

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 and Associates, a California corporation (“Consultant”), is entered into effective as of the 4th day of October, 2022.

RECITALS

A. City and Consultant entered into that certain Agreement for Contract Services dated May 18, 2021 (“Agreement”), whereby Consultant agreed to provide City services to obtain and collect sales and use tax information from appropriate government agencies and to furnish all such information to the City. The term of the Agreement will expire May 17, 2024 and City has two options to extend the term for additional one-year terms. The Contract Sum is for an amount not to exceed \$28,800 plus 15% of new sales and use tax revenue recovered by Consultant on behalf of the City.

B. City and Consultant now seek to expand the Scope of Services so that Consultant will now provide services to obtain and collect sales or transactions and use tax information related to Measure “K” from appropriate government agencies and to furnish all such information to the City, for an additional not to exceed amount of \$4,000 bringing the adjusted Contract Sum to an amount not to exceed \$32,800, plus 25% of new sales or transactions and use tax revenue recovered by Consultant on behalf of the City and Consumer Price Index adjustments.

TERMS

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

A. **Section 1.8 (Additional Services) of the Agreement is hereby amended to read in its entirety as follows:**

“1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section

shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed. For purposes of this Section 1.8 only, the Parties shall deem the Contract Sum to be ~~\$32,800~~~~\$28,800~~.”

B. Section 2.1 (Contract Sum) of the Agreement is hereby amended to read in its entirety as follows:

“2.1 Contract Sum.

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, including reimbursement for actual expenses, shall not exceed ~~Thirty Two Twenty Eight Thousand Eight Hundred Dollars (\$32,800 \$28,800)~~ ***Thirty Two Thousand Eight Hundred Dollars (\$32,800) plus 15% of new sales and use tax revenue recovered by Consultant pursuant to Section II and 25% of new sales or transactions and use tax (Measure K) revenue recovered by Consultant plus certain Consumer Price Index adjustments pursuant to Section II, of Exhibit C, Schedule of Compensation of this Agreement (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.8.”***

C. Subsection (e) of Section 6.4 (Confidentiality and Release of Information) of the Agreement is hereby amended to read in its entirety as follows:

“6.4 Confidentiality and Release of Information.

(e) 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 California Department of Tax and Fee Administration. Section 7056 specifies the conditions under which a City may authorize persons other than City officers and employees to examine State ***sales or transactions and use tax*** ~~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:

(i) Consultant is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law Revenue and Taxation Code section 7200 et. seq.

(ii) 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.

(iii) 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.

(iv) Consultant is prohibited from retaining the information contained in, or derived from those sales, use or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Department of Tax and Fee Administration 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 *or transactions* 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.”

D. Exhibit “A” (Scope of Services) of the Agreement is hereby replaced with Exhibit “A” (Scope of Services), attached hereto and incorporated herein by this reference.

E. Exhibit “C” (Schedule of Compensation) of the Agreement is hereby replaced with Exhibit “C” (Schedule of Compensation), attached hereto and incorporated herein by this reference.

F. Exhibit “D” (Schedule of Performance) of the Agreement is hereby replaced with Exhibit “D” (Schedule of Performance), attached hereto and incorporated herein by this reference.

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

Lula Davis-Holmes, Mayor

ATTEST:

Dr. Khaleah R. Bradshaw, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[rjl]

CONSULTANT:

HINDERLITER, DE LLAMAS
AND ASSOCIATES, a California corporation

By: _____
Name:
Title:

By: _____
Name:
Title:
Address: 120 S. State College Blvd., #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.

CALIFORNIA ALL-PURPOSE 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 LOS ANGELES

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
<input type="checkbox"/>	<div>TITLE(S) PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div>	<div>TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	<div>NUMBER OF PAGES</div>
<input type="checkbox"/>	OTHER _____	
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____		<div>DATE OF DOCUMENT</div>
		<div>SIGNER(S) OTHER THAN NAMED ABOVE</div>

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2022 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: _____

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<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	_____
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))		DATE OF DOCUMENT
_____		_____
_____		SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT “A”
SCOPE OF SERVICES

I. Consultant will perform the following Services:

Obtain and collect sales and use tax information from appropriate government agencies and provide all such information to the City. Additionally, Consultant shall audit, analyze, and seek misallocation of monies and provide City written reports detailing findings. The foregoing shall include but not be limited to the following:

