



CITY OF MARTINEZ

CITY COUNCIL AGENDA

December 7, 2011

TO: Mayor and City Council

FROM: Alan H. Shear, Assistant City Manager

SUBJECT: Agreement for Sales, Use and Transactions Tax Audit and Information Services

DATE: November 30, 2011

RECOMMENDATION:

Approve Agreement for Consultant Services between the City of Martinez and Hinderliter, de Llamas and Associates (HdL) and adopt a resolution appointing Hinderliter, de Llamas and Associates as the City's authorized representative before the California State Board of Equalization.

BACKGROUND:

The City currently has an agreement for Consultant Services with MuniServices to provide specialized management services for sales and use tax. Both HdL and MuniServices offer the same general battery of services including (a) revenue allocation and amount verification (through detailed analysis of California State Board of Equalization (SBOE) reported sales and use tax payments and business tax audits), (b) challenging possible tax allocation errors and underpayments, (c) generating detailed reports and analyses of these major City revenues for use in budgeting.

The main difference between the two consultants is that HdL has been continually updating its review and analytic procedures, and will provide City staff with a wide variety of reports that are straight-forward and easy to use. They will provide a quarterly analysis in context with the surrounding market region to better identify retail/industrial trends, voids and opportunities. The reports will include a custom, non-confidential newsletter that can be shared with the City Council and the community.

City staff will have unlimited support from HdL to provide sales tax estimates for proposed projects, annexations, target business retention possibilities, provide revenue projections, maximize the use tax from construction projects and answer sales and use tax questions related to economic development, budgeting and business license questions. HdL currently provides the City with revenue management services for property taxes. This has given HdL a thorough understanding of land use within the City and will facilitate their ability to provide revenue projections on potential economic development efforts.

HdL has also enhanced its ability to provide information and analysis very quickly after the close of each quarter. The firm will provide highly focused and accurate budget forecasts that will be particularly valuable during the current economic downturn. HdL's philosophy is one ensuring that all of their associates are thoroughly versed on the specifics of each client, which results in greater depth of analysis and the ability to get answers to questions more quickly. By contrast, MuniServices provides the City with one consultant who was the primary point of contact. Although this service model has its advantages, one of the benefits of the HdL approach is having a variety of "eyes" and perspectives reviewing and analyzing the City's data. All of HdL's associates have extensive economic development, finance and local government experience.

California Revenue and Taxation Code Section 7056 requires the City Council to grant, by resolution, authority for City-contracted consultants to examine State Board of Equalization confidential Martinez sales and use tax records. In order for HdL to provide sales tax services to the City, the City Council will need to adopt a resolution granting the firm this authority.

FISCAL IMPACT:

Both HdL and MuniServices use a two-pronged fee approach: 1) a "base" fee for management analysis and information and 2) a contingency fee for allocation audit and recovery. For the base fee for information and analysis, HdL is proposing a fee of \$200 per month. MuniServices charges the City \$2,000 per year. For the contingency fee for allocation and audit and recovery services, both firms charge a fee equal to a percentage of revenue recovered over several quarters. MuniServices contingency fee is 20% of the amount recovered in which the taxpayer begins paying the taxes correctly. HdL is proposing a contingency fee of 17% of the amount recovered following the date of knowledge and all previous quarters.

ACTION:

Motion to approve Agreement for Consultant Services between the City of Martinez and Hinderliter, de Llamas and Associates (HdL) and adopt a resolution appointing Hinderliter, de Llamas and Associates as the City's authorized representative before the California State Board of Equalization.

Attachments:

Resolution

Contract

APPROVED BY:


City Manager

RESOLUTION NO. -11

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
DESIGNATING HINDERLITER, DE LLAMAS AND ASSOCIATES
AS THE AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES
AND USE TAX RECORDS**

WHEREAS, pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Martinez has adopted a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City of Martinez, by resolution, may designate any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Martinez has entered into an agreement for sales tax audit and information services with the firm of Hinderliter, de Llamas and Associates (HdL), to designate HdL as the authorized Consultant to examine such sales and use tax records maintained by the Board on behalf of the City of Martinez.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Martinez resolves as follows:

1. In all respects as set forth above, the City Council of the City of Martinez hereby certifies to the State Board of Equalization that HdL is the designated representative of the City of Martinez to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected by the Board on behalf of the City of Martinez.
2. Pursuant to California Revenue and Taxation Section 7056(b), the City Council of the City of Martinez certifies that HdL (hereinafter referred to as "Consultant") meets all of the following conditions:
 - a. Consultant has an existing contract with the City of Martinez to examine sales tax records; and

