

Report to Economic Development Subcommittee

TO: Economic Development Subcommittee

FROM: Marshall Eyerman, Chief Financial Officer
Mike Lee, Economic Development Director

AGENDA DATE: May 14, 2019

TITLE: CENDEJAS PROFESSIONAL SERVICES AGREEMENT FOR
ECONOMIC DEVELOPMENT AND SALES TAX CONSULTING
SERVICES

RECOMMENDED ACTION

Recommendation:

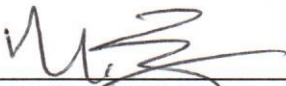
1. That the Economic Development Subcommittee provide staff direction.

SUMMARY

This report recommends authorization of the Professional Services Agreement with Robert E. Cendejas and Associates, Inc. to provide economic development and sales tax consulting services.

ATTACHMENTS

Cendejas – Professional Services Agreement Staff Report


Prepared By: Marshall Eyerman
Chief Financial Officer/City Treasurer


Department Head Approval: Mike Lee
Economic Development Director



Report to City Council

TO: Mayor and City Council

FROM: Marshall Eyerman, Chief Financial Officer
Mike Lee, Economic Development Director

AGENDA DATE: May 21, 2019

TITLE: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH ROBERT E. CENDEJAS AND ASSOCIATES, INC. FOR ECONOMIC DEVELOPMENT AND SALES TAX CONSULTING SERVICES.

RECOMMENDED ACTION

Recommendation:

1. Approve the Professional Services Agreement with Robert E. Cendejas and Associates, Inc. for economic development and sales tax consulting services.
2. Authorize the City Manager to execute the Agreement.

SUMMARY

Sales tax proves to be one of the City's largest revenue sources. As indicated in the Fiscal Year 2018/19 amended budget, sales tax revenue is projected to be roughly \$19.9 million or nearly 18% of the General Fund revenues. As opposed to development related revenue, sales tax revenue is a continuous source of funding that facilitates the delivery of essential services in the City of Moreno Valley. Hence, optimizing the City's ability to draw major businesses to Moreno Valley will help realize a significant increase to our current revenue totals thereby enhancing our ability to serve the public.

DISCUSSION

In addition to HdL (sales tax monitoring and reporting), the City has the opportunity to engage the services of Robert E. Cendejas and Associates, Inc. (Cendejas) to explore opportunities to increase sales tax revenues through increased economic development.

Cendejas specializes in sales and use tax allocation matters and partners with cities to recruit and consolidate major sales tax generating businesses. Typically, these recruitment efforts

focus on administrative points of sale locations rather than brick and mortar store fronts with direct sales to customers.

The City of Moreno Valley is fortunate to be located in the Inland Empire and adjacent to both the 60 and 215 Interstate Freeway. The City's prime location lends for Moreno valley to be a premier destination for businesses to expand both in size and commerce. To maximize the City's use of our ideal location, the City is recommending contracting with Cendejas for sales tax consulting services.

Cendejas has worked successfully with the cities of Ontario, Corona, Signal Hill, Dinuba, Shafter, Chino and Cypress to recruit and centralize major sales tax generating businesses. With experience in working with Fortune 500 companies and representing cities before the California Department of Tax and Fee Administration ("CDTFA"), Cendejas proves to be flexible and well suited to bring forth large sale's tax revenues to a given city. Should the City Council approve this professional services agreement, Cendejas would be responsible for recruiting businesses, advise the City on their business operations and sales process, negotiate the terms of a "location agreement," propose specific incentives for the business to operate in Moreno Valley, and ensure compliance with the provisions of a given location agreement.

A successful recruitment effort would result in the City Council considering a location agreement with the business interested in locating in the city. Typically, location agreements identify a range of expected sales tax revenues and incentives for the business. Cendejas reports location agreements often last for 10 years or more, providing a stable long-term revenue stream to the city. Often, the location agreements facilitate the consolidation of a number of small sales tax generating offices into a centralized location or establishing a fixed location for sales taxes. The City Council will have sole discretion on whether to approve a location agreement.

