

AMENDMENT NO. 4 TO AGREEMENT NO. C2020-091
Revenue and Audit Consulting Services

City Budget Code: 10013102-53210

This Amendment No. 4 ("**Amendment**") to City Agreement No. C2020-091, entitled Revenue Audit and Consulting Services ("**Agreement**"), by and between the City of Napa, a California charter city ("**City**"), and Hinderliter, de Llamas and Associates (HdL), a California corporation ("**Consultant**"), is effective on the date last signed by the City, which is identified on the signature page as the "Effective Date."

RECITALS

A. City and Consultant entered into the Agreement, effective April 23, 2020, for an amount not to exceed \$125,000, pursuant to which Consultant agreed to perform certain services described in the Agreement ("**Services**"), generally including revenue projection analysis, tax-related legislative notifications, and tax and fee compliance review. City and Consultant previously entered into Amendment No.1 to the Agreement, effective August 27, 2020, and Amendment No. 2 to the Agreement, effective April 17, 2023, and Amendment No. 3 to the Agreement, effective June 4, 2024, for a total not to exceed \$1,850,000.

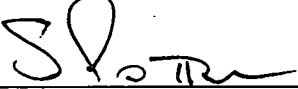
B. City has determined that additional Services ("**Additional Services**") are required to continue, modify, or expand the Services performed under the Agreement, as set forth in the Scope of Additional Services and Schedule of Performance, attached hereto as **Exhibit "A"** and incorporated herein by reference.

NOW, THEREFORE, the City and the Consultant, for the mutual consideration described herein, agree as follows:

1. **INCORPORATION BY REFERENCE.** Unless otherwise specified, all subsequent references to the Agreement are deemed to mean the original Agreement as modified by any amendments preceding this Amendment, if any. This Amendment incorporates the Agreement by reference, except and only to the extent that any terms or conditions of the Agreement are specifically modified by this Amendment. All terms and conditions in the Agreement that are not specifically modified by this Amendment remain in full force and effect.
2. **SCOPE OF ADDITIONAL SERVICES.** Consultant will perform the Additional Services described in Exhibit "A" in accordance with the terms and conditions of this Amendment.
3. **AMENDMENT.** Section 5 of the Agreement is hereby amended to extend the term to June 30, 2026.
4. **PAYMENT.** City will compensate Consultant for satisfactory performance of the Additional Services in an amount not to exceed \$500,000. The cumulative total compensation payable to the Consultant will not exceed \$2,350,000 without prior written authorization from the City (based on \$1,850,000 for the original Agreement and any prior amendments thereto, plus \$500,000 for this Amendment).
5. **ENTIRE AGREEMENT.** The Agreement, as modified by this Amendment, constitutes the entire integrated understanding between the parties concerning the Additional Services. This Amendment supersedes all prior negotiations, agreements and understandings regarding the Additional Services, whether written or oral. The documents incorporated by reference into this Amendment are complementary; what is called for in one is binding as if called for in all, except and only to the extent otherwise specified. If any provision in an exhibit to this Amendment conflicts with or is inconsistent with a provision in the body of this Amendment, the provisions in the body of this Amendment will control over any such conflicting or inconsistent provisions.
6. **SIGNATURES: ELECTRONIC SIGNATURES.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Amendment on behalf of the respective legal entities of Consultant and City. The parties agree that this Amendment may be executed and transmitted electronically and that electronic signatures shall have the same force and effect as original signatures in accordance with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.; the California Uniform Electronic Transactions Act, Civil Code Section 1633.1 et seq. and California Government Code Section 16.5. This Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and authorized assigns.


IN WITNESS WHEREOF, the Parties have executed this Amendment to be effective on the Effective Date set forth below.


