

**FIRST AMENDMENT TO CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
STRATEGIC ECONOMICS, INC. FOR
ECONOMIC DEVELOPMENT STRATEGY**

THIS FIRST AMENDMENT to Consulting Services Agreement (this “**First Amendment**”) is entered into as of November 6th, 2023 (the “**Amendment Date**”), by and among the City of San Leandro (“**City of San Leandro**” or “**City**”), and Strategic Economics, Inc. (“**Strategic Economics**” or “**Consultant**”) (sometimes referred to as the “**Parties**”), and amends that certain Consulting Services Agreement dated September 21, 2023 by and between City and Consultant (the “**Consulting Services Agreement**”). Capitalized terms used without definition herein have the meaning ascribed to such terms in the Agreement.

RECITALS

A. On September 18, 2023, the City Council adopted Resolution No. 2023-134 Authorizing the City Manager to Execute a Consulting Services Agreement with Strategic Economics, Inc. for Production of the Economic Development Strategy for \$120,000 and to Negotiate and Approve Cumulative Contract Amendments up to 25% of the Contract Amount for a Total Not to Exceed Amount of \$150,000.

B. Examination of sales or transactions and use tax records by Strategic Economics is necessary to conduct a proper analysis for the Economic Development Strategy process.

C. The City Council of the City of City of San Leandro deems it desirable and necessary for authorized officers, employees and representatives of the City to examine confidential sales or transactions and use tax records of the California Department of Tax and Fee Administration (“**Department**”) pertaining to sales or transactions and use taxes collected by the Department for the City pursuant to the contract with the to perform all functions incident to the administration and collection of transaction and use taxes.

D. The City Council of the City of San Leandro desires to authorize Strategic Economics to examine confidential sales or transaction and use tax records of the Department for the City pursuant to the Consulting Services Agreement as hereby amended.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Amendment, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the Parties, the City of San Leandro and Strategic Economics hereby agree as follows:

Section 1. The above recitals are true, and the recitals and defined terms set forth therein are incorporated into this Amendment by this reference.

Section 2. In order to produce the Economic Development Strategy, Strategic Economics is hereby authorized and requested to examine sales and transactions and use tax records of the City of San Leandro.

Section 3. Strategic Economics shall disclose information contained in, or derived from, those sales or transactions and use tax records only to authorized officers or employees of the City of San Leandro to examine the information.

Section 4. Strategic Economics is prohibited from performing consulting services for a retailer during the term of the Consulting Services Agreement.

Section 5. Strategic Economics is prohibited from retaining the information contained in, or derived from those sales or transactions and use tax records, after the Consulting Services Agreement has expired.

Section 6. Strategic Economics agrees to the Non-Disclosure Agreement, attached as Attachment A.

Section 7. Except as otherwise expressly set forth herein, all other terms and conditions of the Consulting Services Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Strategic Economics and the City of San Leandro have duly executed this First Amendment on the dates set forth below.

City:

City of San Leandro,
a California charter city

By: _____
Frances Robustelli,
City Manager

Attest:

Kelly B. Clancy, Acting City Clerk

Approved as to Form:

Richard M. Pio Roda, City Attorney

Consultant:

Strategic Economics, Inc.

By: _____
Name: Derek Braun
Its: Principal

ATTACHMENT A

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement ("Agreement") is effective upon execution by either party and is entered into by and between City of San Leandro ("City") and Strategic Economics, Inc. ("Recipient") (collectively the "Parties") for the purpose of preventing the unauthorized disclosure of Confidential Information obtained by Recipient for purposes of performance of a business demographic and economic analysis as a consultant under a Consulting Services Agreement between City and Recipient for preparation of the Economic Development Strategy.

1. **Confidentiality.** "Confidential Information" shall include any and all information, including but not limited to, any proprietary, non-public and/or confidential information that the City provides Recipient or that Recipient obtains in performing work for the City, including but not limited to: City or City licensee's/permittee's financial information, rental rates, transient occupancy taxes, business taxes, sales tax data, other sources of City revenue, taxpayer or customer names, addresses or other personal information, customer or taxpayer data, surveys, studies, strategic plans, lists and/or data, services and other information obtained directly or indirectly, in writing, verbally, electronically or by inspection. Confidential Information is strictly confidential and may not be disclosed in any manner to any third party, or in any social media or other communication format for any reason, but for only limited purposes as set forth below.
2. **Exclusions from Confidential Information.** Recipient's obligations under this Agreement do not extend to information that is or becomes publicly known at the time of disclosure through no fault of Recipient, or as required to be disclosed by applicable law or regulation. Recipient must give the City prompt written notice and sufficient opportunity to object to such use or disclosure.
3. **Recipient's Confidentiality Obligations.** Recipient agrees to hold and maintain the Confidential Information in strictest confidence for the exclusive benefit to City and in compliance with the confidentiality standards set forth in Exhibit 1 to this Agreement, which is hereby incorporated by reference. Recipient agrees not to disclose or divulge any Confidential Information, unless and only if City has given prior written approval to do so, and only for the limited purpose of facilitating a project that is a benefit to the City's Economic Development Department, and except as is required by law. Recipient shall be responsible for Recipient's employees' and agents' compliance with this Agreement. Recipient shall not use or disclose any Confidential Information for Recipient's benefit, or permit the use by others for the benefit to Recipient, or to Recipient's employees, agents, successors or assigns, except for the limited circumstances mentioned above. Recipient also agrees not to take any photos or record in any form or manner regarding any Confidential Information, without City's express written consent.
4. **No Publicity.** Recipient acknowledges and understands that Confidential Information are not to be disclosed to, or shared with, any third party, in any form, including any published reports, public presentations, and electronic media.
5. **Term.** This Agreement shall become effective on the date it is fully executed by the Parties. The Agreement and Recipient's duty to hold City's Confidential Information in confidence shall survive the completion of work relating to the Confidential Information, and shall remain in effect until the City provides written notice to Recipient releasing Recipient from such duty.
6. **Indemnity.** Recipient agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees and agents from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from or in any way related to the obligations or performance of this Agreement by Recipient, Recipient's employees or agents, except where caused by the sole negligence or willful misconduct of City.

7. **Severability.** If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement will remain in force and effect as if such invalid or unenforceable term had never been included.
8. **Complete Agreement.** This Agreement expresses the complete understanding of the Parties with respect to nondisclosure of the Confidential Information. This Agreement may only be modified in writing by mutual consent of the Parties.
9. **No Implied Waiver.** The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.
10. **Attorney's Fees.** The Parties agree that should any party fail to comply with the terms of this Agreement, and/or if any proceeding is necessary to enforce the terms thereof, any reasonable attorneys' fees and costs incurred to enforce the terms of this Agreement shall be paid to the prevailing party.
11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California with jurisdiction by the Alameda County Superior Court.
12. **Construction of Agreement.** Recipient acknowledges that Recipient has reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

The undersigned hereby certify carefully reading this agreement and fully understanding its contents. The undersigned acknowledge voluntarily signing this agreement and by doing so are accepting the terms as binding upon the undersigned, undersigned's agents, assigns, successors and legal representatives.

City:

Strategic Economics:

Exhibit 1

CONFIDENTIALITY STANDARDS Following the Rules

Sales Tax Information – Non-Disclosure

Sales tax data is required to be kept confidential by Revenue and Taxation Code Section 7056. Thus, it is unlawful for any person who obtains access to sales and use tax records, to make known in any manner the information disclosed on any [tax] return, including any abstract thereof. Accordingly, a local agency may not disclose amounts of tax paid, whether tax amounts are up or down from a prior period, or any other information that would reveal the business affairs or operations of a business.

Though confidential by law, sales and use tax information can be used by local government officials if the use is “related to collection of local sales and use taxes” or “related to other governmental functions of the county, city and county, or city.” Permit administrators, finance or revenue managers, economic development staff, redevelopment and community development personnel, and business license officials can benefit from access to local sales and use tax allocation information. However, only those positions or individuals authorized by resolution of the governing body (City Council or Board of Supervisors) may have access to confidential data and each person so authorized is required to abide by the provisions of Revenue and Taxation Code Section 7056.

Combined Information May Be Disclosed

Sales tax payments for groups of businesses may be revealed to the general public if the so-called “gang of four” and “80%” rule are followed. These rules allow combined data for four or more businesses to be released as long as no single member of the group is the source of a disproportionate percentage, defined herein as 80%, of the group total. The “group” may be defined as businesses in the same shopping center, a specific business type such as new auto sellers, or businesses sharing the same major business group.

- The “gang of four” rule must be four separate businesses with individual sellers’ permit numbers. For example, if the group includes four outlets and two of the outlets are sub-outlets under the same sellers’ permit number then those two outlets are counted as one toward the overall “gang of four” rule.
- A business with a current allocation that has since closed its sellers’ permit cannot be counted toward the “gang of four” rule.
- A new business with an active sellers’ permit that has yet to commence reporting sales cannot be counted toward the “gang of four” rule.
- If the total amount for a particular group is negative that group cannot be disclosed.

Pursuant to an Executive Order signed by Governor Wilson in April 1994, it is also possible to publish a list of the top sales tax generators if all of the following conditions are met:

- At least 25 retailers are included.
- Businesses are presented in random or alphabetical order.
- Businesses are not ranked by amount paid. • Sales or use tax amounts are omitted.