

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
CITY OF DESERT HOT SPRINGS
AND
HdL Companies**

This Professional Services Agreement ("Agreement") is made and entered into this 26th day of October 2016, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the "City," and HdL Companies, hereinafter referred to as "Consultant."

RECITALS:

WHEREAS, the City desires to utilize the services of Consultant, as an independent contractor, to perform auditing of marijuana dispensaries ("Services"); and

WHEREAS, Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

Section 2. SCOPE OF SERVICES

Consultant shall provide to the City those Services as set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference, at the time, place, and in the manner specified therein, in a manner satisfactory to the 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. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

Section 3. COMPLETION DATE

Consultant shall complete the services described in the Scope of Services during the term of this Agreement, which shall be effective immediately, and expire on June 30, 2018.

Section 4. COMPENSATION

The City agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the City, as and for compensation for the faithful performance of said services and duties, an amount not to exceed \$30,000, in accordance with the Cost Proposal contained in the Scope of Services.

Section 5. METHOD OF PAYMENT

a. Consultant shall submit invoices to the City, not more often than once a month, describing the work performed. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. The City shall pay Consultant no later than thirty (30) days after approval of the invoice by City staff provided that the services reflected in the invoice were performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement, that the number of hours of service set forth in the invoice reflect the amount of time ordinarily expended for such service by members of the profession currently practicing in the same locality under similar conditions, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement. Review and approval of invoice by City staff will occur within thirty (30) calendar days of receipt of invoice via email.

b. The Consultant shall submit invoices under this Agreement to:

Joe Tanner, Administrative Services Director
City of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240
Telephone: 760-329-6411
Email: jtanner@cityofdhs.org

Section 6. EXTRA WORK

At any time during the term of this Agreement, the City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the Services, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform Extra Work without written authorization from the City.

Section 7. TERMINATION

This Agreement may be terminated by the City immediately for cause. The City may terminate this Agreement without cause upon thirty (30) days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination, provided that Consultant shall have satisfied all its obligations under this Agreement through and including the effective date of termination.

Section 8. OWNERSHIP OF DOCUMENTS

All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at its expense, provide such reports, plans, studies, documents and other writings in pdf format to the City upon written request.

Section 9. CONFIDENTIALITY

a. All ideas, memoranda, specifications, plans, procedures, drawings, photographs, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without prior written consent of the City, be used by Consultant for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential.

b. Consultant shall not use the City's insignia or photographs relating to Consultant's Services, or any publicity pertaining to the Consultant's Services under this

Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

Section 10. CONSULTANT'S BOOKS AND RECORDS

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where the City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, the City may, by written request of any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained at City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

Section 11. INDEPENDENT CONTRACTOR'S STATUS: NOT AGENT OF THE CITY

Consultant shall at all times during the term of this Agreement remain, as to the City, a wholly independent contractor and shall perform the services described in this Agreement as an independent contractor and further, hereby waives any claims for any compensation or benefits afforded to City employees and not to independent contractors. Neither the City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Nothing contained in this Agreement shall be deemed, construed or represented by the City or Consultant or by any third person to create the relationship of principal and agent and Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the City. Consultant shall

have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind the City to any obligation whatsoever.

**Section 12. REPRESENTATIONS AND ACKNOWLEDGMENTS
REGARDING INDEPENDENT CONTRACTOR'S STATUS
OF CONSULTANT**

a. Consultant represents and acknowledges the following:

(1) The City is not required to provide any training or legal counsel to Consultant or its employees in order for Consultant to perform the services described in this Agreement.

(2) Performance of the services described in this Agreement does not have to be integrated into the daily business operations of the City.

(3) The services described in this Agreement can be performed without the use of City equipment, materials, tools or facilities.

(4) Nothing in this Agreement shall be interpreted to imply that the City must maintain any contractual relationship with Consultant on a continuing basis after termination of this Agreement.

(5) The City will not be requested or demanded to assume any liability for the direct payment of any salary, wage or other such compensation to any person employed by Consultant to perform the services described in this Agreement.

(6) Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are employees of the City.

b. The City represents and acknowledges the following:

(1) Consultant is not required to comply with daily instructions from City staff with respect to when, where or how Consultant must perform the services set forth in this Agreement.