CITY:
CITY OF NAPA, a California charter city

By: 
Steve Potter, City Manager

Date: 12/11/2024
("Effective Date")

CONSULTANT:
Hinderliter, de Llamas and Associates (HdL), a California corporation

Signed by:
By: 
Andrew Nickerson, President/CEO

DocuSigned by:
By: 
Richard Park, Chief Financial Officer

COUNTERSIGNED:


Erika Leahy, City Auditor

APPROVED AS TO FORM:


Christopher J. Diaz, Interim City Attorney

EXHIBIT "A"

SCOPE OF ADDITIONAL SERVICES AND SCHEDULE OF PERFORMANCE

The Consultant will perform the Additional Services described below, within the specified times:

SALES TAX SERVICES**1. Sales and Use Tax and Economic Analysis/Forecasting Services/Reports**

- 1.1. Establish a special database identifying the name, address, and quarterly allocations of all sales tax producers within the City. This database will be utilized to generate special reports to 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.
- 1.2. 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, quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, and quarterly reconciliation worksheets to assist with budget forecasting. Consultant shall meet quarterly by in person or virtually with City.
- 1.3. Shall additionally provide following each calendar quarter a summary analysis for City to share with Council Members, Chamber of Commerce, other economic development interest groups and the public that analyze City's sales tax trends by major groups and geographic areas without disclosing confidential individual tax records.
- 1.4. Establish a special database with California Department of Tax and Fee Administration ("CDTFA") registration data for businesses within applicable district boundaries holding seller's permit accounts.
- 1.5. 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.
- 1.6. 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.

2. Allocation and Audit Recovery Services

- 2.1. Conduct (when mutually agreed with City) initial and on-going sales and use tax audits of businesses to help identify and correct distribution and allocation errors, and to proactively affect favorable registration, reporting or formula changes thereby generating previously unrealized sales and use tax income for the City and/or recovering misallocated tax from registered taxpayers. Common errors that will be monitored and corrected include but are not limited to: 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.
- 2.2. 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. Such contacts will be conducted in a professional and courteous manner.
- 2.3. 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 promote recovery by the City of back or prospective quarterly payments that may be owing.
- 2.4. If, during the course of its audit, Consultant finds businesses located in the City's jurisdiction that are properly reporting sales and use tax 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.

3. Consulting and Other Optional Services

Consultant may 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 and use tax, (ii) utilization of reports to enhance

business license 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 and use tax revenue-related matters.

FEES

4. Sales and Use Tax and Economic Analysis/Forecasting Services/Reports

- 4.1. Fees for performing the sales tax and economic analysis/forecasting Services as described above shall initially be **\$870.00** 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 paid by City no later than 30 days after the invoice date.
- 4.2. Consultant will increase the non-hourly Fees established above once a year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), as reported by the U.S. Bureau of Labor Statistics (the "CPI Change").

5. Allocation and Audit Recovery Services

- 5.1. Fees for performing the allocation and audit recovery Services described above shall be **15%** of all new, increased and recovered sales and use tax revenue received by the City as a result, in whole or in part, of the allocation audit and recovery services (hereafter referred to as "audit fee"). The fee 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.
- 5.2. The Fee 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 of the corrections by the CDTFA.
- 5.3. These Fees shall be paid by City upon Consultant's submittal of evidence of Consultant's relevant Services in support thereof, including, without limitation, copies of relevant communications between Consultant and the CDTFA and/or taxpayers.
- 5.4. Consultant recognizes City's authority to waive or reduce the tax/fee-related debt of a business. Should City decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e., statute of limitation or other legal defense) shall not be considered a City voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.

6. Consulting and Other Optional Services

- 6.1. Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.
- 6.2. Consultant may change the rates for its hourly Fees from time to time. A 30 days' prior written notice to City will be given.

7. General Provisions Relating to Fees

- 7.1. 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.
- 7.2. Fees will be invoiced monthly to City for Services performed during the prior month. To the extent that Consultant has commercially reasonable means to do so, Fees will be netted out of City's monthly revenue disbursement.

BUSINESS LICENSE TAX AND FEES ADMINISTRATION

Consultant will provide the following Services relative to Client's business license tax administration.

8. Operations Management Services

- 8.1. Establish and maintain database of Client businesses.
- 8.2. Receive and process applications, renewals and payments in a timely fashion.

