



CITY OF ALBANY CITY COUNCIL AGENDA STAFF REPORT

Agenda Date: April 7, 2025
Reviewed by: NA

SUBJECT: Business License, Sugar Sweetened Beverage, and Sales and Use Tax Consulting Contract No. C25-13 with Hinderliter de Llamas & Associates (HdL)

REPORT BY: Reina Schwartz, Finance Director
Cassi Murphy, Finance Manager

SUMMARY

The action before the City Council is to award Contract No. C25-13 to Hinderliter de Llamas & Associates (HdL) in the not-to-exceed amount of \$250,000 over a period of three years. HdL shall render services to enhance compliance and collection of business license, sugar sweetened beverage, and sales and use taxes. The fees associated with implementation and compliance vary based on tax type. The full fee schedule is detailed in the attached contract in the scope of work.

STAFF RECOMMENDATION

That the Council adopt Resolution No. 2025-14, authorizing the City Manager to award Contract No. C25-13 to HdL in the not-to-exceed amount of \$250,000 for consulting services.

BACKGROUND

Staff have performed compliance checks on existing taxes in order to maximize the revenue collected as a part of regular duties. However, staff have limited time and resources which inhibits this effort. Partnering with HdL will aid in compliance of taxes remitted beyond what staff is able to complete. In addition, as part of this contract HdL will perform analysis of the current Business License Tax ordinance so that staff can bring an updated ordinance to City Council for consideration. City Council has expressed a desire to improve the dated ordinance to move away from the current regressive taxation model and to enhance revenue collection.

DISCUSSION

The current processes in place for revenue collection will benefit from modernization. The services provided through HdL will provide a more efficient and convenient experience for the taxpayer. Taxpayers will have a variety of methods available for applications, renewals

and remittances; they may choose the option which best suits their needs. Support specialists are available to assist customers as needed. Staff anticipate that the services provided by HdL will provide a positive experience for the taxpayer while increasing revenue collection for the City.

CITY COUNCIL STRATEGIC PLAN INITIATIVES

- GOAL 5: Increase Revenue & Economic Development to Sustain City Services;
OBJECTIVE: Develop options to restructure the Business License Tax

FINANCIAL CONSIDERATIONS

The set cost for the Business License Tax analysis is \$50,000. This will include analysis and drafting of a modernized ordinance for consideration by the Council. HdL has provided this service to other local jurisdictions with effective results.

The remaining and recurring cost of services included in the Scope of Work are either a flat rate per item processed, flat rate per month, or a percentage of revenue collected as outlined in the scope of services. The percentage of revenue charged by HdL for services is higher for discovery of non-compliant accounts as the work to audit and collect on the amounts owed is more intensive. However, once the information for non-compliant accounts is captured the fees will align with the lower payment structure for future years and result in greater revenue collection. There is also a one-time implementation fee for the Business License Tax administration setup totaling \$7,500. The one-time costs will be paid by the General Fund in the current fiscal year. Both implementations will require finance staff to set aside time to work on the projects with HdL but should result in efficiencies in the future.

The City of Albany does already pay for services to administer the City's Business License Tax, Sugar Sweetened Beverage Tax as well as Sales and Use Tax Analysis/Forecasting. Staff have analyzed the fee schedule and determined that the costs for the services in total through HdL are comparable to what is currently being paid. Most of the City's current services do not provide effective audit or discovery processes where they exist, and none is currently offered for Sales and Use Tax. The analysis and audit services offered by HdL should allow the City to achieve higher revenue collection. In addition, the administration will be fully managed by HdL and should not create additional work for staff.

The Scope also includes an Optional Service which the City is still evaluating which would involve moving the service to manage the administration and collection of Transient Occupancy Tax (TOT) on short-term rentals within the City from the current provider to HdL as well. The initial analysis indicates that moving to HdL for this service would cost less and improve collections. The City's current contract for administration of TOT expires in October 2025.

The fee components are summarized in the table below.

