



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Deputy City Manager

Reviewed by: Joseph D. Toney, Assistant City Manager

Approved by: Steve McClary, City Manager

Date prepared: November 22, 2022 Meeting date: December 12, 2022

Subject: Transactions and Use Tax Administration

RECOMMENDED ACTION: 1) Adopt Resolution No. 22-47 authorizing the Mayor to execute agreements with the California Department of Tax and Fee Administration (CDTFA) for the implementation of a local transactions and use tax; 2) Adopt Resolution No. 22-48 authorizing the examination of transaction (sales) and use tax records; and 3) Approve Amendment No. 1 to the Professional Services Agreement with Hinderliter, de Llamas, & Associates (HdL).

FISCAL IMPACT: No additional appropriation is required. The new voter approved transactions and use tax (TUT) is scheduled to become operative April 1, 2023.

If Council adopts Resolution No. 22-47 authorizing the Mayor to execute agreements with the CDTFA, the Department will administer the tax on behalf of the City. The cost of administering the tax shall be deducted from the taxes collected by the Department for the City. In the first year, the City is required to pay the CDTFA a preparatory cost in an amount not-to-exceed \$175,000 in accordance with Revenue and Taxation Code Section 7272 in addition to the costs to administer the sales tax. The exact amount of the preparatory costs is unknown at this time. These costs are expected to be offset by TUT revenue.

The base cost for the TUT-related services to be provided by HdL is \$200 per month. This includes regular TUT reports and information. Additionally, HdL will provide audit services for 25% of the initial amount of new transactions or use tax revenue received by City as a result of audit and recovery worked performed.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2022-2023. This project is part of normal staff operations.

DISCUSSION: On August 8, 2022, the City Council adopted Resolution No. 22-34 calling for the placement of a General Tax Measure on the ballot for the November 8, 2022 General Municipal Election for submission to qualified voters of an ordinance to enact a local general TUT (sales tax) at the rate of one-half cent ($\frac{1}{2}$ ¢).

The ballot measure was subsequently named “Measure MC” and was included as part of the General Municipal Election on November 8, 2022. The election was consolidated and conducted by the Los Angeles Registrar Recorder/County Clerk (RR/CC). Measure MC required a majority of votes cast in order to pass. According to the certified results from Los Angeles County Registrar-Recorder/County Clerk, Measure MC was approved by a majority of Malibu votes cast.

On December 12, 2022, the City Council is anticipated to adopt a resolution reciting the facts of the General Municipal Election held on November 8, 2022 and declaring the result based on Los Angeles County Registrar-Recorder/County Clerk’s Official Canvass Certificate and Official Statement of Votes Cast by Precinct for the City of Malibu. After the Council has declared the election results, the new TUT will become operative on April 1, 2023 and will remain in effect until repealed by voters.

Measure MC provides that prior to the operative date of the TUT, the City shall contract with the CDTFA to perform all functions incident to the administration and operation of the TUT ordinance.

In order to implement the new TUT with the CDTFA, the City must execute the CDTFA agreement package and other pertinent forms. While portions of the CDFTA agreement package can be handled administratively by staff, the following items must be approved by the City Council including:

1. Resolution No. 22-47 authorizing the Mayor to execute a preparatory agreement and administrative agreement with CDTFA to implement Measure MC, the local sales tax on behalf of the City. (Attachment 1). Resolution 22-47 includes the following two exhibits:
 - Exhibit 1 is the Preparatory Agreement with the CDTFA that describes the work needed to prepare to administer and operate the sales tax, and associated costs. The CDTFA's costs for preparatory work include costs of developing procedures, programming for data processing, developing, and adopting appropriate regulations, designing and printing forms, developing instructions for CDTFA's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer the sales tax ordinance, including

direct and indirect preparatory costs specified by Government Code section 11256. The preparatory costs cannot exceed \$175,000 pursuant to Revenue and Taxation Code section 7272.