- 8.3. Send renewal notices to active businesses within 30 days of the renewal period end date or at another interval specified by Client.
 - 8.4. Provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. Consultant license specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
 - 8.5. Remit revenue to Client no less than monthly.
 - 8.6. Provide Client staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.
- 9. Compliance Services:** 1) Identify and register businesses which are subject to licensure or taxation, 2) collect known debt as pertains to business license or tax, and 3) identify under-reported tax liability.
- 9.1. **Discovery Services**
 - 9.1.1. Develop a list of businesses subject to Client licensure or taxation.
 - 9.1.2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
 - 9.1.3. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to Client upon request.
 - 9.1.4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
 - 9.1.5. Remit revenue to Client no less than monthly, along with all business applications and any additional documentation.
 - 9.2. **Collection Services**
 - 9.2.1. Identify businesses subject to Client licensure or taxation which have known debt to Client and have failed to pay within an appropriate time frame.
 - 9.2.2. Notify businesses of their options to comply or dispute their non-compliant status.
 - 9.2.3. Provide businesses with detailed invoicing and options to pay via website, mail and phone.
 - 9.2.4. Remit revenue to Client no less than monthly.
 - 9.3. **Audit Services**
 - 9.3.1. Identify potential under-reporting and/or misclassified businesses.
 - 9.3.2. Audit businesses mutually agreed to by Client and Consultant that are identified as potential under-reporting businesses.
 - 9.3.3. Submit audit summaries to Client and discuss further actions.
 - 9.3.4. Educate businesses on proper reporting practices.
 - 9.3.5. Invoice and collect identified deficiencies.
- 10. Online Payment Processing** – Consultant's services include PCI compliant payment processing services which supports both credit card and eCheck transactions.
- 10.1. **Client Responsibilities**
 - 10.1.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Consultant's payment processor, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by Consultant's payment processor. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
 - 10.1.2. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

FEES

11. Operations Management Services

- 11.1. Fees for performing operations management Services shall be \$18.09 for each processed account, which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice.
- 11.2. Fees will be increased as of January 1st of each calendar year 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"). Each annual increase in the Fees will 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%.

- 11.3. Fees related to travel and lodging expenses are billed at cost and apply 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 Client.
- 11.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

12. Compliance Services

- 12.1. Fees for performing compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
 - 12.1.1. Fees for performing discovery Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.
 - 12.1.2. In the event that Client discovers a non-compliant business and reports the business to Consultant (including a calculation of all taxes/fees due), Consultant will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
 - 12.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
 - 12.1.4. Fees for performing audit Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.
- 12.2. Consultant recognizes Client's authority to waive or reduce the tax/fee debt of a business. Should Client decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a Client voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.
- 12.3. The fee shall be paid notwithstanding any related Client assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
- 12.4. Fees related to travel and lodging expenses are billed 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 Client.
- 12.5. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

13. Payment Processing – Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or Client funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.

- 13.1. Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
 - 13.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
 - 13.1.2. ACH/eCheck processing - \$2.50 per transaction
- 13.2. Client funded
 - 13.2.1. Credit and debit card processing – 2.9% of transaction amount
 - 13.2.2. ACH/eCheck processing - \$0.75 per transaction
- 13.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
- 13.4. Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card

association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.

TRANSIENT OCCUPANCY TAX ADMINISTRATION SERVICES

Consultant will provide the following Services relative to Client's transient occupancy tax administration.

14. Operations Management Services

- 14.1. Establish and maintain database of Client lodging providers.
- 14.2. Receive and process registrations, tax returns and payments in a timely fashion.
- 14.3. Provide lodging providers multiple options for submitting registrations, tax returns, payments, or support requests (including via website, email, mail, phone, and fax. Consultant tax specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 14.4. Remit revenue to Client no less than monthly.
- 14.5. Provide Client staff access to website portal offering lodging provider registry inquiry and reporting capabilities.
- 14.6. Endeavor to ensure accurate filings of returns by consistently monitoring returns, providing compliance audits, and educating lodging providers as mutually agreed to by Client and Consultant.
- 14.7. Provide analysis reports monthly and annually provide revenue trends and key insights on Client lodging providers.

