

**AMENDMENT TO AGREEMENT  
BETWEEN THE COUNTY OF SAN MATEO AND  
HINDERLITER, DE LLAMAS & ASSOCIATES**

THIS AMENDMENT TO THE AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Hinderliter, de Llamas & Associates, hereinafter called "Contractor";

**W I T N E S S E T H:**

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the parties entered into an Agreement for sales tax audit, recovery and consulting services on December 13, 2011 for the term January 1, 2012 to December 31, 2014; and

WHEREAS, the parties amended the Agreement on May 8, 2012, to, among other things, include reference to certain provisions of the California revenue & Taxation Code as required by the State Board of Equalization to insure Contractor's access to confidential sales or transactions and use records; and

WHEREAS, the parties entered into a second amendment on October 8, 2013, in order to insure Contractor's access to confidential sales or transactions and use records regarding the County's Measure A data; and

WHEREAS, the parties entered into a third amendment on January 13, 2015 by extending the term of the Agreement an additional two years, through December 31, 2016, and increasing the total not-to-exceed amount of the agreement by \$250,000, from \$500,000 to \$750,000; and

WHEREAS, the parties now wish to amend the Agreement by increasing the total not-to-exceed amount by \$178,423, from \$750,000 to \$928,423, to compensate Contractor for the audit and recovery of Proposition 172 sales tax proceeds that were under allocated by the State Board of Equalization.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

1. Section 3. ("Payments") of the Agreement is hereby amended and restated in its entirety to read as follows:

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", County shall make payment to Contractor based on the rates and in the manner specified in amended Exhibit "B". The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed Nine Hundred Twenty Eight Thousand Four Hundred Twenty-Three Dollars (\$928,423).

2. Exhibit B of the Agreement is hereby amended and restated in its entirety to read as follows:

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

- A. Subject to the \$928,423 limitation set forth in Paragraph 3 of the Agreement, Contractor shall be paid 15% of all new sales and/or use tax revenue received by the County as a direct 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 County or Contractor to be increment attributable to causes other than Contractor's work pursuant to this agreement; provided, however, that the parties agree that Contractor shall be compensated in the amount of \$178,423 representing its 15% commission on \$1,189,485 in under-remitted Prop. 13 revenues for the period April 1, 2011 to December 31, 2013.

In the event that Contractor is responsible for an increase in the tax reported by businesses already properly making tax payments to the County, 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 for 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 County with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

Contractor shall obtain County 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 County Manager or his designated representative on the Sales Tax Audit Authorization form. County shall pay audit fees upon Contractor's submittal of evidence of State fund transfers and payments to County from businesses identified in the audit and approved by the County.

The above sum shall constitute full reimbursement to Contractor and covers all direct and indirect costs incurred by the Contractor under the agreement, including: salaries of Contractor's employees; travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives; quarterly

reports; software; and optional monitoring of the County's various transaction taxes.

3. All other terms and conditions of the agreement dated December 13, 2011, as amended on May 8, 2012, October 8, 2013 and January 13, 2015, between the County and Contractor shall remain in full force and effect.
4. This Fourth Amendment constitutes the entire understanding of the parties hereto with respect to matters herein and correctly states the rights, duties, and obligations of each party as of this document's date. Any understandings, promises, negotiations, or representations between the Parties not expressly stated in this document are not binding. All subsequent modifications of this Fourth Amendment or the Agreement shall not be effective unless set forth in a writing and executed by both parties.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: \_\_\_\_\_  
President, Board of Supervisors, San Mateo County

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

ATTEST:

By: \_\_\_\_\_  
Clerk of Said Board

HINDERLITER, DE LLAMAS & ASSOCIATES

\_\_\_\_\_  
Contractor's Signature

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