

TO: James L. App, City Manager

FROM: Jim Throop, Administrative Services Director

SUBJECT: Authorization for Examination of Supplemental Sales Tax Records

DATE: April 16, 2013

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NEED: For the City Council to consider amending the Hinderliter, de Llamas & Associates (HdL) contract to include examination of supplemental sales taxes.

FACTS:

1. The citizens of Paso Robles passed a temporary supplemental ½ cent sales tax primarily for road and other repairs.
2. HdL has been the City's sales tax consultant since 1988.
3. An amendment to the HdL contract and a resolution giving HdL authorization to review the new sales and use tax is required by the Board of Equalization (BOE).
4. HdL will do continuous monitoring, identification, and correction of allocation errors and reporting deficiencies.

ANALYSIS &

CONCLUSION: HdL has been the City's sales tax consultant since 1988. HdL continuously monitors the current Bradley/Burns 1.0% sales tax for errors in allocations and reporting deficiencies, on the City's behalf and then notifies the BOE for correction.

The new tax, which is a "use" tax, varies slightly from the standard Bradley/Burns sales tax and requires that the city amend the current contract to allow HdL to perform similar analysis and reporting. The BOE also requires the City Council to adopt a resolution that gives HdL authority to review and make findings on the new sales tax. This resolution will be forwarded to the BOE. The sales tax information is proprietary and no one may review the info without City Council permission, which is the reason for the attached resolution.

POLICY

REFERENCE: City of Paso Robles' Fiscal Policy

FISCAL

IMPACT: The contract amendment will cost \$100 per month (\$1,200/year), billed quarterly, plus 25% of all new transaction or use tax revenue received by the City as a result of audit and recovery work performed by HdL.

OPTIONS: a. Adopt Resolution 13-XXX approving the amendment to the existing contract with HdL & Associates and giving authorization to HdL & Associates to examine the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the BOE.

b. Amend, modify or reject the above option.

## **AGREEMENT FOR TRANSACTIONS TAX AUDIT & INFORMATION SERVICES**

This Agreement is made and entered into as of the 16th day of April, 2013 by and between the CITY OF PASO ROBLES, hereinafter referred to as “CITY” and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter referred to as “CONTRACTOR”.

### **I. RECITALS**

WHEREAS, transactions tax revenues can be increased through a system of continuous monitoring, identification and correction of allocation errors and reporting deficiencies, and

WHEREAS, an effective program of transactions and use tax management can provide for more accurate budget forecasting and financial planning; and

WHEREAS, CITY desires the combination of data entry, report preparation, and data analysis necessary to effectively manage its Measure “E” transactions and use tax base and recover revenues either unreported or erroneously allocated to other jurisdictions; and

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

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

## **II. SERVICES**

The CONTRACTOR shall perform the following services:

### **A. DEFICIENCY/ALLOCATION REVIEWS AND RECOVERY**

1. CONTRACTOR shall conduct on-going reviews to identify and correct unreported transactions and use tax payments and distribution errors thereby generating previously unrealized revenue for the CITY. Said reviews shall include:
  - (i) 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 “E” CITY boundaries, and therefore subject to transactions tax.
  - (ii) 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.
  - (iii) Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
  - (iv) 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 “E” Transactions Tax District.

2. CONTRACTOR 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.
3. CONTRACTOR shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors and deficiencies that are identified, and shall follow-up with the individual businesses and the State Board of Equalization to ensure that all back quarter payments due the CITY are recovered.

**B. DATA BASE MANAGEMENT, REPORTS AND STAFF SUPPORT**

1. CONTRACTOR shall establish a database containing all applicable Board of Equalization (BOE) registration data for each business within the Measure "E" 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.
2. CONTRACTOR 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. CONTRACTOR shall advise and work with CITY Staff on planning and economic questions related to maximizing revenues, preparation of revenue

projections and general information on sales, transactions and use tax questions.

4. CONTRACTOR shall make available to CITY the HdL proprietary software program and Measure “E” database containing all applicable registration and quarterly allocation information for CITY business outlets registered with the Board of Equalization. The database will be updated quarterly.

### **III. CONFIDENTIALITY**

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 State Board of Equalization. This section specifies the conditions under which an CITY may authorize persons other than CITY officers and employees to examine State Sales, Use and Transactions Tax records.

