

## SERVICES AGREEMENT

This Professional Services Agreement (Agreement) is made effective as of \_\_\_\_\_, 2014 (Effective Date), by and between Revenue and Costs Specialists, LLC, a California limited liability company (Contractor), and the City of Lompoc, a municipal corporation, (City). Contractor and City are referred to herein individually as a “party” and collectively as the “parties.”

### RECITALS

WHEREAS, City has need for consultant services to develop cost allocation and user fee study; and

WHEREAS, Contractor engages in the business of providing cost allocation and user fee study services (Contractor Services) for California municipalities; and

WHEREAS, City seeks the services of Contractor to assist with updating the Contractor Services for services the City provides; and

WHEREAS, Contractor and City desire to enter into this Agreement to memorialize their agreements regarding the Contractor Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and City agree as follows:

### ARTICLE 1 ENGAGEMENT

1.1. Engagement: City hereby engages Contractor to provide the Contractor Services described in Article 4 herein, and City hereby accepts such engagement, all on the terms and conditions set forth herein. Contractor will determine the method, detail and means of performing the services detailed below.

### ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties of Contractor: Contractor hereby represents and warrants to City, at all times during the term of this Agreement, Contractor is a California limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

2.2. Representations and Warranties of City: City hereby represents and warrants to Contractor, at all times during the term of this Agreement, City is organized and established pursuant to the laws and ordinances of the State of California.

**ARTICLE 3  
CONTRACTOR STATUS AND QUALIFICATIONS**

3.1. Independent Contractor: Contractor enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor. Contractor agrees that it will not become an employee, partner, agent or principal of City while this Agreement is in effect.

3.2. Payment of Income Taxes: Contractor is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Contractor for services satisfactorily rendered under this Agreement. On request, Contractor will provide City with proof of timely payment. Contractor agrees to indemnify, defend and hold harmless City for any and all claims, costs, losses, fees, penalties, interest, or damages, including court costs and reasonable attorney's fees, resulting from Contractor's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Contractor may, at Contractor's own expense, use any employees or subcontractors as Contractor deems necessary to satisfactorily perform the services required of Contractor by this Agreement. City may not control, direct, or supervise Contractor's employees or subcontractors in the performance of those services.

3.4. Qualifications: Contractor represents it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of City.

3.5. No Benefit Contributions: Contractor shall have no obligation under this Agreement to compensate or pay applicable taxes or provide employee benefits of any kind to any person employed or retained by City.

**ARTICLE 4  
GENERAL RESPONSIBILITIES OF CONTRACTOR**

4.1. Minimum Amount of Service: Contractor agrees to devote as much time and attention to the performance of the Contractor Services under this Agreement as may be, in Contractor's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Contractor is responsible under this Agreement.

4.2. Contractor Scope of Services: Contractor agrees to provide services in accordance with Exhibit A attached hereto and incorporated herein by reference; including those additional services requested by City and accepted in writing by the Contractor during the term of this Agreement.

4.3. Nondiscrimination: There shall be no discrimination against any person employed pursuant to this Agreement in any manner forbidden by law.

4.4. Non-Exclusive Relationship: Contractor may represent, perform services for, and contract with as many additional clients, persons, or companies as Contractor, in Contractor's sole discretion, sees fit.

4.5. Time and Place of Performing Work: Contractor may perform the services under this Agreement at any suitable time and location Contractor chooses.

4.6. Materials and Equipment: Contractor will supply all materials and equipment required to perform the services under this Agreement.

4.7. Professional Skill: It is further understood and agreed by and between the parties hereto Contractor is skilled in the professional calling necessary to perform the work agreed to be done by it under this Agreement, and City, not being skilled in such matters, relies upon the skillful manner in accordance with generally-accepted professional practice and the Contractor agrees to thus perform its work, and the acceptance of its work by City shall not operate as a release of Contractor from said Agreement.

4.8. Workers' Compensation: Contractor agrees to provide workers' compensation insurance for Contractor and Contractor's employees and agents and agrees to defend, hold harmless and indemnify City for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.

4.9. Assignment: Neither this Agreement, nor any duties or obligations under this Agreement may be assigned by Contractor without the prior written consent of City, which consent shall not be unreasonably withheld.