Tax and Fee Services	
Services	Compensation
Business License Tax Administration (includes discovery/audits)	\$18.00/processed account + CPI
Business License Tax Discovery	50% of Revenues Collected
Business License Tax Audit	50% of Revenues Collected
Sugar Sweetened Beverage Tax Administration/Compliance	\$18.00/processed account + CPI Compliance: 50% of Revenues Collected Audit: 50% of Revenues Collected Collections: 25% of Revenues Collected
Implementation Fee (one-time bundled cost)	\$7,500
Sales and Use Tax & Economic Analysis	\$350/month
Sales and Use Tax Allocation and Audit Recovery Services	15% of revenues collected in the first eight consecutive reporting quarters

Attachments

1. Resolution No. 2025-14
2. Contract No. C25-13: Agreement with Hinderliter de Llamas (HDL)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

8
911
1214
15
1618
19

21
22
23
24
25
26

29

**CONTRACT #C25-13
AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF ALBANY
AND
Hinderliter de Llamas & Associates (HdL)
FOR PROJECT:**

Business License, Sugar Sweetened Beverage and Sales & Use Tax Consulting

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this 8th day of April 2025 by and among the City of Albany a California charter city ("CITY") and Hinderliter de Llamas & Associates (HdL) ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 20 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of three years from the date of execution of this AGREEMENT, as first shown above. Such term may be reduced or extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT.

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

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless

such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT for services satisfactorily rendered under this AGREEMENT. The total compensation payable, including reimbursement for actual expenses, shall not exceed \$250,000 (two-hundred and fifty thousand dollars) over the three-year initial term unless additional compensation is approved in writing by the City Council or City Manager. This limit does not apply to compensation for services which are billed a contingency fee based on revenue recovered, or to payment processing services which are billed according to usage.

Each month CONSULTANT shall furnish to CITY an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed, and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth below. In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission.

Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, SECTIONS 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents. This does not include any software, programs, methodologies or systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Contractor in the course of performing the Services that were not otherwise provided to City in either hardcopy or electronic form, all of which may be protected by Contractor or others' copyrights or other intellectual property

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such

documents and records shall be granted to CITY, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.

CONSULTANT shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this

AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

CONSULTANT shall obtain and maintain in full force and effect during the term of this AGREEMENT a Business License from the CITY's Finance Department. Provide City of Albany Business License number and Expiration Date on Page 11 of this contract.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of status protected under federal, state, or local law in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et M., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. PAYMENT OF A LIVING WAGE; FAILURE TO COMPLY.

By its signature hereunder, CONSULTANT certifies that it is aware of the CITY ordinance requiring all consultants who meet certain eligibility guidelines to pay covered employees a living wage as enumerated in the ordinance, and agrees to comply with such provisions before commencing the performance of work and/or services covered by this AGREEMENT. CONSULTANT agrees to provide CITY with documents and information verifying compliance with the requirements of the ordinance upon a request by CITY for such verification. CONSULTANT understands that failure to comply with any or all of the requirements of CITY'S living wage ordinance may result in sanctions including termination of the contract and the CITY'S or covered employees' pursuit of any available legal remedies. CONSULTANT further agrees to notify each of its affected employees in writing, upon commencement of performance of work and/or services covered by this AGREEMENT, of CONSULTANT'S obligation to pay a living wage as set forth in the CITY ordinance. This provision shall not be construed to limit CONSULTANT'S discretion to provide greater wages or benefits to its employees. Notwithstanding anything

to the contrary, this provision shall not apply to work or services subject to state prevailing wage law codified at Labor Code sections 1720 *et seq.* and 1770 *et seq.*

SECTION 14. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, or may be, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 15. CONFIDENTIAL INFORMATION AND RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Administrator, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 16. INDEMNIFICATION.

(a) CITY and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or *willful* acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT. Notwithstanding anything to the contrary, in no event will CONSULTANT be liable for claims, liabilities or damages solely in connection with the issuance, non-issuance or revocation of any registration, license, permit, or exemption.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under SECTION 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) If CONSULTANT's obligation to defend, indemnify, and/or hold harmless arises out of CONSULTANT's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil

Code section 2782.8, which is fully incorporated herein, CONSULTANT's indemnification obligation shall be limited to CLAIMS that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONSULTANT, and, upon CONSULTANT obtaining a final adjudication by a court of competent jurisdiction, CONSULTANT's liability for such claim, including the cost to defend, shall not exceed the CONSULTANT's proportionate percentage of fault.

