

**REPORT TO MAYOR AND CITY COUNCIL**

**TO THE HONORABLE MAYOR AND CITY COUNCIL:**

DATE: February 24, 2015

**SUBJECT:** AWARD CONTRACT TO HINDERLITER, DE LLAMAS AND ASSOCIATES FOR AUDIT OF SALES AND USE TAX TRANSACTIONS AND TO ADOPT RESOLUTION 15-11 AUTHORIZING CONSULTANT, AS THE CITY REPRESENTATIVE, TO RECEIVE SALES AND USE TAX INFORMATION FROM THE STATE BOARD OF EQUALIZATION NECESSARY TO COMPLETE THE CONTRACTED AUDIT SERVICES.

**Report in Brief**

It is recommended that the City enter into an agreement with Hinderliter, de Llamas and Associates (HdL) for sales tax auditing and reporting services and approve Resolution No. 15-11 allowing HdL to receive sales and use tax information from the State Board of Equalization necessary to complete the contracted audit and recovery services.

**Background**

The City has employed a consultant to perform sales tax auditing at the State Board of Equalization and provide detailed sales tax analysis since 1988. HdL has been providing these services for the City since October 2001 with great success, recovering \$7.7 million in sales, use and transactional tax revenue\*.

**Discussion**

Virtually every major city in the State of California employs a private firm to perform sales tax auditing on its behalf at the State Board of Equalization and to provide sophisticated sales tax analysis and reporting. HdL currently provides 330 cities and counties with Sales Tax Reports and Sales Tax Audit Services. HdL has been providing these services for the City since 2001 with great success. The nature of the services creates a fluctuation in revenue recovered and the compensation paid to the consultant each year.

Historical amounts recovered are as follows\*:

Calendar Year 2014:	Numbers not available
Calendar Year 2013:	\$855,783
Calendar Year 2012:	\$990,743
Calendar Year 2011:	\$559,056
Calendar Year 2010:	\$606,477

\*From HdL Annual Sales Tax Recovery report dated 4/4/2014

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In addition to the audit and recovery of tax revenues, HdL provides two other major services that have been extremely beneficial to the City. HdL provides analysis of sales tax revenue that is vital in the estimation of sales tax revenue to be received by the City in its Ten Year Financial Forecasting. HdL also provides access to sales tax software which allows staff to search businesses by street address, account number, business name and business type.

In order to perform the audit and recovery services specified, the State Board of Equalization requires that the City Council approve a resolution granting access to its sales tax records. Resolution No. 15-11 is required in order for HdL to obtain sales tax records related to the City of Concord.

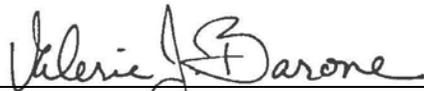
**Public Contact**

The agenda has been posted as required by law.

**Recommendation for Action**

Staff recommends that the City Council:

1. Authorize the City Manager to enter into a contract with Hinderliter, de Llamas and Associates for sales, use and transaction tax audit and recover services in an amount not to exceed \$9,000 plus 15% of the sales and use tax revenue recovered by the consultant during the contract period and 25% of the transaction tax revenue recovered by the consultant during the contract period.
2. Adopt Resolution 15-11 authorizing Hinderliter de Llamas and Associates, as the City's representative, to receive sales and use tax information from the State Board of Equalization.



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Attachment 1 – Hinderlitter de Llamas and Associates Professional Service Agreement

Attachment 2 – Resolution 15-11

1 THIS AGREEMENT ("Agreement") is entered into on February 24, 2015 between the City of  
2 Concord ("CITY") and HINDERLITER, DE LLAMAS AND ASSOCIATES, a California  
3 Corporation 1340 Valley Vista Drive, Suite 200, Diamond Bar California 91765 ("CONSULTANT").

4 THE PARTIES ENTER THIS AGREEMENT based upon the following facts, understandings  
5 and intentions:

6 The CITY desires to contract with CONSULTANT to provide the professional services  
7 described in Section 2 of this Agreement, upon the terms and conditions hereinafter set forth.

8 NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises of the  
9 parties herein contained, the parties hereto agree as follows:

10 1. **TERM.** This Agreement shall commence on February 24, 2015 and expire on  
11 February 24, 2016.

12 A. **Extension of Term.** Upon mutual written agreement by the parties, the term of this  
13 Agreement may be extended for up to five 5 one-year periods, each commencing upon the expiration  
14 of the initial or extended term, subject to the same terms and conditions of this Agreement.  
15 CONSULTANT shall give written notice of its request for extension of the term of the Agreement to  
16 the City's Authorized Representative, as identified in Section 4 below, at least thirty (30) days prior to  
17 expiration of the initial or extended term.

