

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
HINDERLITER, DE LLAMAS AND ASSOCIATES
FOR
SALES AND USE TAX AUDITING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and Hinderliter, de Llamas and Associates, a California Corporation hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide professional sales and use tax auditing services; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates Andy Nickerson who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence on August 1, 2020 (the "Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date, unless extended or sooner terminated as provided herein. All tasks specified in **Exhibit "A"** shall be completed no later than three years from the Commencement Date. The time for performance of the tasks identified in **Exhibit "A"** are generally to be shown in **Exhibit "A."** This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

In the event the Commencement Date precedes the Effective Date, CONSULTANT shall be bound by all terms and conditions as provided herein.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "B,"** which is attached hereto and incorporated by reference into this Agreement, a fee, including all costs and expenses, not to exceed Two Hundred Twenty-Five Thousand Dollars (\$225,000.00).

5. EXTRA WORK

In the event CITY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of **Exhibit "B."**

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) negligent (or alleged negligent) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars

(\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention without the express written consent of CITY; however an insurance policy "deductible" of Ten Thousand Dollars (\$10,000.00) or less is permitted. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

If CONSULTANT fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the CITY with required proof that insurance has been procured and is in force and paid for, the CITY shall have the right, at the CITY's election, to forthwith terminate this Agreement. Such termination shall not effect Consultant's right to be paid for its time and materials expended prior to notification of termination. CONSULTANT waives the right to receive compensation and agrees to indemnify the CITY for any work performed prior to approval of insurance by the CITY.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and
- C. shall promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall

be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable

overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN: Dahle Bulosan
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Hinderliter, de Llamas and Associates
ATTN: Andy Nickerson
120 S. State College Blvd., Ste 200
Brea, CA 92821

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining

covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for

CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

28. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this

Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

29. EFFECTIVE DATE

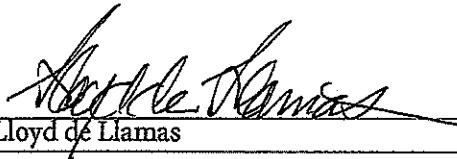
This Agreement shall be effective on the date of its approval by the City Council. This Agreement shall expire when terminated as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers.

(SIGNATURES ON SEPARATE PAGE)

CONSULTANT,
HINDERLITER, DE LLAMAS
AND ASSOCIATES

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

By: 
Lloyd de Llamas

print name

ITS: (circle one) Chairman/President/Vice
President

Mayor

RECEIVED AND FILE:

By: 
AND
Gary Left, Chief Operations Officer

print name

ITS: (circle one) Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer

City Clerk

INITIATED AND APPROVED:

Chief Financial Officer

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:

City Attorney 

CONSULTANT,
HINDERLITER, DE LLAMAS
AND ASSOCIATES

CITY OF HUNTINGTON BEACH, a
municipal corporation of the State of
California

Mayor

By: _____

print name

ITS: (circle one) Chairman/President/Vice
President

AND

By: _____

print name

ITS: (circle one) Secretary/Chief Financial
Officer/Asst. Secretary - Treasurer

RECEIVED AND FILE:

City Clerk

INITIATED AND APPROVED:

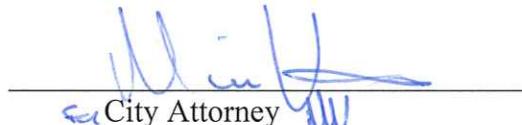


Chief Financial Officer

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:



City Attorney

EXHIBIT "A"

A. STATEMENT OF WORK: (Narrative of work to be performed)

The City desires the provision of services that include report generation and data analysis necessary to effectively manage the City's municipal sales tax base as well as recover revenues erroneously allocated to other jurisdictions.

B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

1. 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 California Department of Tax and Fee Administration (CDFTA).

This section specifies the conditions under which a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.

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

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

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

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

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

2) SALES AND USE TAX INFORMATION SERVICES & ECONOMIC ANALYSIS

a) Provide a user-friendly software program accessible to City staff with an electronic database of the City's sales and use tax data. The software and database would be used to facilitate monitoring, analysis and forecasting of sales and use tax revenue. The database will include the following features at a minimum:

i) All sales tax producers in the City of Huntington Beach, including business name, address, California Department of Tax and Fee Administration (CDFTA) account number and current (e.g., quarterly) and historical sales tax allocations.

