

**CITY OF ORLAND**  
**FIRST AMENDMENT TO**  
**AGREEMENT FOR USE AND TRANSACTIONS TAX SERVICES**

**1. PARTIES AND DATE.**

This First Amendment to the Agreement for Use and Transactions Tax Services ("First Amendment") is entered into on the 3<sup>rd</sup> day of December, 2024, by and between the CITY of ORLAND ("CITY") and Hinderliter de Llamas and Associates, a California corporation ("Consultant"). CITY and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

**2. RECITALS.**

2.1 Agreement. The Parties entered into that certain Agreement for Transaction Tax Services dated April 15<sup>th</sup>, 2024 ("Agreement").

2.2 First Amendment. The Parties now desire to amend the Agreement to include consultation services for Transaction Tax – Measure J.

Schedule A herein is attached to the original Agreement's Schedules.

2.3 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

**CITY OF ORLAND**

**HINDERLITER DE LLAMAS & ASSOC.**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_

## **SCHEDULE A**

### **SERVICES**

#### **1. 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 “J” 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 “J” 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.

#### **2. Deficiency/Allocation Reviews and Recovery**

- 2.1. 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:
  - 2.1.(a) 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 “J” City boundaries, and therefore subject to transactions tax.
  - 2.1.(b) 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.
  - 2.1.(c) Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
  - 2.1.(d) 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 “J” 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.
- 2.2. 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.

#### **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, 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**

### **4. Transactions Tax and Economic Analysis/Forecasting Services/Reports**

- 4.1. Fees shall be paid **\$300** 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.
- 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 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.

### **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.

### **8. 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:

- 8.1. 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.
- 8.2. 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.

- 8.3. Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 8.4. 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.

## **9. Software Use and Proprietary Information**

**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.

**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.