

RESOLUTION NO. 2000-29

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF ELK GROVE, CALIFORNIA, AUTHORIZING
EXAMINATION OF SALES AND USE TAX RECORDS AND
APPOINTING THE CITY MANAGER TO REPRESENT THE CITY
WITH AUTHORITY TO EXAMINE SALES AND USE TAXES AND
DESIGNATING HINDERLITER, DE LLAMAS & ASSOCIATES TO
EXAMINE THE SALES AND USE TAX RECORDS OF THE BOARD
COLLECTED FOR THE CITY.**

WHEREAS, pursuant to Ordinance 2000-12, the City of Elk Grove entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local sales and use taxes; and

WHEREAS, the City Council of the City of Elk Grove deems it desirable and necessary for authorized representative of the City to examine confidential sales and use tax records of the State Board of Equalization pertaining to sales and use taxes collected by the Board for the City pursuant to that contract; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE
HEREBY RESOLVES AS FOLLOWS:

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

Section 2. That Hinderliter, de Llamas & Associates is hereby appointed to represent the City with authority to examine those sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board. The person or entity designated by this section meets all the following conditions:

- (a) has an existing contract with the City to examine those sales and use tax records;

- (b) is required by that contract to disclose information contained in, or derived from, those sales and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- (c) is prohibited by that contract from performing consulting services for a retainer during the term of that contract; and
- (d) is prohibited by that contract from retaining the information contained in, or derived from those sales and use tax records, after that contract has expired.

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

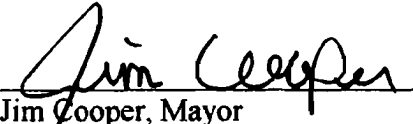
PASSED AND ADOPTED by the City Council of the City of Elk Grove on this 2nd day of August, 2000, by the following vote:

AYES: Council Members: COOPER, BRIGGS, SOARES, LEARY,
SCHERMAN

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:


Jim Cooper, Mayor

ATTEST:


Diana Biddle, City Clerk

AGREEMENT FOR SALES TAX AUDIT AND INFORMATION SERVICES

This Agreement is made and entered into as of the 2nd day of August, 2000 by and between the CITY OF ELK GROVE a municipal corporation hereinafter called CITY, and HINDERLITER, DE LLAMAS AND ASSOCIATES a California Corporation, hereinafter called CONTRACTOR.

I. RECITALS

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

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

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

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

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

II. SERVICES

The CONTRACTOR shall perform the following services:

A. Sales tax and economic analysis

1. CONTRACTOR shall establish a special data base that identifies the name, address and quarterly allocations of the major sales tax producers within the CITY for the most current and previous five quarters from the date of this agreement, or longer, if the CITY has historical sales tax data available on computer readable magnetic media that extends beyond the most recent five quarters. A second data base covering the same period will be established showing total sales tax receipts for each business category identified by the Board of Equalization. These data bases will be utilized to generate special reports to the CITY on: major sales tax producers by rank and category, analysis of sales tax activity by category, business district or redevelopment area specified by CITY, analysis of reporting aberrations, and per capita and outlet comparisons with state wide sales.
2. CONTRACTOR shall provide up-dated reports each quarter identifying changes in sales by major outlets and by category; area growth and decline comparisons; and current graphics, tables, and top 100 listings. 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 be included.
3. CONTRACTOR will additionally provide an 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. CONTRACTOR shall make available to CITY Staff the HdL DATA computer program and data base containing sellers permit information for all in-city business outlets registered with the Board of Equalization. In addition, contractor shall process for CITY the monthly registration and allocation files provided by the Board in magnetic media. Printouts of registration changes and dollars allocated by business name and number will be provided from these files on a monthly basis.

B. Allocation Audit and Recovery

1. CONTRACTOR shall conduct an initial and on-going sales tax audit in order to identify and correct "point-of-sale" 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" from the wrong location; delays in reporting new outlets; misidentifying transactions as a "use tax" rather than a "sales tax," and erroneous fund transfers and adjustments.
2. CONTRACTOR 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 encourage local business retention and expansion.

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

C. On Going Consultation

Throughout the term of this agreement, CONTRACTOR shall advise and work with CITY and CITY Redevelopment Agency Staffs on questions related to tenant mix alternatives for maximum sales tax returns; advise CITY Business License staff on utilization of reports to enhance business license collection efforts; provide sales tax projections on specific projects for redevelopment negotiation and CITY budget purposes; and provide data support to enhance the sales tax base through improved economic development efforts.

III. CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which 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. CONTRACTOR is authorized by this Agreement to examine sales 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. CONTRACTOR 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 the CITY who is authorized by resolution to examine the information.
- C. CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.
- D. CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Board of Equalization records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person, authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

IV. PROPRIETARY INFORMATION

In performing its duties under this agreement, CONTRACTOR will produce reports, technical information and other compilations of data to CITY. These reports, technical

information and compilations of data are derived by CONTRACTOR using methodologies, formulae, programs, techniques and other processes designed and developed by CONTRACTOR at a substantial expense. CONTRACTOR'S reports, technical information, compilations of data, methodologies, formulae, programs, techniques and other processes designed and developed by CONTRACTOR shall be referred to as Proprietary Information. CONTRACTOR'S Proprietary Information is not generally known by the entities with which CONTRACTOR competes.