(d) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or *willful* acts or omissions.

SECTION 17. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Administrator. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT shall not assign or transfer this AGREEMENT or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the CITY. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 19. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

SECTION 20. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving forty five (45) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon forty five (45) days written notice of termination to CITY. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 21. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 22. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 23. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 24. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: Nicole Almaguer
City Manager
City of Albany
1000 San Pablo Avenue
Albany, CA 94706

To CONSULTANT: Joshua Davis
VP of TFA
HdL Companies
120 S. State College Blvd., Suite 200
Brea, CA 92821

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 25. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 26. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 27. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the CITY. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 28. WAIVER

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 29. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in Alameda County. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 30. CLAIMS.

All claims arising out of or related to this agreement must be presented not later than six (6) months after the accrual of the cause of action. Such claims shall be governed by the provisions of the Albany Municipal Code and such claims shall further be governed by the provisions of section 930.4 of the Government Code for the purposes of filing leave to present a later claim. It is further provided that subdivision (b) of section 911.4 sections 911.6 to 912.2, inclusive and section 946.6 are applicable to all such claims, and the time specified in this agreement shall be deemed the “time specified” in section 911.2 within the meaning of sections 911.6 and 946.6.

SECTION 31. California Department of Tax and Fee Administration Data.

31.1 CITY shall adopt a resolution in a form acceptable to the California Department of Tax and Fee Administration and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales tax records of CITY. CITY further agrees to continue CONTRACTOR’s authorization to examine the confidential sales tax records of the CITY by maintaining CONTRACTOR’s name on the CITY resolution until such time as all CONTRACTOR compliance work on behalf of CITY has been completed and any fee owing to CONTRACTOR has been paid.

31.2 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 California Department of Tax and Fee Administration. Section 7056 specifies the conditions under which a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.

31.3 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:

31.3.1 CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law Revenue and Taxation Code section 7200 et.seq.

31.3.2 CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.

31.3.3 CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.

31.3.4 CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales, use or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Department of Tax and Fee Administration records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

SECTION 32. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "D", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 33. SEVERABILITY.

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF ALBANY: (#C25-13)

CONSULTANT:

By _____

By _____

Nicole Almaguer, City Manager

(Authorized Officer)

Date _____

Name: Joshua Davis

Title:VP of TFA

ATTEST:

City of Albany Business License

BL # _____

Anne Hsu, City Clerk

Expiration Date: _____

Date _____

SCOPE OF SERVICES

1. Business License Tax Administration Operations Management Services

- 1.1. Establish and maintain database of Client businesses.
- 1.2. Receive and process applications, renewals and payments in a timely fashion.
- 1.3. Send renewal notices to active businesses within 30 days of the renewal period end date or at another interval specified by Client.
- 1.4. Provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. Consultant license specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 1.5. Remit revenue to Client no less than monthly.
- 1.6. Provide Client staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.

2. Business License Tax Administration Compliance Services: 1) Identify and register businesses which are subject to licensure or taxation, 2) collect known debt as pertains to business license or tax, and 3) identify under-reported tax liability.

2.1. Discovery Services

- 2.1.1. Develop a list of businesses subject to Client licensure or taxation.
- 2.1.2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
- 2.1.3. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to Client upon request.
- 2.1.4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
- 2.1.5. Remit revenue to Client no less than monthly, along with all business applications and any additional documentation.

2.2. Collection Services

- 2.2.1. Identify businesses subject to Client licensure or taxation which have known debt to Client and have failed to pay within an appropriate time frame.
- 2.2.2. Notify businesses of their options to comply or dispute their non-compliant status.
- 2.2.3. Provide businesses with detailed invoicing and options to pay via website, mail and phone.
- 2.2.4. Remit revenue to Client no less than monthly.