(2) Consultant is solely responsible for determining who, under the supervision or direction of Consultant, will perform the services set forth in this Agreement.

(3) The City will not hire, supervise or pay any assistants working for Consultant pursuant to this Agreement.

(4) Nothing in this Agreement shall be interpreted to imply that the Consultant must maintain any contractual relationship with the City on a continuing basis after termination of this Agreement.

(5) It is the sole responsibility of Consultant to set the hours in which Consultant performs or plans to perform the services set forth in this Agreement.

(6) Consultant is not required to devote full time to the business operations of the City in order to perform the services set forth in this Agreement.

(7) Consultant is not required to perform the services set forth in the Agreement in any particular order or sequence.

(8) Nothing in this Agreement shall be interpreted to preclude Consultant from working for other persons or firms, provided that such work does not create a conflict of interest.

(9) Consultant is not required to perform the Services at City-owned property.

Section 13. CIVIL CODE SECTION 1542 WAIVER

Consultant expressly waives any and all rights and benefits conferred upon it by the provisions of section 1542 of the California Civil Code which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

This waiver shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, that are known or unknown, or suspected or unsuspected, including, without limitation, claims of entitlements under the California Public Employees' Retirement System ("CalPERS") that are only afforded to employees and not independent contractors. Consultant further represents and warrants that it understands this waiver and that if it does not understand this waiver, it shall seek the advice of a qualified attorney before executing this Agreement.

Initials _____

Section 14.

CONFLICTS OF INTEREST

a. Consultant (including principals, associates and professional employees) covenants and represents that it does not have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source or income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

b. Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(1) Does not make or participate in:

- (i) the making or any governmental decisions regarding approval of a rate, rule, or regulation, the adoption or enforcement of laws;
- (ii) the issuance, denial, suspension or revocation of permits, licenses, applications, certificates, approvals, orders, or similar authorization or entitlement;
- (iii) authorizing the City to enter into, modify, or renew a contract;
- (iv) granting the City approval to a contract that requires City approval and to which the City is a party, or to the specifications for such a contract;
- (v) granting the City approval to a plan, design, report, study, or similar item; or
- (vi) adopting, or granting City approval of, policies, standards, or guidelines for the City or for any subdivision thereof.

(2) Does not serve in a staff capacity with the City and in that capacity participate in making a governmental decision or otherwise perform the same or substantially all the same duties for the City that would otherwise be performed by an individual holding a position specified in the City's Conflict of Interest Code under Government Code Section 87302.

c. In the event the City officially determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Consultant shall file the subject Form 700 with the City Clerk's Office pursuant to the written instructions provided by the Office of the City Clerk.

Section 15. PROFESSIONAL ABILITY OF CONSULTANT; WARRANTY; FAMILIARITY WITH WORK; PERMITS AND LICENSES

a. Consultant warrants that all services will be performed in a competent, professional and satisfactory manner in accordance with the standards prevalent in the industry for such services.

b. By executing this Agreement, Consultant warrants that:

- (1) it has thoroughly investigated and considered the work to be performed;
- (2) it has investigated the issues, regarding the scope of services to be provided;
- (3) it has carefully considered how the work should be performed; and
- (4) it fully understands the facilities, difficulties and restrictions attending performance of the work under this Agreement.

c. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by the City, it shall immediately inform the City of such fact and shall not proceed except at Consultant's risk until written instructions are received from the City Manager or appropriate City representative.

d. Consultant represents that it and all of its subcontractors, if any, have obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

Section 16. COMPLIANCE WITH LAWS

Consultant shall comply with all local, state and federal laws and regulations applicable to the services required hereunder.

Section 17. INDEMNIFICATION

a. To the furthest extent allowed by law, Consultant shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

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

This section shall survive termination or expiration of this Agreement.

Section 18. INSURANCE REQUIREMENTS

a. Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all insurance as required in Exhibit B or as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion.

b. If at any time during the life of the Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City. Any failure to maintain the required insurance shall be sufficient cause for the City to terminate this Agreement. No action taken by the City pursuant to this section shall in any way relieve Consultant of its responsibilities under this Agreement

c. The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify the City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers,

agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them. If Consultant maintains higher limits of liability than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits of liability maintained by Consultant.

d. Upon request of the City, Consultant shall immediately furnish the City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

e. If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of the City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Consultant and the City prior to the commencement of any services by the subcontractor.

