

RESOLUTION NO. 2020-38

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH HINDERLITER, DE LLAMAS & ASSOCIATES, INC. (dba HdL) NOT TO EXCEED \$50,000 TO PROVIDE CANNABIS PROGRAM APPLICATION REVIEW, TAX AUDITS, COMPLIANCE INSPECTIONS, BACKGROUND CHECKS, AND SUBJECT MATTER EXPERTISE AND TECHNICAL SUPPORT

WHEREAS, on November 6, 2018, the citizens of the City of Marina passed an Ordinance allowing Cannabis Business Activity and Establishing Taxes and Fees for Such Businesses within the City of Marina, Amending Title and Chapter Establishing Cannabis Business Activities as a Use Allowed Subject to a Use Permit in Specified Zones and Establishing Uses to Protect Public Health, Safety and Welfare; and,

WHEREAS, on February 5, 2019, the City Council approved an Agreement with Hinderliter, De Llamas & Associates, Inc. (dba HdL) to provide cannabis program subject matter expertise, to develop and manage the process to review cannabis business applications, to provide inspection compliance services and to conduct a cost recovery study for the creation of application fees. This agreement expired on February 5, 2020; and,

WHEREAS, HdL has a team of knowledgeable professionals who have direct experience in the implementation of Cannabis Regulatory Programs including developing applications, application rating systems, reviewing applications for compliance with rules and regulations, performing facility inspections conducting compliance and financial audits, and developing application fees; and,

WHEREAS, HdL's proposal is based on time, materials and travel expenses associated with the execution of these type services. The contract is for a not to exceed amount of \$50,000; and,

WHEREAS, HdL fees are 100% cost recoverable through the cannabis application and license process, with the exception of worked performed under Objective 6. Objective 6 encompasses the provision of HdL technical expertise relating to program implementation (not related to a specific application) and potential ordinance recommended revisions.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marina does hereby

1. Adopt Resolution No. 2020-, authorizing the City Manager to execute a contract with HdL Companies not to exceed \$50,000 to provide cannabis program application review, tax audits, compliance inspections, background checks, and subject matter expertise and technical support, subject to final review and approval by the City Attorney.
2. Authorize Finance Director to make appropriate accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 21st day of April 2020, by the following vote:

AYES, COUNCIL MEMBERS: Berkley, Urrutia, Morton, Delgado

NOES, COUNCIL MEMBERS: O'Connell

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

City of Marina

Cannabis Management Services

March 24, 2020

HdL[®] Companies

SUBMITTED BY

HdL Companies
120 S. State College Blvd., Ste 200
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hdlcompanies.com

CONTACT

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I. LETTER OF TRANSMITTAL

March 24, 2020

Matt Mogensen
Assistant City Manager
City of Marina
(831) 884-1240
Mmogensen@cityofmarina.org

Re: Proposal for Cannabis Management Services

Dear Mr. Mogensen,

Thank you for the opportunity to submit this proposal to provide ongoing assistance with ongoing implementation and monitoring of the City's cannabis program. The enclosed scope of services provides for continued application reviews, annual financial audits and compliance inspections of cannabis businesses, pre-license site visits supplemental background checks of all owners, managers and employees, and additional general consulting as needed.

HdL was incorporated in 1983 and has over 30 years of experience providing revenue enhancement and consulting services to local governments in California. HdL is a consortium of three companies established to maximize local government revenues by providing audit, compliance, economic development, consulting services and software products. Its audit and consulting services include sales, use and transaction taxes, property taxes, transient occupancy taxes, and a Cannabis Management Program. HdL's systematic and coordinated approach to revenue management and economic data analysis is currently being utilized by over 500 agencies in six states. The firm currently serves 49 counties, 311 cities and 132 transactions tax districts in California.

Our knowledgeable team of professionals have more than 46 years' combined experience in the establishment and implementation of cannabis regulatory programs including establishing land-use regulations, registration processes, operation regulations for cannabis facilities, staffing plans, cost recovery, structuring cannabis business taxes and conducting compliance and financial audits.

We look forward to the opportunity to partner with the City of Marina in developing a strategy which meets your program needs. If you have any questions or require additional information, please feel free to contact me by email at anickerson@hdlcompanies.com or David McPherson at dmcpherson@hdlcompanies.com or by phone at 714.879.5000.

Sincerely,



Andy Nickerson
President, HdL Companies

II. PROPOSED SCOPE OF SERVICES

On November 6, 2018, the citizens of the City of Marina approved a ballot measure to allow commercial cannabis businesses within the City and to establish taxes and fees for such businesses. The measure established Chapter 19 of the City of Marina Municipal Code (MMC), titled the City of Marina Commercial Cannabis Activities ordinance, and makes amendments to MMC Chapter 5 Business Taxes, Licenses and Registrations and Chapter 17 Zoning. The measure took effect on April 1, 2019 and provided the regulatory framework for the City's cannabis program.

The City's ordinance allows up to 6 retailers and an unlimited number of other cannabis business types. Cannabis retailers may be in any combination of not more than 3 medicinal retailers and not more than 3 adult-use retailers. A single business that conducts both medicinal and adult-use sales would count as 1 medicinal retailer and 1 adult-use retailer for purposes of the 6-retailer maximum.

On February 5, 2019, the City Council approved a contract with HdL Companies to assist the City with implementation of its cannabis program, including designing an application process for cannabis businesses, conducting application reviews and interviews, and developing cost-recovery fees. The City accepted cannabis business applications from April 8th to June 7th, 2019 and received 12 applications for retailers. Of these, 5 are now in the permitting process. The City is also in the process of permitting and processing 3 non-retail businesses, including 1 manufacturer and 1 cultivator.

The City is now requesting that HdL provide a proposal which includes the following services:

- Continued application review services for any additional non-retail applications that may be received. These applications would be reviewed on a quality assurance basis, only, to ensure they meet a minimal standard and comply with all State and local laws. The review process would not include applicant interviews.
- Pre-license site inspections of cannabis businesses, accompanied by Police Department and Fire Department representatives, to ensure that all physical State and local cannabis site requirements have been met before the business is issued its occupancy permit.
- One annual financial audit of each cannabis business to ensure that the business is properly reporting all gross receipts and remitting the appropriate amount of cannabis tax to the City.
- One site inspection annually of each permitted cannabis business, accompanied by Police Department and Fire Department representatives, to ensure that all cannabis-specific operational requirements are being properly followed and addressed.
- Supplemental background checks of all owners, managers, principals or employees of cannabis businesses.
- Up to 20 hours of general consulting in the form of technical assistance or subject matter expertise, to be used as needed or requested by the City.

Objective 1: Application Reviews

HdL will provide application review services for any non-retail applications that may be received by the City. HdL staff will conduct an initial screening of all applications for completeness based upon an objective checklist of required documentation. This initial screening shall allow for some limited discretion in determining whether submitted documents are substantively complete but shall not otherwise consider the quality of the submissions.

Applications deemed complete will move forward for a full review. These applications would be reviewed on a quality assurance basis, only, to ensure they meet a minimal standard and comply with all State and local laws. An applicant's point score shall be based on their demonstrated ability to meet or exceed minimum requirements in each category.

Reviews shall include narrative comments that identify both strengths and weaknesses of each application as well as any deficiencies or areas of concern. Reviews shall be adequately detailed to inform the City's final approval process but shall not contain any recommendations for approval or denial, other than a numerical score.

Proposed actions described in the applications shall be considered binding conditions of any resulting permit. Failure to meet or comply with any such requirements after a permit has been granted may subject the applicant to penalties and/or revocation proceedings.