2.3. Audit Services

- 2.3.1. Identify potential under-reporting and/or misclassified businesses.
- 2.3.2. Audit businesses mutually agreed to by Client and Consultant that are identified as potential under-reporting businesses.
- 2.3.3. Submit audit summaries to Client and discuss further actions.

- 2.3.4. Educate businesses on proper reporting practices.
- 2.3.5. Invoice and collect identified deficiencies.

3. Online Payment Processing – Consultant’s services include PCI compliant payment processing services which supports both credit card and eCheck transactions.

3.1. Client Responsibilities

- 3.1.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Consultant’s payment processor, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by Consultant’s payment processor. “Network” is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
- 3.1.2. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

4. Sugar Sweet Beverage Tax Operations Management Services

- 4.1. Establish and maintain database of Client businesses.
- 4.2. Receive and process applications, renewals and payments in a timely fashion.
- 4.3. Send renewal notices to active businesses within 30 days of the renewal period end date or at another interval specified by Client.
- 4.4. Provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. Consultant license specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 4.5. Remit revenue to Client no less than monthly.
- 4.6. Provide Client staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.

5. Sugar Sweet Beverage Tax Administration Compliance Services: 1) Identify and register businesses which are subject to taxation, 2) collect known debt as pertains to tax, and 3) identify under-reported tax liability.

5.1. Discovery Services

- 5.1.1. Develop a list of businesses subject to Client taxation.
- 5.1.2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
- 5.1.3. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to Client upon request.

- 5.1.4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
- 5.1.5. Remit revenue to Client no less than monthly, along with all business applications and any additional documentation.

5.2. Collection Services

- 5.2.1. Identify businesses subject to Client taxation which have known debt to Client and have failed to pay within an appropriate time frame.
- 5.2.2. Notify businesses of their options to comply or dispute their non-compliant status.
- 5.2.3. Provide businesses with detailed invoicing and options to pay via website, mail and phone.
- 5.2.4. Remit revenue to Client no less than monthly.

5.3. Audit Services

- 5.3.1. Identify potential under-reporting and/or misclassified businesses.
- 5.3.2. Audit businesses mutually agreed to by Client and Consultant that are identified as potential under-reporting businesses.
- 5.3.3. Submit audit summaries to Client and discuss further actions.
- 5.3.4. Educate businesses on proper reporting practices.
- 5.3.5. Invoice and collect identified deficiencies.

6. Business License Tax Ordinance / Fee Study

- 6.1. Current Tax Registry Analysis – Consultant will conduct an analysis of the City’s business tax registration database. Data will be compiled on the number of businesses, current tax revenues received by the City, categories, and other related information to provide a baseline of the City’s current tax structure and to allow consultant to model the potential impact of changes to the current model. Contingent on data availability, this analysis will include the following:
 - 6.1.1. A calculation of the effective tax rate paid by small, medium, and large businesses in the City. (Consultant will use estimated or actual gross receipts to create these categories.)
 - 6.1.2. An analysis of the length of tenure of currently active businesses in the City.
 - 6.1.3. An analysis of the trends within major economic sectors, including whether revenue is tracking the measure of the tax (or if the current tax structure is deviating from the trend of the underlying input/measure of the tax).
 - 6.1.4. An analysis of the net growth in numbers of inside businesses.
 - 6.1.5. An analysis of the top 100 businesses (by the City’s current business license measure) looking at their contribution to the total revenue and key trends, if any, in the top 100 businesses.
 - 6.1.6. A review of the existing municipal code structure for both business license and TOT to indicate any opportunities for administrative improvements.
- 6.2. Fee Analysis and Comparative Study – Using the data compiled from the registration analysis, as well as data compiled from other sources, such as revenue data from the State, Consultant will prepare a report comparing the City model to those of neighboring cities. Contingent on data availability, this analysis will include the following.
 - 6.2.1. Identification of a set of nine similar jurisdictions to use for comparison.