Section 19. NOTICES

a. Any notice to be provided pursuant to this Agreement shall be in writing, and all such notices shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the parties as follows:

To the City: **Joe Tanner, Administrative Services Director**
City of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240
Telephone: 760-329-6411
Email: jtanner@cityofdhs.org

To Consultant: **David McPherson, Principal**
HdL Companies
1340 Valley Vista Dr., Ste 200
Diamond Bar, Ca 91765
Telephone: 909-861-4335
Email: dmcpherson@hdlcompanies.com

b. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the second (2nd) day after deposit in the United States mail.

Section 20. DEFAULT

a. Failure or delay by any party to this Agreement to perform any material term or provision of this Agreement shall constitute a default under this Agreement; provided however, that if the party who is otherwise claimed to be in default by the other party commences to cure, correct or remedy the alleged default within fifteen (15) calendar days after receipt of written notice specifying such default and shall diligently complete such cure, correction or remedy, such party shall not be deemed to be in default hereunder.

b. The party which may claim that a default has occurred shall give written notice of default to the party in default, specifying the alleged default. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default; provided, however, the injured party shall have no right to exercise any remedy for a default hereunder without delivering the written default notice, as specified herein.

c. Any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies associated with a default.

d. In the event that a default of any party to this Agreement may remain uncured for more than fifteen (15) calendar days following written notice, as provided above, a "material breach" shall be deemed to have occurred. In the event of a material breach, the injured party shall be entitled to seek any appropriate remedy or damages as otherwise set forth herein and by initiating legal proceedings.

Section 21. REMEDIES

If Consultant materially breaches any of the terms of this Agreement, the City's remedies shall include, but shall not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the work described in the Scope of Services that is not finished by Consultant.

Section 22. ENTIRE AGREEMENT

a. This Agreement supersedes any and all other agreements, either oral or written, between the City and Consultant with respect to the subject matter of this Agreement.

b. This Agreement contains all of the covenants and agreements between the parties with respect to the subject matter of this Agreement, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been made by or on behalf of any party except those covenants and agreements embodied in this Agreement.

c. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.

Section 23. MODIFICATIONS AND AMENDMENTS

This Agreement may be modified or amended only by a written instrument signed by both parties.

Section 24. ASSIGNMENT AND SUBCONTRACTING

a. The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the written consent of the City.

b. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written consent of the City. If the City consents to such subcontract, Consultant shall be fully responsible to the City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as required by law.

Section 25. WAIVER

a. No waiver shall be binding, unless executed in writing by the party making the waiver.

b. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.

c. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

Section 26. SEVERABILITY

If any one or more of the sentences, clauses, paragraphs or sections contained herein is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of the remaining sentences, clauses, paragraphs or sections contained herein.

Section 27. VENUE

All proceedings involving disputes over the terms, provisions, covenants or conditions contained in this Agreement and all proceedings involving any enforcement action related to this Agreement shall be initiated and conducted in the applicable court or forum in Riverside County, California.

Section 28. LITIGATION EXPENSES AND ATTORNEYS' FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

Section 29. EXECUTION IN COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least a copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 30. PROHIBITED INTERESTS

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of the City, during the term of his or her service with the City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

Section 31. EQUAL OPPORTUNITY EMPLOYMENT

Consultant represents that it is an equal opportunity employer and shall not discriminate against any subcontractor, employee, or applicant ("person") for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Unless otherwise permitted under the law, Consultant shall not refuse to hire or employ any such person or refuse to select any such person for a training program leading to employment, or bar or discharge any such person from employment or from a training program leading to employment, or otherwise discriminate against any such person in compensation or in terms, conditions, or privileges of employment.

Section 32. TIME OF THE ESSENCE

Time is of the essence in the performance of this Agreement.

Section 33. PRINCIPAL REPRESENTATIVES

a. David McPherson shall be Consultant's Principal Representative and the person responsible for undertaking, managing and supervising the performance of all of the services set forth in the Scope of Services for this Agreement. Consultant's Principal Representative's experience, knowledge, capability and reputation were a substantial inducement for the City to enter into this Agreement, and as such, for the purposes of performing the Scope of Services of this Agreement, the duties of Consultant's Principal Representative shall not be reassigned, without the express written consent of both parties.

b. The Administrative Services Director, Joe Tanner, shall be the Principal Representative of the City for purposes of communicating with Consultant on any matter associated with the performance of the services set forth in this Agreement.