Objective 2: Pre-License Site Visits

HdL shall conduct a pre-license site visit of each cannabis business prior to issuance of a certificate of occupancy. Site visits shall verify all interior and exterior physical site security requirements have been addressed in accordance with the application and all State and local requirements. Site visits shall examine all entrances and exits, limited access areas, locks and alarm systems, access control procedures, surveillance camera locations, safes and cash management procedures, signage, operational protocols and administrative privileges associated with the license type(s) being sought, and other requirements as necessary. The HdL inspector will be accompanied on the site inspection by representatives from the Police Department and Fire Department.

The cost for this service includes an initial site-plan review and report, coordination and arrangements with the business and other agencies, 2-hour site visit, post-inspection report, all travel costs and any follow up.

Objective 3: Cannabis Tax Audits

HdL will conduct an annual financial audit to verify the accuracy of the revenue reported to the City during the review period and will recommend a tax assessment should the audit reveal any unreported revenue. As part of the process, HdL will conduct a risk based analytical review of the business using the proprietary Cannabis Analytical Tracking Solution (CATS™) program to ensure there is no diversion of product or cash. Our unique audit approach allows us to identify if a cannabis operator is under-reporting its taxes or diverting product from its facility. HdL audit staff will also use information gathered as part of the onsite

inspection to assist with the financial audit.

HdL will help the City prepare a notification letter to send to the business to start the audit. The letter will contain pertinent information about the audit, including a list of the records requested and a request for access to the business' point of sale system. HdL recommends the notification letter be sent by the City to encourage cooperation from the business and communicate HdL's authority to conduct the audit. The audit shall include:

- Gross receipts verification
- Risk based CATS™ Analytic Review
- Inventory review (subject to access to the track and trace system)
- POS data entry requirements review
- Preparation and issuance of report
- Exit conference with the City

HdL will provide a draft audit report to the commercial cannabis business. The business will be given appropriate time to respond or appeal the report in accordance with the ordinance. HdL will review any documentation provided by the business to dispute the findings and will adjust the tax assessment as necessary prior to issuing the final report to the City.

Objective 4: Regulatory Compliance Inspections

HdL will conduct one (1) on-site compliance inspection annually for each permitted cannabis business to determine compliance with State and/or local laws. If HdL identifies any non-compliant activities, we will provide the City with a recommended appropriate action to address the deficiency and to ensure future compliance by the permittee. The HdL inspector will be accompanied by representatives from the Police Department and Fire Department.

The cost for these services includes all of the following:

- Notifying permittee of pending inspection
- 2-hour on-site inspection to ensure that each business complies with all State and local laws and regulatory protocols for all of the following:
 - Inventory management
 - Cash handling procedures
 - Access control
 - Video surveillance
 - Product safety
 - Alarm system maintenance and safety
 - Lock standards
 - Packaging and labeling
 - Waste management
 - Transportation documentation
 - Surveillance equipment maintenance
 - Occupational badges
 - Business records

- Other items as necessary to ensure compliance with laws
- Preparation of a draft report detailing the findings of the inspection and providing recommendations for improvement where needed. If the inspection identifies any violations of law or other non-compliance issues, then HdL will prepare a notice to comply as an included part of the report.
- All travel costs associated with the inspection
- All phone, email and other communications involved in preparing for, scheduling and coordinating the inspections and providing the report.

The cost for this service does not include any follow-up re-inspection or review of any supplemental documents provided to address or contest any findings of non-compliance, nor does it include any assistance with the appeal of any enforcement action by the City. Any costs associated with such additional services would be billed at HdL's hourly rate.

Objective 5: Supplemental Background Checks

HdL is qualified to provide background checks of all owners, principals, managers and employees of cannabis businesses. Our background checks supplement and expand upon the State-required Live Scan information to identify other factors that local governments may wish to consider before granting discretionary business licenses or permits. These considerations may include other felony offenses, misdemeanor convictions, arrest records, civil judgements, restraining orders, the terrorist screening database, the national sex offender registry, delinquent child support payments, bankruptcies, employment and credit records, and more. Our search includes up to 5 variations on the subject's name and will alert if additional aliases are found which might warrant further investigation.

HdL offers separate rates for owners, principals or managers of cannabis businesses and for regular employees or line staff, plus a lower rate for annual renewals after the initial background check has been completed. Our rates include an HdL-designed employee identification badge with the city logo which meets all State regulatory requirements.

Objective 6: Subject Matter Expertise and Technical Assistance

HdL shall provide up to 20 hours of general consulting in the form of technical assistance and subject matter expertise to be used on an as-needed basis at the City's request. Such assistance may be used for assistance with implementation of the program or for any other purpose, including revisions to the City's ordinance, monitoring of changes to State laws and regulations, understanding of the industry, participation in conference calls, responding to staff inquiries via phone and email, reviewing staff reports to the City Council, assisting with responses to inquiries from the public or other issues yet to be determined, as requested by the City.

III. COST

The proposed services are broken down into specific line items in the cost table below. HdL's fees are based on time, materials and travel-related expenses associated with the execution of the services.

The hours and costs in the table below do not include any additional items that are not contemplated by this scope of services. Among these are review of any supplemental application materials and assistance with any appeal of any City permitting or enforcement action. Any additional services requested by the City will be billed at HdL's hourly rate. Prices are valid for 90 days from March 24, 2020.

Scope of Service Objectives	Estimated Cost
Objective 1: Application Reviews¹ Review applications on a quality assurance basis to ensure compliance with State and local laws.	\$2,500 per applicant
Objective 2: Pre-License Site Visit¹ Includes site-plan review, agency coordination, site visit, travel costs, post-inspection report and any follow up	\$1,600 per inspection
Objective 3: Cannabis Tax Audits¹ Conduct an annual financial audit of each cannabis business	\$6,000 per business per year
Objective 4: Regulatory Compliance Inspections¹ Assumes one (1) on-site compliance inspection annually	\$1,250 per business per year
Objective 5: Background Checks (initial)¹	\$300 owner/manager \$100 employee
Background Checks (renewal)¹	\$100 owner/manager \$75 employee
Objective 6: Subject Matter Expertise and Technical Assistance Assumes 20 hours per year to be used as needed by the City.	\$6,000
Additional Travel Costs as Needed	\$600 per site visit
ANNUAL COST PER BUSINESS All other costs are variables that cannot be estimated.	\$7,250
¹ Costs are recoverable from each business or applicant	

Alternate Schedules for Audits and Compliance Inspections

This proposal provides for HdL to provide one (1) financial audit and One (1) compliance inspections per year for each cannabis business. HdL is able to provide these services in other combinations or at other frequencies as may be requested by the City. The combined cost for these alternate schedules is shown below.

Combined cost per business:

- A.** Conduct one (1) financial audit annually for each permit at a rate of \$6,000.
- B.** Conduct one (1) compliance review annually for each permit at a rate of \$1,250.
- C.** Conduct one (1) financial audit and one (1) compliance review annually for each permit at a rate of \$7,250.
- D.** Conduct one (1) financial audit and two (2) compliance reviews annually for each permit at a rate of \$8,500.
- E.** Conduct one (1) financial audit and three (3) compliance reviews annually for each permit at a rate of \$9,750.
- F.** Conduct one (1) financial audit and four (4) compliance reviews annually for each permit at a rate of \$11,000.

IV. EXPERIENCE AND RESOURCES

Company Profile

Founded in 1983, HdL is a consortium of three companies established to maximize local government revenues by providing audit, compliance, economic development, consulting services and software products. Its audit and consulting services include sales, use and transaction taxes, property taxes, transient occupancy taxes, and a Cannabis Management Program. The firm also provides a variety of enterprise software processing tools for business licensing, code enforcement, animal control, building permits and tracking/billing of false alarms. HdL's systematic and coordinated approach to revenue management and economic data analysis is currently being utilized by over 500 agencies in six states. The firm currently serves 49 counties, 311 cities and 132 transactions tax districts in California.

