

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

This Agreement is made and entered into as of the 3rd day of December, 2012 (the “Effective Date”) by and between the CITY OF CRESCENT CITY, a municipal corporation hereinafter called CITY, and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called CONTRACTOR.

I. RECITALS

WHEREAS, sales, use and transactions tax revenues can be increased through: a system of continuous monitoring, identification and correction of allocation errors, and

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

WHEREAS, CITY desires the combination of data entry, report preparation and analysis necessary to effectively manage its sales and use tax base; recover revenues erroneously allocated to other jurisdictions and allocation pools; and maximize its financial and economic planning; and

WHEREAS, CONTRACTOR has the programs, equipment and personnel required to deliver the sales and use tax related services referenced herein;

THEREFORE, CITY and CONTRACTOR, for the consideration hereinafter described, mutually agree as follows:

II. SERVICES

The CONTRACTOR shall perform the following services:

A. SALES TAX AND ECONOMIC ANALYSIS

1. CONTRACTOR shall establish a special database that identifies the name, address and quarterly allocations of all sales tax producers within the CITY for the most current and all quarters back to fiscal year 2009 or earlier, if the CITY has prior historical sales tax data available on computer readable magnetic media. This database will be utilized to generate special reports to the CITY on: major sales tax producers by rank and category, sales tax activity by categories, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.
2. CONTRACTOR shall provide up-dated reports each quarter identifying changes in sales by individual businesses, business groups and categories and by geographic area. Quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments will be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will also be included.
3. CONTRACTOR shall additionally provide a quarterly summary analysis for the CITY to share with Chambers of Commerce and other economic development interest groups that analyze CITY'S sales tax trends by major groups, and geographic areas without disclosing confidential information.
4. CONTRACTOR shall make available to CITY Staff the HdL web-based sales tax computer software program containing sellers permit and quarterly allocation information for all in-city business outlets registered with the Board of Equalization and update quarterly. Software shall allow city staff to search

business by street address, account number, business name, business type and keyword; arrange data by geographic area and print out a variety of reports.

B. ALLOCATION AUDIT AND RECOVERY

1. CONTRACTOR shall conduct initial and on-going sales and use tax audits to identify and correct distribution errors and thereby generate previously unrealized sales tax income for the CITY. Common errors that will be monitored and corrected include: transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; misreporting of "point of sale" to the wrong location; delays in reporting new outlets; misallocating use tax payments to the allocation pools or wrong jurisdiction and erroneous fund transfers and adjustments.
2. CONTRACTOR will initiate contacts with the appropriate sales management and accounting officials in companies that have businesses where a probability of error exists to verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner so as to enhance CITY'S relations with the business community.
3. CONTRACTOR shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors that are identified and shall follow-up with the individual businesses and the State Board of Equalization to ensure that all back quarter payments due the CITY are recovered.
4. If during the course of its audit, CONTRACTOR finds businesses located in the CITY that are properly reporting sales tax but have the potential for modifying their operation to provide an even greater share to the CITY, CONTRACTOR

shall so advise CITY and upon request, shall work with those businesses and the CITY to encourage such changes.

C. ONGOING CONSULTATION

Throughout the term of this agreement, CONTRACTOR shall advise and work with CITY Staff on technical questions related to sales, use and transactions tax; advise CITY Business License staff on utilization of reports to enhance business license collection efforts; provide sales tax projections for proposed annexations, economic development projects and budget planning; and generally serve as support staff on sales, use and transactions tax related issues.

