



## Agenda Commentary

**Item Title/ Subject:** Agreement for Independent Audit Management Services

**Staff Source:** Debra Blanchard, City Treasurer

**History/Background Information:** We received notification from the Oklahoma Tax Commission that an OTC certified independent auditor was performing a sales tax audit for the City of Oklahoma City, on a taxpayer that has possibly not been paying sales tax into the proper taxing jurisdictions. The City of Clinton has been extended the offer to participate in the audit of this taxpayer. His service is used to augment OTC audit efforts.

**Item/Subject Summary:** The contract between the City of Clinton and the Independent Auditor would be required for us to participate in this review. I have contacted this CPA and he gave me more information on this situation. OKC had requested this audit for their taxing jurisdiction to see that OKC was receiving sales tax for sales made in their area. Upon review of the taxpayers records, several other cities have sales being delivered into their taxing jurisdiction, but only sales tax being remitted to their home base jurisdiction. The sales within the City of Clinton area are close to \$325,000 over the last 3 years, with no sales tax remittance coming to the City. The auditor will review all the sales delivered into our city limits, checking to see if they are valid tax exempt sales. If any are found to not be valid tax exempt sales, the taxpayer will be required to file amended sales tax reports and remit to the proper jurisdictions. If half of the sales in our city limits were found to be taxable sales, sales tax due to the City would be \$6,500.

**Price/Cost:** Discovery phase-would expend no more than 5 hours on discovery phase-up to \$395 to determine if there is potential tax liability due to the City. If indication is there, his per hour rate would be \$60 if two or more jurisdictions elect to participate, estimates 40-50 hours. He indicated to me that approximately 30 cities were notified by the OTC.

**Recommendation:** Approval of the agreement, unknown potential revenue recovery. Costs between \$395-\$3000

## **AGREEMENT FOR INDEPENDENT AUDIT MANAGEMENT SERVICES**

This Agreement for independent audit management services is made and entered as of the date hereinafter set out by and between The City of Clinton, a municipal corporation (City), and Gano Coleman, CPA, PLLC, a company domiciled and with its principal place of business at 420 E. Plantation Terr, Mustang, OK 73064, represented herein by its owner, and hereinafter referred to as "Contractor".

### WITNESSETH

**WHEREAS**, City believes certain transactions may have occurred within its taxing jurisdiction, upon which City has not been paid the taxes imposed under Title 68 of the Oklahoma Statutes and other state and local laws and ordinances;

**WHEREAS**, Contractor has represented to City that it possesses skill, expertise and experience with respect to the determination of total liability for any taxes, penalties and/or interest which may be owed by taxpayers to City;

**WHEREAS**, City desires to hire the services of Contractor as a duly authorized agent of the Oklahoma Tax Commission (OTC) to engage in audit activities in an attempt to facilitate collection of tax revenues on behalf of City;

**NOW, THEREFORE**, in consideration of the mutual promises herein contained, it is agreed as follows:

#### **1. Terms of agreement**

This Agreement shall become effective upon execution and approval of City as required by municipal ordinance. The agreement will become effective with the City's approval and will be in effect through June 30, 2014. The agreement will be renewable for four (4), one year terms if agreed to by both parties, and shall be renewed annually

Either party may terminate this Agreement, for their convenience. Agreement may be terminated by delivery of a notice, pursuant to the "Notices" paragraph of this Agreement. Upon receipt of the notice of termination, Contractor shall immediately discontinue all work and services affected. Upon termination for convenience, the City shall pay Contractor for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits (see section 4) and conditions of this Agreement. Termination herein shall not terminate or suspend any of the required provisions of paragraph "Insurance" of this Agreement.

#### **2. Services**

Contractor shall render tax-auditing services to City. Specifically, Contractor will render multi-city coordinated tax auditing services on behalf of City and other participating

Oklahoma cities/towns/counties in an attempt to identify taxes, penalties, and/or interest which may be owed from taxpayers to City.

These services shall include, specifically, Contractor's administrative and auditing services as outlined in Section 3 below.

OTC shall fully retain and be responsible for audit review, assessment, and collection of sales and/or use tax, interest, and/or penalty discovered by Contractor. City shall retain and be responsible for audit review, assessment and collection of other local taxes.