- ii) Ability for the City to create and maintain subsets of the information based on geographic features.
- iii) Ability to define and print reports by business type and/or category.
- iv) Ability to export all data to a spreadsheet.

b) Provide training to City staff on the use of the software program described above.

c) Provide written sales tax reports on a fiscal year quarterly basis to the City in a timely manner, following the receipt of the quarterly distribution report. Such reports would be provided during a quarterly meeting at the City with key Finance and City personnel. The reports should include, but not be limited to, the following:

- i) Historical sales and use tax revenue trends of major industry groups within the City of Huntington Beach.
- ii) Top sales tax generators ranked by the amount of sales and use tax produced.
- iii) Analysis of sales trends by business category, identifying by business the major increases and decreases each quarter (i.e., largest deviating businesses).
- iv) Comparisons to other local, county and state jurisdictions.
- v) Sales and use tax projections updated quarterly.
- vi) Sales tax revenue by geographic area
- vii) Information regarding state and federal legislative issues, including an analysis of their potential impact on the City of Huntington Beach.
- viii) Creation and provision of a non-confidential newsletter in electronic format (e.g., *.pdf or similar electronic format) each quarter for the City suitable for public dissemination.

- ix) Other reports as mutually agreed upon.
- d) Provision of assistance with sales and use tax revenue trends, analysis and related questions throughout the fiscal year; consultation on projections of sales and use tax revenue during the City's annual budget development process.

3) REVENUE RECOVERY AND REPORTING

- a) Identify the specific procedures you will use to detect, correct, and recover misallocated revenue for the City of Huntington Beach, including, but not limited to:
 - i) Identify and correct the sales/use tax reporting errors of businesses within the City that are not properly registered based on their business activities in the City.
 - ii) Identify and correct the reporting of businesses that are improperly reporting tax to state and county pools (i.e. classifying sales tax as use tax), thereby depriving the City of sales tax revenue.
 - iii) Detect, document and correct sales/use tax reports errors and omissions in order to generate new, previously unrealized, revenue for the City.
 - iv) Determine if the California Department of Tax and Fee Administration (CDFTA) had prior knowledge of the error(s), which could entitle the City to collect revenue from additional periods.
- b) Monitor and analyze the quarterly distribution reports with a focus on the following:

- i) Accounts with previously reported point-of-sale distribution errors to ensure that corrections are made for current quarters and all eligible previous quarters.
- ii) Major accounts comprising 90% or more of the City's total sales and use tax revenue to identify any irregularities or unusual deviations from the normal pattern (e.g. negative funds transfers, significant decreases, unusual increases, etc.) and ensure that the City is not receiving less revenue than it is entitled to receive.

c) Identify opportunities for the City to recover the local allocation on purchase transactions subject to tax and facilitate the recovery of such funds.

d) Assist the City with strategies to preserve and enhance sales and use tax generated by existing businesses within the City.

4) ADDITIONAL SERVICES

Consultant shall, at the request of the City:

- a) Work with City staff on questions related to proper tenant mix for maximum sales tax returns;
- b) Advise City business license staff on utilization of reports to enhance business license collection efforts;
- c) Train internal staff in the fundamentals of sales tax auditing should the City opt to resume responsibility for future follow up.

d) Any software offered as part of Section 1 of the Scope of Services, should meet the following basic specifications:

- i) SQL Server Database format
- ii) VMWare Virtual Server Compatible
- iii) Window GUI or Web-based interface

C. CITY'S DUTIES AND RESPONSIBILITIES:

1. The City shall authorize the Consultant to examine the confidential sales tax records of the City in compliance with Section 7056 of the Revenue and Taxation Code.
2. The City shall provide any information or assistance that may readily be available such as business license records, which identify owners and telephone numbers of specific businesses within the City and copies of monthly sales tax allocation reports received from the Board of Equalization.

