

City of Piedmont  
COUNCIL AGENDA REPORT

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DATE: January 6, 2025

TO: Mayor and Council

FROM: Rosanna Bayon Moore, City Administrator

SUBJECT: Recommendation to Authorize the City Administrator to Execute an Agreement for Full Business License Tax Administration, including Business Discovery, Collections, and Audit with Hinderliter De Llamas & Associates (HDL) for a Five Year Term for a Total Agreement Amount Not-to-Exceed \$190,000

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RECOMMENDATION

Approve the attached financial services agreement in an amount not to exceed \$190,000 between the City of Piedmont (City) and Hinderliter De Llamas & Associates (HDL) for Full Business License Tax Administration, Including Business Discovery, Collections, and Audit.

EXECUTIVE SUMMARY

The City of Piedmont currently processes and collects approximately 1,300 current and active business license and rental tax accounts generating approximately \$750,000 in annual tax revenue. The City Clerk's Department currently processes all business license and rental tax accounts in an antiquated, manually intensive manner using the COMDEV system. This system does not meet the needs of the City. City Staff evaluated several solutions to replace the current system, including the Central Square Business License Module, its current Enterprise Resource Planning system (Caselle) and HDL's software only solution. However, the Full Business License Tax Administration service offered by HDL was determined to be the most cost effective.

DISCUSSION

HDL Companies, which is headquartered in Brea, California, is a leader in revenue, operating, and revenue solutions and have been operating for 40 years. They work with approximately 75% of California Municipalities on a variety of tax solutions. Locally, Alameda, San Leandro, and Walnut Creek utilize their Full Business License Tax Administration service.

As part of the proposed Agreement, HDL will give local businesses multiple options for registering, renewing, and making payments. Business owners can do all of this online, by mail, and, in certain instances, over the phone. HDL offers expedited business license services by phone to State-licensed contractors applying for building permits. HDL will answer all general licensing inquiries by mail, email, or phone. HDL will provide customer support and a service center where the business community can obtain assistance Monday through Friday from 8 AM to 5 PM. In

addition, City Staff will continue to assist individuals who prefer to do business in person at City Hall. The City will have access to various services, such as real-time reporting and business account look-up using HDL's online portal.

As a part of the proposed agreement, HDL will identify unregistered and misclassified businesses and work with those businesses to achieve compliance. HDL will use various methodologies, databases, and sources to proactively find these businesses. This compliance program will reduce the number of delinquent businesses and avoid potential lost revenue. The result will be increased business license revenues and cost savings for the City. Additionally, HDL has a staff of experienced business tax auditors who will perform audits to ensure businesses pay the correct amount of taxes owed.

The City will be charged a processing rate of \$20.00 per account with a Consumer Price Index (CPI) increase for each year of the five-year agreement. This is the rate at which HDL charges the City for each new account and renewal processed. For the compliance services, discovery, and audits, these services have no direct cost. Instead, HDL will receive a portion of the total revenue collected. For newly discovered unregistered businesses, HDL will charge 40% of the revenue generated and collected for newly discovered accounts, and 40% of revenues identified from the audits of business licenses. The total cost for the five-year contract is estimated at \$190,000, which includes a one-time implementation fee of \$5,000 and contingency fees calculated at \$50,000. These contingency fees are an estimate of the revenue likely to be recovered based on the percentages provided. They are calculated on a "recovery basis", meaning the fees are not paid until funds are recovered.

### FISCAL IMPACT

The annual ongoing cost of HDL services, not including contingency fees which are offset by increased revenue, will be in the range of \$25,000 to \$30,000. Implementation will begin in January 2025 and will be completed by Spring 2025.

City Staff currently spend approximately 50% of one full time equivalent processing business licenses and rental taxes. This time commitment will be reduced by approximately 75%. The time savings will enable the agency to focus on modern recordkeeping and management practices that will ensure the public can more readily access documents and staff can more efficiently perform their work. In addition, the \$20,160 budget for IT support of the existing Business License system will no longer be required.

### CITY ATTORNEY REVIEW

The attached Agreement for Professional Services was reviewed and approved by the City Attorney's Office.