- 6.2.2. Review of the total revenue trends for each of the ten jurisdictions (nine comparison jurisdictions and the City) along with key attributes like population and number of businesses, the last substantial update to the code, and primary business tax measure.
- 6.2.3. Visualization of the City's business license tax revenue per capita and per business compared to the other nine jurisdictions.
- 6.2.4. Trend of the overall growth of business tax revenue for each of the ten jurisdictions, benchmarked against the highest year of revenue for the City.
- 6.2.5. Creation of a basket of hypothetical businesses and comparison of how each of the ten jurisdictions would tax those hypothetical businesses. The hypothetical businesses will be drawn from composites of small, medium, and large businesses in your City.
- 6.3. Modified Tax Structure Options – As a result of the findings of the comparison report, Consultant will prepare a report with three options for tax structure changes. Contingent on data availability, this analysis will include the following
 - 6.3.1. An analysis of how the taxes paid by the hypothetical businesses in the basket of business identified in the comparison study would change for each model.
 - 6.3.2. An analysis of how the effective tax rate would be changed for small, medium, and large businesses (as identified in the Current Registry Analysis).
 - 6.3.3. An analysis of the models' impact on locally owned and small businesses. (Consultant defines a “locally owned business” as one with a physical and mailing address within the City.)
 - 6.3.4. A comparison of the per-capita and per-business revenue for each of the three models against the ten comparison jurisdictions and, where useful, against additional high-revenue cities identified by Consultant.
 - 6.3.5. A visualization of the proposed tax rates in the models compared to other tax rates, like sales tax.
 - 6.3.6. A comparison of the % of revenues from the top 100 businesses pre- and post-change, assuming that one of the models is adopted.
- 6.4. Additional Support – the following activities are included at no additional cost.
 - 6.4.1. Staff Meetings – Consultant will schedule the following meetings to review deliverables and questions with City staff.
 - 6.4.1.1. Kick-off meeting
 - 6.4.1.2. Review and approve the comparison jurisdictions
 - 6.4.1.3. Review of the interactive model
 - 6.4.1.4. Review of the first draft of the report
 - 6.4.1.5. Review of the revised final report
 - 6.4.2. Meetings with Committees and Council - Consultant will make ourselves available for the following meetings with reasonable advance notice.
 - 6.4.2.1. A presentation of the draft report to a committee
 - 6.4.2.2. The presentation of a revised, final draft report to the committee. (Consultant can make changes that take less than a total of two hours to revise at no additional cost. Changes beyond that two-hour limit will be made on a time and material basis after written approval from the City.)
 - 6.4.2.3. Presentation of the final report to City Council
 - 6.4.2.4. A second meeting with Council to answer technical questions post-polling

6.4.3. Technical Support for Community Meetings

6.4.3.1. Consultant will provide responses to the City to technical questions raised by community stakeholders in any community meetings the City holds.

6.4.3.2. Consultant will also provide a list of the top businesses that the City may want to contact to discuss the potential impact on their businesses.

6.4.4. Deliverables – The deliverables from the study will be:

6.4.4.1. Comparison jurisdiction set

6.4.4.2. Interactive model

6.4.4.3. Draft of report

6.4.4.4. PowerPoint for presentation of the report to the committee, Council, or both

6.4.4.5. Final report

6.4.4.6. List of potential businesses for community outreach

6.4.5. Additional Support Activities

6.4.5.1. Consultant will also review and work with the City Attorney's office to draft new ordinance language supporting a chosen model

6.4.5.2. Consultant will provide reasonable support to assist any polling or ballot firm the City chooses to understand the models

6.4.6. Timeline - Once the contract is signed by both parties and the data is available to Consultant, the clock on the below timeline begins to run. For the timeline, Week 1 is the week on which the clock starts to run.

6.4.6.1. Schedule the kick-off meeting. (By week 2)

6.4.6.2. Meet to review the Jurisdiction comparisons (By week 3)

6.4.6.3. Meet to review the interactive model (By week 6)

6.4.6.4. Deliver the first draft report. (By week 10)

6.4.6.5. Deliver PowerPoint for presentations. (By week 11)

6.4.6.6. Deliver the final report. (TBD based on presentations to the Council and staff direction.)

6.4.7. A Note on Implementation – Once a model is chosen and initial polling is completed, Consultant can meet with the City to discuss options for implementation. Changing the code also requires changes in forms, software set-up, process, and likely some community outreach ahead of renewal season. Consultant will be happy to meet with the City to discuss the additional scope of that work.