- A.** Collect City, county and state sales and use tax data from the appropriate governmental agencies and provide comparison information relating to the City.
- B.** Audit and analyze City sales and use tax revenue sources.
- C.** Provide written audited data and written findings to the City relating to sales and use tax trends and economic statistics.
- D.** Contact appropriate entity(s) and governmental agency(s) to confirm protocol on filing all necessary documentation and recover misallocated tax monies.
- E.** Provide both quarterly and annual reports illustrating computation and compilations of both audits and findings.
- F.** Provide technological capabilities, as well as accessing data and analytic solutions to City staff with insights pertaining to revenues (actuals, budget, and forecast).

IA. Commencing October 4, 2022, Consultant will perform the following Services with respect to City’s Measure “K” Taxes:

- A. Transactions Tax and Economic Analysis/Forecasting Services/Reports***
 - *Provide periodic updated reports to City identifying changes in sales by individual businesses, business groups and categories, and by geographic area. These reports may include, without limitation, aberrations due to State audits, fund transfers, and receivables, along with late or double payments, and reconciliation worksheets to assist with budget forecasting.*
 - *Establish a special database with California Department of Tax and Fee Administration (“CDTFA”) registration data for businesses within applicable Measure “K” boundaries holding seller’s permit accounts. Endeavor to identify transactions and use tax measure/district allocations under such accounts for the most current quarter and immediately prior quarter where available.*
 - *Periodically license for the limited, non-exclusive, non-transferable use by City’s staff certain of Consultant’s web-based sales, use and/or transactions tax program(s) containing sellers permit, registration,*

allocation and related information for business outlets within City's jurisdiction registered with the CDTFA.

- *Provide periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.*

B. Allocation and Audit Recovery Services

- *Conduct (as and when mutually agreed with City) initial and on-going sales, use and transactions tax audits of businesses to help identify and correct distribution and allocation errors, and to help effect favorable registration, reporting or formula changes thereby generating previously unrealized sales, use or transactions tax income for City and/or recover misallocated tax from registered taxpayers. Common errors to be monitored and corrected include transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; formula errors; 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.*
- *Initiate contacts with the CDTFA and sales management and accounting officials in companies that have businesses where a probability of error exists to endeavor to help verify whether current tax receipts accurately reflect the local sales activity.*
- *Prepare and submit to the CDTFA information for the purpose of correcting any identified allocation errors, and follow-up with individual businesses and the CDTFA to advocate for City recovery of back or prospective payments that may be owing.*
- *If, during the course of its audit, Consultant finds businesses located in City's jurisdiction that are properly reporting sales, use or transactions taxes but have the potential for modifying their operation to provide an even greater share to City, Consultant may so advise City and collaborate with those businesses and City to encourage such changes.*

C. Consulting and Other Optional Services

From time to time in its sole discretion, consult with City's staff, including without limitation, regarding (i) technical questions and other issues related to sales, use and transactions tax, (ii) utilization of reports to enhance collection efforts, (iii) sales tax projections for proposed annexations, economic development projects and budget planning, (iv) negotiating/review of tax sharing

agreements, (v) establishing purchasing corporations, (vi) meeting with taxpayers to encourage self-assessment of tax obligations, and (vii) other sales, use or transactions tax revenue-related matters.

- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
 - A.** Both written audited data and written findings related to sales and use tax trends and economic statistics.
 - B.** Both quarterly and annual reports illustrating computation and compilations of audits and findings.
 - C.** *With respect to Measure “K” taxes, periodic updated reports to City identifying changes in sales by individual businesses, business groups and categories, and by geographic area.*
 - D.** *With respect to Measure “K” taxes, periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.*
- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**
 - A.** As needed and as requested by City.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**
- V. Consultant will utilize the following personnel to accomplish the Services:**
 - A.** Andy Nickerson, President/CEO
 - B.** Bobby Young, Director of Client Services, Project Manager
 - C.** Ken Brown, Principal
 - D.** Bret Plumlee –Principal
 - E.** Robin Sturdivant –Principal
 - F.** Matt Hinderliter –Director of Audit Services
 - G.** Quang Dang –Associate Director of Audit Services
 - H.** Mary Hubbell –Manager of Production Services

EXHIBIT “C”
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

Sales and Use Tax Management Services

	RATE	ANNUAL BUDGET
A. Sales Tax Management Services FY 21-22	\$800 Per Month	\$9,600
B. Sales Tax Management Services FY 22-23	\$800 Per Month	\$9,600
C. Sales Tax Management Services FY 23-24	\$800 Per Month	\$9,600
TOTAL:		\$28,800
D. Sales Tax Management Services FY 24-25	\$800 Per Month	\$9,600*
E. Sales Tax Management Services FY 25-26	\$800 Per Month	\$9,600**
TOTAL IF BOTH OPTIONS TO EXTEND ARE EXERCISED		\$48,000

*If first option to extend is exercised.