18 The extension(s) of the term of this Agreement shall be subject to a review of  
19 CONSULTANT'S performance in accordance with the terms and conditions of this Agreement and  
20 shall be subject to City approval. Such extension of time shall be in writing by a duly executed  
21 Amendment to this Agreement.

22 2. **SCOPE OF SERVICES.** Subject to such policy direction and approvals provided by  
23 the CITY's Authorized Representative, CONSULTANT shall perform the services described in detail  
24 in Exhibit A, Scope of Services. CITY retains all rights of approval and discretion with respect to the  
25 projects and undertakings contemplated by this Agreement.

26 3. **PAYMENT.** The compensation to be paid to CONSULTANT including payment for  
27 professional services and reimbursable expenses, shall be at the rate and schedules in detail in Exhibits  
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1 A. However, shall in no event shall the amount CITY pays CONSULTANT exceed Nine Thousand  
2 dollars (\$9,000) plus additional consideration amounting to 15% of all new and recovered sales and  
3 use tax revenue received by the CITY as a result of audit and recovery work performed by  
4 CONSULTANT for the term of this Agreement and 25% of the initial amount of new transaction or  
5 use tax revenue received by the CITY as a result of audit and recovery work performed by  
6 CONSULTANT for the term of this Agreement. Any Amendment to this Agreement that includes an  
7 increase to this compensation amount shall be made in accordance with Section 5 below.

8 CONSULTANT may submit monthly statements for services rendered; all statements shall  
9 include adequate documentation demonstrating work performed during the billing period. It is  
10 intended that CITY review such statement and pay CONSULTANT for services rendered within 30  
11 days of receipt of a statement that meets all requirements of this Agreement. Payment by CITY shall  
12 not be deemed a waiver of unsatisfactory work, even if such defects were known to the CITY at the  
13 time of payment.

14 **4. AUTHORIZED REPRESENTATIVES.** Authorized representatives shall represent  
15 CITY and CONSULTANT in all matters pertaining to the services to be ordered by CITY or rendered  
16 by CONSULTANT under this Agreement except where approval for the CITY is specifically required  
17 by the City Council. The CITY's authorized representative is Karan Reid, Director of Finance. The  
18 CONSULTANT's authorized representative is Andy Nickerson, Company President.

19 **5. AMENDMENT TO AGREEMENT.** This Agreement may be amended in writing,  
20 subject to approval by both parties. If additional services are requested by CITY other than as  
21 described in the above Scope of Services, this Agreement may be amended, modified, or changed by  
22 the parties subject to mutual consent and in accordance with the CITY's Municipal Code by execution  
23 of an Amendment by authorized representatives of both parties setting forth the additional scope of  
24 services to be performed, the performance time schedule, and the compensation for such services.

25 **A. Amendment for Additional Compensation.** CITY's Authorized  
26 Representative is authorized to execute amendments to the Agreement on behalf of CITY, including  
27 amendments providing for additional compensation to CONSULTANT not to exceed \$50,000 during  
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1 the fiscal year, including the base contract amount, throughout the term of this Agreement. Any  
2 additional compensation to CONSULTANT that is \$50,000 or more for the fiscal year, including the  
3 base contract amount, must be approved by City Council.

4 Consultant's failure to secure CITY's written authorization for additional compensation or  
5 changes to the Scope of Work shall constitute a waiver of any and all right to adjustment in the price  
6 or time due, whether by way of compensation, restitution, quantum meruit, or similar relief.

7 **6. INDEPENDENT CONTRACTOR.** Both parties understand and acknowledge that  
8 CONSULTANT, its agents, employers and subcontractors are and shall at all times remain as to the  
9 CITY wholly independent contractors. Neither the CITY nor any of its officers or employees shall  
10 have any control over the manner by which the CONSULTANT performs this Agreement and shall  
11 only dictate the results of the performance. CONSULTANT shall not represent that CONSULTANT  
12 or its agents, employees or subcontractors are agents or employees of the CITY, and CONSULTANT  
13 shall have no authority, express or implied, to act on behalf of the CITY in any capacity whatsoever as  
14 an agent, and shall have no authority, express or implied, to bind the CITY to any obligation  
15 whatsoever, unless otherwise provided in this Agreement.

16 As an independent contractor, CONSULTANT shall not be eligible for any benefits, which the  
17 City may provide to its employees and all persons, if any, hired by CONSULTANT shall be  
18 employees or subcontractors of CONSULTANT and shall not be construed as employees or agents of  
19 the CITY in any respect. CONSULTANT shall receive no premium or enhanced pay for work  
20 normally understood as overtime, i.e., hours that exceed forty (40) hours per work week, or work  
21 performed during non-standard business hours, such as in the evenings or on weekends.  
22 CONSULTANT shall not receive a premium or enhanced pay for work performed on a recognized  
23 holiday. CONSULTANT shall not receive paid time off for days not worked, whether it be in the  
24 form of sick leave, administrative leave, or for any other form of absence. CONSULTANT shall pay  
25 all taxes, assessments and premiums under the federal Social Security Act, any applicable  
26 unemployment insurance contributions, Workers Compensation insurance premiums, sales taxes, use  
27 taxes, personal property taxes, or other taxes or assessments now or hereafter in effect and payable by  
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1 reason of or in connection with the services to be performed by CONSULTANT.