ALTERNATIVES

1. Approve the Professional Services Agreement with Robert E. Cendejas and Associates, Inc. to provide economic development and sales tax consulting services. *Staff recommends these services to assist with economic development and the capture of additional sales tax revenues.*
2. Do not approve Professional Services Agreement with Robert E. Cendejas and Associates, Inc. to provide economic development and sales tax consulting services. *Staff does not recommend this alternative, as it would restrict the City's ability to identify and capture additional sales tax revenues.*

FISCAL IMPACT

Should the City Council authorize the Professional Services Agreement, Cendejas would receive 10% to 20% of the net sales tax revenue received by the City as a result of the location agreement. Payments would be made one hundred fifty (150) days after the City received its quarterly sales tax payment to capture any adjustments of revenue directed by the CDTFA. If the City Council votes to deny any location agreement, Cendejas would receive no compensation from the City.

NOTIFICATION

Publication of the Agenda.

PREPARATION OF STAFF REPORT

Prepared By:
Marshall Eyerman
Chief Financial Officer

Department Head Approval:
Marshall Eyerman
Chief Financial Officer

Concurred By:
Mike Lee
Economic Development Director

CITY COUNCIL GOALS

Revenue Diversification and Preservation. Develop a variety of City revenue sources and policies to create a stable revenue base and fiscal policies to support essential City services, regardless of economic climate.

CITY COUNCIL STRATEGIC PRIORITIES

1. Economic Development
2. Public Safety
3. Library
4. Infrastructure
5. Beautification, Community Engagement, and Quality of Life
6. Youth Programs

ATTACHMENTS

1. Moreno Valley-Cendejas Professional Services Agreement

APPROVALS

-DRAFT-

Contract No. _____

Approved: _____

AGREEMENT FOR CONTRACT SERVICES

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into by and between the City of Moreno Valley, a municipal corporation of the State of California, located at 14177 Frederick Street, Moreno Valley, California 92552, County of Riverside, State of California ("City"), and ROBERT E. CENDEJAS AND ASSOCIATES, INC., a California corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, Consultant is specially trained, experienced, and competent to perform the special services required by the City; and

WHEREAS, Consultant, following submission of a proposal or bid for the performance of the special services required by the City and more particularly defined and described in this Agreement, was selected by the City to perform those services; and

WHEREAS, Consultant desires to render services, as hereinafter defined, on the following terms and conditions.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

AGREEMENT TERMS

1. Scope of Services. Subject to the terms and conditions set forth herein, Consultant shall provide to City the services described in Exhibit A, attached hereto and made a part hereof. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A under the direction of the City Manager.

2. Effective Date, Term and Extension Option. Unless earlier terminated in accordance with Section 26 of this Agreement, this Agreement shall continue in full force and effect for a term of two (2) years, except that, should Consultant obtain a Location Agreement, the term of this Agreement shall be automatically extended to be the same term as any such Location Agreement, but under no circumstances shall that

extension exceed twenty (20) years, unless that Location Agreement is extended by the mutual approval of the parties in writing. The City shall have the right but not the obligation, in its sole and unfettered discretion, to extend the initial term of this Agreement a maximum of one (1) extended term of two (2) years. In order to do so, City shall, not later than ninety (90) calendar days prior to the expiration of the initial term, give Consultant written notice, in the form and manner allowed by this Agreement, of its intention to extend the initial term of this Agreement for two (2) additional calendar years, which extension shall be according to the terms and conditions of this Agreement, unless the same is modified by the Parties hereto in writing signed by the party to be charged.

3. Compensation. For on-call services rendered pursuant to this Agreement, the Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit B and incorporated herein by this reference."

