

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this "Agreement") is entered into as of April 15, 2024 (the "Agreement Date") by and between Hinderliter de Llamas and Associates ("Consultant"), and City of Orland ("Client"), which is located within the state of California (the "State").

WITNESSETH:

WHEREAS, Consultant is engaged in the business of providing consulting, software and other services that help public agencies understand and maximize their collection of sales, use and transactions taxes, business license taxes, property and lodging taxes, and other revenues, as well as their delivery of public services (collectively, "Consultant's Business"); and

WHEREAS, Client desires to contract with Consultant to obtain one or more of the services included within Consultant's Business (as provided for in Section 1) upon the terms and conditions contained in this Agreement;

WHEREAS, Consultant desires to contract with Client to render such services upon the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the covenants and promises contained herein, Client and Consultant mutually agree as follows:

1. Services.

1.1 Consultant will perform those services included within Consultant's Business that are described in any and all schedule(s) referencing this Agreement and signed by Client and Consultant as of the Agreement Date or hereafter (individually and collectively, the "Schedule(s)"), upon the terms and conditions contained in this Agreement (including the Schedules) (such services are, collectively, the "Services"). In performing the Services, Consultant is acting as an independent contractor (and not as an agent or employee of Client).

1.2 Client acknowledges and agrees that any other public agency (including, without limitation, any participating government agency) located within or outside of the State (e.g., city, municipality, county, district, public authority or other political subdivision) may procure services for fees and other terms and conditions that are substantially similar to any of the Services, Fees and other terms and conditions set forth in this Agreement, provided that such other public agency executes a separate agreement with Consultant wherein the services rendered to such other public agency, the fees payable by such other public agency, and the other terms and conditions of such separate agreement are the responsibility of Consultant and such other public agency and not Client.

1.3 This Agreement does not limit the right of Consultant to enter into additional contracts with Client or to contract with third parties to provide them with merchandise or services of any kind whatsoever, including, but not limited to, services similar to the Services. During the Term of this Agreement, Client will not, directly or indirectly (except through Consultant), engage any third party to provide the Services or any services similar to the Services.

2. **Fees.** As compensation for performing the Services, Client will pay Consultant the fees, costs and expenses as described in the Schedules (individually and collectively these fees and costs are, the “Fees”). Consultant may perform the Services using professionals from its staff or Consultant’s affiliated entities, and such Services will be invoiced to Client under the same terms applicable to Consultant’s staff. Consultant may increase the Fees from time to time (including, without limitation, as may be described in any of the Schedules). Other than a Fee increase as described in the Schedules, Client may notify Consultant of a request that such Fee increase be modified or revoked and, if Consultant fails to do so to Client’s satisfaction within thirty (30) days after the receipt of such request, Client may terminate this Agreement without cause pursuant to Section 7.3.

3. **Invoices; Payment.**

3.1 Consultant will invoice Client for the Fees earned and/or incurred by Consultant pursuant to this Agreement.

3.2 Invoices are due and payable upon receipt. Interest will begin to accrue on the thirty-first (31st) day following the invoice date on all unpaid balances at a rate of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less. Payments will first be credited to interest and then to principal. In the event that Client disputes an invoice, only that portion so disputed in good faith will be withheld from payment, and the undisputed portion must be timely paid. Interest will accrue on any disputed portion of the invoice not timely paid and will be payable immediately if the disputed invoice is resolved in favor of Consultant.

3.3 If Client fails to fully pay an invoice within 30 days after the invoice date, Consultant may, after giving five (5) days’ prior written notice to Client, suspend the rendering of Services under this Agreement until said invoice is paid in full, together with all interest that has accrued thereon. In the event of such a suspension of Services, Consultant will have no liability to Client for any delays or damages arising therefrom.

4. **Insurance.** Throughout the term of this Agreement, Consultant will maintain the following insurance in not less than the referenced amounts: (a) workers compensation and employers liability insurance as may be required by the State; (b) property damage liability of \$1,000,000 per incident; (c) bodily injury liability of \$1,000,000 per incident; and (d) professional liability for any errors or omissions of \$1,000,000.

5. **Client Support.**

5.1 Client will promptly provide in writing to Consultant all data and other information relating to or which may be necessary for Consultant’s performance of the Services. Without limiting the foregoing, Client will keep Consultant informed on a timely basis in writing as to the existence and amendments of the laws, ordinances and/or regulations under which Consultant is performing the Services (including any adopted by Client). Consultant will be permitted to rely on the accuracy, timeliness and completeness of the information provided by Client, and in no event will Consultant be liable to Client or others as a result of such reliance.