HdL's key staff has extensive experience serving local government and many have previously held positions in city management, finance, planning, economic development or revenue collection. HdL is a Corporate Partner of the League of California Cities and California State Association of Counties and works extensively with the County Auditor's Association of California, California Society of Municipal Finance Officers (CSMFO) and California Municipal Revenue and Tax Association (CMRTA) on anticipation and planning of programs to strengthen local government revenues.

This close understanding of local government needs coupled with extensive databases and advanced methodology provides for the most relevant, productive and responsive revenue recovery; forecasting; and economic services available.

Our team of professionals has over 46 years of direct experience establishing and implementing cannabis regulatory and taxation programs, including establishing land-use regulations, permit processes, staffing plans, and cost recovery fees; structuring cannabis business tax fees; regulatory compliance; financial audits; and law enforcement training. Our team has conducted over 16,000 cannabis compliance inspections and investigations in Colorado, California and Nevada.

Key Personnel

David McPherson, Compliance Director

David McPherson works with local agencies to prepare them to mitigate regulatory issues surrounding Proposition 64 and SB 94. Prior to joining HdL, David served 28 years in local government for the County of Orange and the cities of Newport Beach, San Jose and Oakland. David's experience as a law enforcement officer, compliance auditor, and tax administrator has provided him a wealth of experience that makes him uniquely qualified to manage HdL's Cannabis Management Program. While working for the City of Oakland, he became the first Tax Administrator in the country to successfully tax, regulate and audit medical marijuana businesses. David has over 8 years of experience working with cannabis regulatory programs.

David is one of the state's most recognized experts in cannabis regulatory policies, compliance implementation and tax policies. His unique knowledge in horticulture, processing and dispensary operations while working for the City of Oakland has made him one of the pioneers in creating a Cannabis Management Program. He uses his experience to assist local and state agencies in developing cannabis policies for regulation, compliance, auditing and economic development. He worked closely with the League of Cities on the development of the Medical Cannabis Regulation and Safety Act (MCRSA) and helped shape SB 94, the Medicinal Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

David provides technical support on cannabis-related matters to the League of Cities, the Police Chief's Association, Rural County Representatives of California and the California State Association of Counties. In addition, David is working collaboratively with the Department of Consumers Affairs, Department of Food & Agriculture, Department of Health Services and the State Board of Equalization on the implementation of best practices for regulating the cannabis industry for local agencies.

David received his Bachelor's Degree in History from California State University, Concord and his Master's Degree in Public Administration from California State University, Long Beach. While at Long Beach, he was named "Future Urban Administrator of the Year".

Matt Eaton, Deputy Compliance Director

Matt Eaton is the Compliance Deputy Director at HdL and plays a critical role in implementing the Cannabis Compliance Program for local agencies. Prior to joining the firm, he was a progressive law enforcement professional with 29 years' experience conducting criminal/regulatory investigations, and corporate/individual background investigations.

While working as a Supervisory Investigator at the Colorado Department of Revenue in the Marijuana Enforcement Division (MED), Matt managed criminal investigators and civilian staff in the Denver Metro and Longmont field offices. During his six-year tenure at the MED, he conducted approximately 10,000 criminal investigations and compliance reviews which included regulatory and financial investigations. In addition, he is a subject matter expert on track and trace systems. He understands the complexity of reviewing data to ensure businesses are in compliance with state and local regulations. Matt was responsible for planning, developing and implementing report and field inspection protocols for the agency. He also played an instrumental role in recommending changes to current regulations and identifying essential language for new legislation in Colorado. Matt is well known for his ability to maintain working relationships with cannabis industry leaders and external stakeholders in resolving issues.

Matt received his Bachelor of Science Degree from Biola University and currently maintains a Colorado Post Certificate. He has also served as an adjunct instructor teaching law enforcement principle related to criminology, correctional processes, procedural law, interviews, interrogations and criminal evidence at AIMS Community College in Greeley, Colorado.

Tim Cromartie, Senior Policy Advisor

Tim Cromartie is a Senior Policy Advisor at HdL, in which his primary role is providing policy expertise related to cannabis regulatory and tax policies at the state and local level. Prior to joining HdL, Tim served as the legislative representative covering public safety issues for the League of California Cities since 2013, with a heavy emphasis on shaping legislation governing state and local regulation of marijuana. He has been actively involved in educating cities on changes in the law resulting from the Medical Cannabis Regulation and Safety Act, as well as Proposition 64, the Adult Use of Marijuana Act. When these two Acts were merged into a single regulatory structure in 2017, Tim successfully advocated for clarification of local government's regulatory and enforcement authority in the cannabis context, and for related environmental safeguards in cultivation operations, protections against over-concentration of businesses, regulation of testing labs, and the inclusion of fire safety standards and a definition of volatile solvents in state law governing cannabis manufacturing operations. Since then he has been engaged in educating local governments on the more recent Medical and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), as well as advocating for a reduction in the cumulative state tax rate for cannabis, improvements in the state's track-and-trace program, and the restoration of a statewide cultivation cap.

Prior to the League, he held a variety of positions in the Legislature and state government, including legislative representative for CalPERS Governmental Affairs, legislative director and public safety consultant to former state Senator Gloria Romero, and field representative for Congresswoman Barbara Lee during her term in the state Senate. Mr. Cromartie holds degrees from the University of California at Berkeley (B.A. Political Science) and UC Hastings College of the Law. Tim is an ardent aviation buff and a member of the California Aerospace Museum at the site of the former McClellan Air Force Base in Sacramento.

Christina Altringer, Audit Manager

Christina Altringer is the Audit Manager at HdL. Her primary role is to oversee the audit staff, conduct forensic audits, review staffs reports, and be the point person to work directly with client cities and counties as it pertains to financial audits. In addition, she is responsible for managing and developing the data intelligence CATS™ program. Furthermore, in preparation of conducting forensic audits she also prepares Tax Analytical Remittance Report (TARR) summaries to evaluate under reporting or anomalies in the remittance of tax payments to local jurisdictions.

Kristina previously worked as a Forensic Accountant for the Federal Bureau of Investigation (FBI). In this role, she investigated alleged violations of federal and state laws for bribery and kickbacks, corruption, money laundering, white collar and health care fraud as well as drug trafficking. She also conducted blockchain analysis for virtual currency transactions. Prior to working with the FBI she worked at a Public Accounting firm as a Certified Public Accountant.

She earned her Bachelor of Science degree in Accounting from Minnesota State. Christina is also a Certified Public Accountant and a Certified Fraud Examiner.

Mark Lovelace, Senior Policy Advisor

Mark Lovelace has 16 years of broad experience in public policy, community engagement and advocacy and is recognized as a leader in advancing the statewide discussion of medical and recreational cannabis as a policy issue in California.

Mark served on the Humboldt County Board of Supervisors from 2009 through 2016 where he was instrumental in developing a comprehensive approach to regulating cannabis, including a voter-approved tax on commercial cultivation and an innovative track and trace pilot program. Mark established and co-chaired the Medical Marijuana Working Group for the California State Association of Counties (CSAC) and helped draft CSAC's legislative platform for cannabis issues. Mark pioneered the first-ever six-County regional summit on cannabis issues in 2015 which resulted in the North Coast Counties Marijuana Policy Statement. His work and input were pivotal in guiding the development of SB 643 and AB 243, two components of the Medical Cannabis Regulation and Safety Act (MCRSA).