2       **7. STANDARD OF PERFORMANCE.** CONSULTANT represents and warrants to  
3 CITY that CONSULTANT is skilled and able to provide such services described in the Scope of  
4 Work and that such services shall be performed in an expeditious manner, and with the degree of skill  
5 and care that is required by current, good, and sound procedures and practices. CONSULTANT  
6 further agrees that the services shall be in conformance with generally accepted professional standards  
7 prevailing at the time work is performed.

8       Section 7056 of the State of California Revenue and Taxation Code specifically limits the  
9 disclosure of confidential taxpayer information contained in the records of the State Board of  
10 Equalization. This Section 7056 specifies the conditions under which a CITY may authorize persons  
11 other than CITY officers and employees to examine State Sales and Use Tax records.

12       The following conditions specified in Section 7056-(b), (1) of the State of California Revenue  
13 and Taxation Code are hereby made part of this Agreement:

- 14       A. CONSULTANT is authorized by this Agreement to examine sales, use or transactions and use  
15 tax records of the Board of Equalization provided to CITY pursuant to contract under the  
16 Bradley-Burns Uniform Sales and Use Tax Law Revenue and Taxation Code section 7200  
17 et.seq.
- 18       B. CONSULTANT is required to disclose information contained in, or derived from, those sales,  
19 use or transactions and use tax records only to an officer or employee of the CITY who is  
20 authorized by resolution to examine the information.
- 21       C. CONSULTANT is prohibited from performing consulting services for a retailer, as defined in  
22 California Revenue & Taxation Code Section 6015, during the term of this Agreement.
- 23       D. CONSULTANT is prohibited from retaining the information contained in, or derived from  
24 those sales or transactions and use tax records, after this Agreement has expired. Information  
25 obtained by examination of Board of Equalization records shall be used only for purposes  
26 related to collection of local sales and use tax or for other governmental functions of the CITY  
27 as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation  
28 Code. The resolution shall designate the CONSULTANT as a person authorized to examine

1 sales and use tax records and certify that this Agreement meets the requirements set forth  
2 above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

3 **8. PERFORMANCE BY CONSULTANT.** CONSULTANT shall not employ other  
4 consultants, subconsultants, experts, or contractors without the prior written approval of the CITY.  
5 Notwithstanding the foregoing, CITY shall not be obligated or liable for payment hereunder to any  
6 party other than the CONSULTANT. CONSULTANT hereby designates the CONSULTANT'S  
7 representative as the person primarily responsible for the day-to-day performance of  
8 CONSULTANT'S work under this Agreement. CONSULTANT shall not change the  
9 CONSULTANT'S representative without the prior written consent of the CITY. Unless otherwise  
10 expressly agreed by the CITY, CONSULTANT'S representative shall remain responsible for the  
11 quality and timeliness of performance of the services, notwithstanding any permitted or approved  
12 delegation hereunder.

13 **9. OWNERSHIP AND MAINTENANCE OF DOCUMENTS.** All documents  
14 furnished by CONSULTANT pursuant to this Agreement are instruments of CONSULTANT's  
15 services in respect to this project. They are not intended nor are represented to be suitable for reuse by  
16 others except CITY on extensions of this project or on any other project. Any reuse without specific  
17 written verification and adoption by CONSULTANT for the specific purposes intended will be at  
18 user's sole risk and without liability or legal exposure and expenses to CONSULTANT, including  
19 attorney's fees arising out of such unauthorized reuse.

20 CONSULTANT's records, documents, calculations, and all other instruments of service  
21 pertaining to actual project shall be given to CITY at the completion of the project. The CITY  
22 reserves the right to specify the file format that electronic document deliverables are presented to the  
23 CITY.

24 Software Use. CONSULTANT hereby provides authorization to the CITY to access  
25 CONSULTANT Sales Tax website if the CITY chooses to subscribe to the software and reports  
26 option. The website shall only be used by authorized CITY staff. No access will be granted to any 3<sup>rd</sup>  
27 party without explicit written authorization by CONSULTANT. The CITY shall not sublet, duplicate,  
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1 modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said  
2 software. The software use granted hereunder shall not imply ownership by CITY of said software, or  
3 any right of the CITY to sell said software or the use of same, or any right to use said software for the  
4 benefit of others. This software use authorization is not transferable. Upon termination or expiration  
5 of this Agreement the software use authorization shall expire, and all CITY staff website logins shall  
6 be de-activated.