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

7.1. Establish a special database identifying the name, address, and quarterly allocations of all sales tax producers within the City. This database will be utilized to generate special reports to City on major sales tax producers by rank and category, sales tax activity by categories, or business districts, identification of reporting aberrations, and per capita and outlet comparisons with regional and statewide sales.

7.2. Provide periodic updated reports to City identifying changes in sales by individual businesses, business groups and categories, and by geographic area. These reports may include, without limitation, quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, and quarterly reconciliation worksheets to

assist with budget forecasting. Consultant shall meet quarterly by in person or virtually with City.

- 7.3. Shall additionally provide following each calendar quarter a summary analysis for City to share with Council Members, Chamber of Commerce, other economic development interest groups and the public that analyze City's sales tax trends by major groups and geographic areas without disclosing confidential individual tax records.
- 7.4. Establish a special database with California Department of Tax and Fee Administration ("CDTFA") registration data for businesses within applicable district boundaries holding seller's permit accounts.
- 7.5. Periodically license for the limited, non-exclusive, non-transferable use by City's staff certain of Consultant's web-based sales, use and/or transactions tax program(s) containing sellers permit, registration, allocation and related information for business outlets within City's jurisdiction registered with the CDTFA.
- 7.6. Provide periodic updated reports endeavoring to identify and assist with budget forecasting (i) changes in allocation totals by individual businesses, business groups and categories, and (ii) aberrations due to State audits, fund transfers, and receivables, along with late or double payments.

8. Sales and Use Tax Allocation and Audit Recovery Services

- 8.1. Conduct (when mutually agreed with City) initial and on-going sales and use tax audits of businesses to help identify and correct distribution and allocation errors, and to proactively affect favorable registration, reporting or formula changes thereby generating previously unrealized sales and use tax income for the City and/or recovering misallocated tax from registered taxpayers. Common errors that will be monitored and corrected include but are not limited to: transposition errors resulting in misallocations; erroneous consolidation of multiple outlets; formula errors; misreporting of "point of sale" to the wrong location; delays in reporting new outlets; misallocating use tax payments to the allocation pools or wrong jurisdiction; and erroneous fund transfers and adjustments.
- 8.2. Initiate contacts with the CDTFA and sales management and accounting officials in companies that have businesses where a probability of error exists to endeavor to help verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner.
- 8.3. Prepare and submit to the CDTFA information for the purpose of correcting any identified allocation errors, and follow-up with individual businesses and the CDTFA to promote recovery by the City of back or prospective quarterly payments that may be owing.
- 8.4. If, during the course of its audit, Consultant finds businesses located in the City's jurisdiction that are properly reporting sales and use tax but have the potential for modifying their operation to provide an even greater share to City, Consultant may so advise City and collaborate with those businesses and City to encourage such changes.

9. Sales and Use Tax Consulting and Other Optional Services

Consultant may from time to time in its sole discretion, consult with City's staff, including without limitation, regarding (i) technical questions and other issues related to sales and use tax, (ii) utilization of reports to enhance business license collection efforts; (iii) sales tax projections for

proposed annexations, economic development projects and budget planning, (iv) negotiating/review of tax sharing agreements, (v) establishing purchasing corporations, (vi) meeting with taxpayers to encourage self-assessment of tax obligations, and (vii) other sales and use tax revenue-related matters.

FEES

10. Business License Tax Administration Operations Management Services

- 10.1. Fees for performing operations management Services shall be \$18.00 for each processed account, which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice, and a one-time implementation fee of \$7,500.00.
- 10.2. Fees will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.
- 10.3. Fees related to travel and lodging expenses are billed at cost and apply to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.
- 10.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

11. Business License Tax Administration Compliance Services

- 11.1. Fees for performing compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
 - 11.1.1. Fees for performing discovery Services shall be a contingency Fee of 50% of the revenues received as a result of the Services.
 - 11.1.2. In the event that Client discovers a non-compliant business and reports the business to Consultant (including a calculation of all taxes/fees due), Consultant will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
 - 11.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
 - 11.1.4. Fees for performing audit Services shall be a contingency Fee of 50% of the revenues received as a result of the Services.
- 11.2. Consultant recognizes Client's authority to waive or reduce the tax/fee debt of a business. Should Client decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of

the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a Client voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.

