

AGREEMENT FOR SALES TAX AUDIT AND INFORMATION SERVICES

This Agreement is made and entered into as of the 8th day of January, 2001 by and between the **COUNTY OF FRESNO**, hereinafter called **COUNTY**, and **HINDERLITER, DE LLAMAS AND ASSOCIATES** a California Corporation, hereinafter called **CONTRACTOR**.

RECITALS

WHEREAS, sales tax revenues can be increased through a system of continuous monitoring, identification and correction of "point of sale" allocation errors; and

WHEREAS, an effective program of sales tax management will improve identification of sales tax opportunities as they relate to economic development and provide for more accurate sales tax forecasting; and

WHEREAS, County desires the combination of report preparation and data analysis necessary to effectively manage the municipal sales tax base and recover revenues erroneously allocated to other jurisdictions and allocation pools; and

WHEREAS, Contractor has the programs, equipment and personnel required to deliver the sales tax services referenced herein.

THEREFORE, County and Contractor, for the consideration hereinafter described, mutually agree as follows:

SERVICES

The Contractor shall perform all services and fulfill all responsibilities for the provision of sales tax services as identified in County's Request for Proposal (RFP) No. 946-3580, dated November 29, 2001 and Contractor's response, dated November 29, 2001, both incorporated herein by reference and made part of this Agreement, and as listed below.

1 In the event of any inconsistency among these documents, the inconsistency shall be
2 resolved by giving precedence in the following order of priority: (1) to this Agreement
3 and Exhibits; (2) to the Response to RFP; and (3) the RFP. A copy of County's RFP
4 No. 946-3580 and Contractor's responses, shall be retained and made available during
5 the term of this Agreement by County's Auditor-Controller/Treasurer-Tax Collector
6 Department.

7 The Contractor shall perform the following services:

8 A. Optional Sales tax and economic analysis

9 1. Contractor shall establish a special data base that identifies the name,
10 address and quarterly allocations of the major sales tax producers within the
11 County for the most current and previous four quarters from the date of this
12 agreement. Major sales tax producers are defined as those businesses meeting
13 a quarterly revenue threshold determined by County. Since 100% of the
14 business outlets registered with the Board of Equalization are tracked monthly,
15 this major producer's data base is designed to highlight the activities of major
16 businesses. A second data base covering the same period will be established
17 showing total sales tax receipts for each business category identified by the
18 Board of Equalization. These data bases will be utilized to generate special
19 reports to the County on: major sales tax producers by rank and category,
20 analysis of sales tax activity by category and business districts or redevelopment
21 areas specified by County, analysis of reporting aberrations, and per capita and
22 outlet comparisons with state wide sales.

23 2. Contractor shall provide up-dated reports each quarter identifying
24 changes in sales by major businesses and by category; area growth and decline
25 comparisons; and current graphics, tables and top 100 listings. Quarterly
26 aberrations due to State audits, fund transfers, and receivables along with late or
27 double payments will be identified.

1 3. Contractor will additionally provide an analysis for the County to share
2 with Chambers of Commerce and other economic development interest groups
3 that analyze County's sales tax trends by major groups, and geographic areas
4 without disclosing confidential information.

5 4. Contractor will provide annual reports for the County Administrative
6 Officer and Auditor-Controller/Treasurer-Tax Collector identifying historical
7 growth comparisons with state, county, selected County averages and C.P.I.
8 indices; top producer listings and make up and volatility of the economic base.
9 Annual reconciliation worksheets to assist with budget forecasting will also be
10 provided.

11 B. Allocation Audit and Recovery

12 1. Contractor shall conduct an initial and on-going sales tax audit in order to
13 identify and correct "point-of-sale" distribution errors and thereby generate
14 previously unrealized sales tax income for the County. Common errors that will
15 be monitored and corrected include: transposition errors resulting in
16 misallocations; erroneous consolidation of multiple outlets; reporting of "point of
17 sale" from the wrong location; delays in reporting new outlets; misidentifying
18 transactions as a "use tax" rather than a "sales tax"; and erroneous fund
19 transfers and adjustments.

20 2. Contractor will initiate contacts with the appropriate sales management
21 and accounting officials in companies that have businesses where a probability
22 of error exists to verify whether current tax receipts accurately reflect the local
23 sales activity. Such contacts will be conducted in a manner to encourage local
24 business retention and expansion.

25 3. Contractor shall prepare and submit to the Board of Equalization all
26 information necessary to correct any allocation errors that are identified and shall
27 follow-up with the individual businesses and the State Board of Equalization to
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1 ensure that all back quarter payments due the County are recovered.

2 4. If, during the course of its audit, Contractor finds businesses located in
3 the County that are properly reporting sales tax but have the potential for
4 modifying their operation to provide an even greater share to the County,
5 Contractor will work with those businesses and the County to encourage such
6 changes.