7 Proprietary Information. As used herein, the term “proprietary information” means any  
8 information which relates to CONSULTANT’S computer or data processing programs; data  
9 processing applications, routines, subroutines, techniques or systems; desktop or web-based software;  
10 or business processes. Except as otherwise required by law. CITY shall hold in confidence and shall  
11 not disclose to any other party any CONSULTANT proprietary information in connection with this  
12 Agreement, or otherwise learned or obtained by the CITY in connection with this Agreement. The  
13 obligations imposed by this Section shall survive any expiration or termination of this Agreement.  
14 The terms of this Section shall not apply to any information that is public information.

15 **10. INDEMNIFICATION.** CONSULTANT agrees to defend, indemnify and hold  
16 harmless the CITY, its officers, officials, employees, agents and volunteers from and against any and  
17 all claims, demands, actions, losses, damages, injuries, and liability (including all attorney's fees and  
18 other litigation expenses) arising out of the CONSULTANT’S performance under the terms of this  
19 Agreement. This indemnification obligation on CONSULTANT’S part shall not apply to demands,  
20 actions, losses, damages, injuries, and liability arising out of sole negligence or willful misconduct on  
21 the part of CITY.

22 **11. INSURANCE.** CONSULTANT shall, at its own expense, procure and maintain in  
23 full force at all times during the term of this Agreement the following insurance:

24 **A. Commercial General Liability Coverage.** CONSULTANT shall maintain  
25 commercial general liability insurance with limits of no less than one million dollars (\$1,000,000)  
26 combined single limit per occurrence or two million dollars (\$2,000,000) aggregate limit for bodily  
27 injury, personal injury, and property damage.

1           **B.     Automobile Liability Coverage.** CONSULTANT shall maintain automobile  
2 liability insurance covering all vehicles used in the performance of this Agreement providing a one  
3 million dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury,  
4 and property damage.

5           **C.     Professional Liability Coverage (Errors and Omissions).** CONSULTANT  
6 shall maintain professional liability insurance with coverage for all negligent errors, acts or omissions  
7 committed by CONSULTANT, its agents and employees in the performance of this Agreement. The  
8 amount of this insurance shall be not less than one million dollars (\$1,000,000) on a claims made  
9 annual aggregate basis or a combined single limit per occurrence basis.

10           **D.     Compliance with State Workers' Compensation Requirements.**  
11 CONSULTANT covenants that it will insure itself against liability for Workers' Compensation  
12 pursuant to the provisions of California Labor Code §3700, et seq. CONSULTANT shall, at all  
13 times, upon demand of the City, furnish proof that Workers' Compensation Insurance is being  
14 maintained by it in force and effect in accordance with the California Labor Code. The insurer shall  
15 also agree to waive all rights of subrogation against the CITY, its officers, officials, employees and  
16 volunteers for losses arising from work performed by CONSULTANT for CITY. This provision  
17 shall not apply upon written verification by CONSULTANT that CONSULTANT has no employees.

18           **E.     Other Insurance Provisions.** The policies are to contain, or be endorsed to  
19 contain the following provisions:

20                   **(1)     Additional Insured.** CITY, its officers, agents, employees, and  
21 volunteers are to be covered as an additional insured as respects: Liability arising out of activities  
22 performed by or on behalf of CONSULTANT and operations of CONSULTANT, premises owned,  
23 occupied, or used by CONSULTANT. The coverage shall contain no special limitations on the scope  
24 or protection afforded to CITY, its officers, officials, employees, or volunteers.

25           Except for worker's compensation and professional liability insurance, the policies mentioned  
26 in this subsection shall name CITY as an additional insured and provide for notice of cancellation to  
27 CITY. CONSULTANT shall also provide timely and prompt notice to CITY if CONSULTANT  
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1 receives any notice of cancellation or nonrenewal from its insurer.

2                   **(2) Primary Coverage.** CONSULTANT'S insurance coverage shall be  
3 primary insurance with respect to CITY, its officers, officials, employees, and volunteers. Any  
4 insurance, risk pooling arrangement, or self-insurance maintained by CITY, its officers, officials,  
5 employees, or volunteers shall be in excess of CONSULTANT'S insurance and shall not contribute  
6 with it.

7                   **(3) Reporting Provisions.** Any failure to comply with the reporting  
8 provisions of the policy shall not affect the coverage provided to the CITY, its officers, officials,  
9 employees, or volunteers.

