

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the 8th day of March, 2020, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Hinderliter, de Llamas and Associates (HdL Companies), a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional cannabis consulting and support services for the City of Fresno, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a municipal cannabis program consultant and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its City Manager (hereinafter referred to as "Administrator") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect through June 30, 2020, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed \$49,200.00 (Forty Nine Thousand Two Hundred dollars), paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Administrator in writing as soon as it is reasonably

possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all writings and documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification.

(i) *Indemnification for Professional Services.* CONSULTANT will save harmless and indemnify and at CITY's request reimburse defense costs for CITY and all its Officers, volunteers, employees and representatives from and against any and all suits, actions, or claims, or any character whatever, brought for, or on account of, any injuries or damages sustained by any person or property resulting or arising from any negligent or wrongful act, error or omission by CONSULTANT or any of CONSULTANT's officers, agents, employees, or representatives, in the performance of this Agreement, except for such loss or damage arising from CITY's active negligence or willful misconduct.

- (ii) *Indemnification for other Damages.* **CONSULTANT indemnifies and hold CITY harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, except for such loss or damage arising from CITY's active negligence or willful misconduct.** Should CITY be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, CONSULTANT will defend CITY (at CITY's request and with counsel satisfactory to CITY) and will indemnify CITY for any judgement rendered against it or any sums paid out in settlement or otherwise.

- (iii) *Indemnification of Consultant.* Both parties understand and agree that nothing in this agreement constitutes advice by CONSULTANT to CITY to violate any existing law and, accordingly, this section does not obligate CONSULTANT to the extent that federal or state law may now, or subsequently, prohibit the actions

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors\sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and

liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this

Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior

written approval of the City Manager or his/her designee. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or

Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

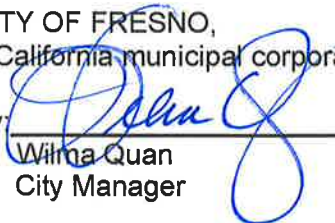
26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: 
Wilma Quan
City Manager

Hinderliter, de Llamas and Associates,
A California Corporation

By: 
Name: Andrew Nickerson

Title: President
(if corporation or LLC, Board
Chair, Pres. or Vice Pres.)

By: 
Name: Richard Park


Title: Chief Financial Officer
(if corporation or LLC, CFO,
Treasurer, Secretary or Assistant
Secretary)

Any Applicable Professional License:
Number: _____
Name: _____
Date of Issuance: _____

ATTEST:
YVONNE SPENCE, MMC CRM
City Clerk

By: 
Deputy YVONNE SPENCE

No signature of City Attorney required.
Standard Document #ALL-S 3.1 has been
used without modification, as certified by
the undersigned.

By: 
Jane Sumpter
Assistant City Manager

Addresses:

CITY:
City of Fresno
Attention: Jane Sumpter,
Assistant City Manager
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-7774
FAX: (559) 621-7776

CONSULTANT:
Hinderliter, de Llamas and Associates
Attention: Andrew Nickerson,
President/CEO,
120 S. State College, Suite 200
Brea, CA
92821
Phone: (714) 879-5000
FAX: (909) 861-7726

Attachments:

- 1. Exhibit A - Scope of Services
- 2. Exhibit B - Insurance Requirements
- 3. Exhibit C - Conflict of Interest Disclosure Form

Exhibit A

SCOPE OF SERVICES Consultant Service Agreement between City of Fresno (“City”) and Municipal Cannabis Program (“Consultant”) Cannabis Consulting and Support PROJECT TITLE

The Scope of Services for the City’s RFQ includes the 5 specific objectives outlined below:

The original Scope of Services for the City’s RFQ included 6 specific objectives, which has since been revised to 5 objectives. Some of these tasks must precede others, and some may overlap or be undertaken in parallel. HdL anticipates that the project flow for these 5 objectives would be divided into 3 stages, as outlined below.

Stage 1: Program Implementation

HdL shall develop a four-phase merit-based application process with specific scoring categories, criteria and weighting to be determined and approved by the City. The process and criteria will be designed to ensure compliance with all requirements of the City’s ordinance. Process guidelines will specify all information that must be submitted by the applicants, as determined by the City, and will clearly explain the scoring criteria.