5.2 Client will examine all of Consultant's reports, specifications, notices, proposals and other documents. In the event that Consultant asks for a decision from Client in order for Consultant to perform the Services, Client will render such decision in writing in a timely manner.

5.3 Promptly following any request from Consultant, Client will adopt and maintain in full force and effect resolutions in forms acceptable to Client and in accordance with applicable law authorizing Consultant to examine the confidential sales tax and other relevant records of Client throughout the Term and, for so long as any Fees are still accruing pursuant to this Agreement, after the Term.

5.4 Client will assist Consultant in obtaining such licenses, permits and approvals as may be required by law for performing the Services, and Client will pay all fees, assessments and taxes related to the application, issuance and maintenance thereof.

5.5 The Services do not include services to support, prepare, document, bring, respond to subpoenas, act as a witness, defend or otherwise assist in litigation undertaken or defended by Client, which Consultant may be required by legal process or otherwise or requested by Client to provide (collectively, "Litigation Services"). In this regard, if Consultant agrees with Client or is otherwise required to perform Litigation Services, Client will promptly pay or reimburse Consultant for all of Consultant's costs and expenses related to Litigation Services (including, without limitation, Consultant's attorneys' fees and costs) at Consultant's actual cost, plus ten percent (10%) thereof (all of which are deemed to be additional Fees).

6. Confidentiality; Software Use and Warranty; Records.

6.1 Consultant will comply with the requirements of the applicable laws, ordinances and/or regulations of which it has been informed by Client pursuant to Section 5.1 concerning the confidentiality of tax records. Consultant may publicly state that it performs Services for Client.

6.2 As used herein, the term "proprietary information" means all information, techniques, processes, services or material that has or could have commercial value or other utility for Consultant or in Consultant's Business, including without limitation, (i) software, computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; (iii) desktop or web-based software; (iv) audit, tax or fee collection/administration or business processes, methods or routines; (v) marketing plans, analyses and strategies; (vi) materials, techniques and intellectual property used; and (vii) the Software and the Software's documentation. Except as otherwise required by law, Client must hold in confidence and may not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by Client in connection with this Agreement. The terms of this Section 6.2 do not apply to information that is public information; provided, however, that proprietary information will not qualify as public information if it became public due to Client's (or its employees' or agents') disclosure.

6.3 If access to any software which Consultant owns is provided to Client as part of the Services under this Agreement (including, without limitation, if Client chooses to subscribe to such software and/or related reports as part of the Services pursuant to a Schedule to this Agreement) (such Consultant-owned software is, collectively, the "Software"), Consultant hereby provides a limited, non-exclusive, non-transferable license to Client (including such of Client's staff as may be

designated from time to time by Client and approved by Consultant in writing) to use the Software pursuant to and during the Term of this Agreement.

6.4 The Software must only be used by such authorized Client staff, and Client must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by Client or any of Client's staff of the Software nor any rights of Client or any of Client's staff to sublicense, transfer or sell the Software, or rights to use the Software for the benefit of others. Client may not create (or allow the creation of) any derivative work or product based on or derived from the Software or the Software's documentation, nor modify (or allow the modification of) the Software or the Software's documentation without the prior written consent of Consultant. In the event of a breach of this provision (and without limiting Consultant's remedies), such modification, derivative work or product based on the Software or the Software's documentation is hereby deemed assigned to Consultant. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired and Client must immediately deactivate, cease using and remove, delete and destroy all the Software (including, without limitation, from Client's computers and network). **Consultant warrants that the Software will perform in accordance with the Software's documentation.**

6.5 Notwithstanding anything to the contrary in this Agreement (including any Schedule hereto), if access to any software which Consultant does not own is provided to Client as part of the Services pursuant to this Agreement (including pursuant to any Schedule hereto), Client hereby agrees (i) to comply with all of the terms and conditions imposed on Client's access to such software (including, without limitation, by Consultant, such software's owner, and pursuant to applicable law), and (ii) Consultant has no obligation during the Term of this Agreement or thereafter to provide Client with access to such software.

6.6 All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by Consultant to Client either in hard copy or electronically are the joint property of Client and Consultant. This does not include the Software or any other software, any programs, any methodologies or any systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Consultant in the course of performing the Services that were not otherwise provided to Client in either hardcopy or electronic form, all of which may be protected by Consultant or third party copyrights or other intellectual property and remain Consultant's or such third parties' exclusive property (as the case may be). It is possible that any documents, drafts, communications or other work product provided to Client may be alleged to be public records under applicable law and/or may be discoverable through litigation. Well in advance of when Client may disclose such information in response to any request for public records, Client must notify Consultant in writing about the request and, if Consultant requests it, Client must apply for any potential exemption from disclosure that may exist under applicable law.

