

## REPORT TO CITY COUNCIL

**DATE: JUNE 26, 2024**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: DIEGO IBAÑEZ, DIRECTOR OF FINANCE**

**SUBJECT: REQUEST TO APPROVE AGREEMENT FOR CONSULTANT SERVICES WITH HDL SOFTWARE, INC., RELATING TO HDL PRIME BUSINESS LICENSING AND TRANSIENT OCCUPANCY TAX SOFTWARE**

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The City utilizes a consulting service to provide Business Licensing and Transient Occupancy Tax. The management services include providing quarterly reports that assist with budget forecasting and detailed analysis to assist with business license and Transient Occupancy Tax forecasts, trends, and financial strategies.

The City has been under contract for HdL Prime Business Licensing and Transient Occupancy consulting services with the same firm, HdL Software, Inc. (HdL), since 2017. The City was unable to issue a Request for Proposal (RFP) due to the transition in the Finance Department during the last year. On the advice of the City Attorney, the City can offer a one-year term contract and then perform an RFP in the 2024-2025 fiscal year.

Additionally, HdL provides quarterly reporting, financial forecasts, and staff and City Council presentations to explain property revenues, policy impact, and future trends for better budget preparation.

HdL is a leader in the field of property analysis and has a majority of the market, with 335 cities and 45 counties as clients. Among those clients are Malibu, Moorpark, Thousand Oaks, and Simi Valley.

Based on the information received, staff is recommending HdL provide the prime business licensing and transient occupancy tax software services for a contract period of one (1) year.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

### **FISCAL IMPACT**

Funds for this contract have been appropriated in the proposed FY 2024-25 City Council Budget, Account 010-4195-5520.

## **RECOMMENDATION**

Staff recommends the City Council approve the Agreement for Consultant Services, with HdL Software, Inc., for the performance of prime business licensing and transient occupancy tax software services, commencing July 1, 2024, through June 30, 2025.

Attachment: Agreement for Consultant Services

AGREEMENT FOR CONSULTANT SERVICES  
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT: HdL Software, Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Attn: Robert Gray

CONSULTANT'S ADDRESS: 120 S. State Blvd. Suite 200  
Brea, Ca 92821

CITY'S ADDRESS: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, CA 91301  
Attn: City Manager

PREPARED BY: Diego Ibanez

COMMENCEMENT DATE: July 1, 2024

TERMINATION DATE: June 30, 2024

CONSIDERATION: Contract Price  
Not to Exceed: \$8,800/yr

**ADDITIONAL SERVICES** *(Describe Services, Amount, and Approval):*

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Date: \_\_\_\_\_ Amount: \$ \_\_\_\_\_ Authorized By: \_\_\_\_\_  
*(Not to Exceed 10% of Contract Price)* City Manager

## **AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE CITY OF AGOURA HILLS AND HDL SOFTWARE, INC.**

**THIS AGREEMENT** is made and effective as of June 26, 2024, between the City of Agoura Hills, a municipal corporation ("City") and HdL Software, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

### **1. TERM**

This Agreement shall commence on July 1, 2024, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2025, unless sooner terminated pursuant to the provisions of this Agreement.

### **2. SERVICES**

Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

### **3. PERFORMANCE**

In meeting its obligations under this Agreement, Consultant shall at all times faithfully and competently perform all tasks described herein in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

### **4. PREVAILING WAGES**

A. Prevailing wages are required on all CITY agreements involving construction, design, and preconstruction phases of construction (including, but not limited to, inspection and land surveying work), and maintenance (except for janitorial or security guards) for work on CITY property.

B. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute by this Consultant from the Director of the Department of Industrial Relations. Copies may be obtained from the California Department of Industrial Relations Internet website at <http://www.dir.ca.gov>. Consultant shall provide a copy of prevailing wage rates to any staff or sub-consultant hired, and shall pay the adopted prevailing wage rates as a minimum. Consultant shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Consultant shall forfeit to the City, as a penalty, the sum of \$50.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any sub-consultant under him, in violation of the provisions of the Agreement..

## **5. PAYMENT**

A. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed Eight Thousand Eight Hundred Dollars and Zero Cents (\$8,800) ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

C. Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

## **6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section entitled "**PAYMENT**" herein.

## **7. DEFAULT OF CONSULTANT**

A. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue

compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

B. If the City Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement."

## **8. OWNERSHIP OF DOCUMENTS**

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## **9. INDEMNIFICATION**

Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, agents and independent Consultants serving in the role of City officials, and volunteers (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, proceedings, costs, expenses, liabilities, losses, damages or injuries, in law or equity, to property or persons, including wrongful death (collectively "Claims"), in any manner arising out of or incident to any acts or omissions of Consultant,

its officials, officers, employees, agents or sub-consultants in connection with the performance of this Agreement, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses, except for such Claims arising out of the sole negligence or willful misconduct of the Indemnitees. With respect to any and all such Claims, Consultant shall defend Indemnitees at Consultant's own cost, expense, and risk and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant or Indemnitees. All duties of Consultant under this Section shall survive termination of this Agreement.

## 10. INSURANCE REQUIREMENTS

Prior to commencement of work, Consultant shall procure, provide, and maintain, at Consultant's own expense, for the duration of this Agreement, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88, or equivalent.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92, or equivalent, covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability. 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/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage for all activities of the Consultant arising out of or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

4) Professional Liability coverage: One million (\$1,000,000) per claim and in aggregate.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section 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 as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Vendor maintains higher limits than the minimums shown above, the Agency requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Agency.

E. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered and named as additional insureds in respect to: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.



3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City. Consultant agrees to oblige its insurance agent or broker and insurers to provide City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

6) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against the City and shall require similar written express waivers and insurance clauses from each of its subcontractors.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

G. Verification of Coverage. **Consultant shall furnish the City with original endorsements, specifically naming the City of Agoura Hills, its officers, officials, employees and volunteers as additional insured, effecting coverage required by this clause.** The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the City. Insurance certificates and endorsements must be received and approved by City's Risk Manager prior to commencement of performance. Current insurance certificates and endorsements shall be kept on file with the City at all times during the term of this agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

H. Mailing Instructions. Insurance documents shall be mailed with the signed Agreement to the attention of the staff person indicated on the cover sheet of this Agreement, to the City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, CA 91301. Executed Agreement(s) cannot be released nor may any work commence on a project until the signed Agreement and appropriate insurance documents are on file with the City Clerk.

