

C-17-012

AMENDMENT NO. 1
TO AGREEMENT FOR CONTRACT SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment”) by and between the CITY OF CARSON, a California municipal corporation (“City”) and HINDERLITER, De LLAMAS & ASSOCIATES, a California Corporation (“Consultant”), is effective as of the 29 day of July, 2019.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated June 20, 2017 (“Agreement”), whereby Consultant agreed to provide certain audit and analysis professional services relating to the City’s sales and use tax.

B. The City and Consultant desired, and the City Council’s action approved, an agreement for a base term of three (3) years with two (2) one-year options, and a base amount of \$9,600 annually, not to exceed \$51,000 over five years, plus fifteen percent (15%) of the amount of sales and use tax it recovers on behalf of the City pursuant to the Agreement.

C. The Agreement ultimately executed by the parties included provisions that did not conform to the intent of the parties and were inconsistent with the Council’s action.

D. Firstly, Council awarded a base contract amount of \$9,600 annually, not to exceed \$51,000 over five (5) years, but the Agreement provided for not-to-exceed amount of \$49,959.

E. Secondly, the Agreement did not identify the built-in \$3,000 contingency that explains the gap between the approved base amount of \$48,000 (\$9,600 annually over five years) and the not-to-exceed amount of \$51,000.

F. Thirdly, although the Agreement contained a provision stating Consultant’s entitlement to 15% of all sales and use tax recovered, the Agreement erroneously included a contradicting provision that the total contract sum was not to exceed \$49,959, which suggested that said sum was inclusive of the Consultant’s entitlement to 15% of all sales and use tax recovered. This error created an internal inconsistency in the contract, contravened the intent of the parties, and precluded the City’s purchasing staff from being able to authorize all necessary and intended payments under the Agreement.

G. City and Consultant now desire to amend the Agreement to correct the foregoing errors and clarify that the authorized Contract Sum is an amount that is not to exceed the following, which was approved by the City Council on June 20, 2017: a base amount of \$9,600 annually, not to exceed \$51,000 over five (5) years, plus 15% of sales and use taxes recovered.

H. City and Consultant also desire to amend the agreement to clarify that the 15% sales tax recovery fee described in Paragraph G immediately above is limited (as described in Section II of Exhibit C of the Agreement approved by the City Council, 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 the Consultant; and 100% of all new revenue generated by Consultant is passed to the City after the completion of the eight quarters.

I. This Amendment does not award any compensation beyond what the City Council approved on June 20, 2017. This Amendment serves to reconcile the Agreement with the Council's action to award the contract to the Consultant.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (additions shown in *bold italics*, deletions shown in ~~strikethrough~~).

a. Exhibit B – Special Requirements is hereby revised to include amendments to Section 2.1 (Contract Sum) as follows:

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the 'Schedule of Compensation' attached hereto as Exhibit 'C' and incorporated herein by this reference. The total compensation (*the "Contract Sum"*), including reimbursement for actual expenses, *consists of: a) the Base Amount, plus any necessary fees paid from the Contingency Fund, which cumulatively shall not exceed Fifty One Thousand Dollars (\$51,000) over five (5) years (three-year base term with two one-year options to extend); and b) the "Sales Tax Recovery Fees" described in Section II of Exhibit C – Schedule of Compensation of this Agreement. Total compensation paid to the Consultant for services provided pursuant to this Agreement shall not exceed the Contract Sum* ~~shall not exceed Forty Nine Thousand Nine Hundred and Fifty Nine Dollars (\$49,959) (the "Contract Sum"),~~ unless additional compensation is approved pursuant to Section 1.8. The Contract Sum includes compensation for the entirety of the Term, including the two optional one-year extensions, ~~but does not include any contingency fees, as described in Exhibit 'C.'~~

b. Section I of Exhibit "C" is hereby amended as follows:

Consultant shall perform the following tasks at the following rates:

	SUB-BUDGET
A. Quarterly and Annual Sales Tax Reports FY 17-18	\$9,600 <i>annually</i>
B. Quarterly and Annual Sales Tax Reports FY 18-19	\$9,792 <i>\$9,600 annually</i>
C. Quarterly and Annual Sales Tax Reports FY 19-20	\$9,988 <i>\$9,600 annually</i>
D. Quarterly and Annual Sales Tax Reports FY 20-21	\$10,188 <i>\$9,600 annually</i>
E. Quarterly and Annual Sales Tax Reports FY 21-22	\$10,391 <i>\$9,600 annually</i>
	<hr/>
<i>BASE AMOUNT SUBTOTAL</i>	<i>\$48,000</i>
F. <i>Contingency Fund</i>	<i>\$3,000</i>
	<hr/>
TOTAL over five (5) years (excluding Sales Tax Recovery Fees)	\$49,959 <i>\$51,000</i>

c. Section VI of Exhibit "C" is hereby amended as follows:

The total compensation for the Services shall not exceed ~~\$49,959~~, *the Contract Sum* as provided in Section 2.1 of the Agreement.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

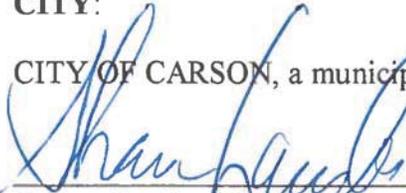
5. **Authority.** The persons executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF CARSON, a municipal corporation

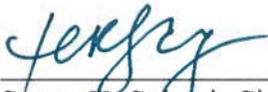


Sharon Landers, City Manager

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP



for Sunny K. Soltani, City Attorney
[BRJ/TC]

*Teresa Chen,
Assistant City Attorney*

CONSULTANT:

HINDERLITER, De LLAMAS & ASSOCIATES,
Inc., a California Corporation

By: 

Name: Andrew Nickerson
Title: President

By: 

Name: Gary Lott
Title: Chief Operations Officer
Address: _____
120 S State College Blvd., Suite 200
Brea, CA 92821

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

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



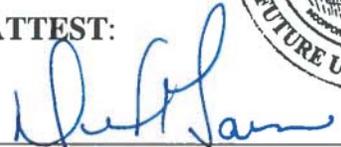
CITY:

CITY OF CARSON, a municipal corporation



Albert Robles, Mayor

ATTEST:



Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP 

Sunny K. Soltani, City Attorney
[BRJ/TC]

CONSULTANT:

HINDERLITER, De LLAMAS & ASSOCIATES,
Inc., a California Corporation

By: _____
Name:
Title:

By: _____
Name:
Title:
Address: _____

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On June 05, 2019 before me, M.R. Shaw, Notary Public
(insert name and title of the officer)

personally appeared Andrew Nickerson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

 (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On June 05, 2019 before me, M. R. Shaw, Notary Public
(insert name and title of the officer)

personally appeared Gary Cott,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)