Mark has worked extensively with public agencies and statewide associations on cannabis issues, including CSAC, Rural County Representatives of California, the Association of California Water Agencies, the North Coast Resource Partnership, California Department of Fish and Wildlife, the State Water Board, the North Coast Regional Water Board, the Bureau of Cannabis Control, state legislators, the Department of Justice, members of Congress and others. He has led numerous presentations, workshops and panel discussions on cannabis issues and has been a sought-after speaker on the topic for government agencies, community organizations and cannabis industry groups.

Mark received his Bachelor of Science degree in Industrial Design from California State University, San Jose. Prior to his time on the Board, he worked for many years as a respected advocate on land use, planning, development and environmental issues.

Kami Miller, Senior Compliance Inspector

Kami Miller is a Senior Compliance Inspector at HdL whose primary role is to ensure cannabis compliance and identify the risk assessment in the supply chain process of each permitted business. Prior to joining the firm, she served three years as a Marijuana Compliance Manager for the Department of Public Behavior and Health (DPBH) for the State of Nevada. During this time Kami played a key role in Nevada's implementation of its Medical Marijuana Program in which she was responsible for statewide monitoring of medical marijuana facilities that included cultivation, production, testing labs and retail stores.

During her tenure at the DPBH, Kami managed compliance auditors and support staff in the Las Vegas office. She conducted approximately 1,000 compliance and financial inspections for which she developed the inspection protocols documentation to create comprehensive reports. In addition, her experience with various cannabis track and trace systems allowed her to develop industry supply chain practices for the Department of Taxation.

Kami received her Bachelor of Business Administration in E-Commerce and Supply Chain Management from Tennessee State University.

Elizabeth Eumurian, Senior Auditor

Elizabeth Eumurian is a Senior Auditor at HdL. Her primary role is to conduct financial audits, evaluate cannabis applications and conduct background checks. As part of the audit program, she will be conducting and preparing analytical information through the CATS™ program to prepare Tax Analytical Remittance Reports (TARR) summaries to evaluate under reporting or anomalies in the remittance of tax payments to local jurisdictions.

Elizabeth previously worked as a senior auditor in the entertainment industry. In this role, she executed testing procedures for targeted audit programs, analyzed findings and prepared audit and compliance reports. She also has experience working for a large financial institution analyzing data for reporting anomalies and performing internal audits. Elizabeth has recently done work for Blythe, California City, Coachella, Cotati, Desert Hot Springs, Long Beach, Mammoth Lakes, Moreno Valley, Perris, San Bernardino, and Vallejo.

She earned her Bachelor of Arts degree in History from California State University, Concord. She has also received a certificate in CannaBusiness from Oaksterdam University.

Michelle Shaw, Compliance Inspector

Michelle is a Compliance Inspector at HdL and is tasked with conducting onsite inspections, examinations and other actions to monitor compliance with established standards for local licensed cannabis businesses. Prior to joining HdL, she was a Compliance Specialist Officer at a large, multinational bank where she managed, validated and oversaw the effectiveness and accuracy of numerous compliance issues within the consumer retail space. Throughout her eight years of experience at the bank, she performed onsite assessments of affiliate businesses to determine compliance/non-compliance of their processes and procedures pursuant to bank standards and state regulations.

A graduate of Cypress College, Michelle holds a Foundations of Banking Risk certificate from the Global Association of Risk Professionals and a paralegal certificate from the Southern California College of Business and Law.

Alfredo Marquez, Senior Auditor

Alfredo Marquez is a Senior Auditor at HdL. His primary role is to conduct financial audits. Alfredo previously worked for Teledyne Technologies analyzing risk assessments for acquiring new businesses and various units in the organization. In this role he worked with people at various levels in the organization and successfully conducted financial, Sarbanes Oxley and compliance audits across North America, Latin America, Europe, and Asia. Alfredo has recently done work for Cotati, Cloverdale, Desert Hot Springs, Mammoth, Perris, and Vallejo. He earned his Bachelor's Degree in Accounting from the University of La Verne.

V. REFERENCES

City of Modesto

Steve Mitchell
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City of Watsonville

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City of Desert Hot Springs

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City of Port Hueneme

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City of Vallejo

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Assistant to the City Manager
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**CITY OF MARINA
AGREEMENT FOR CONSULTANT SERVICES**

Cannabis Management Program

THIS AGREEMENT is made and entered into on April 7, 2020, by and between the City of Marina, a California charter city, hereinafter referred to as the "City," and Hinderliter, De Llamas & Associates, a California corporation, dba HdL Companies, hereinafter referred to as the "Consultant." City and Consultant are sometimes individually referred to as "party" and collectively as "parties" in this Agreement.

Recitals

- A. At the November 6, 2018 General Municipal Election, the citizens of the City of Marina enacted an ordinance entitled "An Ordinance of the People of the City of Marina Allow Cannabis Business Activity and Establishing Taxes and Fees for Such Businesses within the City of Marina, Amending Title and Chapter Establishing Cannabis Business Activities as a Use Allowed Subject to a Use Permit in Specified Zones and Establishing Uses to Protect Public Health, Safety and Welfare" (the "Ordinance").
- B. Said Ordinance went into effect on April 1, 2019.
- C. The use, sale, and possession of cannabis over 0.3% Tetrahydrocannabinol in the United States is illegal under federal law.
- D. The regulation, compliance, taxation of cannabis, and an ongoing evolution of the State of California's Medical Cannabis Regulation and Safety Act (MCRSA) and Proposition 64, Adult Use Marijuana Act (AUMA) and State regulations implementing these initiatives, are complex and filled with challenging issues.
- E. On May 17, 2019, City and Consultant entered into an Agreement for Consultant to provide Cannabis Manage Program services on a time and materials basis for a not to exceed cost of \$49,500 to be funded 100% from the applications and licenses charged to applicants for cannabis licenses, including developing applications, an application ratings system, reviewing applications for compliance, performing facility inspections, conducting compliance and financial audits and developing application fees to ensure the City recovers the cost of reviewing materials and conducting hearings before the Planning Commission and City Council. That Agreement terminated on February 5, 2020.
- F. City desires to again retain Consultant to provide subject matter expertise and technical support for ongoing implementation and monitoring of the City's cannabis program including continued application reviews, annual financial audits and compliance inspections of cannabis businesses, pre-license site visits, supplemental background checks and up to 20 hours of general consulting as needed hereinafter referred to as the "Project."
- G. Consultant represents and warrants that it has the qualifications, experience and personnel necessary to properly perform the services as set forth herein.
- H. City desires to again retain Consultant to provide such services.

Terms and Conditions

For of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises contained herein, City and Consultant agree to the following terms and conditions:

1. Scope of Work.

(a) Consultant is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in Exhibit "A" attached hereto ("Scope of Work") and by this reference made a part hereof. With prior written notice to Consultant, City may elect to delete certain tasks of the Scope of Work at its sole discretion.

(b) Consultant shall perform all such work with skill and diligence and pursuant to generally accepted standards of practice in effect at the time of performance. Consultant shall provide corrective services without charge to the City for work which fails to meet these standards and which is reported to Consultant in writing within sixty days of discovery. Should Consultant fail or refuse to perform promptly its obligations under this Agreement, the City may render or undertake the performance thereof and the Consultant shall be liable for any expenses thereby incurred.

(c) If services under this Agreement are to be performed by a design professional, as that term is defined in California Civil Code §2782.8(b)(2), design professional certifies that all design professional services shall be provided by a person or persons duly licensed by the State of California to provide the type of services described in Section 1(a). By delivery of completed work, design professional certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws, and the professional standard of care in California.

(d) Consultant is responsible for making an independent evaluation and judgment of all relevant conditions affecting performance of the work, including without limitation site conditions, existing facilities, seismic, geologic, soils, hydrologic, geographic, climatic conditions, applicable federal, state and local laws and regulations and all other contingencies or considerations.