10                   **(4) Verification of Coverage.** CONSULTANT shall furnish CITY with  
11 certificates of insurance and the original endorsements effecting coverage required by this Agreement.  
12 The certificates and endorsements for each insurance policy are to be signed by a person authorized by  
13 that insurer to bind coverage on its behalf. The aforementioned policies shall be issued by an  
14 insurance carrier having a rating of Best A-7 or better which is satisfactory to the City Attorney and  
15 shall be delivered to CITY at the time of the execution of this Agreement or before work commences.  
16 Such policies and certificates shall be in a form approved by the City Attorney. CITY reserves the  
17 right to require complete certified copies of all required insurance policies at any time.

18                   **12. TIME OF PERFORMANCE.** The time of performance of the services under this  
19 Agreement is of the essence, and all time deadlines identified in this Agreement or Scope of Services  
20 shall be strictly construed.

21                   **13. SUSPENSION OF WORK.** CITY may, at any time, by ten (10) days' written notice,  
22 suspend further performance by CONSULTANT. All suspensions shall extend the time schedule for  
23 performance in a mutually satisfactory manner, and CONSULTANT shall be paid for services  
24 performed and reimbursable expenses incurred prior to the suspension date. During the period of  
25 suspension, CONSULTANT shall not receive any payment for services, or expenses, except for  
26 reasonable administration expenses, incurred by CONSULTANT by reason of such suspension.

27                   **14. TERMINATION.** CITY may terminate this Agreement for any reason upon ten (30)  
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1 days written notice to the other party. CITY may terminate the Agreement upon five (5) days written  
2 notice if CONSULTANT breaches this Agreement. In the event of any termination, CONSULTANT  
3 shall promptly deliver to the CITY any and all finished and unfinished reports or other written,  
4 recorded, photographic, or visual materials, documents, data, and other deliverables (“Work  
5 Materials”) prepared for the CITY prior to the effective date of such termination, all of which shall  
6 become CITY’s sole property. After receipt of the Work Materials, CITY will pay CONSULTANT  
7 for the services performed as of the effective date of the termination.

8 **15. COMPLIANCE WITH CIVIL RIGHTS.** During the performance of this contract,  
9 CONSULTANT agrees as follows:

10 **A. Equal Employment Opportunity.** In connection with the execution of this  
11 Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment  
12 because of race, religion, color, sex, or national origin. Such actions shall include, but not be limited  
13 to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or  
14 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and  
15 selection for training including apprenticeship.

16 **B. Nondiscrimination Civil Rights Act of 1964.** CONSULTANT will comply  
17 with all federal regulations relative to nondiscrimination in federally assisted programs.

18 **C. Solicitations for Subcontractors including Procurement of Materials and**  
19 **Equipment.** In all solicitation, either by competitive bidding or negotiations, made by  
20 CONSULTANT for work to be performed under a subcontract including procurement of materials or  
21 leases of equipment, each potential subcontractor, supplier or lessor shall be notified by  
22 CONSULTANT of CONSULTANT’S obligation under this Agreement and the regulations relative to  
23 nondiscrimination on the grounds of race, religion, color, sex, or national origin..

24 **16. CONFLICT OF INTEREST.**

25 **A.** CONSULTANT covenants and represents that neither it, nor any officer or  
26 principal of its firm, has, or shall acquire any interest, directly or indirectly, which would conflict in  
27 any manner with the interests of CITY or which would in any way hinder CONSULTANT’S  
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1 performance of services under this Agreement. CONSULTANT further covenants that in the  
2 performance of the Agreement, no person having any such interest shall be employed by it as an  
3 officer, employee, agent or subcontractor without the express written consent of the CITY.  
4 CONSULTANT agrees to at all times avoid conflicts of interest, or the appearance of any conflicts of  
5 interest, with the interests of the CITY in the performance of this Agreement.

6 B. CONSULTANT is not a designated employee within the meaning of the  
7 Political Reform Act because CONSULTANT:

8 (1) Will conduct research and arrive at conclusions with respect to its rendition  
9 of information, advice, recommendation or counsel independent of the control and direction of the  
10 CITY or of any CITY official, other than normal contract monitoring; and

11 (2) Possesses no authority with respect to any CITY decision beyond the  
12 rendition of information, advice, recommendation or counsel. (2 Cal. Code Regs. § 18700(a)(2).)

13 **17. COMPLIANCE WITH LAWS.** CONSULTANT shall comply with all applicable  
14 Federal, State of California, and local laws, rules, and regulations and shall obtain all applicable  
15 licenses, including a business license with the City of Concord, and permits for the conduct of its  
16 business and the performance of the services.

17 **18. CHOICE OF LAW.** This Agreement shall be construed and interpreted in accordance  
18 with the laws of the State of California, excluding any choice of law rules which may direct the  
19 application of the laws of another jurisdiction. In the event that suit shall be brought by either party  
20 hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the  
21 County of Contra Costa, California.