4. Billings. All invoices shall be emailed to City Manager. City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

5. Consultant Representations and Performance. Consultant represents that it has the skills, experience and knowledge necessary to perform the services agreed to be performed under this agreement; and it is understood that City has relied upon the Consultant's representations that it has the skills, experience and knowledge to perform required by this Agreement in a competent manner. Consultant understands the scope of the services to be performed under this agreement. Consultant warrants that it will faithfully and diligently perform the services hereunder. Consultant shall employ, as a minimum, generally accepted standards and practices employed by persons engaged in providing similar services in existence at the time of performance of its obligations hereunder.

6. Consultant Designee. This agreement contemplates the services of Consultant. The primary person(s) to provide the services described by this agreement shall be Robert Cendejas and Dr. Angelov Farooq, who shall not be replaced without the prior written consent of the City Manager. Consultant shall assign only competent personnel to perform services under this agreement. If the City Manager asks Consultant to remove a person assigned to the work called for under this agreement, Consultant agrees to do so immediately, subject to City providing reasonable

justification for the removal. Consultant shall provide the City Manager with a written report each month on all work performed and all significant developments during the term hereof.

7. Abandonment by Consultant. In the event the Consultant ceases performing services under this agreement or otherwise abandons the project prior to completing all of the services described in this agreement, Consultant shall, without delay, deliver to City all materials and records prepared or obtained in the performance of this agreement.

8. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this agreement was, and is, the professional reputation and competence of Consultant and its personnel. Consultant shall not assign this agreement nor any of its obligations herein without the City Manager's prior written approval. Likewise, Consultant shall not employ any subcontractor to perform any service required of Consultant hereunder.

9. Attorney's Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

10. Binding Effect. This agreement shall be binding upon the parties hereto and their respective successors in interest.

11. Conflict of Interest. Consultant represents that Consultant has not employed any person to solicit or procure this agreement and that Consultant has not made, and will not make, any payment of any compensation for the procurement of this agreement. Consultant further represents and agrees that Consultant has not, and will not, acquire any interest, directly or indirectly, in any property acquired by the City during the Term of this agreement. Consultant warrants and covenants that Consultant presently has no interest in, nor shall any interest be hereinafter acquired in, any matter that will render the services required under this agreement a violation of any applicable Federal, State or local law. In the event that any conflict of interest should hereinafter arise, Consultant shall promptly notify the City's Counsel of the existence of such conflict of interest so that the City may determine whether to terminate this agreement.

12. Compliance with Laws. In the performance of this agreement, Consultant shall abide by and conform to any and all applicable laws of the United States and the State of California, and the Moreno Valley Municipal Code and all ordinances,

resolutions, rules and regulations of the City. Consultant warrants that all work done under this agreement will be in compliance with all applicable safety rules, laws, statutes, and practices, including but not limited to Cal/OSHA regulations. Consultant expressly acknowledge the Consultant is aware of the provisions of Sections 53084 and 53084.5 of the California Government Code, as they may be amended from time to time, relating to agreements that would result in the reallocation of sales and use taxes, and Consultant hereby agrees to perform the terms of this Agreement in accordance with said provisions as though such provisions were fully set forth herein.

13. Records. Consultant shall keep, and require subcontractors to keep, such books and records as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of four (4) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required.

14. Governing Law. This Agreement and all matters relating to it shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with by the laws of the State of California.

15. Indemnification. To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

16. Independent Contractor Status. It is expressly understood and agreed by both parties that Consultant, its agents or employees, are an independent contractor and not an employee of the City while engaged in carrying out and complying with any of the terms and conditions of this agreement. Consultant expressly warrants that it will not represent, at any time or in any manner, that Consultant is an employee or agent of the City. Consultant, its agents or employees, shall have no authority to, and shall not, incur any debt, obligation or liability on behalf of City.

17. Insurance. Prior to beginning any of the services or work required by this agreement, Consultant, at its sole cost and expense, shall carry, maintain for the duration of the agreement, and provide proof thereof that is acceptable to the City, the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the City. Consultant shall not allow any subcontractor to commence work on any subcontract until all insurance required of the Consultant has also been obtained for the subcontractor. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 17 to the Contract Officer. All certificates shall name the City as additional insured (providing the appropriate endorsement).