Section 34. NON-LIABILITY OF CITY'S OFFICERS AND EMPLOYEES

No officer or employee of the City shall be personally liable to Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Consultant or to its successor, or for any breach of any obligation of the terms of this Agreement.

Section 35. INTERPRETATION

This Agreement shall not be interpreted against either party on the grounds that one of the parties was solely responsible for preparing it or caused it to be prepared as both parties were involved in drafting it.

Section 36. PROTECTION AND CORRECTION OF WORK

a. Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work performed by Consultant, and the equipment, materials, papers and other components thereof to prevent losses or damages.

b. The performance of services by Consultant shall not relieve Consultant from any obligation to correct any incomplete, inaccurate or defective work at no further cost to the City, when such inaccuracies are due to the fault of Consultant.

Section 37. CAPTIONS AND HEADINGS

The captions and headings contained in this Agreement are provided for identification purposes only and shall not be interpreted to limit or define the content of the provisions described under the respective caption or heading.

Section 38. GOVERNING LAW

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, shall be construed pursuant to and in accordance with California law.

Section 39. CUMULATIVE REMEDIES

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

Section 40. NO THIRD PARTY BENEFICIARIES

The parties do not intend the benefits of this Agreement to inure to any third party, nor shall any provision of this Agreement be so construed.

Section 41. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

Section 42. REPRESENTATIONS OF PARTIES AND PERSONS EXECUTING AGREEMENT

a. Each of the parties to this Agreement hereby represents that all necessary and appropriate actions of their governing bodies have been taken to make this Agreement a binding obligation of each of the parties hereto.

b. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and bind the parties each purports to represent.

Section 43. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties hereto.

Section 44. SURVIVAL

All obligations arising prior to any termination of this Agreement and all provisions of this Agreement allocating liability between the City and Consultant shall survive any such termination.

Section 45. USE OF RECYCLED PRODUCTS

Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

CITY OF DESERT HOT SPRINGS

HdL Companies




Charles Maynard, City Manager




Andrew Nickerson, President

ATTEST:



Jerryl Soriano, CMC, City Clerk

APPROVED AS TO FORM:



Jennifer Mizrahi, Deputy City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

City of Desert Hot Springs

Medical Marijuana Management Program

HdL Companies
1340 Valley Vista Dr., Suite 200
Diamond Bar, CA 91765
www.hdlcompanies.com

Contact:
David McPherson
909.861.4335
dmcpherson@hdlcompanies.com



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I. LETTER OF TRANSMITTAL

May 20, 2016

Mr. Joe Tanner, Administrative Services Director
City of Desert Hot Springs
65960 Pierson Blvd.
Desert Hot Springs, CA 92240

Re: Proposal - Medical Marijuana Dispensary Audit Services

Dear Mr. Tanner,

Thank you for the opportunity to present this proposal to provide audit services for medical marijuana (MMJ) businesses in the City of Desert Hot Springs. HdL was incorporated in 1983 and has over 30 years of experience providing revenue enhancement and consulting services to local governments in California. HdL is a consortium of three companies established to maximize local government revenues by providing audit, compliance, economic development, consulting services and software products. Its audit and consulting services include sales, use and transaction taxes, property taxes, transient occupancy taxes, and a Medical Marijuana Management Program. The firm also provides a variety of enterprise software products for business licensing, code enforcement, animal control, building permits and tracking/billing of false alarms. HdL's systematic and coordinated approach to revenue management and economic data analysis is currently being utilized by over 400 agencies in six states. The firm currently serves 44 counties, 299 cities and 79 transactions tax districts in California.

Of particular interest to you and your team is our knowledgeable team of professionals who have direct experience in the establishment and implementation of Medical Marijuana Regulatory Programs including establishing land-use regulations, registration processes, operation regulations and dispensary audits for medical marijuana facilities and staffing plans.

Enclosed please find our detailed scope of services for HdL's Marijuana Management Program. We agree to adhere to the deliverable requirements for a total cost not to exceed \$6,000 per dispensary. However, this will be subject to an agreed upon project schedule between the City of Desert Hot Springs and HdL.