Prepared by: Michael Szczech, Director of Finance

### ATTACHMENTS:

HDL Contract

## CONTRACT

This Contract made \_\_\_\_\_ (“Effective Date”), between the City of Piedmont, California, a municipal corporation, 120 Vista Avenue, Piedmont, California 94611, ("City") and Hinderliter de Llamas & Associates, a California Corporation, ("Independent Contractor").

1. City is a municipal corporation which needs certain services and software as more specifically set forth hereafter.
2. Independent Contractor agrees to provide these services and software to the City under the terms and conditions set forth in this Contract (“Contract”).

3. Services

Independent Contractor shall provide the services as set forth in Exhibit A attached hereto and incorporated herein.

4. Compensation

- a. City will pay the Independent Contractor as set forth in Exhibit A attached hereto and incorporated herein for the services described in Section 3 above. City shall issue payment within 30 days of the satisfactory completion of the services described in Section 3 above.

5. Term

This contract shall begin on the Effective Date. Unless otherwise terminated as provided in this Contract, this Contract shall terminate 5 years from the Effective Date.

6. Contractual Relationship

The parties intend that an independent contractor-employer relationship will be created by this Contract. City is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Independent Contractor. Independent Contractor is not to be considered an agent or employee of City for any purpose, and neither Independent Contractor nor any employees of Independent Contractor are entitled to any of the benefits that City provides for City's employees. It is understood that City does not agree to use Independent Contractor exclusively. It is further understood that Independent Contractor is free to contract for similar services to be performed for other cities, persons or entities during the term of the Contract. Independent Contractor shall be fully responsible for all income, social security or other taxes or deductions, including but not limited to worker's compensation and unemployment deductions, relating to the services it performs for City.

7. Indemnity and Hold Harmless

To the fullest extent permitted by law, Independent Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, elected officials, employees, agents, and volunteers (collectively “Indemnitees”) from and against any and all liability, claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Independent Contractor or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, fines, penalties, incidental and consequential damages, reasonable court costs and attorneys fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith, and costs of investigation) (“Liability”), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Contract by Independent Contractor or by any individual or entity for whom Independent Contractor is legally liable, including but not limited to, officers, agents, employees, subcontractors or consultants of Independent Contractor.

Notwithstanding anything to the contrary, in no event will Consultant be (a) liable for claims, liabilities or damages in connection with the issuance, non-issuance or revocation of any registration, license, permit, or exemption; nor (b) required to provide a defense in connection with any indemnification or hold harmless provisions under this Agreement.

For design professionals (as that term is defined by Civil Code § 2782.8) acting within the scope of their professional capacity, to the fullest extent permitted by law, Consultant shall, at its own expense, indemnify, protect, defend (by counsel reasonably satisfactory to the City) and hold harmless any Indemnitees from and against any and all Liability, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or as may be provided by statute in Civil Code § 2782.8, as may be amended from time to time.

Neither termination of this Contract nor completion of the services shall release Independent Contractor from its obligations under this Section 7, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion, and this section shall survive the termination of the Contract.

8. Insurance

The following minimum levels of insurance coverage shall be provided during the term of this Contract. Prior to the execution of the Contract, Independent Contractor shall provide proof of insurance required. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

Independent Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before

work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Independent Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 05 09 or 25 04 05 09) or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: as required by the State of California, with Statutory Limits.
4. Professional Liability (Errors & Omissions): As appropriate to Independent Contractor's services, and not less than \$2,000,000 per occurrence.

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

The City of Piedmont, its Council Members, directors, officers, agents and employees shall be named as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Independent Contractor 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 the Independent Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

For any claims related to this contract, Independent Contractor's insurance coverage shall be primary insurance coverage (at least as broad as ISO CG 20 01 04 13) with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Independent Contractor's insurance and shall not contribute with it.

Independent Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Independent Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Independent Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies

regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Independent Contractor shall require the insurer to provide City with 30-day prior notice of termination or material change in coverage and ten (10) days prior notice of cancellation for non-payment.

9. Assignability

Independent Contractor shall not assign, delegate, or transfer any interest in this agreement nor the performance of any Independent Contractor's obligations hereunder, without the prior written consent of the City.