(e) City shall cooperate with Consultant and will furnish all information data, records and reports existing and available to City to enable Consultant to carry out work outlined in Exhibit "A." Consultant shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Consultant which were furnished to the City by a third party. Consultant shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Consultant by the City or a third party.

2. Term of Agreement & Commencement of Work.

(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on May 31, 2021, unless extended by amendment or

terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the board, officer or employee authorized to give such approval; and

(ii) The office of the City Attorney has indicated in writing its approval of this Agreement as to form; and

(iii) This Agreement has been signed on behalf of Consultant by the person or persons authorized to bind the Consultant hereto; and.

(iv) This Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the officer or employee authorized to enter into this Contract and is attested to by the Marina City Clerk.

(b) Consultant shall commence work on the Project upon the date of full execution of this Agreement. This Agreement may be extended upon written agreement of both parties. Consultant may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A, and to perform the work in accordance with the approved schedule.

3. Compensation.

(a) City liability for compensation to Consultant under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Consultant in an amount not to exceed Fifty Thousand dollars (\$50,000.00) in accordance with the provisions of this Section and the Fee Schedule attached hereto in Exhibit A and incorporated herein by this reference

(b) Invoice(s) in a format and on a schedule acceptable to the City shall be submitted to and be reviewed and verified by the Project Administrator (see Section 5(a)) and forwarded to the City's Finance Department for payment. City shall notify Consultant of exceptions or disputed items and their dollar value within fifteen days of receipt. Payment of the undisputed amount of the invoice will typically be made approximately thirty days after the invoice is submitted to the Finance Department.

(c) Consultant will maintain clearly identifiable, complete and accurate records with respect to all costs incurred under this Agreement on an industry recognized accounting basis. Consultant shall make available to the representative of City all such books and records related to this Agreement, and the right to examine, copy and audit the same during regular business hours upon 24-hour's notice for a period of four years from the date of final payment under this Agreement.

(d) Consultant shall not receive any compensation for Extra Work without the prior written authorization of City. As used herein, "Extra Work" means any work that is determined by the City to be necessary for the proper completion of the Project but which is not included within the Scope of Work and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with Exhibit A.

(e) Expenses not otherwise addressed in the Scope of Services or the Fee Schedule incurred by Consultant in performing services under this Agreement shall be reviewed and approved in advance by the Project Administrator (Section 5(a)), be charged at cost and reimbursed to Consultant.

(f) There shall be no charge for transportation within Monterey, Santa Cruz and San Benito Counties required for the performance of the services under this Agreement; travel to other locations must be approved in writing and in advance by the City, mileage will be charged at the then current standard rate for business travel as set by the U.S. Internal Revenue Service for such approved travel.

4. Termination or Suspension.

(a) This Agreement may be terminated in whole or in part in writing by either party in the event of a substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given (1) not less than ten days written notice of intent to terminate, and (2) provided an opportunity for consultation with the terminating party prior to termination.

(b) If termination for default is effected by the City, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due the Consultant at the time of termination may be adjusted to cover any additional costs to the City because of the Consultant's default. If after the termination for failure of Consultant to fulfill its contractual obligations, it is determined that the Consultant had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the City.

(c) The City may terminate or suspend this Agreement at any time for its convenience upon not less than thirty days prior written notice to Consultant. Not later than the effective date of such termination or suspension, Consultant shall discontinue all affected work and deliver all work product and other documents, whether completed or in progress, to the City.

(d) If termination for default is effected by the Consultant or if termination for convenience is effected by the City, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for termination shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by Consultant relating to written commitments that were executed prior to the termination.

5. Project Administrator, Project Manager & Key Personnel.

(a) City designates as its Project Administrator Matt Mogensen, Assistant City Manager who shall have the authority to act for the City under this Agreement. The Project Administrator or his/her authorized representative shall represent the City in all matters pertaining to the work to be performed pursuant to this Agreement.

(b) Consultant designates David McPherson, Cannabis Services Director as its Project Manager who shall coordinate all phases of the Project. The Project manager shall be available to City at all reasonable times during the Agreement term.

(c) Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement. Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of services upon written request of City. Consultant has represented to City that certain key personnel will perform and coordinate the work under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of the City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. The key personnel for performance of this Agreement are as follows: David McPherson, Compliance Director; Matt Eaton, Cannabis Compliance Director; Tim Cromartie, Senior Policy Advisor; Christin Altringer, Audit Manager, Mark Lovelace, Senior Policy Advisor; Kami Miller, Senior Compliance Inspector, Elizabeth Eumurian, Senior Auditor; Michelle Shaw, Compliance Inspector, and Alfredo Marquez.

6. Delegation of Work.

(a) If Consultant utilizes any subcontractors, consultants, persons, employees or firms having applicable expertise to assist Consultant in performing the services under this Agreement, Consultant shall obtain City's prior written approval to such employment. Consultant's contract with any subcontractor shall contain a provision making the subcontract subject to all provisions of this Agreement. Consultant will be fully responsible and liable for payment for, administration, completion, presentation, and quality of all work performed. If such persons are utilized, they shall be charged at cost. City reserves its right to employ other contractors in connection with this Project.

(b) The City is an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between the subcontractor and the City.

7. Skill of Employees. Consultant shall ensure that any employees or agents providing services under this Agreement possess the requisite skill, training and experience to properly perform such services.

8. Confidential and Proprietary Information. In the course of performing services under this Agreement Consultant may obtain, receive, and review confidential or proprietary documents, information or materials that are and shall remain the exclusive property of the City. Should Consultant undertake the work on behalf of other agencies, entities, firms or persons relating to the matters described in the Scope of Work, it is expressly agreed by Consultant that any such confidential or proprietary information or materials shall not be provided or disclosed in any manner to any of Consultant's other clients, or to any other third party, without the City's prior express written consent.

9. Ownership of Data. Unless otherwise provided for herein, all documents, material, data, drawings, plans, specifications, computer data files, basis for design calculations, engineering notes, and reports originated and prepared by Consultant, or any subcontractor of any tier, under this Agreement shall be and remain the property of the City for its use in any manner it deems appropriate. Consultant agrees that all

copyrights which arise from creation of the work pursuant to this Agreement shall be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant shall provide two (2) sets of reproducible of the above-cited items, except for the computer data files which shall consist of one (1) set. Consultant shall use all reasonable efforts to ensure that any electronic files provided to the City will be compatible with the City's computer hardware and software. Consultant makes no representation as to long-term compatibility, usability or readability of the format resulting from the use of software application packages, operating systems or computer hardware differing from those in use by the City at the commencement of this Agreement. Consultant shall be permitted to maintain copies of all such data for its files. City acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work and, should City use these products or data in connection with additions to the work required under this Agreement or for new work without consultation with and without additional compensation to Consultant, Consultant makes no representation as to the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Work and shall have no liability or responsibility whatsoever in connection with such use which shall be at the City's sole risk. Any and all liability arising out of changes made by the City to Consultant's deliverables is waived against Consultant unless City has given Consultant prior written notice of the changes and has received Consultant's written consent to such changes.

10. Conflict of Interest.

(a) Consultant covenants that neither it, nor any officer or principal of its firm has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of the City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of the City in the performance of this Agreement. Consultant shall represent the interest of the City in any discussion or negotiation with cannabis business applicants or permittees, and as such, may not accept compensation, commission or payment of any type from any such party or such party's agent.

(b) City understands and acknowledges that Consultant may be, as of the date of commencement of services under this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of the City relative to such projects. Any future position of the City on such projects may result in a conflict of interest for purposes of this section.