- Exhibit 2 is the Administrative Agreement with the CDTFA to implement Measure MC, the local sales tax. The Administrative Agreement authorizes CDTFA to exclusively perform all functions incident to the administration and operation of the City's transactions and use tax ordinance in accordance with applicable laws and regulations. CDTFA will collect and transmit the sales tax to the City on a periodic basis, but at least twice per quarter while the tax is in effect. The City will pay CDTFA the costs to administer the sales tax, which CDTFA will deduct from collected tax revenues.
2. Resolution No. 22-48 authorizing certain City staff positions (City Manager, Assistant City Manager, and Finance Manager) and the City's consultant, HdL, (should the Council approve the proposed amendment with HdL to provide TUT-related support services) to examine the confidential transactions and use tax records of the CDTFA pertaining to the sales tax collected for the City pursuant to Revenue and Taxation Code section 7056, should the Council approve the proposed amendment to the City's agreement with HdL. (Attachment 2)

In addition to the resolutions and agreements CDTFA requires, staff recommends that the Council contract with HdL for TUT audit and information services. HdL currently provides the City with sales tax consultant services. Staff is satisfied with the quality of services HdL provides. Staff recommends that the Council approve Amendment No. 1 to the City's Professional Services Agreement with HdL to increase the scope and budget of the agreement to include TUT-related information and audit services. The base cost for the TUT-related services including regular TUT reports and information shall be provided at a cost of \$200 per month. HdL would also provide audit services for 25% of the initial amount of new TUT revenue received by City as a result of audit and recovery worked performed.

Once the resolutions are approved by the City Council and agreements executed, the CDTFA will be able to implement the sales tax on behalf of the City. The TUT is scheduled to become operative on April 1, 2023.

ATTACHMENTS:

- 1) Resolution 22-47 Authorizing the Mayor to Execute a Preparatory Agreement and Administrative Agreement with CDTFA
- 2) Resolution 22-48 Authorizing Examination of Records
- 3) Amendment No. 1 with HdL

RESOLUTION NO. 22-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU
AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS WITH THE
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION FOR
IMPLEMENTATION OF A LOCAL TRANSACTIONS AND USE TAX

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On November 8, 2022, the voters approved Ordinance No. 507 amending the Malibu Municipal Code and providing for a local transactions and use tax.

B. The California Department of Tax and Fee Administration (Department) administers and collects the transactions and use taxes for all applicable jurisdictions within the state.

C. The Department requires that the City enter into a “Preparatory Agreement” and an “Administration Agreement” prior to implementation of said taxes.

D. The Department requires that the City Council authorize the agreements.

SECTION 2. The City Council of the City of Malibu hereby resolves that the “Preparatory Agreement” attached as Exhibit A and the “Administration Agreement” attached as Exhibit B are hereby approved and the Mayor is hereby authorized to execute each agreement.

SECTION 3. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 12th day of December 2022.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney

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EXHIBIT A

**AGREEMENT FOR PREPARATION TO ADMINISTER AND OPERATE
CITY'S TRANSACTIONS AND USE TAX ORDINANCE**

In order to prepare to administer a transactions and use tax ordinance adopted in accordance with the provision of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, the City of Malibu, hereinafter called *City*, and the CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION, hereinafter called *Department*, do agree as follows:

1. The Department agrees to enter into work to prepare to administer and operate a transactions and use tax in conformity with Part 1.6 of Division 2 of the Revenue and Taxation Code which has been approved by a majority of the electors of the City and whose ordinance has been adopted by the City.

2. City agrees to pay to the Department at the times and in the amounts hereinafter specified all of the Department's costs for preparatory work necessary to administer the City's transactions and use tax ordinance. The Department's costs for preparatory work include costs of developing procedures, programming for data processing, developing and adopting appropriate regulations, designing and printing forms, developing instructions for the Department's staff and for taxpayers, and other appropriate and necessary preparatory costs to administer a transactions and use tax ordinance. These costs shall include both direct and indirect costs as specified in Section 11256 of the Government Code.

3. Preparatory costs may be accounted for in a manner which conforms to the internal accounting and personnel records currently maintained by the Department. The billings for costs may be presented in summary form. Detailed records of preparatory costs will be retained for audit and verification by the City.

4. Any dispute as to the amount of preparatory costs incurred by the Department shall be referred to the State Director of Finance for resolution, and the Director's decision shall be final.

5. Preparatory costs incurred by the Department shall be billed by the Department periodically, with the final billing within a reasonable time after the operative date of the ordinance. City shall pay to the Department the amount of such costs on or before the last day of the next succeeding month following the month when the billing is received.

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EXHIBIT A

6. The amount to be paid by City for the Department's preparatory costs shall not exceed one hundred seventy-five thousand dollars (\$175,000) (Revenue and Taxation Code Section 7272.)