15. Online Payment Processing – Consultant's services include PCI compliant payment processing services which supports both credit card and eCheck transactions.

15.1. Client Responsibilities

- 15.1.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Consultant's payment processor, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by Consultant's payment processor. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
- 15.1.2. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

FEES

16. Operations Management Services

- 16.1. Fees for performing operations management Services shall be \$893.22 per year for each quarterly filing property.
- 16.2. Fees will be increased as of January 1st of each calendar year 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"). Each annual increase in the Fees will 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%.
- 16.3. Fees for any travel and lodging expenses will be billed at cost and applied to all meetings (including implementation, training, operations and support).
- 16.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

17. Payment Processing – Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or Client funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.

- 17.1. Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
 - 17.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
 - 17.1.2. ACH/eCheck processing - \$2.50 per transaction
- 17.2. Client funded
 - 17.2.1. Credit and debit card processing – 2.9% of transaction amount
 - 17.2.2. ACH/eCheck processing - \$0.75 per transaction
- 17.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
- 17.4. Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.

SHORT-TERM RENTALS TRANSIENT OCCUPANCY TAX ADMINISTRATION.

Consultant will provide the following Services relative to Client's short-term rentals transient occupancy tax administration.

18. Operations Management Services

- 18.1. Establish and maintain database of Client's short-term rental lodging providers.
- 18.2. Receive and process registrations, tax returns and payments in a timely fashion.
- 18.3. Provide lodging providers multiple options for submitting registrations, tax returns, payments, or support requests (including via website, email, mail, phone, and fax. Consultant tax specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 18.4. Remit revenue to Client no less than monthly.
- 18.5. Provide Client staff access to website portal offering lodging provider registry inquiry and reporting capabilities.
- 18.6. Provide analysis reports monthly and annually provide revenue trends and key insights on Client lodging providers.

19. Online Payment Processing – Consultant's services include PCI compliant payment processing services which supports both credit card and eCheck transactions.

- 19.1. Client Responsibilities
 - 19.1.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Consultant's payment processor, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by Consultant's payment processor. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
 - 19.1.2. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

FEES

20. Operations Management Services

- 20.1. Fees for performing operations management Services shall be \$18.09 per filing.
 - 20.1.1. Fees will be increased as of January 1st of each calendar year 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"). Each annual increase in the Fees will 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%.

- 20.2. Fees for any travel and lodging expenses will be billed at cost and applied to all meetings (including implementation, training, operations and support).
- 20.3. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.
- 21. Payment Processing** – Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or Client funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.
 - 21.1. Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
 - 21.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
 - 21.1.2. ACH/eCheck processing - \$2.50 per transaction
 - 21.2. Client funded
 - 21.2.1. Credit and debit card processing – 2.9% of transaction amount
 - 21.2.2. ACH/eCheck processing - \$0.75 per transaction
 - 21.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
 - 21.4. Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.

TRANSACTION TAX SERVICES – MEASURE G

22. Transactions Tax and Economic Analysis/Forecasting Services/Reports

- 1.1. Consultant shall establish a database containing all applicable Department of Tax and Fee Administration (CDTFA) registration data for each business within the Measure "G" District boundaries holding a seller's permit account. Said database shall also identify the quarterly transactions and use tax allocations under each account for the most current and previous quarters where available.
- 1.2. Consultant shall provide updated reports each quarter identifying changes in allocation totals by individual businesses, business groups and by categories. Quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, will also be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will be included.
- 1.3. Consultant shall advise and work with CITY Staff on planning and economic questions related to maximizing revenues, preparation of revenue projections and general information on transactions and use tax questions.
- 1.4. Consultant shall make available to CITY the HdL proprietary software program and Measure "G" database containing all applicable registration and quarterly allocation information for CITY business outlets registered with the Department of Tax and Fee Administration. The database will be updated quarterly.