(c) No official or employee of the City who is authorized in such capacity on behalf of the City to negotiate, make, accept, or approve, or take part in negotiating, making accepting or approving this contract, shall become directly or indirectly interested in this contract or in any part thereof. No officer or employee of the City who is authorized in such capacity and on behalf of the City to exercise any executive, supervisory, or similar function in connection with the performance of this contract shall become directly or indirectly interested personally in this contract or any part thereof.

11. Disclosure. Consultant may be subject to the appropriate disclosure requirements of the California Fair Political Practices Act, as determined by the City Manager.

12. Non-Discrimination.

(a) During the performance of this Agreement the Consultant shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California and the City. In performing this Agreement, Consultant shall not discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), sexual orientation, medical condition (including cancer), age, marital status, denial of family and medical care leave and denial of pregnancy disability leave. Consultant shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement.

(b) Consultant shall include the nondiscrimination and compliance provisions of this Section in all subcontracts.

13. Indemnification.

(a) To the full extent permitted by law, except as stated in Subsection (b) below, Consultant shall indemnify, immediately defend (with independent counsel reasonably acceptable to the City) and hold harmless the City, its Council, boards, commissions, employees, officials and agents (collectively "Indemnified Parties" or in the singular "Indemnified Party") from and against any claim, loss, damages, penalty, fine and judgment, associated investigation and administrative expense, and defense cost including but not limited to reasonable attorney's fees, court costs, expert witness fee and cost of alternate dispute resolution (in the singular "Liability" and collectively "Liabilities"), where same arise out of the performance of this Agreement by Consultant, its officers, employees, agents and sub-contractors. The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify and Consultant shall be obligated to defend in all legal, equitable, administrative or special proceedings encompassed by the scope of Consultant's duty to defend and indemnify upon tender to the Consultant of any claim in any form or at any stage of an action or proceeding, whether or not liability is established and the obligation extends through final judgment including exhaustion of any appeals.. The Consultant's obligation to indemnify applies unless it is finally determined that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally determined that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, the Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) Nothing in this Agreement constitutes advice by Consultant to the City to violate any existing law. The scope of Consultant's duty to defend and indemnify the City shall not extend to: (1) Liability arising directly or indirectly out of the City's adoption or its application of the provisions of the Ordinance allowing cannabis business activity including, but not necessarily limited to, the commercial sale or the consumption of cannabis or cannabis containing products; or (2) Liability arising directly or indirectly out of the discretionary acts of the City or the acts of any City appointed or elected official or

City employee in reviewing, rejecting, granting, or denying an application or permit for cannabis business activity, unless in either circumstance, the City decision was reliant upon information negligently provided or omitted by Consultant..

(c) The provisions of this Section are not limited by the provisions of sections relating to insurance including provisions of any worker's compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its employees and officials. An allegation or determination of comparative active negligence or willful misconduct by an Indemnified Party does not relieve Consultant from its separate and distinct obligation to defend City. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance or subject matter of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder.

(d) If any action or proceeding is brought against any Indemnified Party by reason of any of the matters against which the Consultant has agreed to provide an immediate defense to any Indemnified Party, as provided above, Consultant, upon notice from the City, shall defend the Indemnified Party at Consultant's expense by independent counsel reasonably acceptable to the City. Unless otherwise provided above, an Indemnified Party need not have first paid for any of the matters to which it is entitled to indemnification in order to be so defended. Consultant may submit a claim to the City for reasonable defense costs (including attorney's and expert fees) incurred in providing a defense of any Indemnified Party to the extent such defense costs arise under principals of comparative fault from the Indemnified Party's active negligence, recklessness or willful misconduct.

(e) This obligation to indemnify and defend, as set forth herein, is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this Section.

14. Insurance.

(a) As a condition precedent to the effectiveness of this Agreement and without limiting Consultant's indemnification of the City, Consultant agrees to obtain and maintain in full force and effect at its own expense the insurance policies set forth in Exhibit "B" "Insurance" attached hereto and made a part hereof. Consultant shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf, along with copies of all required endorsements. All certificates and endorsements must be received and approved by the City before any work commences. All insurance policies shall be subject to approval by the City Attorney and Risk Manager as to form and content. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2) provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Consultant's insurance is not expected to respond to claims that may arise from the acts or omissions of the City.

(b) City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required herein by giving Consultant ninety days advance written notice of such change. If such change should result in substantial additional cost of the Consultant, City agrees to negotiate additional compensation proportional to the increased benefit to City.

(c) All required insurance must be submitted and approved the City Attorney and Risk Manager prior to the inception of any operations by Consultant.

(d) The required coverage and limits are subject to availability on the open market at reasonable cost as determined by the City. Non availability or non affordability must be documented by a letter from Consultant's insurance broker or agency indicating a good faith effort to place the required insurance and showing as a minimum the names of the insurance carriers and the declinations or quotations received from each. Within the foregoing constraints, Consultant's failure to procure or maintain required insurance during the entire term of this Agreement shall constitute a material breach of this Agreement under which City may immediately suspend or terminate this Agreement or, at its discretion, procure or renew such insurance to protect City's interests and pay any and all premium in connection therewith and recover all monies so paid from Consultant.

(e) By signing this Agreement, Consultant hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of that Code, and that it will comply with such provisions at all such times as they may apply during the performance of the work pursuant to this Contract. Unless otherwise agreed, a waiver of subrogation in favor of the City is required.

15. Independent Contractor. The parties agree that Consultant, its officers, employees and agents, if any, shall be independent contractors with regard to the providing of services under this Agreement, and that Contractor's employees or agents shall not be considered to be employees or agents of the City for any purpose and will not be entitled to any of the benefits City provides for its employees. City shall make no deductions for payroll taxes or Social Security from amounts due Consultant for work or services provided under this Agreement.

16. Claims for Labor and Materials. Consultant shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Agreement, so as to prevent any lien or other claim under any provision of law from arising against any City property (including reports, documents, and other tangible matter produced by the Consultant hereunder), against the Consultant's rights to payments hereunder, or against the City, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

17. Discounts. Consultant agrees to offer the City any discount terms that are offered to its best customers for the goods and services to be provided herein, and apply such discounts to payment made under this Agreement which meet the discount terms.

18. Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

19. Dispute Resolution. If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties shall first meet and confer in a good faith attempt to resolve the matter between themselves. If the dispute is not resolved by meeting and conferring, the matter shall be submitted for formal mediation to a mediator selected mutually by the parties. The expenses of such mediation shall be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of the matter not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have the arbitration proceed on an informal basis; however, if the parties are unable so to agree, then the arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of the arbitrator shall be binding, unless within thirty days after issuance of the arbitrator's written decision, any party files an action in court. Venue and jurisdiction for any such action between the parties shall lie in the Superior Court for the County of Monterey.

20. Compliance with Laws.

(a) Each party's performance hereunder shall comply with all applicable laws of the State of California and the City including but not limited to laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Agreement shall be governed by, enforced and interpreted under the laws of the State of California. Consultant shall comply with new, amended or revised laws, regulations or procedures that apply to the performance of this Agreement.

(b) Consultant represents that it has obtained and presently holds all permits and licenses necessary for performance hereunder, including a Business License required by the City's Business License Ordinance (Title 5 of the Marina Municipal Code) for which a business license tax is prescribed and assessed at the rate of two-tenths percent (0.002) of gross receipts, in accordance with the provisions therein. For the term covered by this Agreement, the Consultant shall maintain or obtain as necessary, such permits and licenses and shall not allow them to lapse, be revoked or suspended.

21. Assignment or Transfer. This Agreement or any interest herein may not be assigned, hypothecated or transferred, either directly or by operation of law, without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

22. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or by certified mail, postage prepaid with return receipt requested, addressed as follows:

To City: City Manager
City of Marina City Hall
211 Hillcrest Avenue
Marina, California 93933

To Consultant: Andrew Nickerson
President
HdL Companies
120 South State College Blvd, Suite 200
Brea, CA 92821

Notice shall be deemed effective on the date personally delivered or if mailed, three days after deposit in the custody of the U.S. Postal Service. A copy of any notice sent as provided herein shall also be delivered to the Project Administrator and Project Manager.