We look forward to the opportunity to partner with the City of Desert Hot Springs in developing a strategy which meets your program needs. If you have any questions or require additional information, please feel free to contact me at 909.861.4335 ext. 333 or by email at anickerson@hdlcompanies.com or David McPherson at 909.861.4335 ext. 348 dmcpherson@hdlcompanies.com.

Sincerely,



Andy Nickerson
President, HdL Companies

II. PROPOSED SCOPE OF SERVICES

The regulation, compliance and taxation of medical marijuana (MMJ) is complex and filled with challenging issues. Taxes are one of the biggest challenges the cannabis industry faces. Dispensary operators often have a much higher tax burden than other sectors of the cannabis industry due to 280E rules and limited banking options. As a result, it can be tempting for them to look for creative ways to lower their tax liability. Since dispensary operations are primarily a cash transaction business, it is estimated that 30-35% of all revenue related to cannabis businesses can go unreported if they are not routinely audited and regulated is of great concern to most cities. In today's thriving cannabis economy is estimated that only 8% of dispensary businesses get audited which leaves the opportunity for leakage or under reporting of taxes.

HdL has developed data analytics to monitor dispensary sales trends for California, regionally, and variances between all the dispensary operations within the local municipality. In doing so it can determine if a dispensary is under performing or potentially under reporting its taxes. The Scope of Services to be provided by HdL shall include:

- Kick of meeting(s) with City Staff or City Sub Committees;
- The scope of the audit will commence from the first day the Medical Marijuana Dispensary was granted an operating permit to verify the accuracy of the gross receipts reported to the City.
- Review business practices, procedures and internal controls to ascertain the level of risk assessment for each dispensary located in the City.
- Verify the accuracy of the annual gross receipts reported by the Medical Marijuana Dispensary to the City of Desert Hot Springs for purposes of calculating the amount of business tax due.
- Monitor all Marijuana retail sale trends in California, regionally and locally to determine how they impact the City of Desert Hot Springs.
- Monitor all the state agencies that oversee the regulations of medical marijuana businesses and advise the City of any regulations or audits which might impact the City of Desert Hot Springs's revenues or regulation requirements.
- Provide recommendations to the City of its policies, procedures and compliance requirements in order to ensure the most effective and efficient collection of business tax, sales tax and other revenues associated with Medical Marijuana businesses in the City and HdL.

Objective 1: Desk Audit

The project oversight and management objectives will begin upon the execution of a contract with the Consultant which will include the following:

- The first phase of the audit is a desk audit in which the tax returns and external reports are analyzed to verify the gross receipts reported.

Objective 2: Field Audit

The second phase is a field audit where point of sale systems, accounting software and inventory reports are sampled to verify the information contained in the external reports.

Included in Phase 2 of the field audit is a detailed check list of each of the key areas noted below which is deemed essential to conducting a thorough audit of the dispensaries which will be provided to the City as part of the training and development of the audit program.

- Notification letter sent to the Medical Marijuana Dispensaries containing the pertinent information.
- List of initial financial information requested in notification letter used for a desk audit for the periods under review.
- Results from the desk audit will direct the emphasis of the field process.
- Inventory Audit
- Point of Sale Audit
- Software Systems Audit
- Facility Audit

Objective 3: Deliverables

An initial audit findings letter will be sent to the Medical Marijuana Dispensary. The taxpayer will be given the appropriate time to respond or appeal the Final Determination Letter in accordance with the City ordinance. If a tax assessment needs to be adjusted then a modified invoice will be sent out and the taxpayer will be given the appropriate time to pay the tax liability in accordance to the City ordinance.

III. COST

HdL's fee proposal is based on time, materials and travel expenses associated with the execution of the services. It is based on the current scope of services as outlined in Objectives 1 through 3 for a fee of \$6,000 per dispensary, not to exceed the dollar to be determined by the City for the total amount of dispensaries needed to be audited. This fee is based on the current requirements presented to HdL by City staff in order to meet these requirements and the following assumptions:

Scope of Service Objectives Per Dispensary	Estimated Hours of Labor/Budget
Objective 1 – Desk Audit	4 hours / \$1,000
Objective 2 - Field Audit	16 hours / 4,000
Objective 3 - Deliverables	4 hours / \$1,000
Total	24 hours / \$6,000

Objective 1 – 3: Cost Assumptions

- The City will be auditing 2-3 dispensaries per year, up to 5 during the contract period.