7. Communications and notices may be sent by first class United States mail. Communications and notices to be sent to the Department shall be addressed to:

California Department of Tax and Fee Administration
P.O. Box 942879 MIC: 27
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to City shall be addressed to:

City of Malibu
Attention: Assistant City Manager
23825 Stuart Ranch Road
Malibu, CA 90265

8. The date of this agreement is the date on which it is approved by the Department of General Services. This agreement shall continue in effect until the preparatory work necessary to administer City's transactions and use tax ordinance has been completed and the Department has received all payments due from City under the terms of this agreement.

CITY OF MALIBU

CALIFORNIA DEPARTMENT OF TAX
AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator
Local Revenue Branch

Paul Grisanti

Mayor

(Rev. 11/17)

EXHIBIT B

**AGREEMENT FOR STATE ADMINISTRATION
OF CITY TRANSACTIONS AND USE TAXES**

The City Council of the City of Malibu has adopted, and the voters of the City of Malibu (hereafter called "City" or "District") have approved by the required majority vote, the City of Malibu Transactions and Use Tax Ordinance (hereafter called "Ordinance"), a copy of which is attached hereto. To carry out the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code and the Ordinance, the California State Department of Tax and Fee Administration, (hereinafter called the "Department") and the City do agree as follows:

ARTICLE I

DEFINITIONS

Unless the context requires otherwise, wherever the following terms appear in the Agreement, they shall be interpreted to mean the following:

1. "District taxes" shall mean the transactions and use taxes, penalties, and interest imposed under an ordinance specifically authorized by Revenue and Taxation code Section 7285.9 and in compliance with Part 1.6, Division 2 of the Revenue and Taxation Code.

2. "City Ordinance" shall mean the City's Transactions and Use Tax Ordinance referred to above and attached hereto, Ordinance No. 507, as amended from time to time, or as deemed to be amended from time to time pursuant to Revenue and Taxation Code Section 7262.2.

ARTICLE II

ADMINISTRATION AND COLLECTION

OF CITY TAXES

A. Administration. The Department and City agree that the Department shall perform exclusively all functions incident to the administration and operation of the City Ordinance.

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B. Other Applicable Laws. City agrees that all provisions of law applicable to the administration and operation of the Department Sales and Use Tax Law which are not inconsistent with Part 1.6 of Division 2 of the Revenue and Taxation Code shall be applicable to the administration and operation of the City Ordinance. City agrees that money collected pursuant to the City Ordinance may be deposited into the State Treasury to the credit of the Retail Sales Tax Fund and may be drawn from that Fund for any authorized purpose, including making refunds, compensating and reimbursing the Department pursuant to Article IV of this Agreement, and transmitting to City the amount to which City is entitled.

C. Transmittal of money.

1. For the period during which the tax is in effect, and except as otherwise provided herein, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City periodically as promptly as feasible, but not less often than twice in each calendar quarter.

2. For periods subsequent to the expiration date of the tax whether by City's self-imposed limits or by final judgment of any court of the State of California holding that City's ordinance is invalid or void, all district taxes collected under the provisions of the City Ordinance shall be transmitted to City not less than once in each calendar quarter.

3. Transmittals may be made by mail or electronic funds transfer to an account of the City designated and authorized by the City. A statement shall be furnished at least quarterly indicating the amounts withheld pursuant to Article IV of this Agreement.

D. Rules. The Department shall prescribe and adopt such rules and regulations as in its judgment are necessary or desirable for the administration and operation of the City Ordinance and the distribution of the district taxes collected thereunder.

E. Preference. Unless the payor instructs otherwise, and except as otherwise provided in this Agreement, the Department shall give no preference in applying money received for state sales and use taxes, state-administered local sales and use taxes, and district transactions and use taxes owed by a taxpayer, but shall apply moneys collected to the satisfaction of the claims of the State, cities, counties, cities and counties, redevelopment agencies, other districts, and City as their interests appear.

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F. Security. The Department agrees that any security which it hereafter requires to be furnished by taxpayers under the State Sales and Use Tax Law will be upon such terms that it also will be available for the payment of the claims of City for district taxes owing to it as its interest appears. The Department shall not be required to change the terms of any security now held by it, and City shall not participate in any security now held by the Department.