- 11.3. The fee shall be paid notwithstanding any related Client assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
- 11.4. Fees related to travel and lodging expenses are billed at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.
- 11.5. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

12. Payment Processing – Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or Client funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.

- 12.1. Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
 - 12.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
 - 12.1.2. ACH/eCheck processing - \$2.50 per transaction
- 12.2. Client funded
 - 12.2.1. Credit and debit card processing – 2.9% of transaction amount
 - 12.2.2. ACH/eCheck processing - \$0.75 per transaction
- 12.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
- 12.4. Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.

13. Sugar Sweet Beverage Tax Administration Operations Management Services

- 13.1. Fees for performing operations management Services shall be \$18.00 for each processed account, which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice.
- 13.2. Fees will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the Fees will be equal to the greater of two

percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.

- 13.3. Fees related to travel and lodging expenses are billed at cost and apply to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.
- 13.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

14. Sugar Sweet Beverage Tax Administration Compliance Services

- 14.1. Fees for performing compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
 - 14.1.1. Fees for performing discovery Services shall be a contingency Fee of 50% of the revenues received as a result of the Services.
 - 14.1.2. In the event that Client discovers a non-compliant business and reports the business to Consultant (including a calculation of all taxes/fees due), Consultant will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
 - 14.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
 - 14.1.4. Fees for performing audit Services shall be a contingency Fee of 50% of the revenues received as a result of the Services.
- 14.2. Consultant recognizes Client's authority to waive or reduce the tax/fee debt of a business. Should Client decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a Client voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.
- 14.3. The fee shall be paid notwithstanding any related Client assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
- 14.4. Fees related to travel and lodging expenses are billed at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.
- 14.5. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

15. Business License Tax Ordinance / Fee Study – Fee is \$50,000.00, due 50% at the time of agreement execution, and 50% upon delivery of final report.

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

- 16.1. Fees for performing the sales tax and economic analysis/forecasting Services as described above shall initially be **\$350** per month, commencing with the month of the Effective Date (hereafter referred to as “monthly fee”). The monthly fee shall be invoiced quarterly in arrears and shall be paid by City no later than 30 days after the invoice date.
- 16.2. Consultant will increase the non-hourly Fees established above once a year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”).

17. Sales and Use Tax Allocation and Audit Recovery Services

- 17.1. Fees for performing the allocation and audit recovery Services described above shall be **15%** of all new, increased and recovered sales and use tax revenue received by the City as a result, in whole or in part, of the allocation audit and recovery services (hereafter referred to as “audit fee”). The fee shall be paid notwithstanding any related City assistance, work in parallel, and/or incurrence of attorneys’ fees or other costs or expenses in connection, with the relevant Services.
- 17.2. The Fee described above include, without limitation, State fund transfers received for back quarter reallocations and monies received in the first eight (8) consecutive reporting quarters following completion of Consultant’s allocation audit and confirmation of the corrections by the CDTFA.
- 17.3. These Fees shall be paid by City upon Consultant’s submittal of evidence of Consultant’s relevant Services in support thereof, including, without limitation, copies of relevant communications between Consultant and the CDTFA and/or taxpayers.
- 17.4. Consultant recognizes City’s authority to waive or reduce the tax/fee-related debt of a business. Should City decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e., statute of limitation or other legal defense) shall not be considered a City voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.

18. Sales and Use Tax Consulting and Other Optional Services

- 18.1. Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.
- 18.2. Consultant may change the rates for its hourly Fees from time to time. A 30 days’ prior written notice to City will be given.

19. General Provisions Relating to Fees

- 19.1. Fees for travel and lodging expenses will be invoiced at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by City.
- 19.2. Fees will be invoiced monthly to City for Services performed during the prior month. To the extent that Consultant has commercially reasonable means to do so, Fees will be netted out of City's monthly revenue disbursement.