6.7 Subject to applicable law, Consultant is responsible for retaining all final documents and other final work product related to the Services for a period of not less than three (3) years from the date provided to Client. Retention of any other documents, preliminary drafts, communications and any and all other work product provided to Client by Consultant is the responsibility of Client. Consultant has no responsibility to retain any drafts, notes, communications, emails or other writings created or received by Client in the course of performing the Services (other

than the final documents and other final work product related to the Services and provided to Client for the term of years referenced above).

7. Term and Termination.

7.1 The initial term of this Agreement commences as of the Agreement Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "Initial Term"). This Agreement will automatically renew for successive twelve (12) month terms unless earlier terminated as set forth in Section 7.2 or 7.3 or either party gives the other party written notice of non-renewal at least one hundred twenty (120) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

7.2 This Agreement may be terminated by either party for cause upon not less than forty-five (45) days' prior written notice given to and received by the other party, if the other party has materially breached this Agreement through no fault of the notifying party and fails to (i) commence correction of such material breach within thirty (30) days of receipt of the above-referenced written notice and (ii) diligently complete the correction thereafter.

7.3 In addition, either party may terminate this Agreement without cause upon not less than one hundred twenty (120) days' prior written notice to the other party.

7.4 On termination, Client will pay Consultant for all Fees and other compensation (including for Litigation Services) earned and/or incurred through the termination date and will thereafter timely pay Consultant for all other Fees and compensation to which Consultant may be entitled pursuant to this Agreement (including the Schedules hereto).

8. Indemnification.

8.1 Client agrees to fully and promptly protect, indemnify, reimburse and hold harmless Consultant, its directors, officers, employees, agents, direct and indirect equity holders, and affiliates (collectively, "Consultant Group") from and against any and all liabilities, losses, claims, damages, expenses, and costs (including, without limitation, for attorneys' fees and costs) (each, a "Liability", and collectively, "Liabilities") which are (a) the direct or indirect result of any breach of any representation, warranty or covenant made by or given on behalf of Client under this Agreement, or (b) related to any action or failure to act on the part of any one or more of Consultant Group where such action or failure to act was reasonably and in good faith believed by any of Consultant Group at the time to be in conformity with this Agreement, or (c) otherwise related to or arising out of any act or omission of Client or its directors, officers, employees, agents, direct or indirect equity holders, or affiliates (collectively, "Client Group"). In this regard, Client hereby acknowledges that it is responsible for instructing Consultant regarding Consultant's performance of Services under this Agreement, as well as the interpretation and meaning of the ordinances and/or regulations under which Consultant is performing Services under this Agreement.

8.2 Promptly after Consultant receives notice of the commencement of any proceeding for which it intends to make a claim for indemnification under this Agreement, it should notify Client, but the failure to so notify will not result in the loss of any rights of any of Consultant Group to indemnification hereunder except to the extent that Client does not otherwise become aware of such

proceeding and is actually adversely affected thereby to a material extent. Client will assume the defense of Consultant Group (including the employment of legal counsel reasonably satisfactory to Consultant) and payment of such counsel's fees and disbursements (including retainers). Should Consultant reasonably determine that separate counsel is necessary (whether due to the existence of different defenses, potential conflicts of interest or otherwise), or if Client has not assumed the defense, then any of Consultant Group may employ separate legal counsel, and Client will pay such counsel's reasonable fees and disbursements as incurred (including retainers). The obligations of defense and indemnification under this Agreement apply, without limitation, to those situations where someone brings a cross claim for indemnity or contribution against any one or more of Consultant Group.

8.3 Client will not, without Consultant's prior written consent, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, or proceeding or investigation in respect of which indemnification could be sought hereunder (whether or not any of Consultant Group is an actual or potential party to such claim, action or proceeding or investigation), unless such settlement, compromise or consent includes an unconditional release of each of Consultant Group from all liability arising out of such claim, action, proceeding or investigation and includes an explicit disclaimer of responsibility of any kind on the part of Consultant Group.