City acknowledges that Contractor will incur expenses and assume risk in connection with the performance of its auditing services, due to the amount of time and effort in research, discovery, coordination, setup, travel, field audit, support, and technical support services. Contractor, in rendering its auditing services, may determine a need to retain the services of consultants, professionals, and/or industry experts. City professional staff may be utilized if City so elects. Services of this nature, excluding the employment or subcontracting of field audit personnel on a consultant basis, shall be subject to advance review and written approval by City.

### **3. Scope of Work**

#### **3.1.0 Contractor shall:**

- 3.1.1 Perform audit examinations for City based on Oklahoma Statutes, OTC interpretations, OTC policy and auditing standards, local laws and ordinances. The OTC and City shall approve said audit examinations performed on the City's behalf in writing on a case by case basis. In addition, City shall approve said examinations in writing on case by case basis prior to any Contractor contact for other local taxes. Contractor shall proceed with an audit only upon written authorization from the City Finance Director or City Finance Director designee. Work on any audit may be suspended or terminated by the City upon issuance of a written STOP WORK order sent certified mail to Contractor.
- 3.1.2 Expend no more than five (5) hours on the discovery phase prior to each audit, wherein Contractor shall determine whether there is a potential tax liability due to the City. Contractor shall not extend the discovery phase beyond five (5) hours if said determination indicates liability to the City of less than \$395.
- 3.1.3 Perform audits in a fair and impartial manner in compliance with Oklahoma Statutes, OTC interpretations, OTC policy, auditing standards stipulated by the OTC and/or City, and local laws and ordinances.
- 3.1.4 Provide City with quarterly progress reports (see Section 3.2.7) and the prepared City audit package (see Section 3.2.3).

3.1.5 Utilize an audit program, which complies with Oklahoma Statutes, OTC regulation and OTC policy. Audit programs of other local taxes will comply with local laws and ordinances.

3.1.6 Promptly document, revise, amend and verify its taxpayer audit package. Respond to reasonable OTC audit review requests on a timely basis.

3.2.0 Manner of Service Provision:

3.2.1 The scope of Contractor work is to:

- a. Attest to the taxpayer's compliance with the various taxing statutes of the State of Oklahoma, the corresponding rules and regulations, and policies of OTC and local laws and ordinances.
- b. Determine the tax adjustment amount if taxpayer is not in compliance.
- c. Verify, detail and deduct from taxes assessed legally refundable overpayments made directly via tax return to OTC and/or City during the audit period, as allowed by OTC and/or City policy.
- d. The Administrator of OTC has final authority on the interpretation of sales and/or use tax audit adjustments. The Finance Director of City has final authority on interpretation of local tax audit adjustments.

3.2.2 Exit conferences, as needed, will be performed in accordance with OTC and/or City policy.

3.2.3 Prepared City audit package shall include:

- a. Computerized exhibit(s) reflecting all adjustments by month as allowed by State Statute, OTC regulation and policy, local laws and ordinances. Additional documentation supporting audits or local laws and ordinances may be required as determined by Finance Director of City as long as documentation is not in violation of OTC policy.
- b. An invoice for services rendered as specified in Section 4.

3.2.4 Contractor shall maintain any audit files or records relating to a City funded audit for not less than five (5) years from the date of final determination on the audit by the OTC. Contractor shall promptly provide such information as allowed by State Statute, OTC regulation and policy to the City upon request. City acknowledges the requirements of Section 205 of Title 68 of the Oklahoma Statutes regarding the confidential character of sales and/or use tax records.

- 3.2.5 Contractor shall (as requested by OTC) provide full support of all audit assessments during the assessment process and/or litigation unless and until this agreement is terminated by either party.
- 3.2.6 Contractor shall meet the requirements of any new or amended State statutes, rules, or regulations having an effect upon the conduct or results of the audits.
- 3.2.7 Contractor shall provide quarterly progress reports on the status of all open audits. An audit will not be considered closed by the City until the receipt of any assessment due and/or the OTC has made a final determination regarding the audit. This report shall include, but not be limited to, the following:
  - a. Estimated percentage completed and expenses incurred on audits in progress.
  - b. Audits submitted to and accepted by the OTC pending initial action, including dates submitted and accepted. Total amount assessed as submitted to the OTC.
  - c. Status of audits accepted by the OTC pending final resolution.
  - d. Other information as agreed upon by City and Contractor.
- 3.3.0 City shall be available for consultation with Contractor at a reasonable time and place to be mutually agreed upon for the purpose of discussing matters pertinent to the expeditious performance of work.
- 3.4.0 City agrees to make every reasonable effort to expedite all aspects of the audit request/approval process.
- 3.5.0 To the extent allowed by law, City agrees to provide Contractor with data, records, and information, which would facilitate identification of delinquent taxpayers.

