

APPROVE A CONSULTANT SERVICES AGREEMENT WITH
HDL COMPANIES FOR SITE SPECIFIC USE TAX AUDITING
AT THE WATERPARK HOTEL CONSTRUCTION SITE
December 9, 2014
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FINANCIAL IMPACT

On a project the size of the Waterpark Hotel, HdL estimates potential revenue recovery of \$500,000. HdL Companies will only be paid upon confirmation of the City's receipt of any recovered monies for the Waterpark Hotel project.

RECOMMENDATION

Staff recommends that the City Council:

- Approve the Consultant Services Agreement with HdL Companies for construction site use tax auditing services at the Waterpark Hotel site, in an amount not to exceed \$150,000; and
- Authorize the City Manager to execute the agreement on behalf of the City and to make minor modifications as appropriate thereto.


KINGSLEY OKEREKE
Assistant City Manager


By: Jim DellaLonga
Senior Project Manager

Attachment: Consultant Services Agreement

Recommended for Approval


Matthew Fertal
City Manager

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made this 9th day of December 2014, by the **CITY OF GARDEN GROVE**, a municipal corporation ("CITY"), and **HINDERLITER, DE LLAMAS AND ASSOCIATES**, a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. 9212-14 (January 28, 2014).
2. CITY desires to utilize the services of CONSULTANT to provide the agreed upon services as described below.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** The term of the agreement shall be for a period of two years from full execution of the agreement or until completion of the project or which ever occurs first. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with Proposal (Exhibit "A"). CONSULTANT is required to present evidence to support performed work.
2. **Services to be Provided.** CONSULTANT shall provide the following services: Sales Tax Auditing Services. The Proposal is attached as Exhibit A, and is incorporated herein by reference. The Proposal and this Agreement do not guarantee any specific amount of work.
3. **Compensation.** CONSULTANT shall be compensated as follows:
 - 3.1 **AMOUNT:** CONSULTANT shall be paid 15% of all new sales tax revenue received by the CITY as a result, in whole or in part, of the work performed by CONSULTANT (hereafter referred to as "fees"). Total Compensation under this agreement shall not exceed (NTE) amount of \$150,000 payable in arrears and in accordance with Proposal in Exhibit "A".

- 3.2 Payment. For work under this Agreement, CONSULTANT will provide CITY with an itemized invoice showing all formula calculations and amounts due for fees, which shall be payable not later than 30 days following the invoice date.
- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of payroll costs, travel and incidental expenses. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

4. Insurance requirements.

- 4.1 COMMENCEMENT OF WORK. CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify CITY any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. For the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by California law, if applicable. The insurer shall waive its rights of subrogation against the City of Garden Grove, and its respective officers, officials, agents, employees, and volunteers.
- 4.3 INSURANCE AMOUNTS. CONSULTANT shall maintain the following insurance for the duration of this Agreement:
 - (a) Commercial general liability in an amount not less than \$1,000,000 per occurrence; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
 - (b) Automobile liability in an amount not less than \$1,000,000 combined single limit; (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (c) Professional liability in the amount not less than \$1,000,000 per occurrence; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An Additional Insured Endorsement, **ongoing and completed operations**, for the policy under section 4.3 (a) shall designate City of Garden Grove and its respective officers, officials, agents, employees, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY'S requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate City of Garden Grove, and its respective officers, officials, agents, employees, and volunteers as additional insureds for automobiles owned, leased, hired, or borrowed by the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY'S requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects the City of Garden Grove, and its respective officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City of Garden Grove and/or its respective officers, officials, employees, agents, and Volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the SUBDIVIDER.

5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government. CONSULTANT shall comply with, and shall be responsible for causing all contractors and subcontractors performing any of the work pursuant to this Agreement to comply with, all applicable federal and state labor standards, including, to the extent applicable, the prevailing wage requirements promulgated by the Director of Industrial Relations of the State of California Department of Labor. The City makes no warranty or representation concerning whether any of the work performed pursuant to this Agreement constitutes public works subject to the prevailing wage requirements
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by the CITY.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of the CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
12. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

- a. (CONSULTANT)
HINDERLITER, DE LLAMAS AND ASSOCIATES
Attention: Robin Sturdivant
1340 Valley Vista Drive, Suite 200
Diamond Bar, CA 91765

(mailing address)

b.	(Address of City Purchasing)	(with a copy to):
	City of Garden Grove	Garden Grove City Attorney
	11222 Acacia Parkway	11222 Acacia Parkway
	Garden Grove, CA 92840	Garden Grove, CA 92840

13. **CONSULTANT'S PROPOSAL.** This Agreement shall include CONSULTANT'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
14. **Licenses, Permits, and Fees.** At its sole expense, CONSULTANT shall obtain a **Garden Grove Business License**, all permits, and licenses as may be required by this Agreement.
15. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, CONSULTANT shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of CONSULTANT. CITY will deal directly with and will make all payments to CONSULTANT.
18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.

19. **Indemnification.** To the fullest extent permitted by law, CONSULTANT defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractors hired by CONSULTANT in the performance of the Agreement. The only exception to CONSULTANT'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.

This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the CONSULTANT.

20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual agreements executed by the CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

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(Agreement Signature Block On Next Page)

IN WITNESS THEREOF, these parties have executed this Agreement on the day and year shown below.

Date: _____

"CITY"
CITY OF GARDEN GROVE

By: _____
City Manager

ATTESTED:

City Clerk

Date: _____

"CONSULTANT"

**HINDERLITER, DE LLAMAS
AND ASSOCIATES**

By: _____

Name: _____

Title: _____

Date: _____

Tax ID No. _____

If CONSULTANT is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Garden Grove City Attorney

Date

E XHIBIT A
SCOPE OF SERVICES

The CONSULTANT shall perform the following services:

A. CONSTRUCTION PROJECT REVIEW AND FACILITATION

1. CONSULTANT shall contact the project manager and/or general contractor to determine if the project in question meets the minimum criteria for direct allocation as set for in the Board of Equalization's Compliance Policy and Procedures Manual, Chapter 2, §260.020.
2. CONSULTANT shall, through information provided by the project manager and/or general contractor, obtain a list of contractors and sub-contractors for said project to evaluate eligibility for a construction site sub-permit.
3. CONSULTANT shall, through information provided by the project manager and/or general contractor, obtain a list of vendors whose sales of materials may be eligible for direct allocation.
4. CONSULTANT will work directly with any eligible contractors or sub-contractors and Board of Equalization staff to ensure construction site sub-permits are issued.
5. CONSULTANT will monitor local tax allocations to ensure that local tax is allocated directly to the CITY.

B. CONSIDERATION

CONSULTANT shall be paid 15% of all new sales tax revenue received by the CITY as a result, in whole or in part, of the work performed by CONSULTANT (hereafter referred to as "fees"). CONSULTANT will provide CITY with an itemized invoice showing all formula calculations and amounts due for fees, which shall be payable not later than 30 days following the invoice date. Compensation under this agreement shall not exceed (NTE) amount of \$150,000.

The above sum includes a full reimbursement to CONSULTANT for all direct and indirect expenses incurred by CONSULTANT in performing the work includes the salaries of CONSULTANT'S employees and any travel expenses connected with contacting local and out-of-state businesses and Board of Equalization representatives.