D. WORK PROGRAM/PROJECT SCHEDULE:

As needed

EXHIBIT "B"

Payment Schedule (Hourly Payment)

A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

Principal \$325 per hour	Programmer \$294 per hour
Senior Associate \$245 per hour	Analyst \$195 per hour

B. Travel Charges for time during travel are not reimbursable.

C. Billing

1. All billing shall be done monthly in fifteen (15) minute increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.
2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the project.
3. A copy of memoranda, letters, reports, calculations and other documentation prepared by CONSULTANT may be required to be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
4. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
 - A) Reference this Agreement;
 - B) Describe the services performed;
 - C) Show the total amount of the payment due;
 - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
 - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

5. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

EXHIBIT "B"

Payment Schedule (Fixed Fee Payment)

1. CONSULTANT shall be entitled to monthly progress payments toward the fixed fee set forth herein in accordance with the following progress and payment schedules.

Fixed Fee per below schedule per month for basic services including ongoing analysis, reports, legislative support and unlimited access to HdL's team members for sale and use tax related questions, as well as training and support for internal implementation of a program of use tax maximization. Year 1 - \$0; Year 2 - \$500; Year 4 \$850

In addition to the fixed fee, Hinderliter, de Llamas and Associates (HdL) shall charge a fee of 15% of all new sales and use tax revenue received by the City (including reimbursement from the Sales and Use Tax Compensation Fund outlined in Section 97.68 of the Revenue and Taxation Code) as a result of audit and recovery work performed by the firm. This audit fee applies to monies received in the first six (6) consecutive reporting quarters beginning with the receipt of the audit revenue and includes retroactive back quarter adjustments obtained by the firm.

Total fees shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) for the term of the contract. Consultant agrees to inform the City when Consultant is at the point of reaching the maximum limit per year. Consultant shall not continue with any work effort over the amount of the maximum limit per year unless first authorized in writing by the City authorized representative(s).

Audit fees are billed only after completion of the audit, submittal of corrections to the California Department of Tax and Fee Administration (CDFTA) and receipt of revenues by the city.

Bills are submitted only for recoveries previously approved by the city on a Work Authorization Form. HdL does not bill a city for audit revenues until the client has actually received said monies. Further, if during the billing cycle, a taxpayer receives a refund for overpayment of taxes generated during that cycle, HdL credits back any proportionate share of the fee that may have been levied.

100% of all new revenue generated by HdL flows to the City after the completion of the eight quarters. The fee constitutes the full reimbursement to HdL and covers all direct and indirect costs incurred by the firm under this contract. This includes all salaries of our employees, travel expenses and service contracting costs as well as the software to be delivered to the City of Huntington Beach under this proposal.

Invoices are submitted quarterly after the city has received the revenue from the audit correction. The invoice includes a printout showing the name, address, and sales tax registration number of each company, and the specific amount of revenue allocated by the California Department of Tax and Fee Administration (CDFTA) to the City for those businesses.

If a misallocation correction involves additional revenue from a company that had already been partially allocating revenues to the City, the City and HdL will agree in a Work Authorization, prior to billing, the methodology for identifying the incremental revenue attributable to HdL's work.

2. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.

3. CONSULTANT shall submit to CITY an invoice for each monthly progress payment due. Such invoice shall:

- A) Reference this Agreement;
- B) Describe the services performed;
- C) Show the total amount of the payment due;
- D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
- E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

4. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/9/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Woodruff Sawyer 2 Park Plaza, Suite 500 Irvine CA 92614	CONTACT NAME: Audrey Curtis
	PHONE (A/C, No. Ext): 949.435.7345 FAX (A/C, No): 949.476.3118
INSURED Hinderliter de Llamas & Associates HdL Software, LLC. 120 S State College Blvd., Suite 200 Brea CA 92821	E-MAIL ADDRESS: acurtis@woodruffssawyer.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A: National Fire Insurance Company of Hartford 20478
	INSURER B: Continental Insurance Company 35289
	INSURER C: Continental Casualty Company 20443
	INSURER D: Lloyds of London
	INSURER E: Federal Insurance Company 20281
	INSURER F:

COVERAGEs

CERTIFICATE NUMBER: 229183472

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL/SUBR INSD WWD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS		
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	6056953483	5/26/2020	5/26/2021	EACH OCCURRENCE	\$ 1,000,000	
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000	
						MED EXP (Any one person)	\$ 15,000	
						PERSONAL & ADV INJURY	\$ 1,000,000	
						GENERAL AGGREGATE	\$ 2,000,000	
						PRODUCTS - COMP/OP AGG	\$ 2,000,000	
							\$	
	GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC OTHER:							
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS X HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	6056953466	5/26/2020	5/26/2021	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	
						BODILY INJURY (Per person)	\$	
						BODILY INJURY (Per accident)	\$	
						PROPERTY DAMAGE (Per accident)	\$	
							\$	
B	X UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		6056953502	5/26/2020	5/26/2021	EACH OCCURRENCE	\$ 3,000,000	
						AGGREGATE	\$ 3,000,000	
							\$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N / A	6056953497 6056677063	5/26/2020 5/26/2020	5/26/2021 5/26/2021	X PER STATUTE E.L. EACH ACCIDENT	OTH- ER \$ 1,000,000	
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000	
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000	
D C E	Professional Liability/Claim Made Cyber Liability Crime		MPL1007920 6078657761 82556901	5/26/2020 5/26/2020 5/26/2020	5/26/2021 5/26/2021 5/26/2021	Each Claim/Aggregate Cyber Limit Crime Limit	\$ 2,000,000 \$ 2,000,000 \$ 1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers are included as additional insured as respects to the General Liability and Auto Liability per attached forms.

APPROVED AS TO FORM

By:


MICHAEL E. GATES
CITY ATTORNEY

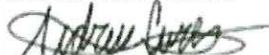
CERTIFICATE HOLDER

CANCELLATION

CITY OF HUNTINGTON BEACH

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:
 - (1) Excess while it is connected to a motor vehicle you do not own; or
 - (2) Primary while it is connected to a covered "auto" you own.
- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. Premium Audit

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.



Technology General Liability Extension Endorsement

K. Other Person Or Organization / Your Work

Any person or organization who is not an additional insured under Paragraphs A. through J. above. Such additional insured is an **Insured** solely for **bodily injury, property damage or personal and advertising injury** for which such additional insured is liable because of the **Named Insured's** acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

1. who is specifically scheduled as an additional insured on another endorsement to this **Coverage Part**; nor
2. for **bodily injury or property damage** included within the **products-completed operations hazard** except to the extent all of the following apply:
 - a. this **Coverage Part** provides such coverage;
 - b. the written contract or agreement described in the opening paragraph of this **ADDITIONAL INSUREDS** Provision requires the **Named Insured** to provide the additional insured such coverage; and
 - c. the **bodily injury or property damage** results from **your work** that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this **Coverage Part**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

A. The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured.

B. With respect to persons or organizations that qualify as additional insureds pursuant to paragraph 1.K. of this endorsement, the following sentence is added to the paragraph above:

Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** Condition is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence, offense or claim** only when the **occurrence, offense or claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or to an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Hinderliter de Llamas & Associates

Endorsement Effective Date: 7/9/2020

SCHEDULE

Name Of Person(s) Or Organization(s):

City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers

2000 Main Street

Huntington Beach, CA 92648

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II -

Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.



CNA Paramount

**Additional Insured - Designated Person
or Organization Endorsement**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person Or Organization:	City of Huntington Beach, its officers, elected or appointed officials, employees, agents and
2000 Main Street	
	Huntington Beach, CA 92648

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

It is understood and agreed that the section entitled **WHO IS AN INSURED** is amended with the addition of the following:

- A.** The person or organization shown in the Schedule is an **Insured**, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part, by: the **Named Insured's** acts or omissions, or the acts or omissions of those acting on the **Named Insured's** behalf:
 - 1. in the performance of the **Named Insured's** ongoing operations; or
 - 2. in connection with premises owned by or rented to the **Named Insured**.
- B.** However, if coverage for the additional insured is required by written contract or written agreement, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
 - 1. coverage broader than required by such contract or agreement; or
 - 2. a higher limit of insurance than required by such contract or agreement.
- C.** The coverage granted by this endorsement does not apply to **bodily injury or property damage** included within the **products-completed operations hazard**.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA74745XX (1-15)

Page 1 of 1

PolUWCompany - CNA Paramount

Insured Name: HdL Companies

Policy No: 6056953483

Endorsement No: TBD

Effective Date: 7/9/2020

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