CONTRACTOR desires to protect its Proprietary Information. Accordingly, CITY agrees that neither it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will at any time during or after the term of the Agreement, directly or indirectly use any of CONTRACTOR'S proprietary Information for any purpose not associated with CONTRACTOR'S activities. Further, CITY agrees that it nor any of its employees, agents, independent contractors or other persons or organizations over which it has control, will disseminate or disclose any of CONTRACTOR'S Proprietary Information to any person or organization not connected with CONTRACTOR, without the express written consent of CONTRACTOR. The CITY also agrees that it will undertake all necessary and appropriate steps to maintain the proprietary nature of CONTRACTOR'S Proprietary Information.

V. CONSIDERATION

- A. CONTRACTOR shall establish the sales tax and audit data bases, shall provide the ongoing reports and analysis and shall make available the computer program and data bases referenced above for a fee of \$350.00 per month, invoiced quarterly (hereafter referred to as "monthly fee").
- B. CONTRACTOR shall be further paid 15% of all new Sales and/or Use tax revenue received by the CITY as a result of audit and recovery work performed by

CONTRACTOR (hereafter referred to as "audit fees"). New sales and/or use tax revenue shall not include any amounts determined by CITY or CONTRACTOR to be increment attributable to causes other than CONTRACTOR'S work pursuant to this agreement. In the event that CONTRACTOR is responsible for an increase in the tax reported by businesses already properly making tax payments to the CITY, it shall be CONTRACTOR'S responsibility to separate and support the incremental amount attributable to its efforts prior to the application of the audit fee. Said audit fees will apply to state fund transfers received for back quarter reallocations and monies received in the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. CONTRACTOR shall provide CITY with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

CONTRACTOR shall obtain 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 accomplished by the City Administrator or his designated representative on the Sales Tax Audit Authorization form, a copy of which is attached as "Exhibit A." CITY shall pay audit fees upon CONTRACTOR'S submittal of evidence of State Fund Transfers and payments to CITY from businesses identified in the audit and approved by the CITY.

- C. Above sum shall constitute full reimbursement to CONTRACTOR for all direct and indirect expenses incurred by CONTRACTOR in performing audits including the salaries of CONTRACTOR'S employees, and travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.

VI. CITY MATERIALS AND SUPPORT

CITY shall adopt a resolution in a form acceptable to the State Board of Equalization and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales 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 CONTRACTOR with proper identification for contacting businesses. CITY further agrees to provide copies of the monthly allocation reports received for the most recent five quarters from the execution of this agreement and to continue to provide 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 CONTRACTOR have been paid.

VII. TERMINATION

This Agreement may be terminated by either party by giving 30 days written notice to the other of such termination and specifying the effective date thereof. Upon the presentation of such notice, CONTRACTOR may continue to work through the date of termination. Upon termination as provided herein, CONTRACTOR shall be paid the value of all tax analysis and reporting work performed less payments previously made by CITY. In ascertaining the value of the work performed up to the date of termination, consideration shall be given to amounts due for any unpaid invoices, and to businesses identified by CONTRACTOR which make tax payments after termination of this Agreement as a result of CONTRACTOR'S work. After CITY receives said tax payments for such businesses, CONTRACTOR shall be paid the audit fees resulting from tax payments made by the business for back quarter reallocations and the first eight consecutive reporting quarters following completion of the audit by CONTRACTOR and confirmation of corrections by the State Board of Equalization. Compensation for any

audit work previously authorized and satisfactorily performed shall be made at the times provided in the preceding section entitled "Consideration."

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

VIII. INDEPENDENT CONTRACTOR

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

IX. NON-ASSIGNMENT

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

X. ATTORNEY'S FEES

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

XI. GOVERNING LAW

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

XII. INDEMNIFICATION

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

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

XIII. NOTICE

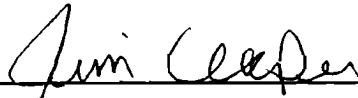
All notices required by this Agreement shall be given to CITY and CONTRACTOR in writing, by personal delivery or first class mail postage prepaid, addressed as follows:

CITY: CITY OF ELK GROVE
P O Box 1776
Elk Grove, CA 95759


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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY:
CITY OF ELK GROVE

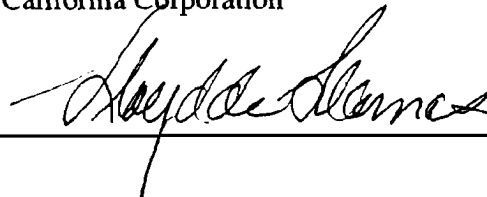


Mayor



City Clerk

CONTRACTOR:
HINDERLITER, DE LLAMAS & ASSOCIATES
A California Corporation



APPROVED AS TO FORM:



City Attorney

SAMPLE

SAMPLE

EXHIBIT A

Sales Tax Audit

Work Authorization No. _____

The following business or businesses, located in the City of _____, have been identified as having the potential for generating additional sales tax revenue to the City of _____. 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 15% 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 _____

By: _____

Date _____

HINDERLITER, DE LLAMAS AND ASSOCIATES

By: _____

Date _____