**4. Compensation**

In consideration of the auditing services rendered hereunder, Contractor shall be compensated by City as follows.

The per hour billing rates for each auditor of Contractor shall be for each participating taxing jurisdiction as follows:

One taxing jurisdiction	\$80
Two or more taxing jurisdictions	\$60

The costs of any individual audit shall not exceed \$20,000 (which includes hourly fees and reasonable expenses) without the expressed written consent of the City to ensure adequate appropriations are available.

Invoices, which will include the name of party providing services, date services were performed, description of services and field audit number, will be sent from Contractor to City following the completion of each audit and the acceptance of the audit by the OTC with the prepared City audit package (see Section 3.2.3) and will include hours worked multiplied by the applicable rate. The prepared City audit package will be sent to City when the OTC audit review approves the audit report. Invoices for subsequent time expended (See Section 3.2.5) will be submitted monthly and will include the name of party providing services, date services were performed, description of services and field audit number. The City will pay Contractor within 30 days of receipt of invoice.

Contractor will be reimbursed for mileage to and from the Contractor's worksite. Upon pre-approval by the City, Contractor may be reimbursed for other reasonable expenses such as airfare, fees charged by experts, food, lodging, and other expenses due to extenuating circumstances of the audit. Pre-approval must be received in advance before the incurring of the expense and in the form of an e-mail or letter from the City Finance Director or Finance Director designee. A detailed audit expense report will be provided on any reasonable expenses incurred. In the event an audit is performed for multiple taxing jurisdictions, reasonable audit related expenses shall be prorated according to each jurisdiction's share of the total multi-jurisdictional assessment as calculated at the time the audit is accepted by the OTC. In the event no assessment is determined, reasonable audit related expenses will be prorated equally among participating jurisdictions.

**5. Negotiated Settlements**

Contractor shall be authorized in connection with its services to assist in negotiation of settlements or compromises. Contractor shall have no authority to approve settlements or compromises on OTC's or City's behalf.

**6. Conflicts of Interest**

Contractor shall not accept any audit assignment where there is a conflict of interest or would appear to be a conflict of interest.

**7. Confidentiality of Tax Records and Findings of Contractor**

Contractor acknowledges the requirements of Section 205 of Title 68 of the Oklahoma Statutes regarding the confidential character of tax records and agrees to abide by these requirements. Contractor acknowledges that tax records are not subject to disclosure or the public records law of the State of Oklahoma, and agrees that it shall not discuss, disclose, or otherwise make available any such information or data unless such disclosure is authorized pursuant to Section 205. Contractor, acting in its capacity as an agent of the OTC, may disclose confidential information to the City where the information disclosed

specifically and directly relates to the City as provided by Title 68 of the Oklahoma Statutes, Section 205 (c)(7) and (23), and Title 11, Section 22-107.

**8. Access to Records**

Contractor shall retain supporting records regarding compensation, time and expenses, including prorated calculations thereof, for a period of five (5) years beyond payment of its fees and reimbursement of expenses. Contractor shall promptly provide access to such records during this period upon request by City.

**9. Authorization: Access to Tax Information**

City agrees to expedite its response to requests for audit assignment and to perform all acts reasonable and necessary to compel cooperation by the taxpayer(s) in regard to audits of other local taxes. Once authorized, City agrees that Contractor shall have full authority and power, to contact taxpayers for the purpose of auditing all relevant records and documentation. Such authority and power shall be supported by City and shall not be withdrawn until each case has been concluded or until either party terminates this Agreement or all funds encumbered by the City for this Agreement have been spent.

City acknowledges that Contractor performs its services for a number of other taxing jurisdictions, and that Contractor may be obtaining information from taxpayers in connection with simultaneous audits for more than one taxing jurisdiction.