22 **19. NON-WAIVER.** The waiver by either party of any breach of any term, covenant, or  
23 condition contained in the Agreement, or any default in their performance of any obligations under the  
24 Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other  
25 term, covenant, condition, or obligation, nor shall any waiver of any incident of breach of default  
26 constitute a continuing waiver of same.

27 **20. ENFORCEABILITY; INTERPRETATION.** In the event that any of the provisions  
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1 or portions of application of any of the provisions of the Agreement are held to be illegal or invalid by  
2 a court of competent jurisdiction, CITY and CONSULTANT shall negotiate an equitable adjustment  
3 in the provisions of the Agreement with a view toward affecting the purpose of the Agreement. The  
4 illegality or invalidity of any of the provisions or portions of application of any of the provisions of  
5 the Agreement shall not affect the legality or enforceability of the remaining provisions or portions of  
6 application of any of the provisions of the Agreement. This Agreement shall be interpreted as though  
7 it was a product of a joint drafting effort and no provisions shall be interpreted against a party on the  
8 ground that said party was solely or primarily responsible for drafting the language to be interpreted.

9       **21. INTEGRATION.** All exhibits identified in this Agreement are attached hereto and  
10 incorporated herein by reference. The Agreement contains the entire agreement and understanding  
11 between the parties as to the subject matter of this Agreement. It merges and supersedes all prior or  
12 contemporaneous agreements, commitments, representation, writings, and discussions between  
13 CONSULTANT and CITY, whether oral or written.

14       **22. SUCCESSORS AND ASSIGNS: NO THIRD PARTY BENEFICIARIES; NO**  
15 **JOINT VENTURE.** CITY and CONSULTANT respectively, bind themselves, their successors,  
16 assigns, and legal representatives to the terms and obligations of this Agreement. CONSULTANT  
17 shall not assign or transfer any interest in the Agreement without the CITY's prior written consent,  
18 which consent shall be in the CITY's sole discretion. Any attempted assignment or transfer in breach  
19 of this provision shall be void. This Agreement is not intended and shall not be construed to create  
20 any third party benefit. This Agreement is not intended and shall not be construed to create a joint  
21 venture or partnership between the parties. CONSULTANT, its officers, employees and agents shall  
22 not have any power to bind or commit the CITY to any decision.

23       **23. FINANCIAL RECORDS.** Records of CONSULTANT's direct labor costs, payroll  
24 costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on  
25 a generally recognized accounting basis and made available to CITY if and when required.

26       **24. NOTICES.** All notices required hereunder shall be in writing and mailed postage  
27 prepaid by certified or registered mail, return receipt requested, or by personal delivery to the CITY's  
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1 address as shown below, or such other places as CITY or CONSULTANT may, from time to time,  
2 respectively, designate in a written notice given to the other. Notice shall be deemed received three  
3 (3) days after the date of the mailing thereof or upon personal delivery.

4 To CITY:

**Karan Reid**  
**Director of Finance**  
**City of Concord**  
**1950 Parkside Drive**  
**Concord, CA 94519-2578**  
**Phone: (925) 671-3192**  
**Fax: (925) 671- 3353**

9 To CONSULTANT:

**Andy Nickerson**  
**President**  
**Hinderliter, De Llamas & Associates**  
**1340 Valley Vista Drive, Suite 200**  
**Diamond Bar, CA 91765**  
**Phone: (909)861-4335**  
**Fax: (909)861-7726**

13 **25. NON-LIABILITY.** No member of the CITY and no other officer, employee or agent  
14 of the CITY shall be personally liable to CONSULTANT or otherwise in the event of any default or  
15 breach of the CITY, or for any amount which may become due to CONSULTANT or any successor in  
16 interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.

17 **26. EXECUTION.** Each individual or entity executing this Agreement on behalf of  
18 Applicant represents and warrants that he or she or it is duly authorized to execute and deliver this  
19 Agreement on behalf of Applicant and that such execution is binding upon Applicant.

20 This Agreement may be executed in several counterparts, each of which shall constitute one  
21 and the same instrument and shall become binding upon the parties when at least one copy hereof  
22 shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary  
23 to produce or account for more than one such counterpart.

24 **IN WITNESS WHEREOF,** the parties have executed this Agreement in one (1) or more  
25 copies as of the date and year first written above.  
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**I. SCOPE OF SERVICES**

The CONSULTANT shall perform the following services:

**A. SALES TAX AND ECONOMIC ANALYSIS**

1. CONSULTANT shall establish a special database that identifies the name, address and quarterly allocations of all sales tax producers within the CITY for the most current and all quarters back to fiscal year 2000 - 2001 or earlier, if the CITY has prior historical sales tax data available on computer readable magnetic media. This database will be utilized to generate special reports to the 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.
2. CONSULTANT shall provide up-dated reports each quarter identifying changes in sales by individual businesses, business groups and categories and by geographic area. Quarterly aberrations due to State audits, fund transfers, and receivables along with late or double payments will be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will also be included.
3. CONSULTANT shall additionally provide a quarterly summary analysis for the CITY to share with Chambers 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 information.

