

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

This Agreement is made and entered into as of the 26th day of May, 2020 (the “Effective Date”) by and between the COUNTY OF FRESNO, a political subdivision of the State of California hereinafter called (“COUNTY”), and HINDERLITER, de LLAMAS AND ASSOCIATES, a California Corporation, hereinafter called (“CONTRACTOR” or “HdL”).

I. RECITALS

WHEREAS, an effective program of sales and use tax management will provide for more accurate sales and use tax forecasting; and

WHEREAS, COUNTY desires the combination of report preparation, analysis and forecasting necessary to effectively manage its sales and use tax base; and

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

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

II. SERVICES

The CONTRACTOR shall perform the following services (collectively, the “Services”):

A. Forecast Model of Sales Tax Revenues

- HdL will use historical sales, use and transactions tax data and business specific performance for the COUNTY to prepare thorough and accurate budget forecasts.
- HdL will provide a forecasting model that is consolidated into major economic categories including retail, transportation, construction and business to business. HdL’s database and reports can be culled by major industry groups.
- Consideration will be made for macroeconomic trends, microeconomic trends, sales tax anomalies, future developments, threatened businesses and legislative actions. HdL currently provides a quarterly Consensus Forecast to all clients which provides relevant information on the economic forces affecting California’s economy. The forecast is used to help project revenues based on statewide formulas and for reference

in tailoring sales tax estimates appropriate for each client's specific demographics, tax base and regional trends. These resources will also be utilized to provide COUNTY with sales tax revenue forecasts.

B. Records Retention

Once authority to receive the data is verified, the data is obtained from the CDTFA via secure transmission and subsequently processed into the database by an authorized senior member of HdL's DevOps team. All team members working with sensitive data go through a background check as part of the hiring process and have signed confidentiality statements specifying limited access to and use of the data. Access to the data contained in the database is restricted at multiple levels. Direct access to the data is restricted to senior members of HdL's DevOps team, and only accessed as needed for various aspects of operations such as processing new data files. All other access to the data is governed by HdL's proprietary system, which restricts access to the data to only authorized individuals. Additionally, both physical access to the servers housing the database, and access to the backup/disaster recovery system are restricted to only authorized individuals. The principle of least privilege is followed at all phases of the data lifecycle, ensuring only authorized individuals are granted access and that the security of the data is protected at all times.

C. STANDARD OF CARE

All of the Services shall be performed by CONTRACTOR or under CONTRACTOR's supervision. CONTRACTOR represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with the highest professional standards. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one (1) or more first-class firms performing similar work under similar circumstances.

All Services shall be performed by qualified and experienced personnel who are not employed by COUNTY. By delivery of completed work, CONTRACTOR certifies that the work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and the highest professional standard.

III. CONSIDERATION

- A. CONTRACTOR shall provide the sales tax and economic analysis Services described in Section II-A above for a fee of **\$0.00** per month, commencing with the month of the Effective Date (hereafter referred to as “monthly fee”). The consideration that CONTRACTOR shall receive for providing the sales tax and economic analysis Services to the COUNTY is access to the COUNTY’s sales and use tax transaction records, which CONTRACTOR would not otherwise be able to utilize.
- B. CONTRACTOR shall invoice COUNTY for any services beyond the scope described above rendered to COUNTY based on the following hourly rates on a monthly or a quarterly basis, at CONTRACTOR’s option. Such services shall include quarterly sales tax analysis and reporting, economic development consulting and tax ordinance development. All such additional services billed in accordance with this Section III(B) must be approved in writing by COUNTY prior to the service being performed by CONTRACTOR.
- C. CONTRACTOR shall submit invoices to COUNTY describing the work performed the preceding month or quarter. CONTRACTOR's bills shall include a brief description of the Services performed and/or the specific task in the scope of services to which it relates, the calendar quarter the Services were performed, the number of hours spent on all work billed on an hourly basis, and a description of any reimbursable expenditures. All such invoices shall be payable by COUNTY no later than 45 days following the invoice date. COUNTY shall not be invoiced for any additional services totaling less than an hour in any month. The hourly rates in effect as of the Effective Date are as follows:

Principal	\$325 per hour
Programmer	\$295 per hour
Senior Analyst	\$245 per hour
Analyst	\$195 per hour

No hourly rate changes shall occur without prior written notice to COUNTY and written approval of the rate change by COUNTY.