- b. Consultant is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information; and
 - c. Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and
 - d. Consultant is prohibited from retaining the information contained in, or derived from, those sales tax records, after the contract has expired.
3. The officers and employees authorized to examine information contained in or derived from sales and use tax records accessed by HdL are: The City Treasurer, City Manager, Assistant City Manager, Finance Manager, and Senior Management Analyst.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 7th day of December, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT, made and entered into this 7th day of December, 2011 by and between the CITY OF MARTINEZ, hereinafter referred to as CITY, and Hinderliter, de Llamas and Associates, hereinafter referred to as CONSULTANT, whose address is 1340 Valley Vista Drive, Suite 200, Diamond Bar, CA 91765. The CITY and CONSULTANT hereby agree as follows:

SPECIFIC PROVISIONS

1. DESCRIPTION OF PROJECT

This Project consists of Sales Tax data-based reporting and analysis required to effectively manage the CITY's Sales Tax base and identify and recover revenues misallocated within the CITY or to other jurisdictions.

2. SCOPE OF SERVICES TO BE PROVIDED BY CONSULTANT

The services provided by CONSULTANT shall include the following:

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 1989-90, 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, business districts or redevelopment areas, 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 or its Redevelopment Agency to share with Chambers of Commerce and other economic development interest groups 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 CONSULTANT sales tax computer software program and database containing sellers permit and quarterly allocation information for all in-CITY business outlets registered with the Board of Equalization and update quarterly. 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. ALLOCATION AUDIT AND RECOVERY

1. CONSULTANT shall conduct an initial and on-going sales and use tax audit to identify and correct distribution errors and thereby generate previously unrealized sales tax income for the CITY. Common errors that will be monitored and corrected include: 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 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, CONSULTANT shall so advise CITY and upon request, shall work with those businesses and the CITY to encourage such changes.

C. ON GOING CONSULTATION

Throughout the term of this agreement, CONSULTANT shall advise and work with CITY 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 reports that reflect tax sharing arrangements with the County; 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.

3. SCOPE OF SERVICES TO BE PROVIDED BY CITY; CONFIDENTIALITY

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 CONSULTANT to examine the confidential sales tax records of CITY. CITY further agrees to provide any information or assistance that may readily be available such as business license records within the CITY and to provide CONSULTANT with proper identification for contacting businesses. CITY further agrees to continue CONSULTANT'S authorization to examine the confidential sales tax records of the CITY by maintaining CONSULTANT'S name on the CITY Resolution or by providing copies of future allocation reports on computer readable magnetic media until such time as all audit adjustments have been completed by the State Board of Equalization and audit fees due the CONSULTANT have been paid.

CONSULTANT 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 CONSULTANT 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.

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 a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.

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

- A. CONSULTANT 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 Bradley-Burns Uniform Sales and Use Tax Law.
- B. CONSULTANT 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. CONSULTANT 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. CONSULTANT 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 CONSULTANT as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

4. PAYMENT

- 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 \$200.00 per month, invoiced quarterly (hereafter referred to as “monthly fee”).
- B. CONSULTANT shall be further paid 17% of all new sales, transactions and/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”) including any reimbursement from the Sales and Use Tax Compensation Fund as outlined in Section 97.68 of the Revenue and Taxation Code. New sales, transactions and/or use tax revenue shall not include any amounts determined by CITY or CONSULTANT to be increment attributable to causes other than CONSULTANT’S work pursuant to this 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 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.

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 “Exhibit C.” 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.

- C. Above sum 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 expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

5. TIME OF COMPLETION

The CONSULTANT shall perform the work described in Section 2 in accordance with the timeframes expressed therein.

6. DEPARTURES FROM SCHEDULE

CONSULTANT and the CITY agree the schedule in Paragraph 5 above represents their best estimates with respect to completion dates and both CONSULTANT and CITY acknowledge that departures from the schedule may occur. Therefore, both CONSULTANT and CITY will use reasonable efforts to notify one

another of changes to the schedule. Any proposed change in the schedule, including a change based on the events described in Section 7, immediately below, shall be delivered to the other party in writing. Any such proposed change by one party shall be subject to the approval of the other party; provided, however, that any such approval may not be withheld unreasonably. The person executing this Agreement on behalf of the CITY shall have the authority to agree to extensions proposed by the CONSULTANT.