7 C. Ongoing Consultation

8 Contractor shall work with the County on questions related to tenant mix
9 alternatives for maximum sales tax returns; advise County business license staff
10 on utilization of reports to enhance business license collection efforts; provide
11 sales tax projections on specific projects for redevelopment negotiation and
12 County budget purposes; and provide sample reports, letters and programs to
13 enhance the sales tax base through improved economic development efforts.

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15 TERM OF CONTRACT

16 Contractor shall satisfactorily complete all work required within one year of the
17 date of this Agreement. Contractor and County agree that the performance of these
18 services may be extended for three additional years, through December 17, 2005, in
19 one-year increments at the sole discretion of the County. Notice of exercise of the
20 County's option to extend shall be delivered thirty (30) days prior to the end of the first
21 year and each succeeding option year.

22 This Agreement shall be in effect until December 18, 2002 and may be extended
23 through December 18, 2004.

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25 CONFIDENTIALITY

26 Section 7056 of the State of California Revenue and Taxation Code specifically
27 limits the disclosure of confidential taxpayer information contained in the records of the
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1 State Board of Equalization. This section specifies the conditions under which a
2 County may authorize persons other than County officers and employees to examine
3 State Sales and Use Tax records.

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

7 A. Contractor is authorized by this Agreement to examine sales or transactions and
8 use tax records of the Board of Equalization provided to County pursuant to
9 contract under the Bradley-Burns Uniform Sales and Use Tax Law.

10 B. Contractor is required to disclose information contained in, or derived from,
11 those sales or transactions and use tax records only to an officer or employee of
12 the County who is authorized by resolution to examine the information.

13 C. Contractor is prohibited from performing consulting services for a retailer, as
14 defined in California Revenue & Tax Code Section 6015, during the term of this
15 Agreement. Further, Contractor agrees not to perform sales tax services for
16 cities within the County of Fresno without written consent from the County
17 Administrative Officer and Auditor-Controller/Treasurer-Tax Collector during the
18 term of the contract.

19 D. Contractor is prohibited from retaining the information contained in, or derived
20 from, those sales or transactions and use tax records after this Agreement has
21 expired. Information obtained by examination of Board records shall be used
22 only for purposes related to collection of local sales and use tax or for other
23 governmental functions of the County as set forth by resolution adopted
24 pursuant to Section 7056(b) of the Revenue and Taxation Code. The resolution
25 shall designate the Contractor as a person, authorized to examine sales and use
26 tax records and certify that this Agreement meets the requirements set forth
27 above and in Section 7056(b), (1) of the Revenue and Taxation Code.

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1 attributable to causes other than Contractor's work pursuant to this Agreement.
2 In the event that Contractor is responsible for an increase in the tax reported by
3 businesses already properly making tax payments to the County, it shall be
4 Contractor's responsibility to separate and support the incremental amount
5 attributable to its efforts prior to the application of the audit fee. Said audit fees
6 will apply to state fund transfers received for back quarter reallocations and
7 monies received in the first eight consecutive reporting quarters following
8 completion of the audit by Contractor and confirmation of corrections by the
9 State Board of Equalization. Contractor shall provide County with an itemized
10 quarterly invoice showing all formula calculations and amounts due for audit
11 fees.

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13 Contractor shall obtain County approval prior to beginning the work of correcting
14 tax reporting methodology or "point of sale" for specific businesses where said
15 payment of the percentage fee will be expected. County shall pay audit fees
16 upon Contractor's submittal of evidence of State Fund Transfers and payments
17 to County from businesses identified in the audit and approved by the County.

18 B. The fee for the Optional Services outlined under Section A, page 2, "Services"
19 shall be \$325 per month, billed quarterly.

20 C. The above sums shall constitute full reimbursement to Contractor for all direct
21 and indirect expenses incurred by Contractor in performing audits including the
22 salaries of Contractor's employees, and travel expenses connected with
23 contacting local and out-of-state businesses and Board of Equalization
24 representatives.

25 26 TERMINATION

27 This Agreement may be terminated by either party by giving 30 days written
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1 notice to the other of such termination and specifying the effective date thereof. Upon
2 the presentation of such notice, Contractor may continue to work through the date of
3 termination. Upon termination as provided herein, Contractor shall be paid the value of
4 all tax analysis and reporting work performed less payments previously made by
5 County. In ascertaining the value of the work performed up to the date of termination,
6 consideration shall be given to amounts due for any unpaid invoices, and to businesses
7 identified by Contractor which make tax payments after termination of this Agreement
8 as a result of Contractor's work. After County receives said tax payments for such
9 businesses, Contractor shall be paid the audit fees resulting from tax payments made
10 by the business for back quarter reallocations and the first eight consecutive reporting
11 quarters following completion of the audit by Contractor and confirmation of corrections
12 by the State Board of Equalization. Compensation for any audit work previously
13 authorized and satisfactorily performed shall be made at the times provided in the
14 preceding section entitled "Consideration".

15 All documents, data, surveys and reports prepared by Contractor pursuant to
16 this Agreement shall be considered the property of the County and upon payment for
17 services performed by Contractor, such documents and other identified materials shall
18 be delivered to County by Contractor.

