

Project Name: Sales and Use Tax Audit Services

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN THE CITY OF THOUSAND OAKS
AND
HINDERLITER, DE LLAMAS & ASSOCIATES**

THIS AGREEMENT is made and entered into this 1st day of July 2024, by and between **CITY OF THOUSAND OAKS**, a municipal corporation ("City"), and **HINDERLITER, DE LLAMAS & ASSOCIATES**, a California corporation ("Consultant").

City and Consultant agree as follows:

1. RETENTION OF CONSULTANT

City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 2. Consultant warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

2. DESCRIPTION OF SERVICES

The services to be performed by Consultant are as follows:

Professional services in conjunction with Sales and Use Tax Audit Services, as more particularly set forth in the Scope of Work, attached as Exhibit "A" which is incorporated herein by reference.

3. COMPENSATION AND PAYMENT

(a) **Maximum and Rate.** Compensation payable to Consultant by City for the services under this Agreement SHALL NOT EXCEED the sum of \$350,000 (herein "not to exceed amount") and shall be earned pursuant the payment schedule set out in Consultant's Schedule of Fees, attached as Exhibit "B" and incorporated herein.

(b) **Payment.** Invoices shall be submitted on a quarterly basis and describe the work performed. All payments shall be made within 30 days after the City's approval of the invoice. City shall pay Consultant as follows and as further set forth in Exhibit B.

(c) **Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed upon only by execution of a written Amendment to this Agreement. No liability or right to compensation for extra services shall exist without such Amendment. Unless otherwise stated in the Amendment, applicable rates for extra services shall be at the rates set forth in Exhibit "B."

4. CITY PROJECT MANAGER

The services to be performed by Consultant shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is Jaime Boscarino, Finance Director.

City, through its Revenue Management Department, will identify and contact new and relocated businesses to ensure sales and use tax is appropriately allocated by the California Department of Tax and Fee Administration ("Department") and business tax is remitted to the City.

City shall inform Consultant of any specific businesses, identified by firm name and where possible Department permit number, that City is tracking for proper registration and local sales/use tax reporting. Consultant shall refrain from contacting said businesses or otherwise pursuing potential registration and reporting errors, including the filing of a petition with the Department.

City shall copy Consultant on any direct filings with the Department, and will make a good faith effort to notify Consultant as early as reasonably possible of any accounts being tracked or monitored by City for proper reporting. Consultant shall not invoice City for any accounts not specifically itemized on a fully executed Work Authorization. Consultant shall submit a work order to the City's Project Manager and must receive approval by a signed Work Authorization prior to proceeding or submitting an invoice.

5. TERM, PROGRESS AND COMPLETION

The term of this Agreement is from the date first written above to June 30, 2027, unless term of this Agreement is extended or the Agreement is terminated as provided for herein. Should any new sales and use tax revenue be received by the City after the Agreement has been terminated, which revenue is a result of Consultant's audit recovery on work orders approved by a work authorization during the term of the Agreement, City shall continue to pay Consultant the contingent fees as set forth in Exhibit "B" for the eight quarters following the decision by the Department.

City Manager or his or her designee shall have the authority to extend the term of this Agreement in writing no more than two separate times, for a period of one year each. Extensions of time shall be memorialized by execution of a written amendment to the contract.

Consultant shall not commence work on the services to be performed under the Agreement until (i) Consultant furnishes proof of insurance as required by paragraph 9 below, and (ii) City's Project Manager gives written authorization to proceed with the work. All services shall be completed as set forth in Exhibit "A."

6. OWNERSHIP OF DOCUMENTS

All drawings, designs, data, photographs, reports and other documentation (other than Consultant's drafts, notes and internal memorandum), including duplication of same prepared by Consultant in the performance of these services, are the property of City. City shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when requested by City. City agrees to hold Consultant harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans, specifications, graphics, brochures, reports, and other documentation for purposes other than those described in this Agreement, unless written authorization of Consultant is first obtained.

7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTS

This Agreement is for professional services, which are personal to City. Bobby Young is deemed to be especially experienced and is a key member of Consultant's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, City on the progress of the work. Should said individual be removed from assisting in this contracted work for any reason, City may terminate this Agreement.

This Agreement is not assignable by Consultant without City's prior written consent.

No part of the work described in this Agreement may be subcontracted out to other parties.