9. Liability Limitations; Governing Law; Dispute Resolution.

9.1 To the maximum extent permitted by law and notwithstanding anything to the contrary in this Agreement:

9.1.1 Except for Consultant's gross negligence or willful misconduct in connection with the performance of its obligations under this Agreement, Client's sole and exclusive remedies for any breaches of Consultant's obligations under this Agreement (including, without limitation, for any breaches relating to the Services or the Software, including any breaches of warranty, express or implied) (i) are limited to making reasonable and necessary repairs, replacements or corrections without additional cost to the Client, and (ii) will not exceed, under any circumstances, the amount of the Fees paid by Client to Consultant for the twelve-month period prior to the alleged breaches, calculated without reference to any payments constituting the payment of costs or expenses. All amounts paid to Consultant hereunder are deemed first to be for the reimbursement of costs or expenses and then any excess will be regarded as payments for other portions of the Fees under this Agreement. Any references to breaches of this Agreement will include any supplements, additions or amendments to this Agreement.

9.1.2 Except as may otherwise be expressly set forth in this Agreement, Consultant makes no warranty of any kind with respect to the Services or the Software, express or implied. Consultant hereby disclaims all other warranties, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, title and non infringement. Consultant disclaims all warranties and responsibility for third party software.

9.1.3 In no event will any of Consultant Group be liable for any lost revenues or lost profits, or any special, incidental, or consequential damages of any nature whatsoever, even if such restrictions deprive one or more remedies of their essential purpose. This damage exclusion is independent of any remedies provided for herein.

9.1.4 None of Consultant Group will have any Liability (whether direct or indirect, in contract or tort or otherwise) related to, arising out of, or in connection with this Agreement or to any of Client Group acting on any advice given or opinion rendered by any of Consultant Group, except to the extent that such Liability is found by a court of competent jurisdiction in a judgment which has become final and that it is no longer subject to appeal or review to have resulted solely from such Consultant Group's willful misconduct or gross negligence.

9.1.5 No claim may be brought by Client against any one or more of Consultant Group arising out of this Agreement (including, without limitation, in connection with the Services or the Software) more than one year after the date on which such claim arose (regardless of the date when Client may have discovered a basis for the claim).

9.1.6 Client acknowledges that this Agreement is with Consultant in its capacity as a corporation or a limited liability company, and Client agrees that in no event will it seek to hold any of the Consultant Group (other than Consultant) responsible for any Liabilities.

9.2 The law of the State will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it, without regard to the State's conflict of laws rules. Venue for any legal action arising out of this Agreement will be proper only in the State courts or the federal courts located within the State. 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.

9.3 If either party is required to bring legal action to enforce its rights under this Agreement or as the result of a breach of this Agreement, the costs and expenses of the prevailing party, including reasonable attorneys' fees, will be paid by the non-prevailing party.

9.4 A breach of this Agreement by either party may cause the other party hereto irreparable harm, the amount of which may be difficult to ascertain, and therefore such other party will 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 may deem appropriate. Such right is 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.

10. General Legal Provisions.

10.1 Authorization to Proceed. Each Schedule must be signed by both Client and Consultant before such Schedule will be binding on the parties hereto.

10.2 Force Majeure. Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, epidemics, pandemics or other health emergencies, or other events beyond the control of Consultant.

- 10.3 Amendment; Waiver. Any provisions of this Agreement (including, without limitation, any Schedules or provisions within any Schedules) may be amended or terminated if in writing and signed by both Client and Consultant. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to be valid unless acknowledged by such party in writing, and such waiver will not extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.
- 10.4 Severability and Survival. If any provision in this Agreement is held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Notwithstanding any other provisions of this Agreement (including, without limitation, Section 7), Sections 3, 5.5, 6, 7, 8, 9 and 10 will survive the termination of this Agreement.
- 10.5 No Third-Party Beneficiaries; Services Limited to Agreement. Except as set forth in Section 8, this Agreement gives no rights or benefits to anyone other than Client and Consultant and has no third-party beneficiaries. The Services to be performed for Client by Consultant are defined solely by this Agreement (including the Schedules), and not by any other contract or agreement that may be associated with performing the Services.
- 10.6 Assignment. This is a bilateral personal services agreement. Neither party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. This Agreement is binding on the successors and assigns of the parties hereto. Notwithstanding anything to the contrary, Consultant may, from time to time, utilize one or more third parties to provide certain of the Services (including, but not limited to, as may be set forth in one or more of the Schedules).