19 20 INDEPENDENT CONTRACTOR

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

1 However, County shall retain the right to administer this Agreement so as to verify that
2 Contractor is performing its obligations in accordance with the terms and conditions
3 thereof. Contractor and County shall comply with all applicable provisions of law and
4 the rules and regulations, if any, of governmental authorities having jurisdiction over
5 matters the subject thereof.

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

16 17 MODIFICATION

18 Any matters of this Agreement may be modified from time to time by the written
19 consent of all the parties without, in any way, affecting the remainder.

20 21 NON-ASSIGNMENT

22 Neither party shall assign, transfer or sub-contract this Agreement nor their
23 rights or duties under this Agreement without the written consent of the other party.

24 25 INDEMNIFICATION

26 Contractor hereby agrees to, and shall hold County, its elective and appointive
27 boards, officers, agents and employees, harmless from any liability for damage or

1 claims for damage for personal injury, including death, as well as from claims for
2 breach of confidentiality or property damage which may arise from Contractor's willful
3 or negligent acts, errors or omissions or those of its employees or agents. Contractor
4 agrees to and shall defend County and its elective and appointive boards, officers,
5 agents and employees from any suits or actions at law or in equity for damages
6 caused, or alleged to have been caused, by reason of any of the aforesaid willful or
7 negligent acts, errors or omissions.

8 County hereby agrees to, and shall hold Contractor, its officers, agents and
9 employees, harmless from any liability for damage or claims for damage for personal
10 injury, including death, as well as from claims for breach of confidentiality or property
11 damage which may arise from County's negligent acts, errors or omissions under this
12 Agreement. County agrees to and shall defend Contractor and its officers, agents and
13 employees from any suits or actions at law or in equity for damage caused, or alleged
14 to have been caused, by reason of any of the aforesaid negligent acts, errors or
15 omissions.

16 17 AUDITS AND INSPECTIONS

18 The Contractor shall at any time during business hours, and as often as the
19 County may deem necessary, make available to the County for examination all of its
20 records and data with respect to the matters covered by this Agreement. The
21 Contractor shall, upon request by the County, permit the County to audit and inspect all
22 of such records and data necessary to ensure Contractor's compliance with the terms
23 of this Agreement.

24 If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00),
25 Contractor shall be subject to the examination and audit of the Auditor General for a
26 period of three (3) years after final payment under contract (Government Code Section
27 8546.7).

1 NOTICES

2 The persons and their addresses having authority to give and receive notices
3 under this Agreement include the following:

4 COUNTY

CONTRACTOR

5 Gary W. Peterson
6 Auditor-Controller/Treasurer-
7 Tax Collector
8 2281 Tulare Street, Room 105
9 Fresno, CA 93715

Hinderliter, de Llamas and Associates
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

10 Any and all notices between the County and the Contractor provided for or
11 permitted under this Agreement or by law shall be in writing and shall be deemed duly
12 served when personally delivered to one of the parties, or in lieu of such personal
13 service, when deposited in the United States Mail, postage prepaid, addressed to such
14 party.

14 GOVERNING LAW

15 Venue for any action arising out of or relating to this Agreement shall only be in
16 Fresno County, California.

17 The rights and obligations of the parties and all interpretation and performance
18 of this Agreement shall be governed in all respects by the laws of the State of
19 California.

20 ENTIRE AGREEMENT

21 This Agreement constitutes the entire agreement between the Contractor and
22 County with respect to the subject matter hereof and supersedes all previous
23 negotiations, proposals, commitments, writings, advertisements, publications, and
24 understandings of any nature whatsoever unless expressly included in this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
2 day and year first hereinabove written.

3 CONTRACTOR:

COUNTY OF FRESNO:

4 Hinderliter, de Llamas & Associates

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6 By: *Hayde Llamas*

By: *Bob Wate*

Chairman, Board of Supervisors

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8 Title: *President*

DATE: *JAN 8 2002*

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10 DATE: *12/28/01*

ATTEST:

11 Mailing Address:

12 Hinderliter, de Llamas & Associates
13 1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

SHARI GREENWOOD, Clerk
Board of Supervisors

By: *Thurma Ortega*
Deputy

14 Tax I.D. # *33 - 000 8507*

15
16 APPROVED AS TO LEGAL FORM:

REVIEWED & RECOMMENDED FOR
APPROVAL:

17 PHILLIP S. CRONIN
18 COUNTY COUNSEL

19 By: *Michael Slatery*
Deputy County Counsel

Gary W. Peterson
Auditor-Controller/Treasurer-Tax
Collector

20 FOR ACCOUNTING USE ONLY: *Lawrence*

APPROVED AS TO ACCOUNTING
FORM:

21 Fund No.: *0001*

GARY W. PETERSON
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

22 Budget Unit No. *2540*

23 Account No. *7295*

24 Requisition No. 410200234

By: *Bobbie Ormonde*

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