HdL anticipates up to 20 hours for development of this process, plus up to two (2) meetings or workshops to discuss goals, priorities and criteria for the application process, and one informational presentation at a public “town hall” style meeting for interested parties and prospective cannabis business applicants. These on-site meetings or presentations may be combined with meetings related to the organization and reporting structure or other objectives, so as to reduce travel costs.

Stage 2: Administration

Development of the Fee Structure and the Organization and Reporting Structure will be carried out concurrently, as each informs the other. Analyzing the City’s existing staffing and organizational structure will require on-site meetings with various departments. HdL anticipates 2 full days on-site, plus another 20 hours for development of the organizational recommendations and related research or conference calls.

Development of the Fee Structure will be based on the organizational recommendations. HdL anticipates 20 hours for this work, which includes any needed conference calls. No additional onsite meetings are anticipated for the fee analysis.

HdL will work with the City to assess the specific training needs for staff to carry out the City’s permitting, regulatory and enforcement program, and will design a training program that specifically targeted to address those needs. This proposal assumes up to 2 on-site trainings for City staff as may be designated. Trainings may be either half-day (4 hours) or full-day (8 hours) as needed, and may include separate trainings for different departments or divisions, as needed.

The details of the training program will be determined in consultation with the City.

Stage 3: Communication

HdL shall work with the City and the local cannabis industry to develop and implement a program to encourage transition from black market sales to licensed businesses. The Industry Outreach and Education Program for the City of Fresno will be developed collaboratively with input from City staff and the local cannabis industry.

This objective assumes up to 40 hours of research and development work, plus up to 4 on-site meetings or presentations to be used as necessary for development of the industry outreach and communications plan. These meetings may be combined with on-site meetings proposed under the other objectives to increase efficiency and reduce costs. This objective does not include any third-party costs for final design, production, printing, paid placement or distribution of any advertising or materials.

TIMELINE

The proposed 3-stage workplan is staggered across a 3-month period, which would begin with approval of a contract. The project stages and objectives overlap in many cases, with successive stages commencing before the previous stage has been completed. The workplan anticipates as many as 9 site visits, but we believe that many of these can be combined so as to reduce costs and increase efficiencies.

The anticipated timeline for this workplan is shown in the table on Attachment 3. This is an estimated timeline, only. The actual timeline will in many cases be dependent upon action or direction by the City which is beyond HdL's control.

SCHEDULE OF FEES AND EXPENSES

HdL anticipates the hours will not exceed these amounts without prior authorization by the City. The estimated costs for each of these objectives are shown on Attachment 1. A sample timeline for the project is shown in Attachment 3.

1: Organization and Reporting Structure

HdL anticipates 2 full days on-site, plus another 20 hours for development of the organizational recommendations and related research or conference calls.

2: Application Process, Workflow and Timelines

HdL anticipates up to 20 hours for development of the application process, plus up to two (2) meetings or workshops to discuss goals, priorities and criteria for the application process, and one informational presentation at a public "town hall" style meeting for interested parties and prospective cannabis business applicants.

3: Development of Fee Structure

HdL anticipates 20 hours for this work, which includes any needed conference calls. No additional on-site meetings are anticipated for the fee analysis.

4: Industry Outreach and Education Program

This objective assumes up to 40 hours of research and development work, plus up to 4 on-site meetings or presentations to be used as necessary or requested by the City for development of the Industry Outreach and Education Program. These meetings may be combined with on-site meetings proposed under the other objectives to increase efficiency and reduce costs. This objective does not include any third-party costs for final design, production, printing, paid placement or distribution of any advertising or materials.

5: Training

This proposal assumes up to 2 on-site trainings for City staff as may be designated. Trainings may be either half-day (4 hours) or full-day (8 hours) as needed, and may include separate trainings for different departments or divisions, as needed. The costs below assume one half-day and one full-day training. The details of the program will be developed as determined by the City.