23. Amendments, Changes or Modifications. This Agreement is not subject to amendment, change or modification except by a writing signed by the authorized representatives of City and Consultant.

24. Force Majeure. Notwithstanding any other provisions hereof, neither Consultant nor City shall be held responsible or liable for failure to meet their respective obligations under this Agreement if such failure shall be due to causes beyond Consultant's or the City's control except that an economic downturn of any type shall not be a justifiable cause for the failure to meet their respective obligations under this Agreement. Such causes include but are not limited to: strike, fire, flood, civil disorder, act of God or of the public enemy, act of the federal government, or any unit of state or local government in either sovereign or contractual capacity, epidemic, quarantine restriction, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

25. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

26. Successors and Assigns. All of the terms, conditions and provisions of this Agreement shall apply to and bind the respective heirs, executors, administrators, successors, and assigns of the parties. Nothing in this paragraph is intended to affect the limitation on assignment.

27. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective party.

28. Waiver. A waiver of a default of any term of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

29. Severability. Should any portion of this Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Agreement will continue as modified.

30. Construction, References, Captions. Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. The captions of the various sections are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, content or intent of this Agreement.

31. Advice of Counsel. The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor or against either party by reason of the extent to which each party participated in the drafting of this Agreement.

32. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

33. Time. Time is of the essence in this contract.

34. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters as set forth in this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement shall be binding or valid.

IN WITNESS WHEREOF, Consultant and the City by their duly authorized representatives, have executed this Agreement, on the dates set forth below.

CITY OF MARINA

HdL COMPANIES

By: _____

Name: Layne Long

Its: City Manager

Date: _____

Attest: (Pursuant to Reso: 2020 - _____)

By: _____

Name: Andrew Nickerson____

Its: President_____

Date: _____

By: _____

Anita Shepherd Sharp
Deputy City Clerk

Approved as to form:

By: _____

Robert W. Rathie
For the City Attorney

INSERT EXHIBIT A

Section 1 (a)

- SCOPE OF WORK –

**Insert HdL's Proposal for Cannabis Management Services
Dated March 24, 2020**

[Include Work Schedule if required.]

Exhibit B - Insurance

Consultant agrees to provide insurance in accordance with the requirements set forth herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant shall furnish the City with original certificates of insurance, manually autographed in ink by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the City before any work commences. The City reserves its right to require complete, certified copies of all required insurance policies at any time. The following coverage will be provided by Consultant and maintained on behalf of the City and in accordance with the requirements set forth herein.

Commercial General Liability (primary). Commercial general liability insurance covering Consultant's operations (and products where applicable) is required whenever the City is at risk of third party claims which may arise out of Consultant's work or presence on City premises. Contractual liability coverage is a required inclusion in this insurance.

General liability insurance coverage shall be at least as broad as ISO form CG 00 01 10 01 and approved in advance by the City Attorney and Risk Manager. Total limits shall be no less than one million dollars (\$1,000,000) combined single limit per occurrence for general liability, bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Project or the general aggregate limit shall be two million dollars (\$2,000,000). Consultant must give written notice to the City of any pending claim, action or lawsuit which has or may diminish the aggregate. If any such claim or lawsuit exists, Consultant shall be required, prior to commencing work under this Agreement, to restore the impaired aggregate or prove it has replacement insurance protection to the satisfaction of the City Attorney and Risk Manager.

City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contains the provisions required by this contract. Coverage shall apply on a primary, non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage is not expected to respond to the claims which may arise from the acts or omissions of the City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

Umbrella Liability Insurance. Umbrella liability insurance (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a “drop down” provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage.

Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policies limits shall be not less than one million dollars (\$1,000,000) per occurrence and in the aggregate, above any limits required in the underlying policies shall have starting and ending dates concurrent with the underlying coverage.

Business Auto. Automobile liability insurance is required where vehicles are used in performing the work under this Agreement or where vehicles are driven off-road on City premises, it is not required for simple commuting unless City is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

If automobile insurance is required for work under this Agreement coverage shall be at least as broad as ISO form CG 00 01 10 01 including symbol 1 (Any Auto) approved by the City Attorney and Risk Manager. Coverage shall be endorsed to stated that the City, its Council, boards and commissions, officers, employees, agents and volunteers shall be added as additional insured with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible with a form equivalent to ISO form CG 20 10 10 93. Limits shall be no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage. Starting and ending dates shall be concurrent. If Consultant owns no autos, a non-owned auto endorsement to the commercial general liability policy described above is acceptable.

Workers' Compensation/Employers' Liability. Workers' Compensation and Employer's Liability insurance are not required for single-person contractors. However, under California law these coverages (or a copy of the State's Consent to Self-Insure) must be provided if Consultant has any employees at any time during the period of this Agreement. Policy(s) shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease and shall be scheduled under any umbrella policy described above. Unless otherwise agreed, policy(s) shall be endorsed to waive any right of subrogation as respects the City, its Council, boards and commissions, officers, employees, agents and volunteers.

Property Insurance. Property insurance, in a form and amount approved by the City Attorney and Risk Manager, is required for Consultants having exclusive use of premises or equipment owned or controlled by the City. City is to be named a Loss Payee “As Its Interest May Appear” in property insurance in which the City has an interest, e.g., as a lien holder. Fire damage legal liability is required for persons occupying a portion of City premises.

Errors and Omissions/Professional Liability. Errors and Omissions or professional liability coverage appropriate to Consultant's profession, in a form and amount approved by the City Attorney and Risk Manager, will be specified on a project-by-project basis if Consultant is working as a licensed professional. Consultant shall maintain such insurance for a period of five years following completion of the project. Such insurance shall be in an amount of not less than one million dollars (\$1,000,000) per claim and in annual aggregate. Design professionals shall maintain such insurance in place until the expiration of the warranty period of the Project.

Consultant and City further agree as follows:

a) This Exhibit supersedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

b) Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.

c) All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d) Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

e) For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or toward performance of this Agreement.

f) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Consultant, Consultant's employees, or agents from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.

g) Consultant's insurance shall be written by an acceptable insurance provided, as determined by the City, which satisfies the following minimum requirements: An insurance carrier authorized and admitted to do business in the State of California and maintaining an agent for service of process within the state. Such insurance carrier shall maintain a current "A.M. Best" rating classification of "A-" or better and a financial size of \$10 million to \$24 million (Class V) or better, or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Self-insurance will not be considered to comply with these insurance specifications. Workers Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Consultant shall provide proof of the carrier's A-V rating to the City.

h) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant.

i) Consultant agrees to provide evidence of the insurance required herein, satisfactory to City Attorney and Risk Manager, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional endorsement to Consultant's general liability and umbrella liability policies. Certificate(s) are to reflect that the insurer will provide at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Consultant agrees to provide complete copies of policies to City within ten days of City's request for said copies.

j) Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

k) Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any additional insured, in this or any other regard.

l) Consultant agrees to require all subcontractors or other parties hired for this Project to provide workers' compensation insurance as required herein and general liability insurance naming as additional insureds all parties to this Agreement. Consultant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Consultant agrees to require that no contract used by any subcontractor, or contracts Consultant enters into on behalf of City, will reserve the right to charge back to City the cost of insurance

required by this Agreement. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant contracts with on behalf of City will be submitted to City for review. Consultant acknowledges that such contracts or agreements may require modification if the insurance requirements do not reflect the requirements herein. Failure of City to request copies of such agreements will not impose any liability on City, its Council, boards and commissions, officers, employees, agents and volunteers.

m) If Consultant is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

n) Consultant agrees to provide immediate notice to City of any claim or loss against Consultant that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

o) Coverage will not be limited to the specific location or individual entity designated as the address of the Project. Consultant agrees to have its coverage endorsed so that all coverage limits required pursuant to this requirement are available separately for each and every location at which Consultant conducts operations of any type on behalf of City. Consultant warrants that these limits will not be reduced or exhausted except for losses attributable to those specific locations and not by losses attributable to any other operations of Consultant.

p) Consultant agrees not to attempt to avoid its defense and indemnity obligations to City, its Council, boards and commissions, officers, employees, agents and volunteers by using as a defense Consultant's statutory immunity under workers' compensation or similar statutes.

r) Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Consultant and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with City or its employees.

s) Consultant shall maintain commercial general liability, and if necessary, commercial umbrella liability insurance, with a limit of not less than one million dollars (\$1,000,000) each occurrence for at least three years following substantial completion of the work.