## **ARTICLE 5 COMPENSATION OF CONTRACTOR**

5.1. Compensation for Contractor Services: All Contractor Services provided pursuant to this Agreement will be provided in accordance with the terms, including compensation amounts and schedule of remittance, set forth in Exhibit A, which is incorporated by this reference as though set forth in full; provided, that the parties understand and agree that fee schedule is not an estimate but the complete costs for the Contractor to provide Contractor Services. Total compensation shall not exceed Twenty-Eight Thousand Dollars (\$28,000.00).

5.2. Payment will be in accordance with City's standard accounts payable process. Term no longer than 45 days after presentation of a valid monthly invoice for disbursement of the payment. Payment is to be made by accounts payable check processed and available as part of the weekly disbursement cycle, available each Friday for pickup or mailed delivery.

5.3. The provisions of Article 12 of this Agreement will govern any dispute associated with compensation.

**ARTICLE 6  
OBLIGATIONS OF CITY**

6.1. Cooperation of City: City agrees to comply with all reasonable requests of Contractor and provide access to all documents reasonably necessary to the performance of Contractor's duties under this Agreement. To the extent determined in the best public interest, in the sole discretion of City's City Council, City shall be responsible for initially ensuring, and continuing to review, local and state laws in City's jurisdiction to assure adequate legal authority for Contractor to engage in the Services described herein on behalf of City.

6.2. Conflict of Interest: No officer, employee, director or agent of CITY shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Agreement or the provisions thereof.

6.3. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City without the prior written consent of Contractor, which consent shall not be unreasonably withheld.

**ARTICLE 7  
CITY AUTHORIZATION**

7.1. Authorization: Notwithstanding other provisions of this Agreement, Contractor shall obtain authorization from City prior to performing any of the following:

- (a) The sale, conveyance, transfer, pledge, exchange, assignment, hypothecation, or encumbrance of City's interest in Collections and Receipts of any and all revenues earned by and due to City; and
- (b) All other limitations as stated by the terms of this Agreement.

**ARTICLE 8  
TERMINATION OF AGREEMENT**

8.1. Termination: Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall continue for a period of two hundred seventy (270) days after execution of this Agreement by City and Contractor. Contractor shall satisfactorily complete Contractor Services pursuant to this Agreement within that term, unless the term is modified as permitted for modifications of this Agreement.

8.2. Termination on Notice: Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving thirty-days' (30-days') written notice to the other party.

8.3. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events;

- (a) Bankruptcy or insolvency of either party;
- (b) The assignment of this Agreement by either party without the consent of the other party; the parties agree that neither party will unreasonably withhold consent to such an assignment.

8.4. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, then the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Contractor's failure to satisfactorily complete the Contractor Services;
- (b) City's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Contractor's material breach of any representation, warranty or agreement contained in this Agreement.

## **ARTICLE 9 PROPRIETARY RIGHTS**

9.1. Confidential Information: Any written, printed, graphic, or electronically or magnetically recorded data, computer-based hardware, software, applications, software scripts, or software links furnished by City for Contractor's use are the sole property of City. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning City's employees, products, services, prices, operations, and subsidiaries. Contractor will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with City's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to Contractor's employees, agents, and subcontractors. On termination of this Agreement, Contractor will return any confidential information in Contractor's possession to City.

9.2 Confidential Information: Any written, printed, graphic, electronically or magnetically recorded information, computer-based hardware, software, applications, software scripts, or software links furnished by Contractor for City's use are the sole property of Contractor. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the Contractor's employees, products, services, prices, operations, and subsidiaries. To the extent allowed by the Public Records Act, City will keep this confidential information in the strictest confidence, and will not disclose it by any means

to any person except with the Contractor's approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to City's employees, agents, and subcontractors. On termination of this Agreement, City will return any confidential information in City's possession to Contractor.

## **ARTICLE 10 INDEMNIFICATION**

10.1. Indemnification: To the extent permitted by applicable law, Contractor will indemnify, defend and hold harmless City and each of its officers, employees and agents from and against any and all losses, damages, liabilities, claims, death, injuries or costs, including court costs and reasonable attorney's fees, (collectively, Damages) resulting from any act or omission of Contractor or any of its officers, employees, agents or subcontractors related to this Agreement; provided, that the obligation to indemnify and hold harmless is only to the extent Contractor or any of its officers, employees, agents or subcontractors caused the Damages.