4. CONSULTANT shall make available to CITY Staff the HdL web-based sales tax computer software program containing sellers permit and quarterly allocation information for all in-city business outlets registered with the Board of Equalization and update quarterly. This software shall allow city staff to search business by street address, account number, business name, business type and keyword; arrange data by geographic area and print out a variety of reports.

**B. DEFICIENCY/ALLOCATION REVIEWS AND RECOVERY**

1. CONSULTANT 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:
  - 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 “Q” CITY boundaries, and therefore subject to transactions tax.
  - 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.
  - c. Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
  - 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 “Q” Transactions Tax District.

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.
3. CONSULTANT 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.

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

1. CONSULTANT shall establish a database containing all applicable Board of Equalization (BOE) registration data for each business within the Measure "Q" 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. 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. 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 sales, transactions and use tax questions.

4. CONSULTANT shall make available to CITY the HdL proprietary software program and Measure “Q” 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.

**D. ALLOCATION AUDIT AND RECOVERY**

1. CONSULTANT shall conduct initial and on-going sales and use tax audits to identify and correct distribution errors, thereby generating previously unrealized sales tax income for the CITY and/or recovering misallocated sales tax from previously properly 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; 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. CONSULTANT will initiate contacts with the appropriate sales management and accounting officials in companies that have businesses where a probability of error exists 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 maintain and enhance CITY’S relations with the business community.
3. CONSULTANT shall prepare and submit to the Board of Equalization all information necessary to correct any allocation errors 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.

4. If during the course of its audit, CONSULTANT finds businesses located in the CITY that are properly reporting sales tax but have the potential for modifying their operation to provide an even greater share to the CITY, CONTRACTOR shall so advise CITY and upon request, shall work with those businesses and the CITY to encourage such changes.

**E. ONGOING CONSULTATION**

Throughout the term of this Agreement, CONSULTANT shall advise and work with CITY staff on technical questions related to sales, use and transactions tax; advise CITY Business License staff on utilization of reports to enhance business license collection efforts; provide sales tax projections for proposed annexations, economic development projects and budget planning; and generally serve as support staff on sales, use and transactions tax related issues.

**II. OPTIONAL SERVICES**

Optional services beyond the scope of this Agreement are available at CONSULTANT's hourly rates as in effect from time to time. Optional services include, but are not limited to, negotiating/review of tax sharing agreements, establishing purchasing corporations and meeting with taxpayers to encourage self-assessment of use tax. The hourly rates in effect at the time of the execution of this Agreement are as follows:

Principal	\$225 per hour
Programmer	\$195 per hour
Senior Analyst	\$150 per hour
Analyst	\$ 75 per hour

CONSULTANT may change such hourly rates from time to time upon not less than 30 days' prior written notice to CITY.

**III. CONSIDERATION**

A. CONSULTANT shall establish the sales and transactions tax databases, shall provide the ongoing reports and analysis and shall make available the computer software program and databases referenced above for a fee of \$750.00 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 payable no later than 30 days after invoice date. The monthly fee shall increase annually following the month of the Effective Date by the percentage increase in the "CPI" for the preceding twelve month period. In no event shall the monthly fee be reduced by this calculation. For purposes of this Agreement, the "CPI" shall mean the Consumer Price Index - All Urban Consumers for the surrounding statistical metropolitan area nearest CITY, All Items (1982-84 = 100), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or, if such index should ceased to be published, any reasonably comparable index selected by CONSULTANT.

A. CONSULTANT shall be further paid 15% of all new and recovered sales and use tax revenue received by the CITY as a result, in whole or in part, of audit and recovery work performed by CONSULTANT (hereafter referred to as "audit fees"), including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the Revenue and Taxation Code. In the event that CONSULTANT

## **Exhibit A**

is responsible, in whole or in part, 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 that is attributable, in whole or in part, to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by CONSULTANT and confirmation of corrections by the State Board of Equalization. CONSULTANT shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees, which shall be payable no later than 30 days following invoice date.

CONSULTANT shall obtain CITY approval prior to beginning the work of correcting tax reporting methodology or "point of sale" for specific businesses where said payment of the percentage fee will be expected. Said approval shall be deemed given when the City Manager, or his designated representative, signs a Sales Tax Audit Authorization form, a copy of which is attached as "Attachment A." CITY shall pay audit fees upon CONSULTANT's submittal of evidence of State Fund Transfers and payments to CITY from businesses identified in the audit and approved by the CITY. The audit fees shall be payable on all new and/or recovered tax revenues received from approved businesses as a consequence, in whole or in part, of the audit, and even if CITY, of its own volition, assists with the audit, works in parallel with the audit, and/or expends attorneys fees or other out-of-pocket costs in connection with any of the foregoing.