## **11. INDEPENDENT CONSULTANT**

A. Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services and tasks under this Agreement on behalf of Consultant shall not be City employees and shall at all times be under Consultant's exclusive direction and control. Consultant and all of Consultant's personnel shall possess the qualifications, permits, and licenses required by state and local law to perform the services and tasks under this Agreement, including, without limitation, a City business license as required by the Agoura Hills Municipal Code. Consultant shall determine the means, methods, and details by which Consultant's personnel will perform the services and tasks. Consultant shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the services and tasks, and compliance with the customary professional standards. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents.

B. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. Consultant and Consultant's personnel shall not supervise any of City's employees; and City's employees shall not supervise Consultant's personnel. Consultant's personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as a City employee; and Consultant's personnel shall not use any City e-mail address or City telephone number in the performance of any of the services and tasks under this Agreement. Consultant shall acquire and maintain at its sole cost and expense such vehicles, equipment, and supplies as Consultant's personnel require to perform any of the services and tasks required by this Agreement. Consultant shall perform all services and tasks off of City premises at locations of Consultant's choice, except as otherwise may from time to time be necessary in order for Consultant's personnel to receive projects from City, review plans on file at City, pick up or deliver any work product related to Consultant's performance of any services and tasks under this Agreement, or as may be necessary to inspect or visit City locations and/or private property to perform the services and tasks. City may make a computer available to Consultant from time to time for Consultant's personnel to obtain information about, or to check on, the status of projects pertaining to the services and tasks performed under this Agreement. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

C. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services and tasks hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services and tasks hereunder. Consultant shall be responsible for and pay all salaries, wages, benefits and other amounts due to Consultant's personnel in connection with their performance of the services and tasks under this Agreement, and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to, Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability

insurance, and workers' compensation insurance. Notwithstanding any other agency, state, or federal policy, rule, regulation, statute, or ordinance to the contrary, Consultant and any of its officers, employees, agents, and subcontractors providing any of the services and tasks under this Agreement shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit, or any incident of employment by City, including, but not limited to, eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") as a City employee, and entitlement to any contribution to be paid by City for employer contributions or employee contributions for PERS benefits.

D. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from, caused by, or relating to Consultant's personnel practices, or to the extent arising from, caused by, or relating to the violation of any of the provisions of this Section. In addition to all other remedies available under law, City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

## **12. PERS COMPLIANCE AND INDEMNIFICATION**

A. General Requirements. The parties acknowledge that City is a local agency member of PERS, and as such has certain pension reporting and contribution obligations to PERS on behalf of qualifying employees. Consultant agrees that, in providing its employees and any other personnel to City to perform the services and tasks under this Agreement, Consultant shall assure compliance with the Public Employees' Retirement Law, commencing at Government Code Section 20000, the regulations of PERS, and the Public Employees' Pension Reform Act of 2013, as amended. Without limitation to the foregoing, Consultant shall assure compliance with regard to personnel who have active or inactive membership in PERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

B. Indemnification. Consultant shall defend (with legal counsel approved by City, whose approval shall not be unreasonably withheld), indemnify, and hold harmless City, and its City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from, caused by, or relating to Consultant's violation of any provisions of this Section. This duty of indemnification is in addition to Consultant's duty to defend, indemnify, and hold harmless as set forth in any other provision of this Agreement.

### **13. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

### **14. RELEASE OF INFORMATION**

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or sub-consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **15. NOTICES**

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by: (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City:

City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, California 91301  
Attention: City Manager

To Consultant: **HdL Software, Inc.  
160 Via Verde, Suite 150  
San Dimas, CA 91773**

**16. ASSIGNMENT**

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

**17. LICENSES**

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

**18. GOVERNING LAW**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**19. PROHIBITED INTEREST**

No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-consultants for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's sub-consultants on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

**20. EXHIBITS**

Exhibits A and B constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

**21. ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**22. AMENDMENT OF AGREEMENT**

This Agreement may be amended only by a writing signed by both parties. The City Manager is authorized to sign an amendment to this Agreement on the City Council's behalf and without the City Council's prior approval to make the following non-substantive modifications to the Agreement: (a) name changes; (b) extensions of time that do not result in monetary changes; (c) non-monetary changes in the scope of work; and (d) termination of the Agreement.

**23. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF AGOURA HILLS**

\_\_\_\_\_  
Illece Buckley Weber,  
Mayor

ATTEST:

\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk  
Date Approved by City Council: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Candice K. Lee,  
City Attorney

**CONSULTANT**

HdL Software, Inc.  
120 S. State Blvd., Suite 200  
Brea, CA 92821  
Robert Gray  
714-879-5000

By: \_\_\_\_\_  
Name: Richard Park DocuSigned by: Richard Park  
4DD130EE7C2A4A2...  
Title: CFO

By: \_\_\_\_\_  
Name: Robert Gray DocuSigned by: Robert Gray  
D4C862557876418...  
Title: Vice President of Technology

**[Signatures of Two Corporate Officers Required]**

## EXHIBIT A

### TASKS TO BE PERFORMED

***The specific elements (scope of work) of this service include:***

Consultant will provide the following Services relative to Consultant's local tax software solution.

1. Software Hosting Services – Consultant's hosting services offload the majority of IT concerns to Consultant's hosting team; including system upgrades, hardware and software maintenance, database management, and disaster recovery. Client will be responsible for maintaining its workstations and a reliable internet connection. Consultant will handle the rest. Website functionality will be hosted using a Client specific sub-domain on Consultant's special purpose hdlgov.com domain.

1.1. Workstation Specifications – Workstations will access the software through a remote application session with Consultant's hosting service. All workstations require 4+GB Memory, 1280x1024 screen resolution, and MS Windows 10/11 operating system.

1.2. Network Specifications – Consultant's hosted service requires reliable, high speed internet connectivity. High-speed local area network connections are always helpful, but the service will also run without difficulty over slower WAN connections such as T1 or mobile broadband.

1.3. Printer Specifications - The software is designed to work with laser printers. A PCL compliant laser printer is recommended. Each make and model of printer has different drivers and therefore has slightly different results when printing. We design forms/reports using HP LaserJet printers.

#### 2. Software Support

2.1. Client Support - Consultant will provide Client's users no charge support by telephone, email and the web during the term of this Agreement. In the United States support is available as follows: For customer support between the hours of 8:00 am and 5:00 pm Pacific time, Monday through Friday, email support@hdlcompanies.com or call (909) 861-4335 and ask for software support. For urgent off hours support before 8:00 am or after 5:00 pm Pacific time, Monday through Friday (or anytime Saturday), email 911@hdlcompanies.com and Consultant's on call support personnel will be notified. Please only include your name, agency and contact # in emails to 911@hdlcompanies.com. You will be contacted as soon as possible.