- D. Any invoices not paid in accordance with the 45-day payment terms shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.

- E. The compensation paid to CONTRACTOR pursuant to this Agreement shall not exceed ten thousand dollars (\$10,000).

IV. CONFIDENTIALITY; OWNERSHIP/USE OF INFORMATION

- A. 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 COUNTY may authorize persons other than COUNTY officers and employees to examine State Sales and Use Tax records.
- B. 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:
 - 1. CONTRACTOR 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 COUNTY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law Revenue and Taxation Code section 7200 et.seq.
 - 2. CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the COUNTY who is authorized by resolution to examine the information.
 - 3. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
 - 4. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales, use or transactions and use tax records, after this Agreement has been terminated or 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 COUNTY as set forth by resolution adopted pursuant to Section 7056(b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person authorized to examine sales and use tax records, and certify that this Agreement meets the requirements set forth above and in Section 7056(b)(1) of the Revenue and Taxation Code.

5. CONTRACTOR is prohibited from examining any sales or transactions or use records of any taxpayer.

C. 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 CONTRACTOR or COUNTY’s business, including without limitation: CONTRACTOR’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; (v) materials and techniques used, and (vi) any confidential COUNTY or tax data obtained as a result of this Agreement. Except as otherwise required by law, CONTRACTOR and COUNTY 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 CONTRACTOR or COUNTY in connection with this Agreement. The obligations imposed by this shall survive any expiration or termination of this Agreement or otherwise. The terms of this shall not apply to any information that is public information.

V. COUNTY MATERIALS AND SUPPORT

COUNTY shall adopt a resolution in a form acceptable to the California Department of Tax and Fee Administration and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales tax records of COUNTY. CONTRACTOR shall not perform any services pursuant to this Agreement until the board of the California Department of Tax and Fee Administration has approved the COUNTY’s resolution prepared and approved pursuant to this Section V. COUNTY further agrees to provide any information or assistance that may readily be available such as business license records within the COUNTY. COUNTY further agrees to continue CONTRACTOR’s authorization to examine the confidential sales tax records of the COUNTY by maintaining CONTRACTOR’s name on the COUNTY resolution, or by providing copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the California Department of Tax and Fee Administration and any audit fee owing to CONTRACTOR has been paid.

VI. LICENSE, PERMITS, FEES AND ASSESSMENTS

CONTRACTOR shall, at its sole cost, obtain such licenses, permits and approvals (collectively the “Permits”) as may be required by law for the performance of the Services. COUNTY shall assist CONTRACTOR in obtaining such Permits.

VII. TERM AND TERMINATION

The Term of this Agreement shall begin on the Effective Date, and shall terminate on May 25, 2025.

This Agreement may be terminated for convenience by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, CONTRACTOR may continue to perform Services through the date of termination. Following termination of this Agreement, COUNTY shall continue to timely pay CONTRACTOR’s invoices for Services authorized by COUNTY, performed by CONTRACTOR, and not paid for by COUNTY prior to termination. Anything to the contrary herein notwithstanding (and without limitation on the foregoing sentence), COUNTY shall continue to pay to CONTRACTOR the audit fee for tax payments received by COUNTY after termination of this Agreement from (i) state fund transfers for back quarter reallocations and the first eight consecutive calendar quarters following completion of the allocation audit by CONTRACTOR and confirmation of corrections by the California Department of Tax and Fee Administration; and (ii) businesses identified by CONTRACTOR pursuant to Section III-B-2 above, to the extent such businesses commence or continue to make increased tax payments during the first 24 months following termination of this Agreement.

VIII. INDEPENDENT CONTRACTOR

In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY

shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

IX. COOPERATIVE AGREEMENT

It is intended any other public agency (e.g., COUNTY, county, district, public authority, public agency, municipality, or other political subdivision of California) located in the state of California shall have an option to procure identical services as set forth in this Agreement. The County of Fresno shall incur no responsibility, financial or otherwise, in connection with orders for services issued by another public agency. The participating public agency shall accept sole responsibility for securing services or making payments to the vendor.