**If second option to extend is exercised.

This includes 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, a principal of the Consultant shall analyze the City’s data in detail and meet 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 is a non-confidential newsletter.

H. Sales and Use Tax Recovery Fee

In addition to the fees under Section I above, Consultant shall receive a recovery fee for all new sales and use tax revenue received by the City as a result of audit and recovery work performed by Consultant, at the rate of 15%. This audit fee applies to monies received in the first eight consecutive reporting quarters beginning with the receipt of the audit revenue in addition to any retroactive back quarter adjustments obtained by Consultant.

Audit fees are billed 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 flows to the City after the completion of the eight quarters. The fee constitutes the full reimbursement to Consultant and covers all direct and indirect costs incurred by Consultant under this Agreement, including all employees' salaries, travel expenses and service contracting costs as well as the software to be delivered to the City.

II. Commencing October 4, 2022, Consultant shall perform the following tasks at the following rates:

Sales or Transactions and Use Tax Services

	RATE	ANNUAL BUDGET
A. Sales or Transactions and Use Tax Services FY 22-23	\$200 Per Month	\$1,600
B. Sales or Transactions and Use Tax Services FY 23-24	\$200 Per Month	\$2,400
TOTAL:		\$4,000
D. Sales or Transactions and Use Tax Services FY 24-25	\$200 Per Month	\$2,400*
E. Sales or Transactions and Use Tax Services FY 25-26	\$200 Per Month	\$2,400**
TOTAL IF BOTH OPTIONS TO EXTEND ARE EXERCISED		\$8,800

**If first option to extend is exercised.*

***If second option to extend is exercised.*

Consultant may change the fees established above upon at least 30 days' prior written notice to City (but not more than once a year). Any such change must be with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"), and be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.

Allocation and Audit Recovery Services

Fees for performing the allocation and audit recovery Services described above shall be 25% of all new, increased and recovered transactions and use tax measure/district revenue received by City as a result, in whole or in part, of such Services, including without limitation, any reimbursement or other payment from any State fund and any point of sale misallocations. These fees shall be paid notwithstanding any related City assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection with the relevant Services.

The fees described above include, without limitation, State fund transfers received for back quarter reallocations and monies received in the first eight (8) consecutive reporting quarters following completion of Consultant's allocation audit and confirmation by the CDTFA of the relevant corrections.

General Provisions Relating to Fees

Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by City.

- III.** A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

N/A

- IV.** Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.
- V.** The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

VI. The total compensation for the Services shall not exceed \$32,800 ~~\$28,800~~ plus 15% of all amounts recovered under Section II and 25% of all amounts recovered and CPI adjustments made under Section II, of this Exhibit C, as provided in Section 2.1 of this Agreement.

VII. The Consultant's billing rates for all personnel and other incidental costs are attached as Exhibit C- 1.

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

- A.** Tasks will be continuous, on-going and as directed by the Contract Officer.
- B.** The tax reports shall be provided to City as follows:

Deadline

Quarterly Reports

30 days after quarter end date
for California Department of
Tax and Fee Administration

Annual Reports

30 days after data is made
available by California
Department of Tax and Fee
Administration

II. Consultant shall deliver the following tangible work products to the City by the following dates.

- A.** *With respect to taxes that are not associated with Measure “K,” both written audited data and written findings related to sales tax trends and economic statistics.*
- B.** *With respect to taxes that are not associated with Measure “K,” both quarterly and annual reports illustrating computation and compilations of audits and findings.*
- C.** *With respect to Measure “K” taxes, periodic updated reports to City identifying changes in sales by individual businesses, business groups and categories, and by geographic area.*
- D.** *With respect to Measure “K” taxes, periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.*

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.