2.2. Response Time – In the event that Client encounters an error and/or malfunction whereby the software does not conform to expected behavior in accordance with the software design, Consultant will assign one of the following severity levels and render support services in a timely manner consistent with the urgency of the situation.

2.2.1. Severity Level 1 – a critical problem has been encountered such that the software is essentially inoperable and without a reasonable workaround. Consultant will respond within one (1) business hour to diagnose the problem. A response is defined as an email or call to the Client's designated support contact. Consultant and Client will work diligently and continuously to correct the problem as quickly as possible.

2.2.2. Severity Level 2 – a problem has been encountered that does not prevent use of the software, but the software is not operating correctly. Consultant will diagnose the problem within 48 hours and advise Client of any available work-around. Upon Consultant's confirmation that the software is not operating correctly, Consultant will provide a software update to repair the defect and confirm with Client that the update resolved the issue.

2.2.3. Severity Level 3 – a minor problem has been encountered. The software is usable but could be improved by correction of a minor defect or addition of a usability enhancement. HdL will assess the request within fifteen (15) business days and, depending on priorities, schedule a software update for a future release, advise Client that the request will not be implemented, or offer the option of implementing the request as a custom software enhancement at additional cost.

2.3. Support Policy Regarding Reports - Consultant will assist with modifications to reports as needed during the term of this agreement. Typical report modifications require 7 to 10 business days to complete. Very complex reports or reports required in a very short time frame may incur development costs, in which case an estimate will be provided for approval before the work is begun.

2.4. Software Upgrades - Except to the extent that upgrades of the software include new modules or features not previously offered as part of the software as of the date hereof, Client is entitled to upgrades of the software within the terms of this Agreement. Additional costs may apply depending on the extent of the upgrade. Potential additional costs include training, consulting, configuration, or other requested services.

2.5. Out of Scope Support – Client agrees to pay additional hourly fees according to Consultant's then current hourly rates if the Client desires Consultant's assistance for matters which are not caused by any defects in Consultant's software.

### 3. Online Payment Processing

3.1. Standard Payment Processing Solution – Consultant’s software includes PCI compliant payment processing services, supporting both credit card and eCheck transactions. Consultant guarantees continued support of the Standard Payment Processing Solution across all releases of Consultant’s software and the Standard Payment Processing Solution, at no cost to Client.

3.1.1. Payment Processing - Consultant shall provide its Services to support payments remitted to Client. Consultant shall transmit transactions for authorization and settlement through Consultant’s certified payment processor. Funds for transactions processed by Consultant hereunder shall be submitted to Client’s designated bank account as follows: (i) no more than two (2) business banking days after all Transactions (other than electronic Check Transactions) that are successfully processed prior to 5:00 p.m. ET on each business banking day (e.g., a Transaction authorized at 2:00 p.m. ET on Monday will be submitted on Wednesday; a Transaction successfully processed at 8:00 p.m. ET on Monday will be submitted on Thursday); and (ii) no more than five (5) business banking days for all electronic Check Transactions that are successfully processed prior to 5:00 p.m. ET on each business banking day. Consultant makes no representation or warranty as to when funds will be made available by Client’s bank.

3.1.2. Support - Consultant shall provide Client with payment processing related customer service as needed. Client shall timely report any problems encountered with the service. Consultant shall promptly respond to each report problem based on its severity, the impact on Client’s operations and the effect on the service. Consultant shall either resolve the problem or provide Client with the information needed to enable the Client to resolve it.

3.1.3. Transaction Errors - Consultant’s sole responsibility for any Transaction error or reversed Transaction is to determine whether the result indicates a problem with Consultant’s service and, if necessary, reprocess and resubmit the Transaction without additional charge. In the event that a Transaction is reversed or refunded to any Customer of Client, for any reason, Consultant may offset such amount against funds remitted to Client, or invoice Client for such amount, at Consultant’s discretion. Client shall pay any such invoice within 30 days of receipt.

3.1.4. Electronic Check Authorization - If Client elects to accept electronic Checks as a form of payment, the following subsections apply. For the purpose of this section, “checks” means checks drawn on accounts held in the U.S. (“Check(s)”).

3.1.4.1. As part of the implementation plan, Client shall select risk management controls governing Check acceptance and assumes sole responsibility for the choice of controls.

3.1.4.2. Consultant shall provide confirmation on a submitted ABA number as part of the Service to assist Client with the decision whether to accept a Check and shall route accepted Checks.

3.1.4.3. Client hereby authorizes Consultant to debit the Client's financial institution account in the amount of any returned item that is received by Consultant.

### 3.1.5. Client Responsibilities

3.1.5.1. As a condition to its receipt of Consultant's Standard Payment Processing Solution, Client shall execute and deliver a payments services/merchant application with Consultant's Standard Payment Processing Solution vendor to establish Client's merchant account for payments processing, and any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. This includes "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.

3.1.5.2. Client represents, warrants, and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines. Client shall notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over Client or a Customer related to the Service. Client shall also notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened relating to Transactions or the Services.

3.1.5.3. Client represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of Consultant, Client shall provide Consultant with documentation reasonably satisfactory to Consultant verifying compliance with this Section.

3.1.5.4. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

3.2. Custom Payment Processing Solution - Should Client require a different payment processing solution than Consultant's designated standard solution, Client will pay an initial custom development fee to establish the integration as well as an increase to the annual use fee to maintain the integration across regular maintenance releases of Consultant's software and Client's custom payment processing solution. The annual use fee does not include significant redevelopment of the integration as may be required for major updates to Consultant's software or Client's custom payment processing solution. Before commencing any work Consultant will provide a statement of work (SOW) defining the scope of work to be performed, timeline for development, and all associated costs.

## EXHIBIT B

### PAYMENT RATES AND SCHEDULE

#### FEES

4. Pricing Adjustments – All pricing listed in this Schedule will be honored during the first twelve months of software services. Any additional/optional services needed after this period will be provided using Consultant’s current pricing schedule at the time the service is requested.

#### 5. Software Services

##### 5.1. Recurring Costs

###### Item Price Comments

Software Use Fee \$8,344.97 Billed Annually

Software Hosting Services \$399.12 Billed Annually

5.1.1. Software Use Fee – Software Use Fee is billed annually, and provides for ongoing customer support and updates to the software.

5.1.2. Hosting Services – The fee for software hosting services is billed annually in advance, along with the software use fee.