8. HOLD HARMLESS AND INDEMNITY

(a) Hold Harmless for Consultant's Damages. Consultant holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Consultant's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Consultant, to Consultant's employees, to Consultant's contractors or subcontractors, or to the owners of Consultant's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

(b) Defense and Indemnity of Third Party Claims/Liability. Consultant shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, agents, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Consultant, or

should City otherwise find Consultant's legal counsel unacceptable, then Consultant shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Consultant's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Consultant's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of the Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

(c) **Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

9. MINIMUM SCOPE AND LIMIT OF INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to City.

Coverage shall be at least as broad as:

(a). **Commercial General Liability (CGL):** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including without limitation, blanket contractual liability.

(b). **Automobile Liability:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA

00 01 or the exact equivalent covering bodily injury and property damage for all activities of Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c). **Worker's Compensation:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its elected officials, officers, agents, employees and volunteers for all work performed by Consultant, its employees, agents and subcontractors.

(d). **Professional Errors and Omissions Insurance:** Consultant shall, at Consultant's sole cost and expense throughout the term of this Agreement, and any extensions thereof, carry professional errors and omissions coverage of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate, with tail coverage for an extended reporting period of three (3) years.

(e). **Cyber Liability Insurance:** Cyber liability insurance coverage with a minimum limit of \$1,000,000 per occurrence. The insurance policy shall include coverage for data breaches, cyber incidents, cyber terrorism, legal liabilities, and regulatory fines.

If Consultant maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

City, its elected officials, officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Consultant shall ensure that the automobile liability policy contains a provision covering City as an additional insured, and shall obtain an endorsement to that effect if it does not.

Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and no-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant's payments. In the alternative, City may cancel this Agreement.

City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

Primary and Non-Contributory Coverage

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its elected officials, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it and shall be at least as broad as CG 20 01 04 13.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected officials, officers, agents, employees or volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications - to waive their right of recovery prior to a loss. Consultant hereby waives his own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.
- (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

Verification of Coverage

Consultant shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

10. RELATION OF THE PARTIES

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. 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 of its officers, employees, agents, or volunteers 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 it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. CORRECTIONS

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work that may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Consultant or withheld from any funds due to Consultant hereunder.

12. TERMINATION BY CITY

City may terminate without cause any or all of the services agreed to be performed under this Agreement upon 30 calendar days' written notice. If termination is for cause, no advance notice need be given. In the event of termination, Consultant shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Consultant within 30 days following submission of a final statement by Consultant unless termination is for cause. In such event, Consultant shall be compensated only to the extent required by law.

13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished, or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and

consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.

14. AUDIT OF RECORDS

Consultant shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination of this Agreement. Consultant agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Consultant shall reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more. Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Consultant with respect to this Agreement.

15. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

16. CONFLICT OF INTEREST

Consultant is unaware of any City employee or official that has a financial interest in Consultant's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Consultant shall not offer, encourage or accept any financial interest in Consultant's business by any City employee or official.

17. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

18. MITIGATION OF DAMAGES

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

19. GOVERNING LAW

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

20. TAXPAYER IDENTIFICATION NUMBER

Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as most recently issued by the Internal Revenue Service.

21. NON-APPROPRIATION OF FUNDS

Payments due and payable to Consultant for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

22. MODIFICATION/AMENDMENT OF AGREEMENT

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval of the City and Consultant.

23. USE OF THE TERM "CITY"

Reference to "City" in this Agreement includes the City Manager or any authorized representative acting on behalf of City.

24. PERMITS AND LICENSES

Consultant, at its sole expense, shall obtain and maintain during the term of this

Agreement all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

25. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

26. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and binds said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

27. ENTIRE AGREEMENT BETWEEN PARTIES

Except for Consultant's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services.

28. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

29. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Attention: Ryan Roman
Finance Department
City of Thousand Oaks
2100 Thousand Oaks Boulevard
Thousand Oaks, CA 91362

TO CONSULTANT: Attention: R. Andrew Nickerson
Hinderliter, deLlamas & Associates
1340 Valley Vista Drive # 200
Diamond Bar, CA 91765

30. **SECTION 7056 — CONFIDENTIALITY REQUIREMENTS**

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 Department. 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 Department 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 Contract.

(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 Department 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 in Section 7056 (b), (1) of the Revenue and Taxation Code.

31. **SIGNATURES**

(a) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) **Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e. files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(c) **Digital/Electronic Signatures.** This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the

Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

32. LEVINE ACT COMPLIANCE

California Government Code section 84308 (Levine Act) prohibits any Thousand Oaks City Council member from participating in any action related to a contract, agreement, or franchise agreement if the councilmember receives a campaign contribution totaling more than \$250 (aggregated) from the party to the contract, agreement, or franchise agreement, an agent of the party, or any financially interested participant who actively supports or opposes the matter within the previous twelve (12) months. Councilmembers must also disclose any eligible campaign contribution received on the record of the proceeding.