7. PERFORMANCE DELAYS BEYOND CONSULTANT CONTROL

CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

GENERAL PROVISIONS

1. The status of CONSULTANT is that of an independent CONSULTANT operating having control of his/her work and the manner in which it is performed. CONSULTANT is not considered to be an officer, an employee, or an agent of CITY, nor shall he/she hold him/herself out as or represent that he/she is an officer, employee, or agent of the CITY. CONSULTANT is required to obtain a business license with the CITY.
2. The CONSULTANT agrees that he/she/it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement, and that he/she/it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, brokerage fee, gifts, or any other considerations, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the CITY shall have the right to annul and cancel this Agreement without liability of any sort and/or, in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage brokerage fee, gift, or contingent fee.

Software License. CONSULTANT hereby provides a license to the CITY to use CONSULTANT'S Software. The software shall only be used by the CITY. The CITY shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The license granted hereunder shall not imply ownership by CITY of said software, rights of the CITY to sell said software, or rights to use said software for the benefits of others. This license is not transferable. Upon termination, the software license shall expire, all copies of the software shall be removed from the CITY'S computers and network and all digital copies deleted or otherwise destroyed.

CITY Data. CONSULTANT acknowledges that the account data generated by the CITY during the course of CITY operations is the property of the CITY. At the termination of this Agreement the CITY data will be made available to the CITY in a format acceptable to both the CITY and CONSULTANT.

Proprietary Information. As used herein, the term "proprietary information" means any information which relates to CONSULTANT'S computer or data processing programs; data processing applications, routines, subroutines, techniques or systems; or business processes. CITY shall hold in confidence and shall not disclose to any other party any CONSULTANT proprietary information in connection with this Agreement, or otherwise learned or obtained by the CITY in connection with this Agreement. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement. The terms of this section shall not apply to any information that is public information.

All reports, drawings, calculations, plans, specifications, and other documents prepared or obtained pursuant to the terms of this Agreement shall be endorsed by Consultant and delivered to and become the property of the CITY with the exception of proprietary/copyrighted information as stated above (as in agreements or software services). In addition, data prepared or obtained under this Agreement shall be made available, upon request, to the CITY. The foregoing notwithstanding, said documents, plans, etc. which are site specific for the subject project shall not be used for any other work without the consent of Consultant.

Consultant and his/her/its subconsultants shall keep and maintain full and complete documentation and accounting records, including all records, employees' time sheets and correspondence pertaining to this Agreement. The Consultant shall make such documents and records available for review and/or audit evaluation by representatives of the CITY at all reasonable times during the contract period and for at least four (4) years from the date of final payment. Upon written request by the CITY, the Consultant shall provide the CITY with copies of all pertinent reports and correspondence.

3. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services under this contract. The CONSULTANT shall not engage the services of any person or persons now employed by the CITY, except with the written permission of the CITY. Except as otherwise herein provided, the CONSULTANT shall not assign or sublet any portion of the services to be performed under this Agreement without the prior written consent of the CITY. Said consent may be withheld with or without reasons. In the event that the CITY, in writing, approves any assignment or subletting of this Agreement or the retention of sub-consultants by CONSULTANT, the CONSULTANT shall provide to the CITY copies of each and every sub-consultant contract prior to the execution thereof by the CONSULTANT and sub-consultant.
4. CONSULTANT shall comply with all Federal, State and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement, including without limitation laws requiring licensing and non-discrimination in employment because of race, creed, color, sex, age, marital status, physical or mental disability, national origin or other prohibited bases.
5. All changes and/or extra work shall be performed and paid for in accordance with the following:
 - A. Only the CITY Manager may authorize extra and/or changed work. CONSULTANT expressly recognizes that other CITY personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of CONSULTANT to secure the CITY Manager's prior, written authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and CONSULTANT thereafter shall be entitled to no compensation whatsoever for performance of such work.
 - B. If the CONSULTANT is of the opinion that any work he has been directed to perform is beyond the scope of this Agreement and constitutes extra work, he shall promptly notify the CITY Manager of the fact. The CITY Manager shall make a determination as to whether or not such work is, in fact, beyond the scope of this Agreement and constitutes extra work. In the event that the CITY Manager determines that such work does constitute extra work, the CITY shall provide compensation to the CONSULTANT on a fair and equitable basis. A Supplemental Agreement providing for such compensation for extra work shall be negotiated between the CITY and the CONSULTANT. Such Supplemental Agreement shall be executed by the CONSULTANT and be approved by the necessary CITY officials.
 - C. In the event the CITY Manager determines that such work does not constitute extra work, CONSULTANT shall not be paid extra compensation above that provided herein. The determination of the CITY Manager may be appealed to the CITY Council as long as a written appeal is submitted to the CITY Manager within five (5) days after the date of the CITY Manager's determination. Said written appeal shall include a description of each and every ground upon which CONSULTANT challenges the CITY Manager's determination.
6. CITY has relied upon the professional ability and training of CONSULTANT as a material inducement to enter into this Agreement. Consultant shall perform in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that payment for or acceptance of CONSULTANT'S work by CITY shall not operate as a waiver or release. CONSULTANT shall indemnify and hold harmless the CITY from and against any and all claims or expenses caused or occasioned directly or indirectly by CONSULTANT'S failure to so perform.