G. Records of the Department.

When requested by resolution of the legislative body of the City under section 7056 of the Revenue and Taxation Code, the Department agrees to permit authorized personnel of the City to examine the records of the Department, including the name, address, and account number of each seller holding a seller's permit with a registered business location in the City, pertaining to the ascertainment of transactions and use taxes collected for the City. Information obtained by the City from examination of the Department's records shall be used by the City only for purposes related to the collection of transactions and use taxes by the Department pursuant to this Agreement.

H. Annexation. City agrees that the Department shall not be required to give effect to an annexation, for the purpose of collecting, allocating, and distributing District transactions and use taxes, earlier than the first day of the calendar quarter which commences not less than two months after notice to the Department. The notice shall include the name of the county or counties annexed to the extended City boundary. In the event the City shall annex an area, the boundaries of which are not coterminous with a county or counties, the notice shall include a description of the area annexed and two maps of the City showing the area annexed and the location address of the property nearest to the extended City boundary on each side of every street or road crossing the boundary.

ARTICLE III
ALLOCATION OF TAX

A. Allocation. In the administration of the Department's contracts with all districts that impose transactions and use taxes imposed under ordinances, which comply with Part 1.6 of Division 2 of the Revenue and Taxation Code:

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1. Any payment not identified as being in payment of liability owing to a designated district or districts may be apportioned among the districts as their interest appear, or, in the discretion of the Department, to all districts with which the Department has contracted using ratios reflected by the distribution of district taxes collected from all taxpayers.

2. All district taxes collected as a result of determinations or billings made by the Department, and all amounts refunded or credited may be distributed or charged to the respective districts in the same ratio as the taxpayer's self-declared district taxes for the period for which the determination, billing, refund or credit applies.

B. Vehicles, Vessels, and Aircraft. For the purpose of allocating use tax with respect to vehicles, vessels, or aircraft, the address of the registered owner appearing on the application for registration or on the certificate of ownership may be used by the Department in determining the place of use.

ARTICLE IV COMPENSATION

The City agrees to pay to the Department as the State's cost of administering the City Ordinance such amount as is provided for by law. Such amounts shall be deducted from the taxes collected by the Department for the City.

ARTICLE V MISCELLANEOUS PROVISIONS

A. Communications. Communications and notices may be sent by first class United States mail to the addresses listed below, or to such other addresses as the parties may from time to time designate. A notification is complete when deposited in the mail.

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Communications and notices to be sent to the Department shall be addressed to:

California State Department of Tax and Fee Administration
P.O. Box 942879
Sacramento, California 94279-0027

Attention: Administrator
Local Revenue Branch

Communications and notices to be sent to the City shall be addressed to:

City of Malibu
Attention: Assistant City Manager
23825 Stuart Ranch Road
Malibu, CA 90265

Unless otherwise directed, transmittals of payment of District transactions and use taxes will be sent to the address above.

B. Term. The date of this Agreement is the date on which it is approved by the Department of General Services. The Agreement shall take effect on April 1, 2023. This Agreement shall continue until December 31 next following the expiration date of the City Ordinance, and shall thereafter be renewed automatically from year to year until the Department completes all work necessary to the administration of the City Ordinance and has received and disbursed all payments due under that Ordinance.

C. Notice of Repeal of Ordinance. City shall give the Department written notice of the repeal of the City Ordinance not less than 110 days prior to the operative date of the repeal.

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ARTICLE VI
ADMINISTRATION OF TAXES IF THE
ORDINANCE IS CHALLENGED AS BEING INVALID

A. Impoundment of funds.

1. When a legal action is begun challenging the validity of the imposition of the tax, the City shall deposit in an interest-bearing escrow account, any proceeds transmitted to it under Article II. C., until a court of competent jurisdiction renders a final and non-appealable judgment that the tax is valid.

2. If the tax is determined to be unconstitutional or otherwise invalid, the City shall transmit to the Department the moneys retained in escrow, including any accumulated interest, within ten days of the judgment of the trial court in the litigation awarding costs and fees becoming final and non-appealable.

B. Costs of administration. Should a final judgment be entered in any court of the State of California, holding that City's Ordinance is invalid or void, and requiring a rebate or refund to taxpayers of any taxes collected under the terms of this Agreement, the parties mutually agree that:

1. Department may retain all payments made by City to Department to prepare to administer the City Ordinance.

2. City will pay to Department and allow Department to retain Department's cost of administering the City Ordinance in the amounts set forth in Article IV of this Agreement.