Councilmembers are also prohibited from soliciting, accepting or directing campaign contributions totaling more than \$250 (aggregated) from the applicant or party, an agent of the applicant/party, or any financially interested participant who actively supports or opposes the matter within the previous twelve (12) months, and for twelve (12) months following the date a final decision on the contract/agreement is made.

The Levine Act also required parties to a contract, agreement, or franchise agreement to disclose any campaign contribution over \$250 (aggregated) within the preceding twelve (12) months by the party to the agreement, contract, or franchise agreement. The Levine Act does not apply to competitively bid, labor, or personal employment contracts.

In order to assure compliance with these requirements, Consultant has provided the disclosure requirements identified in the Levine Act Disclosure Form, attached as Exhibit C, incorporated herein by reference, and Consultant verifies by its signature that it has completed Exhibit C in compliance of these requirements.

Consultant shall also be responsible for understanding and complying with requirements of Government Code section 84308, which prohibits parties to a contract/agreement, as well as their agents and representatives, from contributing more than \$250 (aggregated) to a City Council member of the City of Thousand Oaks for the 12 months prior to the award of this Contract/Agreement, and for the 12 months following award of this Contract/Agreement. Where applicable, Consultant shall disclose any post award campaign contributions prior to seeking an amendment to this Agreement.

In concurrence and witness whereof, this Agreement has been executed by the parties effective on the date and year first above written.

CONSULTANT

By: R. Andrew Nickerson
Title: President

By: Richard Park
Title: Chief Financial Officer

CITY OF THOUSAND OAKS

Al Adam, Mayor

ATTEST:

Laura B. Maguire, City Clerk

APPROVED AS TO ADMINISTRATION:

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

Jaime Boscarino, Finance Director

APPROVED AS TO FORM:
Office of the City Attorney

By: Tracy Friedl, Assistant City Attorney

EXHIBIT A SCOPE OF WORK

Consultant shall provide information and management services as well as audit recovery services, including a continuous, systematic program of identifying and correcting sales and use tax allocation errors, as set forth below.

I. Information and Management Services

1. Monitor and provide information on the segments of the local, state, and national economies which impact the City's sales/use tax revenue.
2. Monitor and report on state and federal legislation and administrative proposals as they affect sales/use tax revenue and the method by which sales/use tax is collected and allocated to the City.
3. Prepare quarterly sales/use tax analysis and reports that are benchmarked to previous years. Analysis shall be presented to City staff during an in-person or virtual meeting and shall include revenue forecasting, top revenue producers, indication of revenue changes by business and economic category, reports for specific geographical areas determined by City, sales/use tax trends and issues, legislative updates, and economic information impacting sales and use tax revenue.
4. Prepare fiscal year sales/use tax revenue budget forecasting to assist with the City's biannual budget preparation process.
5. Provide access to Consultant's client portal and on-call assistance on sales/use tax issues.
6. Consultant shall use its database and expertise to help the City expand its revenue base by identifying local companies that can restructure the way orders are taken to increase local sales tax revenues; identifying opportunities for expanding use tax from construction projects; seeking opportunities for direct payment permits and purchasing corporations; helping identify economic voids; and by supporting a proactive and effective approach to short and long-term fiscal and economic planning.

II. Audit Recovery Services

1. Audit City's sales/use taxpayers to determine whether taxpayers are properly reporting sales/use tax to the City.
2. Audit records to confirm accurate allocation of sales/use tax to the City.
3. Identify allocation errors, and notify City staff by submitting a work order.
4. After Work Order approval by receiving a signed work authorization by City's Project Manager, prepare and submit all information necessary to correct any allocation errors that are identified.
5. Track and report misallocations that have been corrected as a result of Proposer's efforts and remitted to the City by California Department of Tax and Fee Administration (Department).

EXHIBIT B COMPENSATION

I. Information and Management Services

Ongoing analysis, reports, legislative support and unlimited access to Consultant's team members for sales and use tax related questions, including training and support for internal implementation of a program of use tax maximizations - \$ 2,700 per quarter.

The fee will increase annually by the percentage increase in the "CPI" for the preceding twelve-month period beginning on July 1 of each year.

II. Audit Recoveries

Consultant shall be entitled to 15% percent of new sales and use tax revenue received by the City as a result of audit and recovery work performed by Consultant through the process described in the Scope of Services.

This fee applies to revenue received in the first eight consecutive reporting quarters beginning with the receipt of the audit revenue and includes retroactive back quarter adjustments. Upon termination of this Agreement, payments to Consultant will continue until recoveries in progress total eight consecutive quarters.