The hours and costs in the Attachment 1 are based on the standard hourly rates for assigned HdL staff. The costs shown do not include any additional services that are not specifically contemplated by this scope of services. Any additional services requested by the client that are not specifically described in this proposal would be billed at the standard rate for the assigned staff person. Prices are valid for 120 days from February 10, 2020.

OPTIONAL SERVICES

Outreach to Consumers to Encourage Purchasing from Legal Businesses

HdL can assist the City with development of a consumer education program to encourage cannabis consumers to purchase from licensed cannabis businesses. This outreach would be designed to steer consumers toward legal cannabis businesses, so as to increase the market available to those businesses which choose to apply for and become licensed.

This service is described in our SOQ for the City's consideration. The details of such a program would be developed in consultation with City staff. HdL will provide a detailed proposal, cost and workplan upon request.

Supplemental Background Checks for Owners, Principals and Managers

HdL is qualified to provide background checks of all owners, principals and managers of cannabis businesses, as well as employees, if desired. Our background checks supplement the State-required Live Scan fingerprint check.

HdL offers 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's logo which meets all State regulatory requirements.

BACKGROUND CHECKS

Initial background check:

Owner, principal or manager: \$300
Employee or line staff: \$ 75

Annual renewal

Owner, principal or manager: \$100
Employee or line staff: \$ 75

Prices valid as of February 10, 2020.

HOURLY RATES FOR HdL STAFF

Any additional services requested by the City that are not specifically described in this proposal would be billed at the standard rate for the assigned staff person (See Attachment 2).

Exhibit B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno ("CITY") and Municipal Cannabis Program ("CONSULTANT")

Cannabis Consulting and Support
PROJECT TITLE

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

MINIMUM LIMITS OF INSURANCE

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
 - (i) \$1,000,000 per occurrence for bodily injury and property damage;
 - (ii) \$1,000,000 per occurrence for personal and advertising injury;
 - (iii) \$2,000,000 aggregate for products and completed operations; and,

(iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event CONSULTANT purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONSULTANT shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to CITY for review.

5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

VERIFICATION OF COVERAGE

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Exhibit C


DISCLOSURE OF CONFLICT OF INTEREST

Cannabis Consulting and Support
PROJECT TITLE

| | | YES* | NO |
|---|---|--------------------------|-------------------------------------|
| 1 | Are you currently in litigation with the City of Fresno or any of its agents? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2 | Do you represent any firm, organization or person who is in litigation with the City of Fresno? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3 | Do you currently represent or perform work for any clients who do business with the City of Fresno? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4 | Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5 | Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6 | Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| * If the answer to any question is yes, please explain in full below. | | | |

Explanation: _____

Additional page(s) attached.


Signature

3-6-20
Date

Andrew Nickerson
(name)

Hinderliter, de Llamas and Associates
(company)

120 S State College Blvd., Suite 200
(address)

Brea, CA 92821
(city state zip)

ATTACHMENT #1

The Scope of Services for the City's RFQ includes the 5 specific objectives outlined below. HdL anticipates the hours and costs as described below and will not exceed these amounts without prior authorization by the City.

1: Organization and Reporting Structure

HdL anticipates 2 full days on-site, plus another 20 hours for development of the organizational recommendations and related research or conference calls.

2: Application Process, Workflow and Timelines

HdL anticipates up to 20 hours for development of the application process, plus up to two (2) meetings or workshops to discuss goals, priorities and criteria for the application process, and one informational presentation at a public "town hall" style meeting for interested parties and prospective cannabis business applicants. These on-site meetings or presentations may be combined with meetings related to the Social Equity Program, organization and reporting structure, or other objectives, so as to reduce travel costs.

3: Development of Fee Structure

HdL anticipates 20 hours for this work, which includes any needed conference calls. No additional on-site meetings are anticipated for the fee analysis.

4: Industry Outreach and Education Program

This objective assumes up to 40 hours of research and development work, plus up to 4 on-site meetings or presentations to be used as necessary or requested by the City for development of the Industry Outreach and Education Program. These meetings may be combined with on-site meetings proposed under the other objectives to increase efficiency and reduce costs. This objective does not include any third-party costs for final design, production, printing, paid placement or distribution of any advertising or materials.