5.1.3. CPI – Recurring costs will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.

## MASTER SERVICES AGREEMENT

**THIS MASTER SERVICES AGREEMENT** (this “Agreement”) is entered into as of \_\_\_\_\_, 2024 (the “Agreement Date”) by and between Hinderliter De Llamas & Associates (“Consultant”), and City of Agoura Hills (“Client”), which is located within the state of California (the “State”).

### WITNESSETH:

**WHEREAS**, Consultant is engaged in the business of providing consulting, software and other services that help public agencies understand and maximize their collection of sales, use and transactions taxes, business license taxes, property and lodging taxes, and other revenues, as well as their delivery of other public services (collectively, “Consultant’s Business”); and

**WHEREAS**, Client desires to contract with Consultant to obtain one or more of the services included within Consultant’s Business (as provided for in Section 1) upon the terms and conditions contained in this Agreement;

**WHEREAS**, Consultant desires to contract with Client to render such services upon the terms and conditions contained in this Agreement.

**NOW THEREFORE**, in consideration of the covenants and promises contained herein, Client and Consultant mutually agree as follows:

#### 1. Services.

1.1 Consultant will perform those services included within Consultant’s Business that are described in any and all schedule(s) referencing this Agreement and signed by Client and Consultant as of the Agreement Date or hereafter (individually and collectively, the “Schedule(s)”), upon the terms and conditions contained in this Agreement (including the Schedules) (such services are, collectively, the “Services”)

1.2 **Consultant warrants that it will perform the Services in a professional manner in accordance with professional standards.** In performing the Services, Consultant is acting as an independent contractor (and not as an agent or employee of Client).

1.3 Client acknowledges and agrees that any other public agency (including, without limitation, any participating government agency) located within or outside of the State (e.g., city, municipality, county, district, public authority or other political subdivision) may procure services for fees and other terms and conditions that are substantially similar to any of the Services, Fees and other terms and conditions set forth in this Agreement, provided that such other public agency executes a separate agreement with Consultant wherein the services rendered to such other public agency, the fees payable by such other public agency, and the other terms and conditions of such separate agreement are the responsibility of Consultant and such other public agency and not Client.

1.4 This Agreement does not limit the right of Consultant to enter into additional contracts with Client or to contract with other persons or entities (that are not Client) to provide them with merchandise or services of any kind whatsoever, including, but not limited to, services similar to the Services.

2. **Fees.** As compensation for performing the Services, Client will pay Consultant the fees, costs and expenses as described in the Schedules (individually and collectively these fees and costs are, the “Fees”). Consultant may perform the Services using professionals from its staff or Consultant’s affiliated entities, and such Services will be billed to Client under the same billing terms applicable to Consultant’s staff. Consultant may increase the Fees from time to time (including, without limitation, annually as described in the Schedules). Other than a Fee increase as described in the Schedules, Client may notify Consultant of a request that such Fee increase be modified or revoked and, if Consultant fails to do so to Client’s satisfaction within thirty (30) days after the receipt of such request, Client may terminate this Agreement without cause pursuant to Section 7.3.

3. **Invoices; Payment.**

3.1 Consultant will invoice Client for the Fees earned and/or incurred by Consultant pursuant to this Agreement.

3.2 Invoices are due and payable upon receipt. Interest will begin to accrue on the thirtieth (30th) day following the invoice date on all unpaid balances at a rate of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less. Payments will first be credited to interest and then to principal. In the event that Client disputes or contests an invoice, only that portion so disputed or contested in good faith will be withheld from payment, and the undisputed portion must be timely paid. Interest will accrue on any contested portion of the invoice not timely paid and will be payable immediately if the contested invoice is resolved in favor of Consultant.

3.3 If Client fails to fully pay an invoice within 30 days after the invoice date, Consultant may, after giving five (5) days’ notice to Client, suspend the rendering of Services under this Agreement until said invoice is paid in full, together with all interest that has accrued thereon. In the event of such a suspension of Services, Consultant will have no liability to Client for any delays or damages arising therefrom.

4. **Insurance.** Throughout the term of this Agreement, Consultant will maintain the following insurance in not less than the referenced amounts: (a) workers compensation and employers liability insurance as may be required by the State; (b) property damage liability of \$1,000,000 per incident; (c) bodily injury liability of \$1,000,000 per incident; and (d) professional liability for any errors or omissions of \$1,000,000.

5. **Client Support.**

5.1 Client will promptly provide in writing to Consultant all data and other information relating to or which may be necessary for Consultant’s performance of the Services. Without limiting the foregoing, Client will keep Consultant informed on a timely basis in writing as to the existence and amendments of the laws, ordinances and/or regulations under which Consultant is performing the Services (including any adopted by Client). Consultant will be permitted to rely on the accuracy, timeliness and completeness of the information provided by Client, and in no event will Consultant be liable to Client or others as a result of such reliance.

5.2 Client will examine all of Consultant's reports, specifications, notices, proposals and other documents. In the event that a decision is required of Client in order for Consultant to perform the Services, Client will render such decision in writing in a timely manner.

5.3 Promptly following any request from Consultant, Client will adopt and maintain in full force and effect resolutions in forms acceptable to Client and in accordance with applicable law authorizing Consultant to examine the confidential sales tax and other relevant records of Client throughout the Term and, for so long as any Fees are still accruing pursuant to this Agreement, after the Term.

5.4 Client will assist Consultant in obtaining such licenses, permits and approvals as may be required by law for performing the Services, and Client will pay all fees, assessments and taxes related to the application, issuance and maintenance thereof.

5.5 The Services do not include services that Consultant may be required or requested to provide to support, prepare, document, bring, defend or assist in litigation undertaken or defended by Client ("Litigation Services"). If Consultant agrees with Client or is required to perform Litigation Services, Client will promptly pay Consultant for all of Consultant's costs and expenses related to Litigation Services at Consultant's actual cost, plus ten percent (10%) thereof (all of which are deemed to be additional Fees).

## **6. Confidentiality; Software Use and Warranty; Records.**

6.1 Consultant will comply with the requirements of the applicable laws, ordinances and/or regulations concerning the confidentiality of tax records of which it has been informed by Client pursuant to Section 5.1.

