businesses that should be contacted as part of the City's business retention program and discuss and make recommendations regarding the economic and budget implications of the quarter's data. Also included in this fee is a nonconfidential newsletter that City can share with City Council and the public.

3. Additional Staffing Beyond the Scope of Services

Additional services beyond the scope of services in this Agreement are priced separately depending on the complexity of tasks involved. Such fees can either be fixed or time and materials. Consultant's current hourly rates are listed below:

TITLE	HOURLY BILLIABLE RATE
Principal	\$325 per hour
Programmer	\$295 per hour
Senior Associate	\$245 per hour
Analyst	\$195 per hour

4. Transaction Tax Reporting

DESCRIPTION	FEE
Monitoring & Reporting on this revenue source	\$100.00/ per month per transaction tax

- 4.1 Consultant shall monitor and report on this additional revenue source.
- 4.2 All fees for the allocation and deficiency audit work shall be billed at **25%** for any audit recovery for eight (8) retroactive adjustments only. Consultant shall not receive payment for the allocation and deficiency audit recovery fee from City after the eight (8) retroactive adjustments have been completed. ***There is no fee applied to the prospective revenue stream following correction of the error(s) identified.***
- 4.3 Quarterly invoices shall be detailed on an account by account basis the amount of transaction tax recovered due to Consultant's audit efforts. City will not be invoiced until/unless CDTFA has confirmed the specific allocation error identified and has processed the necessary corrections so that the revenue has been received.

5. Invoice

Consultant shall remit invoices to the following:

City of Stockton
Attn: Revenue
425 North El Dorado Street
Stockton, CA 95202

6. Revenue Remittance

Consultant shall issue revenue remittances to the following:

City of Stockton
Attn: Revenue
425 North El Dorado Street
Stockton, CA 95202

EXHIBIT C INSURANCE REQUIREMENTS FOR 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 **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location 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. ***(Not required if consultant provides written verification it has no employees)***
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate. (If Claims-made, see below.)

If the Consultant maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the consultant. 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 Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant 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 Consultant's insurance (**at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used**).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

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

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

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

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant'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, for any reason or no reason.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

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

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

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

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.