Consultant is entitled to its fee for a one-time correction rather than the first eight consecutive reporting quarters for back quarter recovery and Schedule F recovery. Back quarter recovery includes local tax for a specifically identified reporting period that is allocated incorrectly due to reporting or return processing errors. Schedule F refers to certain sales in excess of \$500,000 allocated directly to the jurisdiction of first functional use pursuant to regulation 1802(d).

Consultant shall obtain City approval prior to beginning the work of correcting a tax reporting methodology or "place of sale" for specific businesses identified in the audit. The Project Manager's signature on a Sales Tax Audit Work Authorization form shall constitute City approval. City shall pay audit recovery fees upon Consultant's submittal of evidence in a form satisfactory to the Project Manager of Department transfers and payments to City from businesses identified in the audit and approved by City. Audit fees shall constitute full reimbursement to Consultant for all direct and indirect expenses incurred by Consultant in performing audits, including the salaries of Consultant's employees and travel expenses connected with contacting local and out-of-state business and Department representatives

The agreed upon not-to-exceed total for 3-year contract term for all serviced is \$200,000, and an additional \$150,000 if the optional two-year extensions are exercised (\$350,000 total over 5 years contract).

III. Fee for Additional Optional Services

Fees for optional services shall be billed at the following hourly rates:

Partner	\$325 per hour
Programmer	\$295 per hour
Senior Analyst	\$245 per hour
Analyst	\$195 per hour
Associate	\$150 per hour

Hourly rates are exclusive of expenses and are subject to adjustment by Consultant annually. On July 1st of each year Consultant shall provide City with an updated schedule of hourly rates. The rates will not be increased by more than five percent per year. In addition, expenses for Optional Services shall be billed at 1.15 times actual incurred costs.

EXHIBIT C
LEVINE ACT DISCLOSURE FORM

California Government Code section 84308 (Levine Act) prohibits any Thousand Oaks City Council member from participating in any action related to a contract, agreement, or franchise agreement (excluding labor or competitively bid contracts) if the Council member receives a campaign contribution totaling more than \$250 (aggregated) from the party to the contract, agreement or franchise agreement, their agents, or any financially interested participant who actively supports or opposes the matter within the previous twelve (12) months. Council members must also disclose any eligible campaign contribution received on the record of the proceeding.

Council members are prohibited from accepting, soliciting, or directing a campaign contribution of more than \$250 (aggregated) from a party, their agent/representative, or a financially interested participant during a proceeding and for 12 months following the date a final decision is made. In addition, a party, their agent/representative, or a financially interested participant is prohibited from contributing more than \$250 (aggregated) to a Council member during a proceeding and for 12 months following the date a final decision is made.

The Levine Act also requires parties to certain contracts, agreements, or franchise agreements to disclose any campaign contribution over \$250 (aggregated) within the preceding twelve (12) months by the party to the agreement, contract, or franchise agreement and their agents. The Levine Act does not apply to competitively bid, labor, or personal employment contracts.

- ☐ The Levine Act (Gov Code § 84308) DOES NOT apply to this Agreement/Contract
- ☐ The Levine Act (Gov Code § 84308) DOES apply to this Agreement/Contract and the required disclosure is set forth below:

1. Have you or your company, or any agent on behalf of you or your company, made campaign contributions totaling more than \$250 (aggregated) to any council member in the 12 months preceding the date you submitted your proposal, the date you completed this form, or the anticipated date of any Council action related to this Agreement/Contract?

- ☐ YES
- ☐ NO

Council Member Name	Payee Name	Payment Date	Payment Amount

2. Do you or your organization, or any agency or representative on behalf of you or your organization, anticipate or plan to make any campaign contributions of more than \$250 (aggregated) to any City Council member in the 12 months following any City Council action related to this Agreement/Contract? **** There may be legal restrictions on making contributions during the 12 months following City Council Action. It is recommended that you consult with your own legal counsel regarding the requirements of law.**

☐ YES

☐ NO

Council Member Name	Payee Name	Payment Date	Payment Amount

Answering "YES" to either question above does not preclude the City of Thousand Oaks from entering into or taking any subsequent action related to this Agreement/Contract. However, it may preclude the identified Council member(s) from participating in any actions/decisions related to this Agreement/Contract.

Date

Printed Name/Title of Authorized Representative

Name of Business/Legal Entity

Signature

***** You must submit a supplemental form if you make any new reportable contribution(s) while the Agreement/Contract is being considered *****

** "Aggregated" contributions, as described in FPPC Regulation §18438.5, include the following types of contributions made during a 12-month period: (1) all contributions made by the party or participant; (2) all contributions made by an agent of the party or participant; and (3) all contributions made by an individual or entity required to be aggregated with the party or participant, and any agent of the party or participant.