3. City will pay to Department or to the State of California the amount of any taxes plus interest and penalties, if any, that Department or the State of California may be required to rebate or refund to taxpayers.

4. City will pay to Department its costs for rebating or refunding such taxes, interest, or penalties. Department's costs shall include its additional cost for developing procedures for processing

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the rebates or refunds, its costs of actually making these refunds, designing and printing forms, and developing instructions for Department's staff for use in making these rebates or refunds and any other costs incurred by Department which are reasonably appropriate or necessary to make those rebates or refunds. These costs shall include Department's direct and indirect costs as specified by Section 11256 of the Government Code.

5. Costs may be accounted for in a manner, which conforms to the internal accounting, and personnel records currently maintained by the Department. The billings for such costs may be presented in summary form. Detailed records will be retained for audit and verification by City.

6. Any dispute as to the amount of costs incurred by Department in refunding taxes shall be referred to the State Director of Finance for resolution and the Director's decision shall be final.

7. Costs incurred by Department in connection with such refunds shall be billed by Department on or before the 25th day of the second month following the month in which the judgment of a court of the State of California holding City's Ordinance invalid or void becomes final. Thereafter Department shall bill City on or before the 25th of each month for all costs incurred by Department for the preceding calendar month. City shall pay to Department the amount of such costs on or before the last day of the succeeding month and shall pay to Department the total amount of taxes, interest, and penalties refunded or paid to taxpayers, together with Department costs incurred in making those refunds.

CITY OF MALIBU

CALIFORNIA STATE DEPARTMENT OF
TAX AND FEE ADMINISTRATION

By _____
(Signature)

By _____
Administrator
Local Revenue Branch

Paul Grisanti

Mayor

RESOLUTION NO. 22-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU AUTHORIZING EXAMINATION OF SALES OR TRANSACTIONS AND USE TAX RECORDS

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. Pursuant to Ordinance Number 507 of the City of Malibu (District), and Revenue and Taxation Code section 7270, the District entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of transactions and use taxes; and

B. The District deems it desirable and necessary for authorized officers, employees and representatives of the District to examine confidential sales or transactions and use tax records of the Department pertaining to transactions and use taxes collected by the Department for the District pursuant to that contract; and

C. Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Department records, and Section 7056.5 of the California Revenue and Taxation Code establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales or transactions and use tax records of the Department.

SECTION 2. That the City Manager, Assistant City Manager and Finance Manager, or other officer or employee of the District designated in writing by the City Manager to the California Department of Tax and Fee Administration is hereby appointed to represent the District with authority to examine sales or transactions and use tax records of the Department pertaining to transactions and use taxes collected for the District by the Department pursuant to the contract between the District and the Department.

SECTION 3. The information obtained by examination of Department records shall be used only for purposes related to the collection of District transactions and use taxes by the Department pursuant to that contract, and for purposes related to the following governmental functions of the District:

- (a) Collection and administration of the City's transactions and use tax
- (b) Budget Planning
- (c) City Administration
- (d) Economic Development

SECTION 4. That Hinderliter, de Llamas, & Associates (HdL) is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to transactions and use taxes collected for the District by the Department. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the District and the Hinderliter, de Llamas, & Associates (HdL):

- a) has an existing contract with the District to examine those sales or transactions and use tax records;

- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 2 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of Department records shall be used only for purposes related to the collection of District transactions and use taxes by the Department pursuant to the contract between the District and the Department and for those purposes relating to the governmental functions of the District listed in section 3 of this resolution.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 12th day of December 2022.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT is made and entered in the City of Malibu on December 12, 2022, by and between the CITY OF MALIBU, hereinafter referred to as City, and Hinderliter, de Llamas and Associates (HDL), hereinafter referred to as Consultant.