6.2 As used herein, the term "proprietary information" means all information, techniques, processes, services or material that has or could have commercial value or other utility in Consultant's Business, including without limitation: Consultant's (i) software, computer or data processing programs; (ii) data processing applications, routines, subroutines, techniques or systems; (iii) desktop or web-based software; (iv) audit, tax or fee collection/administration or business processes, methods or routines; (v) marketing plans, analyses and strategies; and (vi) materials, techniques and intellectual property used. Except as otherwise required by law, Client must hold in confidence and may not use (except as expressly authorized by this Agreement) or disclose to any other party any proprietary information provided, learned of or obtained by Client in connection with this Agreement. The terms of this Section 6.2 do not apply to any information that is public information.

6.3 If access to any software which Consultant owns is provided to Client as part of this Agreement (including, without limitation, if Client chooses to subscribe to such software and reports option as part of the Services) (such Consultant-owned software is, collectively, the "Software"), Consultant hereby provides a limited, non-exclusive, non-transferable license to Client for the use by such of Client's staff as may be designated from time to time by Client and approved by Consultant in writing to use the Software pursuant to and during the Term of this Agreement. The Software must only be used by such authorized Client staff, and Client must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by Client or any of Client's staff of the Software nor any rights of Client or any of Client's staff to sublicense, transfer or sell the Software, or rights



to use the Software for the benefit of others. Client may not create (or allow the creation of) any derivative work or product based on or derived from the Software or documentation, nor modify (or allow the modification of) the Software or documentation without the prior written consent of Consultant. In the event of a breach of this provision (and without limiting Consultant's remedies), such modification, derivative work or product based on the Software or documentation is hereby deemed assigned to Consultant. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired and Client access to Software will be immediately removed. Client must immediately cease using and remove, delete and destroy all Software materials which may exist on Client's computers and network. **Consultant warrants that the Software will perform in accordance with the Software's documentation.**

6.4 All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by Consultant to Client either in hard copy or electronically are the property of Client. This does not include any software, programs, methodologies or systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Consultant in the course of performing the Services that were not otherwise provided to Client in either hardcopy or electronic form, all of which may be protected by Consultant or others' copyrights or other intellectual property. It is possible that any documents, drafts, communications or other work product provided to Client may be considered public records under applicable law and/or may be discoverable through litigation. Consultant may publicly state that it performs the Services for Client.

6.5 Subject to applicable law, Consultant is responsible for retaining all final documents and other final work product related to the Services for a period of not less than three (3) years from the date provided to Client. Retention of any other documents, preliminary drafts, communications and any and all other work product provided to Client by Consultant is the responsibility of Client. Consultant has no responsibility to retain any drafts, notes, communications, emails or other writings created or received by Client in the course of performing the Services (other than the final documents and other final work product related to the Services and provided to Client for the term of years referenced above).

## **7. Term and Termination.**

7.1 The initial term of this Agreement commences as of the Agreement Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect until twelve (12) months from such date (the "Initial Term"). This Agreement will automatically renew for successive twelve (12) month terms unless earlier terminated as set forth in Section 7.2 or 7.3 or either party gives the other party written notice of non-renewal at least one hundred twenty (120) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

7.2 This Agreement may be terminated by either party for cause upon not less than forty-five (45) days' written notice given to and received by the other party, if the other party has materially breached this Agreement through no fault of the notifying party and fails to (i) commence correction of such material breach within thirty (30) days of receipt of the above-referenced written notice and (ii) diligently complete the correction thereafter.

7.3 In addition, either party may terminate this Agreement without cause upon not less than one hundred twenty (120) days' written notice to the other party.

7.4 On termination, Client will pay Consultant for all Fees and other compensation (including for Litigation Services) earned and/or incurred through the termination date and will thereafter timely pay Consultant for all other Fees and compensation to which Consultant may be entitled pursuant to this Agreement (including the Schedules hereto).

## **8. Indemnification.**

8.1 Consultant agrees to fully and promptly indemnify and hold harmless (but not defend) Client and each of its officers, employees and agents (collectively, "Client Group") from and against any and all third-party liabilities, judgments, awards, losses, claims, damages, expenses, and costs (including, without limitation, for reasonable third-party attorneys' fees and costs awarded in connection therewith) (each, a "Third-Party Liability", and collectively, "Third-Party Liabilities") directly or indirectly related to this Agreement and arising out of any negligent act or negligent omission, or reckless or willful misconduct, of Consultant or any of its directors, officers, employees, agents, direct and indirect equity holders, or affiliates (collectively, "Consultant Group") under this Agreement; provided, that such obligations to indemnify and hold harmless are only to the extent Consultant admits in writing, or any of Consultant Group is found by a court of competent jurisdiction in a judgment which has become final and that is no longer subject to appeal or review, to have caused the above-described Third-Party Liability(ies). In no event shall Consultant be obligated to defend any of Client Group or pay for any Client Group attorneys' fees or other costs of defending against any such Third-Party Liabilities ("defense costs"), with exception of if Consultant is obligated to indemnify and hold harmless Client Group as described above in this Section 8.1 then Consultant shall also be responsible for the defense costs incurred by Client Group for the related matter. Consultant's duty to indemnify and hold harmless Client shall not apply to claims for liability which arise from the issuance or non-issuance of any registration, license, permit, or exemption.

8.2 Client agrees to fully and promptly indemnify and hold harmless (but not defend) each of Consultant Group from and against any and all Third-Party Liabilities directly or indirectly related to this Agreement and arising out of any negligent act or negligent omission, or reckless or willful misconduct, of any of Client Group under this Agreement; provided, that such obligations to indemnify and hold harmless are only to the extent Client admits in writing, or any of Client Group is found by a court of competent jurisdiction in a judgment which has become final and that is no longer subject to appeal or review, to have caused the above-described Third-Party Liability(ies). In no event shall Client be obligated to defend any of Consultant Group or pay for any Consultant Group attorneys' fees or other costs of defending against any such Third-Party Liabilities ("defense costs"), with exception of if Client is obligated to indemnify and hold harmless Consultant Group as described above in this Section 8.2 then Client shall also be responsible for the defense costs incurred by Consultant Group for the related matter.

## **9. Liability Limitations; Governing Law; Dispute Resolution.**

9.1 To the maximum extent permitted by law and notwithstanding anything to the contrary in this Agreement:

9.1.1 Except as may otherwise be expressly set forth in this Agreement, Consultant makes no warranty of any kind with respect to the Services or the Software, express or implied. Consultant hereby disclaims all other warranties, express or implied, including the implied warranties of merchantability, fitness for a particular purpose, title and non infringement. Consultant disclaims all warranties and responsibility for third party software.