7. CONSULTANT assumes all responsibility for damages to property or injury or death to persons caused by the negligent performance errors or omissions of CONSULTANT and/or his/her agents or employees. To the extent permitted by law, CONSULTANT shall indemnify, hold harmless, release and defend CITY, its officers, employees and agents from and against any and all actions, claims, demands, damages, disability, losses, failure to comply with any current or prospective laws, and expenses including attorneys' fees and other defense costs or liabilities of any nature that may be asserted by any person or entity including CONSULTANT from any cause whatsoever including another's concurrent negligence arising out of or in any way connected with the activities of CONSULTANT, his employees and agents hereunder and regardless of CITY'S passive negligence. CITY agrees to provide CONSULTANT with reasonable notification of legal claims and/or lawsuits which CITY may receive and for which CITY will request indemnification under this paragraph.

This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for CONSULTANT under Workers' Compensation, disability or other employee benefits acts, acceptance of insurance certificates required under this Agreement, or the terms, applicability or limitations of any insurance held by CONSULTANT.

8. Without limiting CONSULTANT'S indemnification provided hereunder, CONSULTANT shall take out and maintain at all times during the life of this contract, up to the date of acceptance of the work by the CITY, the following policies of insurance with a Best rating of no less than A-VII.

- A. Workers' Compensation insurance to cover its employees, and the CONSULTANT shall require all sub-consultants similarly to provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the sub-consultant's employees. All Workers' Compensation policies shall be endorsed with the provision that it will not be canceled without first giving thirty (30) days prior notice to the CITY.

In the event any class of employees engaged in hazardous work under the Contract is not protected under Workers' Compensation Statutes, the CONSULTANT shall provide, and shall cause all sub-consultants to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. Such policy must be acceptable to CITY and shall provide that it will not be canceled without first giving thirty (30) days notice to the CITY.

CONSULTANT'S Worker's Compensation insurance shall include the following language: "All rights of subrogation are hereby waived against the CITY, its officers and employees when acting within the scope of their appointment or employment."

- B. Commercial general liability insurance including personal injury and property damage insurance for all activities of the CONSULTANT and its sub-consultants arising out of or in connection with this contract, written on a commercial general liability form including, but not limited to, Broad Form Property Damage, blanket contractual, completed operations, cross liability, x, c, u hazards, subCONSULTANTs named as additional insureds (inapplicable if no subCONSULTANTs or subconsultants), vehicle coverage, products liability and employers non-ownership liability coverage in an amount no less than \$1 million dollars combined, single limit personal injury and property damage for each occurrence. The completed operations and product liability insurance shall continue for not less than 365 days following acceptance of the work by CITY. The commercial general liability policy shall be endorsed with the following language:

- (1) The CITY OF MARTINEZ is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and this policy protects the additional insured, its officers, agents and employees against liability for personal and bodily injuries, deaths or property damage or destruction arising in any respect, directly or indirectly, in the performance of the contract.
- (2) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured.