The City and the Consultant agree as follows:

RECITALS

- A. On July 1 2021, the City entered into an Agreement with Consultant for sales tax management and monitoring which includes examining all sales, use and transactions tax records of the California Department of Tax and Fee Administration (CDTFA) pertaining to sales, use and transactions taxes collected by the CDTFA on behalf of the City of Malibu. (the "Agreement").
- B. On November 8, 2022, a General Municipal Election was held and included ballot Measure MC asking Malibu voters to consider whether or not to impose a one-half cent ($\frac{1}{2}$ ¢) Transaction and Use Tax for general City purposes.
- C. According to the certified results from Los Angeles County Registrar-Recorder/County Clerk, Measure MC was approved by a majority of Malibu votes cast.
- D. The City desires to amend the Agreement to include management and monitoring services for new Transaction and Use District Tax Measure MC and Consultant has submitted a proposal for this purpose that is acceptable to the City.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

- 1. Section 1.0 – Scope of the Consultant's Services, of the Agreement, is hereby amended to add the additional scope of services set forth in Exhibit B attached hereto.
- 2. Section 4.0 – Compensation for Services, of the Agreement, is hereby amended to add to the compensation for services as set forth in Exhibit B attached hereto.
- 3. The Parties agree that this Amendment will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.
- 4. All terms and conditions of the Agreement not amended by this Amendment No. 1 remain in full force and effect.

This Agreement is executed on _____, at Malibu, California, and effective as of January 1, 2023.

CITY OF MALIBU:

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

TREVOR RUSIN, Interim City Attorney

CONSULTANT:

DocuSigned by:

Andrew Nickerson

By: Andy Nickerson
Title: President

EXHIBIT B

Transactions Tax Audit Services Economic Analysis/Forecasting and Related Services

SERVICES

1. Transactions Tax and Economic Analysis/Forecasting Services/Reports

- 1.1. Consultant shall establish a database containing all applicable Department of Tax and Fee Administration (CDTFA) registration data for each business within the Measure “MC” District boundaries holding a seller’s permit account. Said database shall also identify the quarterly transactions and use tax allocations under each account for the most current and previous quarters where available.
- 1.2. Consultant shall provide updated reports each quarter identifying changes in allocation totals by individual businesses, business groups and by categories. Quarterly aberrations due to State audits, fund transfers, and receivables, along with late or double payments, will also be identified. Quarterly reconciliation worksheets to assist finance officer with budget forecasting will be included.
- 1.3. Consultant shall advise and work with CITY Staff on planning and economic questions related to maximizing revenues, preparation of revenue projections and general information on transactions and use tax questions.
- 1.4. Consultant shall make available to CITY the HdL proprietary software program and Measure “MC” database containing all applicable registration and quarterly allocation information for CITY business outlets registered with the Department of Tax and Fee Administration. The database will be updated quarterly.

2. Deficiency/Allocation Reviews and Recovery

- 2.1. Consultant shall conduct on-going reviews to identify and correct unreported transactions and tax payments and distribution errors thereby generating previously unrealized revenue for the City. Reviews shall include:
 - 2.1.(a) Comparison of county-wide local tax allocations to transactions tax for brick and mortar stores and other cash register-based businesses, where clearly all transactions are conducted on-site within the Measure “MC” City boundaries, and therefore subject to transactions tax.
 - 2.1.(b) Review of any significant one-time use tax allocations to ensure that there is corresponding transaction tax payments for taxpayers with nexus within the City boundaries.
 - 2.1.(c) Review of state-wide transactions tax allocations and patterns to identify any obvious errors and omissions.
 - 2.1.(d) Identification and follow-up with any potentially large purchasers of supplies and equipment (e.g. hospitals, universities, manufacturing plants, agricultural operations, refineries) to ensure that their major vendors are properly reporting corresponding transactions tax payments to the Measure “MC” Transactions Tax District.
- 2.2. Consultant will initiate, where the probability of an error exists, contacts with the appropriate taxpayer management and accounting officials to verify whether current tax receipts accurately reflect the local sales activity. Such contacts will be conducted in a professional and courteous manner so as to enhance CITY’s relations with the business community.

EXHIBIT B

Transactions Tax Audit Services Economic Analysis/Forecasting and Related Services

2.2. Consultant shall prepare and submit to the Department of Tax and Fee Administration all information necessary to correct any allocation errors and deficiencies that are identified and shall follow-up with the individual businesses and the California Department of Tax and Fee Administration to ensure that all back quarter payments due the CITY are recovered.

3. Consulting and Other Optional Services

Consultant may from time to time in its sole discretion, consult with City's staff, including without limitation, regarding (i) technical questions and other issues related to sales, use and transactions tax, (ii) utilization of reports to enhance business license collection efforts, (iii) sales tax projections for proposed annexations, economic development projects and budget planning, (iv) negotiating/review of tax sharing agreements, (v) establishing purchasing corporations, (vi) meeting with taxpayers to encourage self-assessment of tax obligations, and (vii) other sales, use or transactions tax revenue-related matters.