IV. EXPERIENCE AND RESOURCES

Company Profile

Founded in 1983, HdL is a consortium of three companies established to maximize local government revenues by providing audit, compliance, economic development, consulting services and software products. Its audit and consulting services include sales, use and transaction taxes, property taxes, transient occupancy taxes, and a Medical Marijuana Management Program. The firm also provides a variety of enterprise software processing tools for business licensing, code enforcement, animal control, building permits and tracking/billing of false alarms. HdL's systematic and coordinated approach to revenue management and economic data analysis is currently being utilized by over 400 agencies in six states. The firm currently serves 44 counties, 299 cities and 79 transactions tax districts in California.

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

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

Key Personnel

David McPherson is a Principal with HdL and will be the primary point of contact for this project. Prior to joining the firm he served 28 years in local government for the cities of Newport Beach, San Jose and Oakland. While working for the City of Oakland, he became the first Tax Administrator in the Country to successfully tax medical marijuana. David is one of the state's most recognized experts in cannabis horticulture, processing and dispensary operations. He uses his industry experience to assist local and state agencies in developing medical marijuana policies for regulation, compliance, auditing and economic development. David worked closely with the League of Cities and lobbyists on the development of AB 243, SB 243 and AB 266 which established the Medical Marijuana Regulation and Safety Act (MMRSA).

V. REFERENCES

Thomas Truskowski
Director of Planning and Economic Development
City of Gonzales
Phone: 831.675.5000
Email: ttruskowski@ci.gonzales.ca.us

Satwant Takhar
Administrative Services Director
City of Marysville
Phone: 503.749.3935
Email: stakhar@marysville.ca.us

Brandon Swanson
Management Analyst
County of Monterey
Phone: 831.755.5334
Email: swansonb@co.monterey.ca.us

Bekki Riggan
Deputy County Executive Officer
County of Placer
Phone: 530.889.4000
Email: briggan@placer.ca.gov

Chris Callihan
City Attorney
City of Salinas
Phone: 831.758.7201
Email: chris.callihan@ci.salinas.ca.us

EXHIBIT "B"

INSURANCE REQUIREMENTS- PROFESSIONAL SERVICES AGREEMENT

Insurance:

Throughout the life of this Contract, Contractor shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City Manager or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$2,000,000 per occurrence for bodily injury and property damage
\$1,000,000 per occurrence for personal and advertising injury
\$2,000,000 aggregate for products and completed operations
\$4,000,000 general aggregate

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$2,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS' COMPENSATION** insurance as required under the California Labor Code.

(iv) **EMPLOYERS' LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) **BUILDERS RISK (Course of Construction)** insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. (Only required if the project includes new construction of a building; or renovation of, or addition to, an existing building.)

(vi) CONTRACTORS POLLUTION LIABILITY (Unless waived in writing by the City Manager or his/her designee in his/her sole discretion, Contractors Pollution Liability is required for all environmental and water remediation work and for all work transporting fuel. Unless waived in writing by the City Manager or his/her designee in his/her sole discretion, Contractors Pollution Liability insurance is also required for demolition, renovation, HVAC, plumbing or electrical (including, without limitation, lighting) work on any structure built prior to the year 1990) with limits of liability of not less than the following:

\$1,000,000 per occurrence or claim

\$2,000,000 general aggregate per annual policy period

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Should this Contract involves any lead based, mold or asbestos environmental hazard, either the Automobile Liability insurance policy or the Contractors Pollution Liability insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by Contractor pursuant to the Contract.

In the event this Contract involves any lead-based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Contract involves any mold environmental hazard (e.g., mold remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

Contractor shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee in his/her sole discretion. At the option of the City Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees and agents; or (ii) Contractor shall provide a financial guarantee, satisfactory to the City Manager or his/her designee in his/her sole discretion, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a

notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The Contractors Pollution Liability insurance policy shall be written on either an occurrence form, or a claims-made form. The General Liability (including ongoing operations and completed operations), Automobile Liability and Contractors Pollution Liability insurance policies shall name City, its officers, officials, employees and agents as an additional insured. All such policies of insurance shall be endorsed so Contractor's insurance shall be primary and no contribution shall be required of City, its officers, officials, employees and agents. The Builders Risk (Course of Construction) insurance policy shall be endorsed to name the City as a loss payee. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, employees and agents. The coverage(s) shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees and agents. If Contractor maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Contractor.