9.1.2 Notwithstanding anything to the contrary, in no event will Consultant be (a) liable for claims, liabilities or damages (i) that could not reasonably have been foreseen upon entry into this Agreement; (ii) arising from any action or inaction by Consultant in response to specific direction from Client; (iii) in connection with any Client monies not collected by Consultant; nor (iv) in connection with the issuance, non-issuance or revocation of any registration, license, permit, or exemption; nor (b) required to provide a defense in connection with any indemnification or hold harmless provisions under this Agreement.

9.1.3 Without limitation on any statute of limitations that expire in less than three years, no claim may be brought by Client against any one or more of Consultant Group arising out of this Agreement (including, without limitation, in connection with the Services or the Software) more than three years after the date upon which Client has actual knowledge of the first occurrence of the action or inaction giving rise to such claim (whether relating to the Services, the Software or otherwise).

9.1.4 Client acknowledges this Agreement is with Consultant in its capacity as a corporation or a limited liability company, and Client agrees that in no event will it seek to hold any of the Consultant Group (other than Consultant) responsible for any obligations under this Agreement.

9.2 The law of the State will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it, without regard to the State's conflict of laws rules. Venue for any legal action arising out of this Agreement will be proper only in the State courts or the federal courts located within the State. The parties hereby submit to the exclusive jurisdiction of such courts and waive any other venue to which either party might be entitled by domicile or otherwise. Both parties waive the right to a jury trial in an action to enforce, interpret or construe this Agreement.

9.3 If either party is required to bring legal action to enforce its rights under this Agreement or as the result of a breach of this Agreement, the costs and expenses of the prevailing party, including reasonable attorneys' fees, will be paid by the non-prevailing party.

9.4 A breach of this Agreement by either party may cause the other party hereto irreparable harm, the amount of which may be difficult to ascertain, and therefore such other party will have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any further breach and for such other relief as such other party may deem appropriate. Such right is in addition to the remedies otherwise available to such other party at law or in equity. The parties hereto expressly waive the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction hereunder for the posting of a bond.

## **10. General Legal Provisions.**

10.1 Authorization to Proceed. Each Schedule must be signed by both Client and Consultant before such Schedule will be binding on the parties hereto.

10.2 Force Majeure. Consultant is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of Consultant.

10.3 Amendment; Waiver. Any provisions of this Agreement (including, without limitation, any Schedules or provisions within any Schedules) may be amended or terminated if in writing and signed by both Client and Consultant. No waiver by any party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to be valid unless acknowledged by such party in writing, and such waiver will not extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

10.4 Severability and Survival. If any provision in this Agreement is held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Notwithstanding any other provisions of this Agreement (including, without limitation, Section 7), Sections 3, 5.5, 6, 7, 8, 9 and 10 will survive the termination of this Agreement.

10.5 No Third-Party Beneficiaries; Services Limited to Agreement. Except as set forth in Section 8, this Agreement gives no rights or benefits to anyone other than Client and Consultant and has no third-party beneficiaries. The Services to be performed for Client by Consultant are defined solely by this Agreement (including the Schedules), and not by any other contract or agreement that may be associated with performing the Services.

10.6 Assignment. This is a bilateral personal services agreement. Neither party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. This Agreement is binding on the successors and assigns of the parties hereto.

10.7 Notices. All notices under this Agreement must be in writing and will be deemed to have been given when such notice is received (i) from United States Postal Service First Class Certified Mail, Return Receipt Requested, (ii) by courier service, or (iii) by email; provided, however, that notices received on a weekend or holiday or on a business day after 4:00 p.m. local time will be deemed to have been received on the next business day. Notices will, unless another address is specified in writing, be sent to the addresses indicated below (each of which must include a street address and an email address): Consultant: Hinderliter De Llamas & Assoc., Attn: George Bonnin, Email: gbonnin@hdlcompanies.com; and Client: City of Agoura hills, CA, Attn: \_\_\_\_\_, Email: \_\_\_\_\_.

10.8 Entire Agreement; Conflict. This Agreement (including any Schedules dated as of the Agreement Date or hereafter) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they have related in any way to the subject matter hereof. Should there ever be a conflict between the terms and conditions of the Schedule(s) and the remainder of this Agreement, the terms and conditions of the remainder of this Agreement will prevail and be controlling.

10.9 Counterparts; Electronic Signatures; Authority. This Agreement may be signed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signed signature pages of this Agreement transmitted

by email or other electronic means in a portable document format (PDF) or other clear and visible electronic format will have the same legal effect as an original. Each of the persons signing on behalf of a party hereto represents that he or she has the authority to sign this Agreement on such party's behalf.

10.10 No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement will not be construed against either party based upon authorship. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

## **11. California Department of Tax and Fee Administration Data.**

11.1 CITY shall adopt a resolution in a form acceptable to the California Department of Tax and Fee Administration and in compliance with Section 7056 of the Revenue and Taxation Code, authorizing CONTRACTOR to examine the confidential sales tax records of CITY. CITY further agrees to continue CONTRACTOR's authorization to examine the confidential sales tax records of the CITY by maintaining CONTRACTOR's name on the CITY resolution until such time as all CONTRACTOR compliance work on behalf of CITY has been completed and any fee owing to CONTRACTOR has been paid.

11.2 Section 7056 of the State of California Revenue and Taxation Code specifically limits the disclosure of confidential taxpayer information contained in the records of the California Department of Tax and Fee Administration. Section 7056 specifies the conditions under which a CITY may authorize persons other than CITY officers and employees to examine State Sales and Use Tax records.

11.3 The following conditions specified in Section 7056-(b), (1) of the State of California Revenue and Taxation Code are hereby made part of this Agreement:

11.3.1 CONTRACTOR is authorized by this Agreement to examine sales, use or transactions and use tax records of the Department of Tax and Fee Administration provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law Revenue and Taxation Code section 7200 et.seq.

11.3.2 CONTRACTOR is required to disclose information contained in, or derived from, those sales, use or transactions and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.

11.3.3 CONTRACTOR is prohibited from performing consulting services for a retailer, as defined in California Revenue & Taxation Code Section 6015, during the term of this Agreement.

11.3.4 CONTRACTOR is prohibited from retaining the information contained in, or derived from those sales, use or transactions and use tax records, after this Agreement has expired. Information obtained by examination of Department of Tax and Fee Administration records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code. The resolution shall designate the CONTRACTOR as a person authorized to

examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056 (b), (1) of the Revenue and Taxation Code.

[Signatures are on the next page]

**IN WITNESS WHEREOF**, the parties hereto have entered into this Agreement through their duly authorized representatives as of the Agreement Date.