10. Miscellaneous

As used in this Contract, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

11. Notices

Any notices to be sent pursuant to this Contract shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage addressed to City at 120 Vista Avenue, Piedmont, California 94611, and to Independent Contractor at 120 S State College Blvd. #200 Brea, CA 92821, or at such other address as each party shall give the other in writing from time to time, and notices shall be deemed received at the time of personal delivery or three (3) working days after being placed in the United States Mail, postage prepaid, certified mail, return receipt requested.

12. Governing Law

This Contract shall be governed by the laws of the State of California. Jurisdiction and venue of litigation arising from this Agreement shall be in the County of Alameda, State of California.

13. Modification

Any modification of this Contract will be effective only if it is in writing signed by all parties to this Contract.

14. Time is of the Essence

Time is of the essence in the performance of this Contract.

15. Termination

The following provisions shall govern termination under this Contract:

- a. Either party may terminate this Contract for cause as follows:
  - (1) The party electing to terminate shall give the other party written notice of termination at least five (45) days prior to the termination date, setting forth very specifically the grounds for termination, the specific provisions of the Contract that has been violated, and a full statement of the facts surrounding the violations(s).
  - (2) If the terminated party so elects, the parties shall meet promptly and make good faith efforts to resolve the violation(s) in a mutually agreeable way.
  - (3) If any such violation cannot be resolved by the parties at such meeting, or at any mutually agreed extension(s) of such meeting, the termination shall proceed.
  - (4) If the violation(s) have not been resolved, the terminating party may proceed with termination, and with retaining other person(s) or entities to provide services, if the terminating party is the City.
- b. Either party may terminate the Contract at any time without cause upon at least sixty (60) days prior written notice to the other party. In the event of any such termination by City, Independent Contractor shall be paid for services actually performed through the date of termination, and Independent Contractor's work shall be immediately discontinued as of that date, except that City may elect, at City's option, to have Independent Contractor complete one or more projects or specific activities which are then in progress, in which case Independent Contractor shall be paid for such services until completion. If terminated by Independent Contractor, any assignment accepted by Independent Contractor prior to the notice of termination shall be completed if desired by City.

16. Equal Opportunity

Independent Contractor shall insure that its policies and practices provide equal opportunity to all applicants and employees without regard to race, color, creed, gender, age, religion, national origin, sexual preference, gender identity, marital status, disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) and in addition, Independent Contractor must comply with the Americans with Disabilities Act.

17. Compliance with Laws

Independent Contractor shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations. Independent Contractor represents and warrants to City that it has and shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits, insurance and approvals which are legally required for Independent Contractor to practice its

profession.

18. Entire Agreement

This Contract constitutes the entire agreement of the parties with respect to the matters set forth herein. Any amendments, modifications, or changes to this Agreement shall be in writing and signed by both parties. In the event of a conflict between the terms set forth in this Contract and the terms set forth in any exhibit to this Contract, the terms of this Contract shall govern over the terms of any exhibit.

19. Ownership of Documents

All plans, studies, documents and other writings, including working notes and internal documents, prepared by and for Independent Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, shall become the property of City, upon payment to Independent Contractor for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Independent Contractor or to any other party. Independent Contractor shall, at Independent Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. All documents prepared by Independent Contractor are confidential and shall be maintained to preserve their confidential nature. Release of any such documents to third parties shall only be made upon written consent of City.

This does not include any software, programs, methodologies or systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Independent Contractor in the course of performing the Services that were not otherwise provided to City in either hardcopy or electronic form, all of which may be protected by Independent Contractor or others' copyrights or other intellectual property.

20. Licenses

Independent Contractor represents and warrants that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Independent Contractor to practice its profession. Independent Contractor represents and warrants to City that Independent Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Independent Contractor to practice its profession.

21. Waiver

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Contract at Piedmont, California, the day and year first above written.

CITY OF PIEDMONT:

[Hinderliter de Llamas & Associates]:

By: \_\_\_\_\_  
Rosanna Bayon Moore, City Administrator

By: \_\_\_\_\_  
[Vice President]

Attest:

\_\_\_\_\_  
Anna Brown, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney  
Deepa Sharma, Assistant City Attorney

## EXHIBIT A

### SCOPE OF SERVICES

Consultant will provide the following Services relative to Client's business license tax administration.