5: Training

This proposal assumes up to 2 on-site trainings for City staff as may be designated. Trainings may be either half-day (4 hours) or full day (8 hours) as needed and may include separate trainings for different departments or divisions, as needed. The costs below assume one half-day and one full-day training. The details of the program will be developed as determined by the City.

The hours and costs in the table below are based on the standard hourly rates for assigned HdL staff. The costs shown do not include any additional services that are not specifically contemplated by this scope of services. Any additional services requested by the client that are not specifically described in this proposal would be billed at the standard rate for the assigned staff person. Prices are valid for 120 days from February 10, 2020.

| Scope of Service Objectives | Estimated Cost |
|---|---|
| <u>Organization and Reporting Structure</u> Primary work associated with this objective On-site work associated with this objective Travel costs associated with this objective | <u>\$12,000</u> \$6,000 \$4,800 \$1,200 |
| <u>Application Process, Workflow and Timelines</u> Primary work associated with this objective On-site work associated with this objective Travel costs associated with this objective | <u>\$8,200</u> \$5,000 \$2,000 \$1,200 |
| <u>Development of Fee Structure</u> Primary work associated with this objective On-site work associated with this objective Travel costs associated with this objective | <u>\$6,000</u> \$6,000 N/A N/A |
| <u>Industry Outreach and Education Program</u> Primary work associated with this objective On-site work associated with this objective Travel costs associated with this objective | <u>\$18,400</u> \$10,000 \$6,000 \$2,400 |
| <u>Training</u> Primary work associated with this objective On-site work associated with this objective Travel costs associated with this objective | <u>\$4,600</u> \$1,000 \$3,000 \$600 |
| TOTAL NOT TO EXCEED: | \$49,200 |

ATTACHEMENT #2

Hourly Rates for HdL Staff

Any additional services requested by the City that are not specifically described in this proposal would be billed at the standard rate for the assigned staff person.

| HdL Staff | Title | Hourly Rate |
|--|-----------------------------|--------------------|
| David McPherson | Compliance Director | \$300 |
| Matt Eaton | Deputy Compliance Director | \$250 |
| Tim Cromartie | Senior Policy Advisor | \$250 |
| Mark Lovelace | Senior Policy Advisor | \$250 |
| Christina Altringer | Audit Manager | \$250 |
| Kami Miller | Senior Compliance Inspector | \$195 |
| Elizabeth Eumurian | Senior Auditor | \$195 |
| Alfredo Marquez | Senior Auditor | \$195 |
| Michelle Shaw | Compliance Inspector | \$195 |
| | | |
| All rates current as of February 10, 2020 | | |

ATTACHMENT #3

Timeline

The proposed 3-stage workplan is staggered across a 3-month period, which would begin with approval of a contract. The project stages and objectives overlap in many cases, with successive stages commencing before the previous stage has been completed. The workplan anticipates as many as 9 site visits, but we believe that many of these can be combined so as to reduce costs and increase efficiencies.

The anticipated timeline for this workplan is shown in the table below. This is an estimated timeline, only. The actual timeline will in many cases be dependent upon action or direction by the City which is beyond HdL's control.

| Sample Timeline | |
|------------------------|--|
| Week 1 | Initial kick-off meeting with City staff (conference call) |
| Weeks 2 - 6 | Stage 1: Policy Implementation <ul style="list-style-type: none">• Application Process, Workflow and Timelines Includes 20 hours and 3 on-site meetings |
| Week 4 - 10 | Stage 2: Administration <ul style="list-style-type: none">• Organizing and Reporting Structure• Development of Fee Structure• Training Includes 40 hours and 3 ½ days on-site |
| Week 2 - 12 | Stage 3: Communication <ul style="list-style-type: none">• Industry Outreach and Education Program Includes 40 hours plus up to 4 on-site meetings <i>(Note: It is anticipated that most of the Industry Outreach and Education Program will likely trail development of the application process, administrative structure and fees. This timeline allows that some initial outreach to the industry and potential applicants may begin as early as week 2.)</i> |