The following conditions specified in Section 7056 (b), (1) of the State of California Revenue and Taxation Code are hereby made part of this agreement.

- A. CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Board of Equalization provided to CITY pursuant to contract under the conditions established by the California Revenue and Taxation law.
- B. 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 CITY who is authorized by resolution to examine the information.

- C. 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.
- D. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Board of Equalization 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 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.

#### **IV. CONSIDERATION**

- A. CONTRACTOR shall be paid \$100 monthly billed quarterly for the transaction district tax reports that we include with the quarterly sales tax analyses. CONTRACTOR shall be paid 25% of all new transactions or use tax revenue received by the CITY as a result of audit and recovery work performed by CONTRACTOR (hereafter referred to as "audit fees"). Such payments shall not be made for more than eight (8) quarters following receipt of a new transactions and use tax as a direct result of the audit and recovery work. New revenue shall not include any amounts determined and verified by CITY or CONTRACTOR to be increment attributable to causes other than CONTRACTOR'S work pursuant to this agreement. In the event that CONTRACTOR is responsible for an increase in the tax reported by businesses already properly making tax payments to the CITY, it shall be CONTRACTOR'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 CONTRACTOR and confirmation of corrections by the State Board of Equalization. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

CONTRACTOR shall obtain prior approval from CITY for each specific business where payment of the percentage fee will be expected. Said approval shall be deemed given when the Executive Director or his/her designated representative, signs a Work Authorization form, a copy of which is attached as "Exhibit A." CITY shall pay audit fees upon CONTRACTOR'S submittal of evidence of State fund transfers and payments to CITY from businesses identified in the audit and approved by the CITY.

- C. Above sum shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR'S employees, and travel expenses connected with contacting local and out-of-state businesses and the Board of Equalization Staff.
- D. Extra work beyond the Scope of Services set forth in this agreement by CONTRACTOR or reimbursed by CITY unless such extra work is specifically authorized in writing by Executive Director or his/her designated representative. CONTRACTOR shall be compensated for any additional services in the amounts and in the manner as agreed to by the CITY and CONTRACTOR at the time the CITY's written authorization is given to CONTRACTOR for the performance of said services.

## **VI. CITY MATERIALS AND SUPPORT**

CITY shall adopt a resolution in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales, use, and transactions tax records of CITY. CITY further agrees to continue CONTRACTOR'S authorization to examine the confidential records of the CITY by maintaining CITY's name on the CITY Resolution until such time as all audit adjustments have been completed by the State Board of Equalization and audit fees due the CONTRACTOR have been paid.

## **VII. LICENSE, PERMITS, FEES AND ASSESMENTS**

CONTRACTOR shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the services required by this Agreement. CITY shall assist CONTRACTOR in obtaining such Permits, and CITY shall absorb all fees, assessments and taxes which are necessary for any Permits required to be issued by CITY.

## **VIII. TERMINATION**

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 work through the date of termination. Upon termination as provided herein, CONTRACTOR shall be paid the value of all tax analysis and reporting work performed less payments previously made by CITY. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by CONTRACTOR which make tax payments after termination of this Agreement as a result of



CONTRACTOR'S work. After CITY receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. Compensation for any audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

All documents, data, surveys and reports prepared by CONTRACTOR pursuant to this Agreement shall be considered the property of the CITY and upon payment for services performed by CONTRACTOR, such documents and other identified materials shall be delivered to CITY by CONTRACTOR.

#### **IX. INDEPENDENT CONTRACTOR**

CONTRACTOR shall perform the services hereunder as an independent contractor and shall furnish such services in his own manner and method, and under no circumstances or conditions shall any agent, servant, or employee of CONTRACTOR be considered as an employee of CITY.

#### **X. NON-ASSIGNMENT**

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

## **XI. ATTORNEY'S FEES**

In the event a legal action is commenced to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

## **XII. GOVERNING LAW**

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall also govern the interpretation of this agreement.

## **XIII. INDEMNIFICATION**

CONTRACTOR hereby agrees to, and shall hold CITY, its elective and appointive boards, officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from CONTRACTOR'S willful or negligent acts, errors or omissions or those of its employees or agents. CONTRACTOR agrees to and shall defend CITY and its elective and appointive boards, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid willful or negligent acts, errors or omissions.