**CONSULTANT:**

**CLIENT:**

Hinderliter De Llamas & Assoc.

City of Agoura Hills, CA

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Any Schedule or Schedules may (but is/are not required to) be attached hereto]

**SCHEDULE Z2**  
Tax and Fee Administration Services and Fees  
Local Tax Software Solution

SCHEDULE Z2 – This Schedule Z2 provides the scope of Services and Fees for Consultant’s Local Tax Software Solution pursuant to the Master Services Agreement dated \_\_\_\_\_, 2024 (“MSA”).

The MSA includes the main body of the MSA, this Schedule, and all other Schedules to the MSA. Terms not otherwise defined herein have the definitions given to them within the main body of the MSA.

**SCOPE OF SERVICES**

Consultant will provide the following Services relative to Consultant’s local tax software solution.

1. **Software Hosting Services** – Consultant’s hosting services offload the majority of IT concerns to Consultant’s hosting team; including system upgrades, hardware and software maintenance, database management, and disaster recovery. Client will be responsible for maintaining its workstations and a reliable internet connection. Consultant will handle the rest. Website functionality will be hosted using a Client specific sub-domain on Consultant’s special purpose hdlgov.com domain.
  - 1.1. **Workstation Specifications** – Workstations will access the software through a remote application session with Consultant’s hosting service. All workstations require 4+GB Memory, 1280x1024 screen resolution, and MS Windows 10/11 operating system.
  - 1.2. **Network Specifications** – Consultant’s hosted service requires reliable, high speed internet connectivity. High-speed local area network connections are always helpful, but the service will also run without difficulty over slower WAN connections such as T1 or mobile broadband.
  - 1.3. **Printer Specifications** - The software is designed to work with laser printers. A PCL compliant laser printer is recommended. Each make and model of printer has different drivers and therefore has slightly different results when printing. We design forms/reports using HP LaserJet printers.
2. **Software Support**
  - 2.1. **Client Support** - Consultant will provide Client’s users no charge support by telephone, email and the web during the term of this Agreement. In the United States support is available as follows: For customer support between the hours of 8:00 am and 5:00 pm Pacific time, Monday through Friday, email [support@hdlcompanies.com](mailto:support@hdlcompanies.com) or call (909) 861-4335 and ask for software support. For urgent off hours support before 8:00 am or after 5:00 pm Pacific time, Monday through Friday (or anytime Saturday), email [911@hdlcompanies.com](mailto:911@hdlcompanies.com) and Consultant’s on call support personnel will be notified. Please only include your name, agency and contact # in emails to [911@hdlcompanies.com](mailto:911@hdlcompanies.com). You will be contacted as soon as possible.
  - 2.2. **Response Time** – In the event that Client encounters an error and/or malfunction whereby the software does not conform to expected behavior in accordance with the software design, Consultant will assign one of the following severity levels and render support services in a timely manner consistent with the urgency of the situation.
    - 2.2.1. **Severity Level 1** – a critical problem has been encountered such that the software is essentially inoperable and without a reasonable workaround. Consultant will respond within one (1) business hour to diagnose the problem. A response is defined as an email or call to the Client’s designated support contact. Consultant and Client will work diligently and continuously to correct the problem as quickly as possible.
    - 2.2.2. **Severity Level 2** – a problem has been encountered that does not prevent use of the software, but the software is not operating correctly. Consultant will diagnose the problem within 48 hours and advise Client of any available work-around. Upon Consultant’s confirmation that the software is not operating correctly, Consultant will provide a software update to repair the defect and confirm with Client that the update resolved the issue.



- 2.2.3. **Severity Level 3** – a minor problem has been encountered. The software is usable but could be improved by correction of a minor defect or addition of a usability enhancement. HdL will assess the request within fifteen (15) business days and, depending on priorities, schedule a software update for a future release, advise Client that the request will not be implemented, or offer the option of implementing the request as a custom software enhancement at additional cost.
- 2.3. **Support Policy Regarding Reports** - Consultant will assist with modifications to reports as needed during the term of this agreement. Typical report modifications require 7 to 10 business days to complete. Very complex reports or reports required in a very short time frame may incur development costs, in which case an estimate will be provided for approval before the work is begun.
- 2.4. **Software Upgrades** - Except to the extent that upgrades of the software include new modules or features not previously offered as part of the software as of the date hereof, Client is entitled to upgrades of the software within the terms of this Agreement. Additional costs may apply depending on the extent of the upgrade. Potential additional costs include training, consulting, configuration, or other requested services.
- 2.5. **Out of Scope Support** – Client agrees to pay additional hourly fees according to Consultant’s then current hourly rates if the Client desires Consultant’s assistance for matters which are not caused by any defects in Consultant’s software.
3. **Online Payment Processing**
- 3.1. **Standard Payment Processing Solution** – Consultant’s software includes PCI compliant payment processing services, supporting both credit card and eCheck transactions. Consultant guarantees continued support of the Standard Payment Processing Solution across all releases of Consultant’s software and the Standard Payment Processing Solution, at no cost to Client.
- 3.1.1. **Payment Processing** - Consultant shall provide its Services to support payments remitted to Client. Consultant shall transmit transactions for authorization and settlement through Consultant’s certified payment processor. Funds for transactions processed by Consultant hereunder shall be submitted to Client’s designated bank account as follows: (i) no more than two (2) business banking days after all Transactions (other than electronic Check Transactions) that are successfully processed prior to 5:00 p.m. ET on each business banking day (e.g., a Transaction authorized at 2:00 p.m. ET on Monday will be submitted on Wednesday; a Transaction successfully processed at 8:00 p.m. ET on Monday will be submitted on Thursday); and (ii) no more than five (5) business banking days for all electronic Check Transactions that are successfully processed prior to 5:00 p.m. ET on each business banking day. Consultant makes no representation or warranty as to when funds will be made available by Client’s bank.
- 3.1.2. **Support** - Consultant shall provide Client with payment processing related customer service as needed. Client shall timely report any problems encountered with the service. Consultant shall promptly respond to each report problem based on its severity, the impact on Client’s operations and the effect on the service. Consultant shall either resolve the problem or provide Client with the information needed to enable the Client to resolve it.
- 3.1.3. **Transaction Errors** - Consultant’s sole responsibility for any Transaction error or reversed Transaction is to determine whether the result indicates a problem with Consultant’s service and, if necessary, reprocess and resubmit the Transaction without additional charge. In the event that a Transaction is reversed or refunded to any Customer of Client, for any reason, Consultant may offset such amount against funds remitted to Client, or invoice Client for such amount, at Consultant’s discretion. Client shall pay any such invoice within 30 days of receipt.
- 3.1.4. **Electronic Check Authorization** - If Client elects to accept electronic Checks as a form of payment, the following subsections apply. For the purpose of this section, “checks” means checks drawn on accounts held in the U.S. (“Check(s)”).
- 3.1.4.1. As part of the implementation plan, Client shall select risk management controls governing Check acceptance and assumes sole responsibility for the choice of controls.