- (a) Workers' Compensation. As of the effective date of Agreement, Consultant represents that it has no employees. In reliance on that representation, the following requirements shall be in full force and effect only should Consultant determine to retain any employee while the Agreement is in effect, and shall continue to apply for the entire period the employee is retained by Consultant: Consultant shall comply with this Subsection 17(a) before any such employee commences work under this Agreement: Subject to the provisions in this Section 17, satisfactory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant shall be provided by Consultant with limits not less than one million dollars (\$1,000,000.00). In the alternative, Consultant may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City for loss arising from work performed under this agreement.
- (b) Automobile Liability. Consultant, at Consultant's own cost and expense, shall maintain automobile liability insurance for the period covered by this agreement in an amount not less than one million dollars (\$1,000,000.00) per occurrence. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this agreement including the use of owned and non-owned automobiles.

Coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto). No endorsement shall be attached limiting the coverage.

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (1) City, its officers, employees, agents, and volunteers are to be covered as insureds as respects automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded City, its officers, employees, agents, or volunteers.
- (2) The policy must contain a cross liability or severability of interest clause.
- (3) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.

- (4) An endorsement must state that coverage is primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss under the coverage.
 - (5) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
 - (6) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A:VII.
- (c) Professional Liability. Consultant, at Consultant's own cost and expense, shall maintain for the period covered by this agreement professional liability insurance for licensed professionals performing work pursuant to this agreement in an amount not less than two million dollars (\$2,000,000.00) covering the licensed professionals' errors and omissions, as follows:
- (1) Any deductible or self-insured retention shall not exceed \$10,000 per claim.
 - (2) Written notice that cancellation, material changes, or nonrenewal must be received by the City in conformance with the provisions of this Section 17.
 - (3) The following provisions shall apply if the professional liability coverages are written on a claim made form:
 - (a) The retroactive date of the policy must be shown and must be before the date of the agreement.
 - (b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the agreement or the work.
 - (c) If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this agreement, Consultant must provide extended reporting coverage for a minimum of five (5) years after completion of the work. The City shall have the right to exercise at the Consultant's cost, any extended reporting provisions of the policy should the Consultant cancel or not renew the coverage.

- (d) A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this agreement.
- (d) Deductibles and Self-Insured Retentions. Consultant shall disclose the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this agreement. During the period covered by this agreement upon express written authorization of City Attorney, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The City Attorney may condition approval of an increase in deductible or self-insured retention levels upon a requirement that Consultant procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.
- (e) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the agreement is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.
- (f) City's Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:
 - (i) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the agreement;
 - (ii) Order Consultant to stop work under this agreement or withhold any payment which becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof;
 - (iii) Terminate this agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies City may have and is not the exclusive remedy for Consultant's failure to maintain insurance or secure appropriate endorsements.

18. Interpretation. The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement.

19. Licenses. If a license of any kind having terms intended to include evidence of registration is required of Consultant, its employees, agents, or subcontractors by Federal or State law, Consultant warrants that such license has been obtained, is valid and in good standing, and Consultant shall keep it in effect at all times during the terms of this agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

20. Modifications. This agreement may be modified only by a written agreement, approved by City Attorney, City and Consultant.

21. No Third-Party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this agreement or of any duty, covenant, obligation, or undertaking established herein.

22. Notices. All notices under this Agreement shall be in writing and shall be delivered by personal service or by certified or registered mail, postage prepaid, return receipt requested, of the parties. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given on the date of service if served personally or if served by facsimile transmission (with confirmation of receipt), or seventy-two (72) hours after the mailing. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notices of the parties shall be addressed as follows:

To City: Thomas M. DeSantis, City Manager
 City of Moreno Valley
 14177 Frederick Street
 Moreno Valley, CA 92552
 tomd@moval.org

To Consultant: Robert E. Cendejas and Associates, Inc.
 20955 Pathfinder Road, Suite 100
 Diamond Bar, California 91765
 RobertECendejas@aol.com

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

23. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by Consultant pursuant to this agreement shall be the property of the City at the moment of their preparation. All materials and records of a finished nature, such as reports, analysis, and documentation of negotiations, prepared or obtained in the performance of this agreement, shall be delivered to and become the property of City. All materials of a preliminary nature, such as notes, computations and

other data, prepared or obtained in the performance of this agreement, shall be made available, upon request, to City at no additional charge and without restriction or limitation on their use consistent with the intent of the original design.