- B. CONSULTANT shall be paid 25% of the initial amount of new transactions or use tax revenue received by the CITY as a result 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

## **Exhibit A**

agreement. In the event that 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 State Board of Equalization 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.

CONSULTANT shall obtain prior approval from CITY for each specific business for which payment of audit fees will be expected. Said approval shall be deemed given when the City Manager or his/her designated representative, signs a Work Authorization form, a copy of which is attached as "Attachment B." CITY shall pay audit fees upon CONSULTANT's submittal of evidence of State fund transfers and payments to CITY from businesses identified in the audit and approved by the CITY.

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

- C. Any invoices not paid on a due and timely basis shall accrue monthly interest at a rate equivalent to ten percent (10%) per annum until paid.

*SAMPLE*

*SAMPLE*

**ATTACHMENT A**

**Sales Tax Audit**

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

The following business or businesses, located in the City of Concord have been identified as having the potential for recovering or generating additional sales tax revenue to the City of Concord. Consultant is hereby solely 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 modify allocation formulas, and to return previous misallocated revenue that may be due to City.

Consultant's compensation shall be 15% of the sales and/or use tax revenue received by the City as a result of audit and recovery work performed by Consultant, as set forth in the Agreement between Consultant and City.

**CITY OF CONCORD**

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

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

**HINDERLITER, DE LLAMAS AND ASSOCIATES**

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

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

*SAMPLE*

*SAMPLE*

ATTACHMENT B  
Transactions Tax Audit  
Work Authorization No. \_\_\_\_\_

The following business or businesses, located in the City of Concord have been identified as having the potential for recovering or generating additional transactions tax revenue to the City of Concord. Consultant is hereby solely 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 modify allocation formulas, and to return previous misallocated revenue that may be due to City.

Consultant's compensation shall be 25% of the transaction tax revenue received by the City as a result of audit and recovery work performed by Consultant, as set forth in the Agreement between Consultant and City.

CITY OF CONCORD

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

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

HINDERLITER, DE LLAMAS AND ASSOCIATES

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

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

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Authorizing Examination of Sales and  
Use Tax Records**

**Resolution No. 15-11**

**WHEREAS**, Section 3.15.030 (Revenue and Finance) of the Concord Municipal Code authorizes the State Board of Equalization to perform all functions incident to the administration and collection of local sales and use taxes; and

**WHEREAS**, the City Council deems it desirable and necessary for authorized representatives of the City to examine confidential sales and use tax records of the State Board of Equalization pertaining to sales 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 the Board of Equalization records and establishes criminal penalties for the unlawful disclosure of the information contained in, or derived from, the sales and use tax records of the Board. .

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES  
RESOLVE AS FOLLOWS:**

**Section 1.** The Finance Director, or other officer or employee of the 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 of Concord with authority to examine sales and use tax records of the Board, pertaining to sales 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 the Board records shall be used only for purposes related to the collection of City sales and use taxes by the Board, pursuant to that contract. .

**Section 2.** The Finance Director, or other officer or employee of the City designated in writing by the City Manager to the Board, is hereby appointed to represent the City with the authority to examine those sales and use tax records of the Board, for purposes related to the following governmental functions of the city:

- 1 (a) Revenue monitoring
- 2 (b) Planning
- 3 (c) Economic Development

4 The information obtained by examination of Board records shall be used only for those governmental  
5 functions listed above.

6 **Section 3.** That Hinderliter, de Llamas & Associates is hereby designated to examine the sales  
7 and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board,  
8 provided the person or entity designated by this section meets all of the following conditions:

- 9 (a) Has an existing contract with the City to examine those sales and use tax records
- 10 (b) Is required by that contract to disclose information contained in, or derived from, those  
11 sales and use tax records only to the officer or employee authorized under section 1 or  
12 section 2 of this resolution to examine the information
- 13 (c) Is prohibited by the contract from performing consulting services for a retailer during the  
14 term of that contract
- 15 (d) Is prohibited by that contract from retaining the information contained in, or derived from,  
16 those sales and use tax records after that contract has expired

17 The information obtained by examination of Board records shall be used only for purposes related to  
18 the collections of the City sales and use taxes by the Board pursuant to the contract between the City  
19 and the Board, and for purposes relating to the governmental functions of the City listed in Section 2  
20 of this resolution.

21 **Section 4.** This resolution supersedes all prior resolutions adopted pursuant to California  
22 Revenue and Taxation Code, Section 7056.

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