- 3.1.4.2. Consultant shall provide confirmation on a submitted ABA number as part of the Service to assist Client with the decision whether to accept a Check and shall route accepted Checks.
- 3.1.4.3. Client hereby authorizes Consultant to debit the Client's financial institution account in the amount of any returned item that is received by Consultant.
- 3.1.5. **Client Responsibilities**
  - 3.1.5.1. As a condition to its receipt of Consultant's Standard Payment Processing Solution, Client shall execute and deliver a payments services/merchant application with Consultant's Standard Payment Processing Solution vendor to establish Client's merchant account for payments processing, and any and all applications, agreements, certifications or other documents required by Networks or other third parties whose consent or approval is necessary for the processing of Transactions. This includes "Network" is an entity or association that operates, under a common service mark, a system which permits participants to authorize, route, and settle Transactions among themselves, including, for example, networks operated by VISA USA and Mastercard, Inc., NYCE Corporation, American Express, and Discover.
  - 3.1.5.2. Client represents, warrants, and agrees that it does and will comply with applicable Laws and regulations and Network rules, regulations or operating guidelines. Client shall notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client by any governmental organization having jurisdiction over Client or a Customer related to the Service. Client shall also notify Consultant in writing as soon as possible in the event a claim is either threatened or filed against Client relating to Transactions or the Services or a fine or other penalty is assessed or threatened relating to Transactions or the Services.
  - 3.1.5.3. Client represents, warrants and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of Consultant, Client shall provide Consultant with documentation reasonably satisfactory to Consultant verifying compliance with this Section.
  - 3.1.5.4. Client hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.
- 3.2. **Custom Payment Processing Solution** - Should Client require a different payment processing solution than Consultant's designated standard solution, Client will pay an initial custom development fee to establish the integration as well as an increase to the annual use fee to maintain the integration across regular maintenance releases of Consultant's software and Client's custom payment processing solution. The annual use fee does not include significant redevelopment of the integration as may be required for major updates to Consultant's software or Client's custom payment processing solution. Before commencing any work Consultant will provide a statement of work (SOW) defining the scope of work to be performed, timeline for development, and all associated costs.

## **FEES**

- 4. **Pricing Adjustments** – All pricing listed in this Schedule will be honored during the first twelve months of software services. Any additional/optional services needed after this period will be provided using Consultant's current pricing schedule at the time the service is requested.
- 5. **Software Services**
  - 5.1. **Recurring Costs**

<i>Item</i>	<i>Price</i>	<i>Comments</i>
<i>Software Use Fee</i>	\$8,344.97	Billed Annually
<i>Software Hosting Services</i>	\$399.12	Billed Annually

- 5.1.1. **Software Use Fee** – Software Use Fee is billed annually, and provides for ongoing customer support and updates to the software.
- 5.1.2. **Hosting Services** – The fee for software hosting services is billed annually in advance, along with the software use fee.
- 5.1.3. **CPI** – Recurring costs will be increased as of January 1st of each calendar year with reference to the 12-month percent change in the most recently published annual Consumer Price Index for All Urban Consumers (CPI-U), West Region, as reported by the U.S. Bureau of Labor Statistics (the “CPI Change”). Each annual increase in the Fees will be equal to the greater of two percent (2%) or the actual CPI Change and the lesser of ten percent (10%) or the actual CPI Change. For example, if the actual CPI Change is 1.5%, then the annual increase will be 2%, if the actual CPI Change is 3.5%, then the annual increase will be 3.5%, and if the actual CPI Change is 12%, then the annual increase will be 10%.
6. **Payment Processing** – Consultant’s Standard Payment Processing Solution will configure payment processing services to utilize either a taxpayer funded model (service/convenience fee) or Agency funded model, as directed by Client. Client may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.
- 6.1. Taxpayer funded model – Client authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
- 6.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
- 6.1.2. ACH/eCheck processing - \$2.50 per transaction
- 6.1.3. ACH/eCheck returns - \$0.00 per return
- 6.1.4. Chargebacks - \$0.00 per chargeback
- 6.1.5. Payment Account Hosting and Maintenance - \$35.00 per month
- 6.2. Agency funded interchange passthrough model
- 6.2.1. Credit and debit card processing – 2.9% of transaction amount, + \$0.30 per transaction
- 6.2.2. ACH/eCheck processing - \$0.75 per transaction
- 6.2.3. ACH/eCheck returns - \$10.00 per return
- 6.2.4. Chargebacks - \$25.00 per chargeback
- 6.2.5. Payment Account Hosting and Maintenance - \$35.00 per month
- 6.3. Consultant reserves the right to review and adjust pricing related to payment processing services on an annual basis. Consultant will communicate any such adjustment to Client in writing, with 60 days advance notice. Items that will be considered in the review of fees may include, but are not limited to: regulatory changes, card association rate adjustments, card association category changes, bank/processor dues and assessments, average consumer payment amounts, card type utilization, and costs of service.
- 6.4. Fees do not include expenses, late fees or charges, or taxes, all of which shall be the responsibility of Client. In addition to the charges specified, Client shall be responsible for (a) all interchange and network provider fees, (b) all dues, fees, fines and assessments established and owed by Client to Visa and/or Mastercard, (c) for all costs and fees associated

with changes to ATM protocol caused by Client's conversion to the Services, and (d) any increase in postage charges, provided that any increase in charges resulting from (a) through (d) shall not exceed the actual increase incurred by Consultant.

**7. Payment Schedule**

- 7.1. Any travel and lodging expenses are billed at cost as they are incurred. Such expenses shall be due within 30 days of the billing date.
- 7.2. Recurring software service fees will be invoiced each year on the anniversary of the effective date of the Agreement, and shall be due within 30 days of the invoice date.
- 7.3. Payment processing service fees are invoiced monthly for the prior month's activity, and shall be due within 30 days of the invoice date.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Schedule Z2 to the MSA through their duly authorized representatives as of \_\_\_\_\_, 2024.

**CONSULTANT:**

**CLIENT:**

**Hinderliter De Llamas & Associates**

**City of Agoura Hills, CA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_