23. Deficiency/Allocation Reviews and Recovery

- 23.1. Consultant shall conduct on-going reviews to identify and correct unreported transactions and tax payments and distribution errors thereby generating previously unrealized revenue for the City. Reviews shall include:
 - 23.1.1. Comparison of county-wide local tax allocations to transactions tax for brick and mortar stores and other cash register-based businesses, where clearly all transactions are conducted on-site within the Measure "G" City boundaries, and therefore subject to transactions tax.
 - 23.1.2. Review of any significant one-time use tax allocations to ensure that there is corresponding transaction tax payments for taxpayers with nexus within the City boundaries.
 - 23.1.3. Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
 - 23.1.4. Identification and follow-up with any potentially large purchasers of supplies and equipment (e.g. hospitals, universities, manufacturing plants, agricultural operations, refineries) to ensure that their major vendors are properly reporting corresponding transactions tax payments to the Measure "G" Transactions Tax District.
- 2.2. Consultant will initiate, where the probability of an error exists, contacts with the appropriate taxpayer

management and accounting officials 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.

- 23.2. Consultant shall prepare and submit to the Department of Tax and Fee Administration all information necessary to correct any allocation errors and deficiencies that are identified and shall follow-up with the individual businesses and the California Department of Tax and Fee Administration to ensure that all back quarter payments due the CITY are recovered.

24. Consulting and Other Optional Services

Consultant may 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 business license 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.

FEES

25. Transactions Tax and Economic Analysis/Forecasting Services/Reports

- 25.1. Fees shall be paid **\$300.00** monthly billed quarterly for the transaction district tax reports that we include with the quarterly sales tax analyses. The monthly fee shall be invoiced quarterly in arrears and shall be paid by City no later than 30 days after the invoice date.
- 25.2. Consultant will increase the non-hourly Fees established above once a year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), as reported by the U.S. Bureau of Labor Statistics (the "CPI Change").

26. Allocation and Audit Recovery Services

- 26.1. Fees shall be paid **25%** of the initial amount of new transactions or use tax revenue received by the City because of audit and recovery work performed by Consultant, (hereafter referred to as "audit fees"). New revenue shall not include any amounts determined and verified by City or Consultant to be increment attributable to causes other than Consultant's work pursuant to this agreement. In the event, Consultant is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, it shall be Consultant's responsibility to separate and support the incremental amount attributable to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for those specific quarters identified as being missing and/or deficient following completion of the audit by Consultant and confirmation of corrections by the California Department of Tax and Fee Administration but shall not apply prospectively to any future quarter. Consultant shall provide City with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

27. Consulting and Other Optional Services

- 27.1. Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.
- 27.2. Consultant may change the rates for its hourly Fees from time to time. A 30 days' prior written notice to City will be given.

28. General Provisions Relating to Fees

- 28.1. 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.
- 28.2. Fees will be invoiced monthly to City for Services performed during the prior month. To the extent that Consultant has commercially reasonable means to do so, Fees will be netted out of City's monthly revenue disbursement.

29. Confidentiality Information

Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure

of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a city, county or district may authorize persons other than such city, county or district's 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 R&T Code are hereby made part of this Agreement:

- 29.1. 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 Local Sales and Use Tax Law R&T Code Section 7200 et.seq.
- 29.2. Consultant is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of City who is authorized by City resolution provided to the CDTFA to examine the information.
- 29.3. Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 29.4. 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 the 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 and in Section 7056 (b), (1) of the Revenue and Taxation Code.

30. Software Use and Proprietary Information

- 30.1. **Software Use.** Consultant hereby provides authorization to City to access Consultant's Sales Tax website if 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 third party without explicit written authorization by Consultant. 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 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 or expiration of this Agreement, the software use authorization shall expire, and all City staff website logins shall be de-activated.
- 30.2. **Proprietary Information.** As used herein, the term "proprietary information" means all information or material that has or could have commercial value or other utility in Consultant's business, including without limitation: Consultant's (i) computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; (iii) business processes; (iv) marketing plans, analysis and strategies; and (v) materials and techniques used; as well as the terms and conditions of this Agreement. Except as otherwise required by law, City shall hold in confidence and shall not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by City in connection with this Agreement. The obligations imposed by this Section shall survive any expiration or termination of this Agreement or otherwise. The terms of this Section shall not apply to any information that is public information.