III. OPTIONAL SERVICES

Optional services beyond the scope of this Agreement are available at CONTRACTOR's hourly rates as in effect from time to time. Optional services include, but are not limited to, negotiating/review of tax sharing agreements, establishing purchasing corporations and meeting with taxpayers to encourage self-assessment of use tax. The hourly rates in effect at the time of the execution of this Agreement are as follows:

Principal	\$225 per hour
Programmer	\$195 per hour
Senior Analyst	\$150 per hour
Analyst	\$ 75 per hour

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

IV. CONFIDENTIALITY

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.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this agreement:

- A. CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Board of Equalization provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.
- C. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
- D. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Board of Equalization records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to

Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

V. OWNERSHIP OF MATERIALS, CONFIDENTIALITY.

A. Software Use. CONTRACTOR hereby provides authorization to the CITY to access CONTRACTOR'S Sales Tax website if the CITY chooses to subscribe to the software and reports option. The website shall only be used by authorized CITY staff. No access will be granted to any 3rd party without explicit written authorization by CONTRACTOR. The CITY shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by CITY of said software, or any right of the CITY to sell said software or the use of same, or any right to use said software for the benefit of others. This software use authorization is not transferable. Upon termination of this agreement the software use authorization shall expire, and all CITY staff website logins shall be de-activated.

B. Proprietary Information. As used herein, the term "proprietary information" means any information which relates to CONTRACTOR'S computer or data processing programs; data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; or business processes. CITY shall hold in confidence and shall not disclose to any other party any CONTRACTOR proprietary information in connection with this Agreement, or otherwise learned or obtained by the CITY in connection with this Agreement. The obligations imposed by this

Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

VI. CONSIDERATION

- A. CONTRACTOR shall establish the sales and transactions tax databases, shall provide the ongoing reports and analysis and shall make available the computer software program and databases referenced above for a fee of \$300.00 per month, commencing with the month of the Effective Date (hereafter referred to as “monthly fee”). The monthly fee shall be invoiced quarterly in arrears, and shall be payable no later than 30 days after invoice date. The monthly fee shall increase every 12th month following the month of the Effective Date (each such month, an “Adjustment Month”) by the percentage increase (if any) in the CPI for the second month preceding the Adjustment Month over the CPI for the 14th month preceding the Adjustment Month; provided, however, that in no event shall the monthly fee be reduced below the monthly fee that was payable for the month immediately preceding the Adjustment Month. For purposes of this Agreement, the “CPI” shall mean the Consumer Price Index - All Urban Consumers for the surrounding statistical metropolitan area nearest CITY, All Items (1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or, if such index should ceased to be published, any reasonably comparable index selected by CONTRACTOR.
- B. CONTRACTOR shall be further paid 15% of all new sales, transactions and/or use tax revenue received by the CITY as a result, in whole or in part, of audit and recovery work performed by CONTRACTOR (hereafter referred to as “audit fees”), including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the Revenue and Taxation Code. New sales,

transactions and/or use tax revenue shall not include any amounts determined by CITY or CONTRACTOR to be increment attributable to causes unrelated to CONTRACTOR'S work pursuant to this agreement. In the event that CONTRACTOR is responsible, in whole or in part, for an increase in the tax reported by businesses already properly making tax payments to the CITY, it shall be CONTRACTOR'S responsibility to separate and support the incremental amount that is attributable, in whole or in part, to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees, which shall be payable no later than 30 days following invoice date.

CONTRACTOR shall obtain CITY approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval shall be deemed given when the City Manager, or his designated representative, signs a Sales Tax Audit Authorization form, a copy of which is attached as "Exhibit A." CITY shall pay audit fees upon CONTRACTOR'S submittal of evidence of State Fund Transfers and payments to CITY from businesses identified in the audit and approved by the CITY. The audit fees shall be payable on new tax revenues received from approved businesses as a consequence, in whole or in part, of the audit, and even if CITY, of its own volition, assists with the audit, works in parallel with the audit, and/or expends attorneys fees or other out-of-pocket costs in connection with any of the foregoing.

The above sums shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR'S employees, and travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

- C. CONTRACTOR shall invoice CITY for any optional services rendered to CITY in accordance with section III above on a monthly or a quarterly basis, at CONTRACTOR's option. Any such invoices shall be payable by CITY no later than 30 days following invoice date.
- D. Any invoices not paid on a due and timely basis shall accrue interest at the rate of ten percent (10%) per annum until paid.