24. Severability. Should any part of this agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

25. Default; Cure. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) calendar days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement pursuant to the terms thereof.

26. Termination.

26.1 Prior to Expiration of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. City may, with or without cause, terminate this agreement upon fifteen (15) days written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the City. In addition, Consultant may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the City. Except where the Consultant has initiated termination, Consultant shall be entitled to compensation for services performed prior to the effective date of notice of termination; provided, however, that the City may condition payment of such compensation upon Consultant's delivery to the City of any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant, or prepared by or for Consultant or the City in connection with this agreement and upon satisfactory completion of the services or portion thereof which the consultant has performed through the effective date of termination.

26.2 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after

compliance with the provisions of Section 25, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

27. Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

28. Whole Agreement. This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

29. Prevailing Wages. The State of California's General Prevailing Wage Rates are not applicable to this Contract.

30. Time is of the Essence. Consultant agrees to diligently carry out the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

31. Counterparts. This Agreement may be executed in multiple identical counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument but the parties agree that the Agreement on file in the office of the City Clerk is the version of the Agreement that shall take precedence should any differences exist among counterparts of the document.

32. Warranty & Representation of Non-Collusion. No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "non-interests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or

given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

33. Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

IN WITNESS WHEREOF, City and Consultant have executed this agreement in the City of Moreno Valley, California on _____ 2019.

CITY OF MORENO VALLEY,
A Municipal Corporation

By: _____
Thomas M. DeSantis
City Manager

Date: _____

APPROVED AS TO FORM:
CITY ATTORNEY

By: _____
Martin D. Koczanowicz
City Attorney

ATTEST:

By: _____
Pat Jacquez-Nares
City Clerk

ROBERT E. CENDEJAS AND ASSOCIATES, INC.
a California corporation

By: _____
Robert E. Cendejas

President

Attachments:

Exhibit A, Scope of Services, consisting of 2 pages.

Exhibit B, Schedule of Compensation, consisting of 2 pages.

EXHIBIT "A"
SCOPE OF SERVICES

For the compensation and subject to the terms provided under this Agreement, Consultant shall provide the following services to City:

A-1.1 Identify Major Retail Businesses. Consultant shall identify and based upon the City's written direction, reach out to new or existing major retail businesses ("retail business") and businesses located in City, with the goal of said businesses entering into up to 10-year, or longer as may be mutually approved by the parties in writing, agreements with the City, which will provide that the retail business locate its retail sales offices and related operations within the City and may provide for tax-sharing arrangements and rebate terms between the City and retail business ("Location Agreement"). The goal and purpose of the Location Agreements shall be that the California Department of Tax and Fee Administration ("CDTFA") allocate the retail business' local sales and use tax to the City of Moreno Valley to the fullest extent permissible pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax. Code § 7200, et seq.) and the Transactions and Use Tax Law (Cal. Rev. & Tax. Code § 7251, et seq.), to the extent applicable. For the purposes of this Agreement, "retail businesses" shall be only those which would be subject to the City's "Sales and Use Tax Ordinance," set forth in the Moreno Valley Municipal Code and the Bradley-Burns Uniform Sales and Use Tax Law (Cal. Rev. & Tax. Code § 7200, et seq.).

A-1.2 Drafting the Location Agreement. Upon identifying a retail business as set forth in A-1.1, Consultant shall provide consulting services to the City in drafting the Location Agreement, with the understanding that the review and final approval, of the Location Agreement shall be the City's responsibility, subject to approval by the City Council, the City Attorney and the City Manager.