20. Confidentiality Information

Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a city, county or district may authorize persons other than such city, county or district's officers and employees to examine state sales and use tax records.

The following conditions specified in Section 7056-(b)(1) of the State of California R&T Code are hereby made part of this Agreement:

- 20.1. Consultant is authorized by this Agreement to examine sales, use or transactions and use tax records of the CDTFA provided to City pursuant to contract under the Bradley-Burns Uniform Local Sales and Use Tax Law R&T Code Section 7200 et.seq.
- 20.2. Consultant is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of City who is authorized by City resolution provided to the CDTFA to examine the information.
- 20.3. Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 20.4. Consultant is prohibited from retaining the information contained in or derived from those sales, use or transactions and use tax records after this agreement has expired. Information obtained by examination of the CDTFA records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the Consultant as a person authorized to examine sales and use tax records and certify that this agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

21. Software Use and Proprietary Information

Software Use. Consultant hereby provides authorization to City to access Consultant's Sales Tax website if City chooses to subscribe to the software and reports option. The website shall only be used by authorized City staff. No access will be granted to any third party without explicit written authorization by Consultant. City shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by City of said software, or any right of City to sell said software or the use of same, or any right to use said software for the benefit of others. This software

use authorization is not transferable. Upon termination or expiration of this Agreement, the software use authorization shall expire, and all City staff website logins shall be de-activated.

Proprietary Information. As used herein, the term “proprietary information” means all information or material that has or could have commercial value or other utility in Consultant’s business, including without limitation: Consultant’s (i) computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; (iii) business processes; (iv) marketing plans, analysis and strategies; and (v) materials and techniques used; as well as the terms and conditions of this Agreement. Except as otherwise required by law, City shall hold in confidence and shall not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by City in connection with this Agreement. The obligations imposed by this Section shall survive any expiration or termination of this Agreement or otherwise. The terms of this Section shall not apply to any information that is public information.

OPTIONAL SERVICES

22. Short-Term Rentals Transient Occupancy Tax Administration

Scope of Work

22.1. Identification and Monitoring

- 22.1.1. Monitor short-term rental sites to identify new listings and closures.
- 22.1.2. Match listings to specific parcels using GIS and property tax assessor data.
- 22.1.3. Identify properties which are already registered and paying taxes.
- 22.1.4. Provide a visual map of listing locations in Client’s jurisdiction.
- 22.1.5. Record listing details (including start date, sites linked to, and other information necessary for documenting evidence of short-term rental activity).

22.2. Education, Registration, and Compliance

- 22.2.1. Notify non-compliant lodging providers of their status and any actions necessary to become compliant.
- 22.2.2. Provide short-term rentals website with links to FAQs, education packets, and support for registering, filing returns, and making payments.
- 22.2.3. Follow-up with non-compliant entities and assist as needed to obtain compliance.
- 22.2.4. Work with Client to identify additional requirements and ensure collection of data necessary for enforcement procedures.

22.3. Operations Management Services

- 22.3.1. Establish and maintain database of Client’s short-term rental lodging providers.
- 22.3.2. Receive and process registrations, tax returns and payments in a timely fashion.
- 22.3.3. Provide lodging providers multiple options for submitting registrations, tax returns, payments, or support requests (including via website, email, mail, phone, and fax. Consultant tax specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 22.3.4. Remit revenue to Client no less than monthly.
- 22.3.5. Provide Client staff access to website portal offering lodging provider registry inquiry and reporting capabilities.
- 22.3.6. Endeavor to ensure accurate filings of returns by consistently monitoring returns and educating lodging providers.

- 22.3.7. Provide analysis reports monthly and annually provide revenue trends and key insights on Client lodging providers.

Fees

- 22.4. Fees for performing operations management Services shall be \$25.00 per filing and a one-time implementation fee of \$2,500.00.
- 22.5. Fees for performing compliance Services shall be \$95.00 per filing.
- 22.5.1. Fees will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.
- 22.6. Fees for any travel and lodging expenses will be billed at cost and applied to all meetings (including implementation, training, operations and support).
- 22.7. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client’s monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.