#### 1. Operations Management Services

- 1.1. Establish and maintain database of Client businesses.
- 1.2. Receive and process applications, renewals and payments in a timely fashion.
- 1.3. Send renewal notices to active businesses within 30 days of the renewal period end date or at another interval specified by Client.
- 1.4. Provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. Consultant license specialists will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific).
- 1.5. Remit revenue to Client no less than monthly.
- 1.6. Provide Client staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.

#### 2. Compliance Services: 1) Identify and register businesses which are subject to licensure or taxation, 2) collect known debt as pertains to business license or tax, and 3) identify under-reported tax liability.

##### 2.1. Discovery Services

- 2.1.1. Develop a list of businesses subject to Client licensure or taxation.
- 2.1.2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
- 2.1.3. Review information and forms submitted by the business for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to Client upon request.
- 2.1.4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
- 2.1.5. Remit revenue to Client no less than monthly, along with all business applications and any additional documentation.

##### 2.2. Collection Services

- 2.2.1. Identify businesses subject to Client licensure or taxation which have known debt to Client and have failed to pay within an appropriate time frame.
- 2.2.2. Notify businesses of their options to comply or dispute their non-compliant status.
- 2.2.3. Provide businesses with detailed invoicing and options to pay via website, mail and phone.
- 2.2.4. Remit revenue to Client no less than monthly.

##### 2.3. Audit Services

- 2.3.1. Identify potential under-reporting and/or misclassified businesses.
- 2.3.2. Audit businesses mutually agreed to by Client and Consultant that are identified as potential under-reporting businesses.
- 2.3.3. Submit audit summaries to Client and discuss further actions.
- 2.3.4. Educate businesses on proper reporting practices.
- 2.3.5. Invoice and collect identified deficiencies.

#### 3. Online Payment Processing – Consultant's services include PCI compliant payment processing services which supports both credit card and eCheck transactions.

##### 3.1. Client Responsibilities

- 3.1.1. As a condition to its receipt of the Service, Client shall execute and deliver any and all applications, agreements, certifications or other documents required by Consultant's payment processor, Networks or other third parties whose consent or approval is necessary for the

processing of Transactions by Consultant's payment processor. "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.

- 3.1.2. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

## **FEES**

### **4. Operations Management Services**

- 4.1. Fees for performing operations management Services shall be \$20.00 for each processed account, which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice, and a one-time implementation fee of \$5,000.00.
- 4.2. Fees will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the "CPI Change"). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.
- 4.3. Fees related to travel and lodging expenses are billed at cost and apply to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.
- 4.4. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

### **5. Compliance Services**

- 5.1. Fees for performing compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
  - 5.1.1. Fees for performing discovery Services shall be a contingency Fee of 40% of the revenues received as a result of the Services.
  - 5.1.2. In the event that Client discovers a non-compliant business and reports the business to Consultant (including a calculation of all taxes/fees due), Consultant will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
  - 5.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
  - 5.1.4. Fees for performing audit Services shall be a contingency Fee of 40% of the revenues received as a result of the Services.
- 5.2. Consultant recognizes Client's authority to waive or reduce the tax/fee debt of a business. Should Client decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a Client voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision.

- 5.3. The fee shall be paid notwithstanding any related Client assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
- 5.4. Fees related to travel and lodging expenses are billed at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by Client.
- 5.5. Fees will be invoiced monthly to Client for Services performed during the prior month. Fees will be netted out of Client's monthly revenue disbursement. Client will submit payment for any balance due to Consultant within 30 days of receiving the invoice.
6. **Payment Processing** – Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or Client funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.
  - 6.1. Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
    - 6.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
    - 6.1.2. ACH/eCheck processing - \$2.50 per transaction
  - 6.2. Client funded
    - 6.2.1. Credit and debit card processing – 2.9% of transaction amount
    - 6.2.2. ACH/eCheck processing - \$0.75 per transaction
  - 6.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
  - 6.4. Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.