## **ARTICLE 11 INSURANCE REQUIREMENTS**

11.1. Insurance: Without limiting Contractor's responsibility to defend, indemnify and hold harmless City and each of its officers, employees and agents, it is agreed Contractor shall maintain in full force and effect, at all times during the performance of this Agreement, the following policy or policies of insurance covering its operations:

- (a) Comprehensive General Liability, including contractual liability, business automobile liability, broad form property damage, and products and completed operations, all of which shall include coverage for both bodily injury and property damage, with a combined single limit of one million dollars (\$1,000,000) per occurrence. Contractor's comprehensive general liability insurance policy shall contain the following clauses:
  - (i) "The City of Lompoc is named as an additional insured as respects to operations of the named insurance performed under contract with the City of Lompoc."
  - (ii) "It is agreed that any insurance maintained by the City of Lompoc shall apply in excess of, and not contribute with insurance provided by this policy."
- (b) Workers' Compensation coverage shall be at statutory limits.
- (c) Errors and Omissions Liability in the amount of one million dollars (\$1,000,000). City need not be named as an additional insured on professional errors and omissions insurance policies.

11.2. All insurance policies required by this section shall not be canceled, limited or non-renewed without first giving 30 days written notice to the City. Additionally, the policy shall specifically contain the following clause:

- (a) "This insurance shall not be canceled until after thirty days written notice has been given to the City of Lompoc."

11.3. Certificates of insurance evidencing the coverages required by the clauses set forth above shall be filed with City prior to the effective date of this Agreement. This is a condition precedent to the formation of any obligation by City to compensate Contractor under this Agreement.

## **ARTICLE 12 GENERAL PROVISIONS**

12.1. Governing Law: This Agreement shall be governed in all respects by the laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction that would cause the application of the laws of any jurisdiction other than the State of California). Venue for any matter related to this Agreement shall be the Superior Court of the County of Santa Barbara.

12.2. Attorney Fees: In the event of any litigation to enforce, or construe the terms of this Contract, the prevailing party herein shall be entitled to recover reasonable attorney's fees and costs.

12.3. Section Headings: The section headings appearing herein shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Contract.

12.4. Inconsistency: In the event any provision of this Agreement and the documents incorporated herein by reference are deemed to be in conflict, the provision in this Agreement shall prevail.

12.5. Entire Agreement: This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understanding of the parties. No amendment or modification of this Agreement shall be valid unless evidenced in writing and executed by the parties thereto.

12.6. Successors and Assigns: Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto. No party may assign any of its rights or obligations hereunder without the express written consent of the other party hereto, which consent may not be unreasonably withheld; provided, however, any party may assign any and all of its rights and interests hereunder to one or more of its affiliates and designate one or more of its affiliates to perform its

obligations hereunder; provided, however, that such party remains liable for full and total performance of its obligations hereunder.

12.7. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Contractor to:

Revenue & Cost Specialists, LLC  
Attn: Eric S. Johnson  
1519 East Chapman Ave., Suite C  
Fullerton, CA 92831  
FAX: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
FAX: \_\_\_\_\_

If to City to:

City of Lompoc  
Attn: Accounting Supervisor  
100 Civic Center Plaza  
P.O. Box 8001  
Lompoc CA 93438-8001  
FAX (805) 736-5347

with a copy to:

Aleshire & Wynder, LLP  
Attn: Joseph W. Pannone  
2361 Rosecrans Avenue, Suite 475  
El Segundo, CA 90245-4916  
FAX (310) 532-7395

Or, if delivered by telecopy, on a Business Day before 4:00 PM local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the foregoing notice provisions. When used in this Agreement, the term "Business Day" shall mean a day other than a Saturday, Sunday Federal Holiday or other day City's city hall is closed to the public.

12.8. Counterparts: This Agreement may be signed in several counterparts.

12.9. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

**CITY OF LOMPOC, a municipal corporation**

By:

\_\_\_\_\_

Patrick Wiemiller,  
City Administrator

Approved as to form:

By:

\_\_\_\_\_

Joseph W. Pannone  
City Attorney

**EXHIBIT A**

**LIST OF CONTRACTOR SERVICES**

(Immediately behind this page)