10.7 Notices. All notices under this Agreement must be in writing and will be deemed to have been given when such notice is received (i) from United States Postal Service First Class Certified Mail, Return Receipt Requested, (ii) by courier service, or (iii) by email; provided, however, that notices received on a weekend or holiday or on a business day after 4:00 p.m. local time will be deemed to have been received on the next business day. Notices will, unless another address is specified in writing, be sent to the addresses indicated below (each of which must include a street address and an email address): Consultant: 120 S. State College Blvd. STE 200, Brea CA, 92821, Attn: HdL Contracts, Email: contracts@hdlcompanies.com; and Client: City of Orland, Attn: Peter R. Carr, Email: citymanager@cityoforland.com.

10.8 Entire Agreement; Conflict. This Agreement (which includes any Schedules or amendments dated as of the Agreement Date or hereafter, including without limitation, amendments of the main body of this Agreement or the Schedules that may add to, subtract from, modify or clarify the Term, the scope of Services and/or the amount of Fees) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof. Should there ever be a conflict between the terms and conditions of any Schedules and the remainder of this Agreement as set forth in the main body of this Agreement, the terms and conditions of the remainder of this Agreement as set forth in the main body of this Agreement will prevail and be controlling; provided, however, that should there ever be a conflict between the terms and conditions of this Agreement (including any Schedules) and (i) any amendments hereof, the terms and conditions of the amendments hereof will prevail and be controlling, and (ii) the terms and conditions of any Schedule that expressly provides for them to supersede any terms and conditions of the main body of this Agreement, such terms and conditions of such Schedule will prevail and be controlling.

10.9 Counterparts; Electronic Signatures; Authority. This Agreement may be signed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signed signature pages of this Agreement transmitted by email or other electronic means in a portable document format (PDF) or other clear and visible electronic format will have the same legal effect as an original. Each of the persons signing on behalf of a party hereto represents that he or she has the authority to sign this Agreement on such party's behalf.

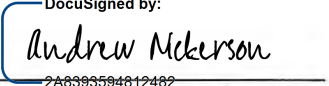
10.10 No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement will not be construed against either party based upon authorship. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

[Signatures are on the next page]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement through their duly authorized representatives as of the Agreement Date.


CONSULTANT:

Hinderliter de Llamas and Associates

By: 
Andrew Nickerson, President

CLIENT:

City of Orland


By: Peter R. Carr
Its: City Manager

[Any Schedule or Schedules may (but is/are not required to) be attached hereto]

SCHEDULE A
Sales, Use and Transactions Tax
Economic Analysis/Forecasting and Related Services

SERVICES – Sales and Use Tax

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.

SCHEDULE A
Sales, Use and Transactions Tax
Economic Analysis/Forecasting and Related Services

- 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.

SERVICES – Transactions Tax Services

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

- 3.1 Consultant shall establish a database containing all applicable Department of Tax and Fee Administration (CDTFA) registration data for each business within the Measure “A” 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.
- 3.2 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.
- 3.3. 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.
- 3.4. Consultant shall make available to CITY the HdL proprietary software program and Measure “A” 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.

4. Deficiency/Allocation Reviews and Recovery

- 4.1. 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:
- 4.1.(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 “A” City boundaries, and therefore subject to transactions tax.
- 4.1.(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.
- 4.1.(c) Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
- 4.1.(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 “A” Transactions Tax District.
- 4.2. 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

SCHEDULE A
Sales, Use and Transactions Tax
Economic Analysis/Forecasting and Related Services

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.

- 4.3. 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.

5. 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 – Sales and Use Tax Services

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

- 6.1. Fees for performing the sales tax and economic analysis/forecasting Services as described above shall initially be **\$360** 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.
- 6.2. Consultant may change the non-hourly Fees established above (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), as reported by the U.S. Bureau of Labor Statistics (the "CPI Change").

7. Allocation and Audit Recovery Services

- 7.1. 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.
- 7.2. 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.
- 7.3. 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.
- 7.4. 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

SCHEDULE A
Sales, Use and Transactions Tax
Economic Analysis/Forecasting and Related Services

waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.

FEES – Transactions Tax Services

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

8.1. Fees shall be paid \$200 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.

8.2. Consultant may change the non-hourly Fees established above (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), as reported by the U.S. Bureau of Labor Statistics (the "CPI Change").

9. Allocation and Audit Recovery Services

4.1 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.

10. Consulting and Other Optional Services

10.1. 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.

10.2. Consultant may change the rates for its hourly Fees from time to time. A 30 days' prior written notice to City will be given.

11. General Provisions Relating to Fees

11.1. 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.

11.2. 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.

12. 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

SCHEDULE A
Sales, Use and Transactions Tax
Economic Analysis/Forecasting and Related Services

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:

- 12.1. 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.
- 12.2. 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.
- 12.3. Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 12.4. 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.