CITY hereby agrees to, and shall hold CONTRACTOR, its officers, agents and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for breach of confidentiality or property damage which may arise from CITY's negligent acts, errors or omissions under this

Agreement. CITY agrees to and shall defend CONTRACTOR and its officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid negligent acts, errors or omissions.

#### **XIV. NOTICE**

All notices required by this Agreement shall be given to CITY and CONTRACTOR in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

CITY: CITY OF PASO ROBLES  
1000 Spring Street  
Paso Robles, CA 93446

CONTRACTOR: HINDERLITER, DE LLAMAS, & ASSOCIATES  
1340 Valley Vista Drive, Suite 200  
Diamond Bar, CA 91765

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 that behalf.

CITY: CITY OF PASO ROBLES

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Jim App, City Manager

CONTRACTOR:  
HINDERLITER, DE LLAMAS & ASSOCIATES  
A California Corporation

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President

APPROVED AS TO FORM:  
CITY COUNSEL:

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SAMPLE

SAMPLE

EXHIBIT A

Sales Tax Audit

Work Authorization No. \_\_\_\_\_

The following business or businesses, located in the City of Paso Robles, have been identified as having the potential for generating additional tax revenues to the City of Paso Robles. Contractor is hereby authorized to contact the given business(s) and the State Board of Equalization to verify the accuracy of the current reporting methodology and obtain the necessary documentation for the Board of Equalization, to bill for uncollected transactions and use tax payments or modify misallocated payments and to return revenues that may be due to the District.

Contractor's compensation shall be 25% of the new sales and/or use tax revenue received by the District as a result of audit and recovery work performed by Contractor, as set forth in the Agreement between Contractor and City.

CITY: CITY OF PASO ROBLES

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

Date: \_\_\_\_\_

HINDERLITER, DE LLAMAS AND ASSOCIATES

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

Date\_\_\_\_\_

## RESOLUTION NO. 13-XXX

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES AUTHORIZING EXAMINATION OF TRANSACTIONS AND USE TAX RECORDS

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WHEREAS, pursuant to ordinance No. 13-xxx, the City of Paso Robles entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local transactions and use taxes; and

WHEREAS, the City Council of the City of Paso Robles deems it necessary for authorized representatives of the City to examine confidential transactions and use tax records of the State Board of Equalization pertaining to transactions and use taxes collected by the Board for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from the transactions and use tax records of the Board; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code requires that any person designated by the City shall have an existing contract to examine the City's sales and use tax records.

THEREFORE, BE IT HEREBY RESOLVED by the City Council of El Paso de Robles that:

Section 1. That the City Manager or other officer(s) or employee(s) of the City (hereafter referred to as City) designated in writing by the City Manager to the State Board of Equalization (hereafter referred to as Board), is hereby appointed to represent the City with authority to examine transactions and use tax records of the Board pertaining to transactions and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract.

Section 2. That the City's existing contract with Hinderliter, de Llamas and Associates is hereby amended to add thereto the examination of the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The fee for transactions tax related audit and recovery work will be 25% of all new transactions tax or related use tax recovered for those specific quarters identified as being missing and/or deficient.

Section 3. That Hinderliter, de Llamas and Associates is hereby designated to examine the transactions and use tax records of the City pertaining to transactions and use taxes collected for the City by the Board. The entity designated by this section meets all of the following conditions:

- (a) Has an existing contract with the City to examine those transactions and use tax records;
- (b) Is required by that contract to disclose information contained in, or derived from, those transactions and use tax records only to the officer(s) or employee(s) authorized under Section 1 of this resolution to examine the information.

(c) Is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and

(d) Is prohibited by that contract from retaining the information contained in, or derived from those transactions and use tax records, after that contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of City transactions and use taxes by the Board pursuant to the contract between the City and the Board.

Section 3. The City Clerk of the City is hereby directed to certify adoption of this Resolution and to send a copy to:

State Board of Equalization  
Local Tax Section MIC:27  
P O Box 942879  
Sacramento, CA 94279-0001

PASSED AND ADOPTED by the City of Paso Robles on the 16<sup>th</sup> Day of April, 2013.

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

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Duane Picanco, Mayor

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Caryn Jackson, Deputy City Clerk