- (3) The insurance provided herein is primary and no insurance held or owned by the CITY OF MARTINEZ shall be called upon to contribute to a loss.
 - (4) The coverage provided by this policy shall not be canceled without thirty (30) days prior written notice given to the CITY of MARTINEZ.
 - C. Professional liability, errors and omissions insurance in an amount not less than \$1 million dollars. The professional liability insurance policy shall be endorsed with a provision stating that it may not be canceled without first giving thirty (30) days prior written notice to the CITY. The professional liability policy shall be written on an occurrence policy basis to cover any professional liability, errors or omissions made during the term of policy. In the event CONSULTANT'S policy is a "claims made" policy only covering those claims made during the policy period, then CONSULTANT agrees to maintain the professional liability insurance required hereunder and with respect to this project in effect for at least three (3) years after acceptance of the work.
 - (1) SUB-CONSULTANTS providing professional services under this agreement shall be added to CONSULTANT'S policy as additional insured, or shall provide evidence of their own professional liability insurance which is acceptable to the CITY Attorney.
 - D. CONSULTANT shall submit to CITY documentation evidencing its required insurances signed by the insurance agent and companies, copies of which are attached as Exhibit "C". Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY, insurer shall reduce or eliminate such deductible or self-insured retention as respects CITY, its officers and employees or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claims, administration and defense expenses.
9. The CITY shall furnish the CONSULTANT, to the extent that they are available, CITY standards, details, specifications, and regulations applying to the Project and other such information which may be helpful to the CONSULTANT in performance of its service. Any and all additional data necessary for design shall be the responsibility of the CONSULTANT.
10. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the CITY within its sole discretion upon written notice to CONSULTANT. CONSULTANT may terminate this Agreement upon thirty (30) days' written notice to the CITY only for good cause, including without limitation, CONSULTANT'S serious illness or material breach of this Agreement by the CITY. CONSULTANT'S written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. Upon termination, all finished and unfinished documents, project data and reports shall, at the option of the CITY, become its sole property and shall, at CONSULTANTS' expense, be delivered to the CITY or to any party the CITY may so designate. In the event of termination by CONSULTANT, CONSULTANT shall only be compensated for all work CONSULTANT satisfactorily performs prior to the time CONSULTANT delivers to the CITY the termination notice, unless other arrangements are agreed to by the CITY. In the event of termination by the CITY, CONSULTANT shall be compensated for all work satisfactorily performed prior to the time CONSULTANT receives the termination notice, and shall be compensated for all materials ordered by CONSULTANT, and services of others ordered by CONSULTANT prior to receipt of the CITY'S termination notice, whether or not such materials or instruments of services of others have actually been delivered to CONSULTANT or to the CITY, provided that CONSULTANT is not able to cancel such orders for materials or services of others. In the event this Agreement is terminated pursuant to this section, CONSULTANT shall not be entitled to any additional compensation over that provided herein; nor shall CONSULTANT be entitled to payment for alleged damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the CITY pursuant to this section.
11. Should the CONSULTANT fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the CITY may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination in such event. CONSULTANT shall be compensated as above, provided, however, there shall be deducted from such amount the amount of damage, if any, sustained by CITY by virtue of the CONSULTANT'S breach of this Agreement.

12. This Agreement shall inure to the benefit of, and be binding upon, the successors in interest, legal representatives, trustees, and permitted assigns of either party.
13. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to included terms and a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure, section 1856. No modification hereof shall be effective unless and until such modification is evidenced by a writing signed by parties to this Agreement.
14. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed **return** has not been received. After receipt of a demand for assurance, either party's failure to provide within a reasonable time but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances is a breach of this Agreement by that party. Acceptance of any improper delivery of service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
15. All notices permitted or required hereunder shall be addressed as follows:

If to the CITY:

Philip Vince
 CITY Manager
 CITY of Martinez
 525 Henrietta Street
 Martinez, CA 94553

If to the CONSULTANT:

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

16. This Agreement shall be construed in accordance with the law of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the day first above written in the CITY OF MARTINEZ, California.

CITY OF MARTINEZ
 A Municipal Corporation

Date: _____

By: _____
 Philip Vince, CITY Manager

CONSULTANT is a corporation duly organized and validly existing and in good standing under the laws of the State of California, and is authorized to perform the services under this agreement. The corporate officer executing this agreement has been authorized and directed to do so by corporate resolution.

Date: _____

By: _____
 Consultant

Attachments:

Exhibit A: Sales Tax Audit Authorization

SAMPLE

SAMPLE

EXHIBIT A

Sales Tax Audit

Work Authorization No. _____

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

Contractor's compensation shall be 17% of the new sales and/or use tax revenue received by the City as a result of audit and recovery work performed by Contractor, as set forth in the Agreement between Contractor and City.

CITY OF MARTINEZ

By: _____

Date: _____

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: _____

Date: _____