Such consulting services shall include, but not be limited to, determining an appropriate operations and sales structure for the retail business such that the business' local sales and use tax shall be allocated by the CDTFA to the City of Moreno Valley to the fullest extent permissible ("local sales tax allocation solution"). In furtherance of that goal, Consultant shall consult with the City and the retail business regarding how to structure, or restructure, the retail business' operations and sales process such that the place of sale, and participation in the sale, occurs in the City of Moreno Valley, as defined by Section 1802, Article 19, Chapter 4, Division 2, of Title 18 of the California Code of Regulations, as it may be amended from time to time.

- A-1.3 Negotiating the Location Agreement. Consultant shall assist in negotiating with the retail business the terms and conditions of the Location Agreement, including proposing appropriate tax rebates to incentivize the retail business to locate sales and operations in the City of Moreno Valley.
- A-1.4. City's Right to Reject Any Location Agreement. The City Council of the City of Moreno Valley expressly retains the right to, in its sole discretion, alter, amend, accept, execute, or reject any Location Agreement without incurring any liability or obligation to Consultant or the business.
- A-1.5 Implementing the Location Agreement. After the City has executed a Location Agreement with a retail business, Consultant shall assist in implementing and ensuring compliance with such Location Agreement while the Location Agreement is in effect. Such services shall include, but not be limited to: (i) consulting with the retail business to insure the local sales tax allocation solution is implemented; and (ii) representing the City in all communications with and proceedings before the CDTFA pertaining to the local sales and use tax for that retail business, as set forth in more detail below in A-1.6.
- A-1.6 Representing the City before the CDTFA. As part of the services provided for each Location Agreement, and for the duration that such Location Agreement is in effect, Consultant shall, at no extra cost to the City, represent the City in all proceedings before and communications with the CDTFA pertaining to the local sales and use tax for the retail business. Such representation shall include, but not be limited to: (i) representing the City in all meetings, conferences, and communications with the CDTFA; (ii) complying with any audit required or performed by the CDTFA; and (iii) representing the City in any CDTFA administrative proceedings, including appeals before the CDTFA. Administrative proceedings shall include communications with the CDTFA, any briefing required as part of the CDTFA proceedings, and appearing on behalf of the City at any CDTFA hearings.
- A-1.7 Services Not Included. Consultant shall not pursue or represent the City in any litigation related to a Location Agreement, other than provided for in the indemnity portion of this Agreement.

EXHIBIT "B"
SCHEDULE OF COMPENSATION

- B-1.1 Existing Business Yearly Fee. For each Location Agreement, for businesses with an existing location within the city, executed by the City as a result of the Consultant's services performed under this Agreement, Consultant shall receive a fee each year equal to 10% of the Local Sales Tax Revenues, as defined herein, actually paid by each retail business and actually received by the City ("Yearly Fee"). Consultant acknowledges and hereby agrees that it is not entitled to any compensation for Location Agreements, which originate or are secured from City's own information, knowledge, resources or contacts, whether or not Consultant was also aware of the opportunity, except when specifically assigned to Consultant to obtain a Location Agreement or increase the local tax allocation to the City from said retail business.
- B-1.2 New Business Yearly Fee. For each Location Agreement executed by the City as a result of the Consultant's services performed under this Agreement, Consultant shall receive a fee each year equal to 20% of the Local Sales Tax Revenues, as defined herein, actually paid by each retail business and actually received by the City ("Yearly Fee"). Consultant acknowledges and hereby agrees that it is not entitled to any compensation for Location Agreements, which originate or are secured from City's own information, knowledge, resources or contacts, whether or not Consultant was also aware of the opportunity, except when specifically assigned to Consultant to obtain a Location Agreement or increase the local tax allocation to the City from said retail business.
- B-2 Definitions. "Local Sales Tax Revenues" means that portion of the sales and use tax, if any, paid by the retail business upon taxable sales and uses attributable to the operations of the retail business and allocated and actually paid to, and received by, the City under the 1% (local portion of uniform statewide rate) of the Bradley-Burns Uniform Local Sales and Use Tax Law (Cal. Rev. & Tax. Code § 7200, et seq.) and the Transactions and Use Tax Law (Cal. Rev. & Tax. Code § 7251, et seq.), to the extent applicable. Local Sales Tax Revenues shall not include: (i) any portion of the sales or use tax not eligible for a rebate within the terms of the Location Agreements or this Agreement (ii) any sales or use tax rebate or other tax incentive paid by the City to a retail business pursuant to a Location Agreement, (iii) Penalty Assessments, (iv) any Sales Tax levied by, collected for or allocated to the State of California, the County of Riverside, a district or any entity (including an allocation to a statewide or countywide pool) other than the City of Moreno Valley, (v) any administrative fee charged by the CDTFA, (vi) any sales or use tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except the Cities') law, rule, or regulation, (vii) any Sales Tax attributable to any transaction not consummated within the term of this Agreement, or (viii) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set