FEEES

4. Transactions Tax and Economic Analysis/Forecasting Services/Reports

- 4.1. Fees shall be paid **\$200** monthly billed quarterly for the transaction district tax reports that we include with the quarterly sales tax analyses. The monthly fee shall be invoiced quarterly in arrears and shall be paid by City no later than 30 days after the invoice date.
- 4.2. Consultant may change the non-hourly Fees established above upon at least 30 days' prior written notice to City (but not more than once a year). Any such change must be with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), as reported by the U.S. Bureau of Labor Statistics (the "CPI Change").

5. Allocation and Audit Recovery Services

- 4.1 Fees shall be paid **25%** of the initial amount of new transactions or use tax revenue received by the City because of audit and recovery work performed by Consultant, (hereafter referred to as "audit fees"). New revenue shall not include any amounts determined and verified by City or Consultant to be increment attributable to causes other than Consultant's work pursuant to this agreement. In the event, Consultant is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, it shall be Consultant'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 those specific quarters identified as being missing and/or deficient following completion of the audit by Consultant and confirmation of corrections by the California Department of Tax and Fee Administration but shall not apply prospectively to any future quarter. Consultant shall provide City with an itemized quarterly invoice showing all formula calculations and amounts due for audit fees.

6. Consulting and Other Optional Services

- 6.1. Fees for performing the consulting and other optional Services described above shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.
- 6.2. Consultant may change the rates for its hourly Fees from time to time. A 30 days' prior written notice to City will be given.

7. General Provisions Relating to Fees

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- 7.1. Fees for travel and lodging expenses will be invoiced 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 City.
- 7.2. Fees will be invoiced monthly to City for Services performed during the prior month. To the extent that Consultant has commercially reasonable means to do so, Fees will be netted out of City's monthly revenue disbursement.

7. Confidentiality Information

Section 7056 of the State of California Revenue and Taxation Code ("R&T Code") specifically limits the disclosure of confidential taxpayer information contained in the records of the CDTFA. Section 7056 specifies the conditions under which a city, county or district may authorize persons other than such city, county or district's 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 R&T Code are hereby made part of this Agreement:

- 7.1. Consultant is authorized by this Agreement to examine sales, use or transactions and use tax records of the CDTFA provided to City pursuant to contract under the Bradley-Burns Uniform Local Sales and Use Tax Law R&T Code Section 7200 et.seq.
- 7.2. Consultant is required to disclose information contained in, or derived from, those sales or transactions and use tax records only to an officer or employee of City who is authorized by City resolution provided to the CDTFA to examine the information.
- 7.3. Consultant is prohibited from performing consulting services for a retailer (as defined in R&T Code Section 6015), during the term of this agreement.
- 7.4. Consultant is prohibited from retaining the information contained in or derived from those sales, use or transactions and use tax records after this agreement has expired. Information obtained by examination of the CDTFA records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the Consultant as a person authorized to examine sales and use tax records and certify that this agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

8. Software Use and Proprietary Information

Software Use. Consultant hereby provides authorization to City to access Consultant's Sales Tax website if City chooses to subscribe to the software and reports option. The website shall only be used by authorized City staff. No access will be granted to any third party without explicit written authorization by Consultant. City shall not sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of said software. The software use granted hereunder shall not imply ownership by City of said software, or any right of City to sell said software or the use of same, or any right to use said software for the benefit of others. This software use authorization is not transferable. Upon termination or expiration of this Agreement, the software use authorization shall expire, and all City staff website logins shall be de-activated.

Proprietary Information. As used herein, the term "proprietary information" means all information or material that has or could have commercial value or other utility in Consultant's business, including

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without limitation: Consultant's (i) computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; desktop or web-based software; (iii) business processes; (iv) marketing plans, analysis and strategies; and (v) materials and techniques used; as well as the terms and conditions of this Agreement. Except as otherwise required by law, City shall hold in confidence and shall not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by City in connection with this Agreement. The obligations imposed by this Section shall survive any expiration or termination of this Agreement or otherwise. The terms of this Section shall not apply to any information that is public information.