Claims-Made Policies - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Contract or the commencement of work by Contractor.**
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the work or termination of the Contract, whichever first occurs.**
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract, or work commencement date, Contractor must purchase extended reporting period coverage for a minimum of 5 years after completion of the work or termination of the Contract, whichever first occurs.**
- (iv) A copy of the claims reporting requirements must be submitted to City for review.**
- (v) These requirements shall survive expiration or termination of the Contract.**

Contractor shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or his/her designee in his/her sole discretion prior to City's execution of the Contract and before work commences. Upon request of City, Contractor shall immediately furnish City with a complete copy of any insurance policy

required under this Contract, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Contract.

If at any time during the life of the Contract or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Contract shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Contract. No action taken by City hereunder shall in any way relieve Contractor of its responsibilities under this Contract.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Contract. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its principals, officers, agents, employees, persons under the supervision of Contractor, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

In the event of a partial or total destruction by the perils insured against of any or all of the work and/or materials herein provided for at any time prior to the final completion of the Contract and the final acceptance by the City of the work or materials to be performed or supplied thereunder, the Contractor shall promptly reconstruct, repair, replace, or restore all work or materials so destroyed or injured at his/her sole cost and expense. Nothing herein provided for shall in any way excuse the Contractor or his/her insurance company from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Contract.

If Contractor should subcontract all or any portion of the services to be performed under this Contract, Contractor shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Contractor and City prior to the commencement of any work by the subcontractor.

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
CITY OF DESERT HOT SPRINGS
AND
HdL Companies**

This Professional Services Agreement ("Agreement") is made and entered into this 26th day of October 2016, by and between the City of Desert Hot Springs, a municipal corporation located in the County of Riverside, State of California, hereinafter referred to as the "City," and HdL Companies, hereinafter referred to as "Consultant."

RECITALS:

WHEREAS, the City desires to utilize the services of Consultant, as an independent contractor, to perform auditing of marijuana dispensaries ("Services"); and

WHEREAS, Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, CONDITIONS AND PROMISES CONTAINED HEREIN AND FOR SUCH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. RECITALS

The Recitals set forth above are true and correct and are hereby incorporated into this Agreement by this reference, as though set forth in full herein.

Section 2. SCOPE OF SERVICES

Consultant shall provide to the City those Services as set forth in the Scope of Services, attached hereto as Exhibit "A" and incorporated herein by this reference, at the time, place, and in the manner specified therein, in a manner satisfactory to the 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. In the event any conflict exists between this Agreement minus the Scope of Services, on the one hand, and the Scope of Services, on the other hand, the former shall supersede.

Section 3. COMPLETION DATE

Consultant shall complete the services described in the Scope of Services during the term of this Agreement, which shall be effective immediately, and expire on June 30, 2018.

Section 4. COMPENSATION

The City agrees to pay Consultant for and in consideration of the faithful performance of the consulting services and duties set forth in this Agreement, and Consultant agrees to accept from the City, as and for compensation for the faithful performance of said services and duties, an amount not to exceed \$30,000, in accordance with the Cost Proposal contained in the Scope of Services.

Section 5. METHOD OF PAYMENT

a. Consultant shall submit invoices to the City, not more often than once a month, describing the work performed. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. The City shall pay Consultant no later than thirty (30) days after approval of the invoice by City staff provided that the services reflected in the invoice were performed to the reasonable satisfaction of the City in accordance with the terms of this Agreement, that the number of hours of service set forth in the invoice reflect the amount of time ordinarily expended for such service by members of the profession currently practicing in the same locality under similar conditions, and that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement. Review and approval of invoice by City staff will occur within thirty (30) calendar days of receipt of invoice via email.

b. The Consultant shall submit invoices under this Agreement to:

Joe Tanner, Administrative Services Director
City of Desert Hot Springs
65950 Pierson Boulevard
Desert Hot Springs, CA 92240
Telephone: 760-329-6411
Email: jtanner@cityofdhs.org