aside and/or pledged to a specific use other than for deposit into or payment from the Cities' general funds, including retroactively.

- B-3 Time for Payment. Consultant shall be paid quarterly upon submitting invoices to the City, but in no event shall the City remit any payments on an invoice until after the CDTFA's allocation of Local Sales Tax Revenues for that quarter, as described in B-2. The City shall remit payment on an invoice submitted by the Consultant no later than one-hundred and fifty (150) days following the end of the quarter which is the subject of the invoice. Each invoice shall be in an amount equal to the applicable Yearly Fee (as defined in Sections B-1.1 and B-1.2) of the Local Sales Tax Revenues, as defined above in Subsection B-2, for that quarter.
- B-4 Consultant's Continuing Right to Yearly Fee for Term of Location Agreement. Except in the case of a breach or default of this Agreement by Consultant, the Consultant's receipt of the Yearly Fee shall continue for the same duration as the period of time any Location Agreement obtained by Consultant pursuant to this Agreement is in effect. Accordingly, the provisions of this Exhibit B, entitled Schedule of Compensation, shall continue in full force and effect for the duration that any Location Agreement is in effect, and shall survive the expiration or termination of this Agreement.
- B-5 Recapture. If, at any time during or after this Agreement, the CDTFA determines that all or any portion of the local sales or use tax received by the City were improperly allocated and/or paid to the City, and if the CDTFA requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid local sales and use tax, then Consultant shall, within thirty (30) calendar days after written demand from the City, repay all payments (or applicable portions thereof) theretofore paid to Consultant which are attributable to such repaid, offset or recaptured local sales or use tax. If Consultant fails to make such repayment within thirty (30) calendar days after the City's written demand, then Consultant shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. Additionally, the City may deduct any amount required to be repaid by Consultant under this Subsection B-5 from any future payments otherwise payable to Consultant under this Agreement until the amount in default is recaptured by the City. This Subsection B-5 shall survive the expiration or termination of this Agreement. The City immediately will contact Consultant regarding any communication from the CDTFA pertaining to tax allocations associated with Consultant's business. The City and Consultant agree that, should the CDTFA question the correctness of the allocation or otherwise determine that there has been an improper allocation to the City, the City may engage legal counsel to use his or her best efforts to defend such allocation in all CDTFA administrative proceedings. Any cost or expense associated with such efforts will be borne by the City. For purposes of this paragraph, administrative

proceedings include all CDTFA meetings, conferences and appeals before the CDTFA. Consultant will reasonably cooperate with the City and its attorney. Additionally, Consultant shall have the obligation to participate in any such administrative proceedings, to the extent the City consents to and requests such participation, and may engage its own legal counsel or consultant, at its own cost.

- B-6 Fixed Percentage Fee. Consultant's compensation under this Agreement is a fixed percentage fee. Consultant shall not receive any reimbursement for expenses or any amount beyond the fixed percentage as described above in this Exhibit B.