**10. Inspection and Audit**

The City shall have the right to inspect and audit the documents and procedures of Contractor concerning services herein.

**11. Administration**

This Agreement shall be administered by the Finance Department of the City or as otherwise designated by City Council by resolution or amendment hereto.

**12. Effect**

Contractor and City represent that this Agreement supersedes all proposals, oral or written, all previous contracts, agreements, negotiations, and all other communications between such parties with respect to the subject matter hereof.

**13. Non-Discrimination**

Contractor agrees, in connection with the performance of work under this Agreement, as follows:

- A. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin or ancestry, or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2).

Contractor shall take affirmative action to insure that employees are treated without regard to their race, creed, religion, color, sex, age, national origin or ancestry, or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfers, recruiting or recruitment, advertising, lay-off, termination, rates of pay, or apprenticeship. Contractor agrees to post in a conspicuous place, available to employees and applicants for employment, notices to be provided by the City Clerk of the City setting forth provisions of this section.

- B. Contractor agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Agreement.
- C. In the event of Contractor's non-compliance with the above non-discrimination clause, this Agreement may be canceled or terminated by the City. The City may declare Contractor ineligible for further Agreements with the said City until satisfactory proof of intent to comply shall be made by Contractor.

#### **14. Insurance and Indemnification**

Contractor will comply with the indemnity and insurance requirements as follows:

- A. To the fullest extent permitted by law, Contractor agrees to release, defend, indemnify, and save harmless the City and its officers, agents, and employees from and against any and all loss of or damage to tangible property, or bodily injuries to or death of any person or persons and or all claims, damages, suits, costs, expenses, liability, actions or proceedings of any kind or nature whatsoever, including, without limitation, Workers' Compensation claims of or by anyone whomever, in any way resulting from or arising out of Contractor's negligent acts, operations, errors and/or omissions under or in connection with this Agreement. Contractor shall promptly advise the City, in writing, of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at it's expense, shall assume the defense of the City with counsel satisfactory to the City. This section shall survive the expiration of the Agreement. Provided, however, Contractor need not release, defend, indemnify or save harmless the City, or their officers, agents and employees, from damages or injuries resulting from the negligence, operations, errors and/or omissions of the City, their officers, agents or employees. The city and the Contractor is responsible for its own intentionally wrongful acts or negligence, provided that the City is not liable for its own wrongful or negligent acts beyond that allowed under the Oklahoma Governmental Tort Claims Act as codified in 51 O.S. 2001, § 153. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under the provisions hereof.
- B. The minimum insurance requirements set forth below shall not be deemed to limit or define the obligations of Contractor hereunder from the provisions of paragraph A. Prior to beginning work, Contractor shall obtain and furnish to the City current copies of certificates of insurance and a copy of the verification of

insurance from Contractor's broker of the policy required in subparagraph (5) following. The required insurance shall be maintained in full force and effect until completion and final acceptance by the City of all contracted services. Contractor shall maintain insurance for the coverages and amounts of coverages not less than those set forth below. The insurance certificates may provide that there may be no termination of such coverage without thirty (30) days prior written notice to the City, in conformance with the provisions of this contract.

The amounts of such coverage shall be:

1. Valuable paper insurance in an amount not less than \$20,000, to assure the restoration in the event of their loss or destruction of any workpapers, documents, summaries, estimates, reports, specifications, data, calculations, computer files obtained or prepared as part of the audit services.
2. Professional liability project insurance evidencing Contractor's coverage in an amount not less than \$175,000.

**15. Laws**

This agreement shall be governed by, construed and enforced in accordance with the laws of the State of Oklahoma.

**16. Venue of Actions**

The parties agree that if any legal action is brought pursuant to this Agreement, such action shall be instituted in the District Court of Custer County.

**17. Notices**

Notices to the City shall be in writing, personally served or sent by registered mail to the :

Finance Director  
The City of Clinton  
P O Box 1177  
Clinton, OK 73601

or to such other official address as the City may from time to time specify in writing. Notice to Contractor shall be in writing, personally served or sent by registered mail to Contractor's address:

Gano Coleman, CPA, PLLC  
420 E Plantation Terr  
Mustang, OK 73064

or to such other official address as Contractor may from time to time specify in writing.