

AMENDMENT NO. 2

TO AGREEMENT FOR CONTRACT SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACT SERVICES (“Amendment No. 2”) by and between the CITY OF CARSON, a California municipal corporation (“City”), and HINDERLITER, DE LLAMAS AND ASSOCIATES, a California corporation (“Consultant”), is entered into effective as of the 30th day of June, 2020.

RECITALS

A. City and Consultant entered into that certain Agreement for Contract Services dated June 20, 2017 (“Agreement”) whereby Consultant agreed to provide City services to review sales tax data that will ensure that City is receiving all sales tax.

B. 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 (“Contract Sum”) over five years, plus fifteen percent (15%) of the amount of sales and use tax Consultant recovers on behalf of the City pursuant to the Agreement.

C. The Contract Sum includes a built-in \$3,000 contingency that accounts for the gap between the approved base amount of \$48,000 (\$9,600 annually over 5 years) and the Contract Sum.

D. 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 and as a result, on July 29, 2019, City and Consultant amended the Agreement (“Amendment No. 1”) to correct and clarify such inconsistencies.

E. On June 16, 2020, based on the mistaken assumption that Amendment No. 1 did not exist, the City Council approved an amendment to the Agreement (“June 2020 Amendment”) to reflect City’s exercise of the first of its two (2) one-year options to extend the term of the Agreement for one year, from July 1, 2020 through June 30, 2021 (“First Option Period”), and to decrease the Contract Sum and reduce the tax audit recovery rate.

F. Following approval of the June 2020 Amendment, the existence of Amendment No. 1 was discovered and based thereon, it was determined that the June 2020 Amendment could not be executed because amendments made therein were based on inaccurate information that did not incorporate modifications made in Amendment No. 1. Accordingly, the June 2020 Amendment was never executed and will never take effect.

G. Now, in recognition that the parties previously entered into Amendment No. 1, the parties desire to enter into this Amendment No. 2 to (i) reflect City’s exercise of the first of its two (2) one-year options to extend the term of the Agreement for one year, from July 1, 2020 through June 30, 2021, and (ii) decrease the Contract Sum attributable to the First Option Period by 10%, thereby decreasing compensation during the First Option Period from \$9,600 to \$8,640 and

decreasing the Contract Sum from \$51,000 to \$50,040, and reduce the tax audit recovery rate from 15% to 13%.

H. Based on the foregoing, City and Consultant now desire and intend to enter into Amendment No. 2 retroactive to June 30, 2020, and to thereby authorize the provision of the services under the Agreement by Consultant commencing as of said date, and to ratify and affirm the continuous and uninterrupted term of the Agreement from the effective date of the Agreement until and through June 30, 2021.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein (new text in *bold italics* and deleted text in ~~strikethrough~~).

A. Section 2.1, “Contract Sum,” of the Agreement is hereby amended to read in its entirety 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~~ *and Forty* Dollars (*\$50,040* ~~\$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, 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.”

B. Section I of Exhibit “B” of the Agreement, “Special Requirements,” is hereby amended to read in its entirety as follows:

“3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, *the term of* this Agreement shall continue in full force and effect until completion of the services but *no later than June 30, 2021 which is four (4)* ~~not exceeding three (3)~~ years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”). City, in its sole discretion, may extend the term for *one (1)* ~~two (2)~~ additional ~~one-year terms, the first extension ending on June 30, 2021 and the second ending on June 30, 2022.~~”

C. Section I. of Exhibit “C” of the Agreement, “Schedule of Compensation,” is hereby amended to read 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 annually
B.	Quarterly and Annual Sales Tax Reports FY 18-19	\$9,600 annually
C.	Quarterly and Annual Sales Tax Reports FY 19-20	\$9,600 annually
D	Quarterly and Annual Sales Tax Reports FY 20-21	\$9,600\$8,640 annually
E.	Quarterly and Annual Sales Tax Reports FY 21-22	<u>\$9,600 annually</u>
BASE AMOUNT SUBTOTAL		\$48,000\$47,040
F.	Contingency Fund	<u>\$3,000</u>
TOTAL over five (5) years (excluding Sales Tax Recovery Fees)"		<u>\$51,000\$50,040</u>

D. Section II. of Exhibit "C" of the Agreement, "Schedule of Compensation," is hereby amended so that the audit and recovery rate is reduced from 15% to 13%.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 2, all provisions of the Agreement and Amendment No. 1 shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 2, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment No. 2 and Amendment No. 1.

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 and Amendment No. 1. 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 and Amendment No. 1. Each party represents and warrants to the other that the Agreement, as amended by Amendment No. 1 and this Amendment No. 2, is currently an effective, valid, and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment No. 2, 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 No. 2, 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 No. 2.

5. **Authority.** The persons executing this Amendment No. 2 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 No. 2 on behalf of said party, (iii) by so executing this Amendment No. 2, such party is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 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 No. 2 on the date(s) set forth below with express intent for this Amendment No. 2 to be effective as of June 30, 2020.

CITY:

CITY OF CARSON, a municipal corporation

Albert Robles, Mayor

Date: October ____, 2020

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
(tjl)

CONSULTANT:

HINDERLITER, DE LLAMAS AND ASSOCIATES, a California corporation

By: _____
Name:
Title:

By: _____
Name:
Title:
Address: 120 S. State College Blvd., Suite 200
Brea, CA 92821

Date: October ____, 2020

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.