X. NON-ASSIGNMENT

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

XI. INSURANCE

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of the Agreement:

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include any auto used in connection with this Agreement.

C. Worker's Compensation

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

Additional Requirements Relating to Insurance

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and employees any amounts paid by the policy of worker's compensation insurance required by this Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and Address of the official who will administer this contract), stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for

any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be issued by admitted insurers licensed to do business in the State of California, and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

XII. INDEMNIFICATION

CONTRACTOR hereby agrees to protect, defend, indemnify, and hold the COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) arising from CONTRACTOR's performance or lack of performance under this Agreement..

XIII. IRREPARABLE HARM

CONTRACTOR and COUNTY each understands and agrees that any breach of this Agreement by either of them may cause the other party hereto irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that such other party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any further breach and for such other relief as such other party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to such other party at law or in equity. The parties hereto expressly waive the defense that a remedy

in damages will be adequate and any requirement in an action for specific performance or injunction hereunder for the posting of a bond.

XIV. DISPUTE RESOLUTION

The Parties agree to make a diligent, good faith attempt to resolve any claim, controversy or dispute arising out of or relating to this Agreement, or concerning the breach or interpretation thereof.

XV. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to its choice of law provisions). If any legal action is necessary to enforce or interpret this Agreement, the parties agree that such action shall be brought in the Superior Court for the State of California, County of Fresno, or the U.S. District Court for the Central District of California, Western Division. The parties hereby submit to the exclusive jurisdiction of such courts, and waive any other venue to which either party might be entitled by domicile or otherwise.

XVI. ATTORNEYS' FEES

Reserved.

XVII. SEVERABILITY; NO WAIVER

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. If any of the provisions of this Agreement shall be deemed to be unenforceable by reason of its extent, duration, scope or otherwise, then the parties contemplate that the court making such determination shall enforce the remaining provisions of this Agreement, and shall reduce such extent, duration, scope, or other provision and shall enforce them in their reduced form for all purposes contemplated by this Agreement. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

XVIII. NOTICES

All notices sent by a party under this Agreement shall be in writing and shall be deemed properly delivered to the other party as of the date of receipt, if received on a business day prior to 3:00 PM local time, or otherwise on the next business day after receipt, provided delivery occurs personally, by courier service, or by U.S. mail to the other party at its address set forth below, or to such other address as either party may, by written notice, designate to the other party. Notices to CONTRACTOR shall be sent to HINDERLITER, de LLAMAS and ASSOCIATES, 120 S. State College Blvd., Suite 200, Brea, CA 92821; and notices to COUNTY shall be sent to COUNTY OF FRESNO, 2281 Tulare Street, Room 304, Fresno, CA 93721.

XIX. ENTIRE AGREEMENT

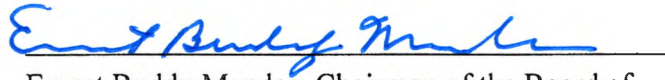
This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement may not be amended or modified except in writing signed by each of the parties hereto. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

XX. COUNTERPARTS; AUTHORITY TO SIGN

This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signature pages of this Agreement transmitted by facsimile or sent by email in portable document format (PDF) will have the same legal effect as an original executed signature page. Each of the persons signing on behalf of a party hereto represents that he or she has the right and power to execute this Agreement on such party's behalf.

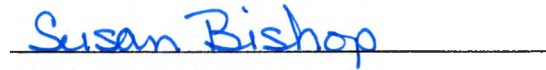
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in their behalf.

COUNTY:
COUNTY OF FRESNO



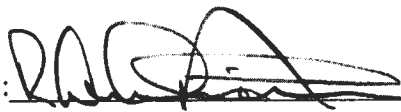
Ernest Buddy Mendes, Chairman of the Board of Supervisors, County of Fresno

ATTEST:



Bernice E. Seidel,
Clerk of the Board of Supervisors
County of Fresno, State of California

CONTRACTOR:
HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation

By: 

Andrew Nickerson, President/CEO

FOR ACCOUNTING USE ONLY:

Fund: 0001
Subclass: 10000
Org: 2540
Account: 7295