VII. CITY MATERIALS AND SUPPORT

CITY shall adopt a resolution in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales tax records of CITY. CITY further agrees to provide any information or assistance that may readily be available such as business license records within the CITY and to provide CONTRACTOR with proper identification for contacting businesses. CITY further agrees to continue CONTRACTOR'S authorization to examine the confidential sales tax records of the CITY by maintaining CONTRACTOR'S name on the CITY Resolution or by providing copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the State Board of Equalization and audit fees due the CONTRACTOR have been paid.

VIII. LICENSE, PERMITS, FEES AND ASSESSMENTS

CONTRACTOR shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. CITY shall assist CONTRACTOR in obtaining such Permits, and CITY shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by CITY.

IX. TERMINATION

This Agreement may be terminated for convenience by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, CONTRACTOR may continue to work through the date of termination. Upon termination as provided herein, CONTRACTOR shall be paid the value of all tax analysis and reporting work performed less payments previously made by CITY. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by CONTRACTOR which make tax payments after termination of this Agreement as a result of CONTRACTOR'S work. After CITY receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

All documents, data, surveys and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the CITY and upon payment for services

performed by CONTRACTOR, such documents and other identified materials shall be delivered to CITY by CONTRACTOR.

X. INDEPENDENT CONTRACTOR

CONTRACTOR shall perform the services hereunder as an independent contractor and shall furnish such services in its own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of CONTRACTOR be considered as an employee of CITY.

XI. NON-ASSIGNMENT

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

XII. ATTORNEY'S FEES

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

XIII. GOVERNING LAW

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this Agreement.

XIV. INSURANCE

CONTRACTOR shall maintain the policies set out below, and in amounts of coverage not less than those indicated herein. Additionally, where required by CITY, CONTRACTOR shall name the CITY as an additional insured on CONTRACTOR'S comprehensive general liability policy and provide a Certificate of Insurance.

1. Worker's Compensation and Employer's Liability. In accordance with applicable law.
2. Comprehensive General Liability. Bodily injury liability in the amount of \$1,000,000 for each person in any one accident, and \$1,000,000 for injuries sustained by two or more persons in any one accident. Property damage liability in the amount of \$1,000,000 for each accident, and \$2,000,000 aggregate for each year of the policy period.
3. Comprehensive Automobile Liability. Bodily injury liability coverage of \$1,000,000 for each accident.
4. Errors and Omissions. In addition to any other insurance required by this Agreement, CONTRACTOR shall provide and maintain, during the term of this Agreement, professional liability insurance in the amount of \$1,000,000 as evidenced by a Certificate of Insurance.

XV. INDEMNIFICATION

CONTRACTOR hereby agrees to, and shall hold CITY, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of

confidentiality or property damage which may arise from CONTRACTOR's willful or negligent acts, errors or omissions or those of its employees or agents. CONTRACTOR agrees to and shall indemnify and defend, including reasonable attorneys fees, CITY and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions.

CITY hereby agrees to, and shall hold CONTRACTOR, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from CITY'S negligent acts, errors or omissions under this Agreement. CITY agrees to and shall defend, including reasonable attorneys fees, CONTRACTOR and its officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions.

XVI. NOTICE

All notices required by this Agreement shall be given to CITY and CONTRACTOR in writing, by personal delivery or first class mail postage prepaid, addressed as follows:


CITY: CITY OF CRESCENT CITY
377 "J" Street
Crescent City, CA 95531

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY:


CITY OF CRESCENT CITY



Eugene M. Palazzo
City Manager


CONTRACTOR:

HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation



Andy Nickerson
President

APPROVED AS TO FORM:



Robert N. Black
City Attorney

SAMPLE

SAMPLE

EXHIBIT A
Sales Tax Audit
Work Authorization No. _____

The following business or businesses, located in the City of Crescent City have been identified as having the potential for generating additional sales tax revenue to the City of Crescent City. Contractor is hereby authorized to contact the given business(s) and the State Board of Equalization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board of Equalization, to modify allocation formulas, and to return previous misallocated revenue that may be due to City.

Contractor's compensation shall be 15% of the new sales and/or use tax revenue received by the City as a result of audit and recovery work performed by Contractor, as set forth in the Agreement between Contractor and City.

CITY OF CRESCENT CITY

By: _____

Date: _____

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: _____

Date: _____