April 9, 2020

Item No: ~~8g(1)~~ - **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 7, 2020
April 21, 2020

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2020-,
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT
WITH HDL COMPANIES NOT TO EXCEED \$50,000 TO PROVIDE
CANNABIS PROGRAM APPLICATION REVIEW, TAX AUDITS,
COMPLIANCE INSPECTIONS, BACKGROUND CHECKS, AND
SUBJECT MATTER EXPERTISE AND TECHNICAL SUPPORT**

REQUEST:

It is requested that City Council consider:

1. Adopting Resolution No. 2020-, authorizing the City Manager to execute a contract with HdL Companies not to exceed \$50,000 to provide cannabis program application review, tax audits, compliance inspections, background checks, and subject matter expertise and technical support, subject to final review and approval by the City Attorney.
2. Authorizing Finance Director to make appropriate accounting and budgetary entries.

BACKGROUND:

On November 6, 2018, the citizens of the City of Marina passed an Ordinance allowing Cannabis Business Activity and Establishing Taxes and Fees for such Businesses within the City of Marina. The voter initiative established Chapter 19 of the City of Marina Municipal Code (MMC), titled the City of Marina Commercial Cannabis Activities ordinance, and made amendments to MMC Chapter 5 Business Taxes, Licenses and Registrations and Chapter 17 Zoning. Per the voter initiative, the ordinance took effect on April 1, 2019.

On February 5, 2019, the City Council approved an Agreement with Hinderliter, De Llamas & Associates, Inc. (dba HdL) to provide cannabis program subject matter expertise, to develop and manage the process to select review cannabis business applications, to provide inspection compliance services and to conduct a cost recovery study for the creation of application fees. This agreement expired on February 5, 2020.

Under the prior agreement, HdL: developed the rules and procedures for the cannabis business application process; conducted a cost recovery study; performed background checks for all business applicants; reviewed and scored business plans and security plans; issued incomplete letters; provided final scores; reviewed combined applications and scored accordingly; and advised staff throughout the process based on their expertise and experience. The cost of these services under the contract was \$48,500.

The cost recovery study is provided as “**EXHIBIT A**”. Note that per the voter approved ordinance, the fees set by the study were capped at \$8,000 for Cannabis Business Applications and \$7,000 for Cannabis Conditional Use Permits. The City received a total of 12 Dispensary Cannabis Business applications and 3 Non-Dispensary Cannabis. Combined with the Cannabis Conditional Use Permit fees, background check fees and zoning verification fees, the total revenue collected for the Cannabis Business program to date is \$169,662. The breakdown of the revenue collected is as follows:

Fee	Amount
Cannabis Dispensary Business Applications	\$96,000
Cannabis Non-Dispensary Business Applications	\$24,000
Live Scans	\$8,062
Zoning Verification Letters	\$3,600
Cannabis Conditional Use Permit	\$35,000
Cannabis Administrative Use Permit	\$3,000
Total	\$169,662

ANALYSIS:

The City opened a cannabis business application submittal period between April 8th and June 7th of 2019. During that period twelve retail cannabis applications and two non-retail cannabis applications were submitted. Applications received during this period were first reviewed by HdL for compliance with the City's Cannabis Business Activity Ordinance. Scores were issued for the first review and second (final) review. Applicants were then allowed to combine their application with other applicant's application to maximize points through supplementing strengths and weaknesses of each other. The final scores following this Amend and Combine Period were then issued, and applicants were notified that they could now apply to the Planning Division for their Cannabis Conditional Use Permit.

A total of four applications were submitted for the Cannabis Conditional Use Permit. These applications will be heard by the Planning Commission soon. The Planning Commission will make a recommendation to the City Council regarding the awarding of the Cannabis CUPs. The City Council is not the final step in the cannabis business permitting processes though. The next steps will be for building permits to be obtained and inspection services performed for both building permits and compliance with CA law on cannabis businesses. Once open for business, an annual compliance inspection will need to be performed and an annual audit of tax receipts will need to be completed. For these reasons, ongoing assistance and staff augmentation from HdL is requested.

The attached (“**EXHIBIT B**”) contract and proposal from HdL details the scope of cannabis program services HdL will provide to the City of Marina to assist in continuing to review new submitted cannabis business applications, background checks, inspection services of licensed cannabis businesses, cannabis tax auditing, and ongoing subject matter expertise to assist in day to day operations. Under the scope of work, if requested by the City, HdL will also provide a review of the existing ordinance and make recommendations for cleanup text changes that can be proposed for a new ballot initiative.

HdL has a team of knowledgeable professionals who have direct experience in the implementation of Cannabis Regulatory Programs including developing applications, application rating systems, reviewing applications for compliance with rules and regulations, performing facility inspections conducting compliance and financial audits, and developing application fees to ensure that the City recovers the costs of reviewing materials and conducting hearings before the Planning Commission and City Council. The scope of services includes:

- Cannabis business application review
- Pre-license site visits
- Cannabis tax audits
- Regulatory compliance inspections
- Supplemental background checks
- Subject matter expertise and technical support

HdL's proposal is based on time, materials and travel expenses associated with the execution of these type services. The contract is for a not to exceed amount of \$50,000. The City is only billed for services rendered listed in the Cost section of the proposal contained in proposal included in **"EXHIBIT B"**. Soon, staff will be returning with an updated fee cost recovery study that includes inspections and audits to ensure the HdL costs and staff time continue to be fully captured.

As noted in page 7 of the HdL proposal, all fees are 100% cost recoverable through the cannabis application and license process, except worked performed under Objective 6. Objective 6 encompasses the provision of HdL technical expertise relating to program implementation (not related to a specific application) and potential ordinance recommended revisions.

FISCAL IMPACT:

To date the City has collected a total of \$169,662 in the Cannabis Program with expenses totaling \$48,500 for the now expired HdL contract. Cost recovery fees contained in **"EXHIBIT A"** were approved by the City Council in May of 2019. This fee study did not include inspection and inspections; therefore, staff will be returning to the City Council with an updated cost recovery fee study in the near future to ensure costs of the new HdL contract are recovered.

With the exception of City authorized HdL technical expertise services outlined in Objective 6 of the proposal, there will be no additional cost to the General Fund. The \$50,000 cost of HdL services, except Objective 6, will be recovered 100% from the applications and licenses charged to those businesses involved in the cannabis application and license process.

CONCLUSION:

Adopting Resolution No. 2020-, will authorize the City Manager to execute a contract with HdL Companies not to exceed \$50,000 to provide cannabis program application review, tax audits, compliance inspections, background checks, and subject matter expertise and technical support, subject to final review and approval by the City Attorney.

Respectfully submitted,

Matt Mogensen
Assistant City Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina