

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is dated November 19, 2024 ("Effective Date") and is between the City of Manhattan Beach, a California municipal corporation ("City") and Hinderliter, de Llamas & Associates, a California corporation ("Consultant"). City and Consultant are sometimes referred to herein as the "Parties", and individually as a "Party".

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide business license administration and compliance services.

B. 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.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The Parties therefore agree as follows:

1. Consultant's Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services (the "Services") for business license administration and compliance services, attached as **Exhibit A**. City may request, in writing, changes in the Scope of Services to be performed. Any changes to the scope or cost of work must be in writing and mutually agreed upon by the Parties.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Joshua Davis, VP of TFA (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

C. Time for Performance. Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

D. Standard of Performance. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of Services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through November 18, 2027, with two one-year extension options exercisable in the City's discretion, unless sooner terminated as provided in Section 12 of this Agreement.

3. Compensation.

A. Compensation. As full compensation for Services satisfactorily rendered, City shall pay Consultant at the rates set forth in the Approved Fee Schedule attached hereto as **Exhibit B**. In no event shall Consultant be paid more than \$17.00/processed account plus annual CPI, 25% of recovered revenue that result from collection services, and 35% of new recovered revenue that result from business license tax discovery and audit activities for such Services.

B. Expenses. The amount set forth in paragraph 3.A. above includes reimbursement for all expenditures incurred in the performance of this Agreement.

C. Unauthorized Services and Unanticipated Expenses. City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services authorized by the City Council, or (where authorized) the City Manager shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the Parties. At the request of the Consultant, the City Council may, in writing, reimburse Consultant for an unanticipated expense at its actual cost. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis, for the Services performed pursuant to this Agreement. Each invoice shall itemize the Services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten Business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within 30 calendar days after receipt up to the Maximum Compensation set forth in Section 3 of this Agreement. City does not pay interest on past due amounts. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant. Notwithstanding the preceding sentence, if Consultant is a nonresident of California, City will withhold the amount required by the Franchise Tax Board pursuant to Revenue and Taxation Code Section 18662 and applicable regulations.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

5. Independent contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

6. Information and Documents.

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing 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. A 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 subcontractors 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 thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant 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 the response.

C. All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. 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 Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant. This Section 6.C. does not apply to any software, programs, methodologies or systems used in the creation of such work product, nor does it apply to any drafts, notes or internal communications prepared by Consultant in the course of performing the Services that were not otherwise provided to City in either hardcopy or electronic form, all of which may be protected by Consultant or others' copyrights or other intellectual property.

D. Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

7. Conflicts of Interest. Consultant affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Services contemplated by this Agreement. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

8. Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) Except as provided in subsection B below, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of

all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement.

3) Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws.

4) City may 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 subparagraph A.2).

5) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. In no event will Consultant be (i) liable for claims, liabilities or damages arising from any action or inaction by Consultant in response to specific direction from City, or in direct connection with the issuance, non-issuance or revocation of any

registration, license, permit, or exemption by City or in response to City's direction; or (ii) required to provide a defense to the Indemnitees in connection with such claims identified in this subsection B. This subsection B shall not apply to Liabilities arising from the negligence or willful misconduct of Consultant.

C. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

9. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph A.1) of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of \$2,000,000.00 per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming City and its elected and appointed officials, officers, employees, agents and volunteers as additional insureds. This provision shall also apply to any excess/umbrella liability policies.

D. Primary and Non-Contributing. The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its elected and appointed officials, officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 8 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

10. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

11. Records and Inspections. Consultant shall maintain complete and accurate records with respect to time, costs, expenses, receipts, correspondence, and other such information required by City that relate to the performance of the 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 City, its designees and representatives at reasonable times, and shall allow City to examine and audit the books and records, to make transcripts therefrom as necessary, and to inspect 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 years after receipt of final payment.

12. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least forty-five calendar days before the termination is to be effective. Consultant may terminate this

Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least 60 calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

13. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, judicial orders, enemy or hostile governmental action, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

14. Default.

A. 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.

B. In addition to the right to terminate pursuant to Section 12, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City shall serve Consultant with written notice of the default. Consultant shall have ten calendar days after service upon it of the notice in which to cure the default by rendering a satisfactory performance. In the event that Consultant fails to cure its default within such period of time, City may, notwithstanding any other provision of this Agreement, 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.

15. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

If to Consultant:

Attn: Libby Bretthauer

Attn: Joshua Davis

Financial Services Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5597
Email: Lbretthauer@manhattanbeach.gov

VP of TFA
HDL Companies
120 S State College Blvd, Suite 200
Brea, CA 92821
Telephone: 714-879-5000
Email: contracts@hdlcompanies.com

With a courtesy copy to:

Quinn M. Barrow, City Attorney
1400 Highland Avenue
Manhattan Beach, California 90266
Telephone: (310) 802-5061
Email: qbarrow@rwglaw.com

16. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

17. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

18. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

19. Waiver. No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to

be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20. Final Payment Acceptance Constitutes Release. The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

21. Corrections. In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

22. Non-Appropriation of Funds. Payments to be made to Consultant by City for services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's services beyond the current fiscal year, this Agreement shall cover payment for Consultant's services only to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

23. 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, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

24. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

25. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

26. Word Usage. Unless the context clearly requires otherwise, (a) the words “shall,” “will” and “agrees” are mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

27. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

28. Business Days. “Business days” means days Manhattan Beach City Hall is open for business.

29. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a superior court with geographic jurisdiction over the City of Manhattan Beach.

30. Attorneys’ Fees. In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys’ fees, experts’ fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

31. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

32. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument.

33. Corporate Authority. Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Manhattan Beach,
a California municipal corporation

Consultant:

Hinderliter, de Llamas & Associates,
a California corporation

By: _____

Name: Talyn Mirzakhanian

Title: City Manager

Date:

By: _____

Signed by:

Joshua Davis, VP of TFA

Name: Joshua Davis 11/13/2024

Title: VP of TFA

By: _____

Signed by:

Gary Lott, COO

Name: Gary Lott 11/13/2024

Title: COO

ATTEST:

By: _____

Name: Liza Tamura

Title: City Clerk

Date:

APPROVED AS TO FORM:

By: _____

DocuSigned by:

Quinn M. Barrow, City Attorney

Name: Quinn M. Barrow

Title: City Attorney

Date: 11/13/2024

APPROVED AS TO FISCAL IMPACT:

By: _____

DocuSigned by:

Libby Bretthauer

Name: Libby Bretthauer

Title: Acting Finance Director

Date: 11/13/2024

APPROVED AS TO CONTENT:

By: _____

DocuSigned by:

Libby Bretthauer

Name: Libby Bretthauer

Title: Acting Finance Director

Date: 11/13/2024

EXHIBIT A SCOPE OF SERVICES

1. Operations Management Services

1.1. Establish and maintain database of City businesses.

- 1.** Consultant will transfer the City's existing databases as they relate to business license tax into Consultant's internal administration tools. Consultant will maintain the data and provide access to or copies of data or reports at the City's request. While access to online systems will be available for the City to use at their discretion, the City will not be required to maintain any software in house for managing the business license registry.

1.2. Receive and process applications, renewals, payments and delinquent notices in a timely fashion.

- 1.** New Account Processing: In conjunction with City established workflows, Consultant will process any new business license applications and complete the new account registration process in a timely fashion. Consultant will facilitate intra-city departmental approvals such as zoning, code compliance, fire inspection, and other regulatory related functions.
- 2.** Renewal Processing: Consultant will send active business license accounts a renewal notice within the period specified by the City under City Requirements/Timelines (section 4 below). Accounts will receive all applicable forms necessary to complete the renewal process.
- 3.** Payment Posting/Processing: Consultant will process and post payments to customer accounts in an expedited manner within 5-business days of receiving funds. License accounts will be updated daily with payment information and revenues to be disbursed to the City net applicable fees at an interval to be agreed to during the project planning phase. Disbursements shall be remitted monthly or twice a month depending on volumes and City needs. This directly ties to common customer inquiries that are received regarding status update on a business license account and is also consistent with best practices for cash handling and safekeeping of public funds.

1.3. Business Support Center: Consultant will provide businesses multiple options for submitting applications, renewals, payments, or support requests (including via website, email, mail, phone, and fax. A toll-free number will be provided to businesses in order to access one of our license specialists, who will be available for live interactions Monday through Friday, 8:00am to 5:00pm Pacific). Businesses will also have access to support via, e-mail, fax, and via the Business Support Center On-Line. Consultant shall constantly monitor quality control points to ensure courteous customer service, minimal hold times under 2 minutes, and the return of voice messages the same business day. The Business Support Center will also provide language translation services upon request by business customer or by City.

- 1.4. Remit revenue to the City no less than the frequency described below.
 1. Bi-monthly remittances as follows:
 - 1.4.1.1. Transactions between 1st - 21st will be remitted by the 31st
 - 1.4.1.2. Transactions between 21st - 31st will be remitted by the 10th
 2. In addition to bi-monthly remittances, Consultant will file quarterly AB2164 reports and send quarterly remittances to the Division of State Architect.
- 1.5. Provide City staff access to website portal offering business registry inquiry, reporting, and electronic department approval capabilities.
- 1.6. Provide City staff access to electronic copies of new business license applications and annual renewal forms completed by businesses.
2. **Compliance Services:** Consultant shall: 1) Identify and register businesses which are subject to licensure or taxation, 2) collect known debt as pertains to business license or tax, and 3) identify under-reported tax liability.
 - 2.1. **Discovery Services.** Consultant shall:
 1. Develop a list of businesses subject to City licensure or taxation.
 2. Notify non-compliant businesses of their options to comply or dispute their non-compliant status. Notification and support to businesses will be facilitated through the website, mail, email, phone and fax.
 3. Review information and forms submitted by the businesses for completion and accuracy, inclusive of any additional required documentation (i.e. home occupation permit). All submissions are filed and stored electronically and made available to City upon request.
 4. Provide businesses with detailed invoicing and options to pay via website, mail, and phone.
 5. Remit revenue to City no less than monthly, along with all business applications and any additional documentation.
 6. Consultant shall use to following methods during Discovery Services:
 - 2.1.6.1. Enriched Data Portfolio / Lead Identification – Utilizing data provided by the City, as well as the Consultant's Enriched Data Portfolio (EDP), Consultant's team builds an enhanced listing of entities subjected to licensure or taxation including, but not limited to, those businesses physically located in the City, itinerant businesses, and entities participating in the sharing economy such as short-term rentals (STRs), drive sharing services and others. These entities are electronically matched to the existing files of the City using advanced data matching algorithms, allowing Consultant's staff to identify which entities are compliant and which entities require follow up.
 - 2.1.6.2. Field Surveys – Experienced field crews, equipped with the most advanced tools available (mobile mapping/GPS systems, tablet computers pre-loaded with various City and state-wide databases, etc.) may canvass commercial areas of the City to develop and enhance the leads identified in the EDP. Field Surveys provide additional inventories

of active businesses as well as to provide on-site verifications of data culled from other sources.

2.1.6.3. Exception Resolution – Records are reviewed by Consultant’s skilled team members, filtering out records that may lead to erroneous contacts. This extra step allows staff to find additional revenues not otherwise identifiable through electronic means and assists in reducing potential complaints levied at City staff and management from pursuit of false positives.

2.1.6.4. Compliance Communication and Outreach – Upon exception resolution, Consultant’s staff initiates contact with the identified entities through a series of City approved communication methods. Consultant’s staff shall make every effort to simplify the process for taxpayers and utilizes a variety of mediums for communication including mail, telephone, email and web-site access. Potential non-compliant entities are notified by Consultant of their options to comply or dispute their non-compliant status. Initial notification packets include everything a business needs to become compliant and multiple methods of resolving their accounts.

2.2. **Collection Services.** Consultant shall:

1. Identify businesses subject to City licensure or taxation which have known debt to City and have failed to pay within an appropriate time frame.
2. Notify businesses of their options to comply or dispute their non-compliant status.
3. Provide businesses with detailed invoicing and options to pay via website, mail and phone.

2.3. **Audit Services.** Consultant shall:

1. Identify potential under-reporting and/or misclassified businesses.
2. Audit businesses mutually agreed to by City and Consultant that are identified as potential under-reporting businesses.
3. Submit audit summaries to City and discuss further actions.
4. Educate businesses on proper reporting practices.
5. Invoice and collect identified deficiencies.

3. **Online and Mail-in Payment Processing** – Consultant’s services include PCI compliant payment processing services which supports credit card, check and eCheck transactions.

3.1. **City Responsibilities**

1. As a condition to its receipt of the Service, City shall execute and deliver any and all applications, agreements, certifications or other documents required by Consultant’s payment processor, Networks or other third parties whose consent or approval is necessary for the processing of Transactions by Consultant’s payment processor. “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.

2. City hereby grants Consultant the full right, power and authority to request, receive and review any Data or records reflected in a Transaction report in order to provide the Services. City represents and warrants that it has the full right and authority to grant these rights.
3. On-Line Filing & Payment Processing: Consultant will register a City approved domain name which will serve as the starting point for all web-based activities. This City specific site will be designed to look and feel like the City's own web pages and ensures a level of continuity between the business community, the City, and Consultant.
 - 3.1.3.1. With HdL Flex File, businesses can choose to file their new business registration as well as renew their license and make payments via the on-line filing portal. In addition to filing and paying for taxes, businesses can obtain copies of applications, general support and FAQs, schedule appointments and request copies of their tax registration all with the click of a button. Consultant will maintain commitment to excellence in customer service and education by continually improving the registration and payment experience for the business community.
4. Mail-in Filing & Payment Processing: Consultant will receive and process incoming mailed renewals, applications and payments. HDL will include the appropriate mailing address with paper renewals and on pdf documents. HDL currently uses a private post office box with a Fresno address and will use that method or a substantially similar method during this Agreement. Mail is sorted, opened, batched, and the relevant information is posted to the Prime Software on average within 5-business days.
4. **Annual Renewal Timeline** – Consultant will send out a series of renewal reminders (post-mail and e-mail) to all annual active accounts before their due date per the schedule below, *or as otherwise agreed to by City and HDL.*
 - 4.1. **Below are the definitions of some key terms that are used in the schedule.**
 - **Online Renewal Notice** – Email or Post-Mail letter that provides web renewal instructions to taxpayers which include their Account Number, Web Pin, Expire Date, Due Date, and Business Support Center contact information.
 - **Renewal Notice** – Mailed notice that includes instructions for fee calculations for businesses that would like to process their renewal via post-mail. Provides instructions on how to calculate their business license tax due for the current period.
 - **Insert Management**--Emailed inserts are included free of charge. Additional mailed inserts will be billed to the City at 25 cents per page.
 - **Expiration Date** – The City's business license expiration date occurs on February 28th of each year.

- **Due Date** - The City's business license renewal due date occurs on April 30th of each year.

4.2. **Below is a summary of the key events and timing for those events in the overall renewal process.**

1. **November - January: 100-175 Days Prior to Due Date of April 30th**

- Consultant (also referred to as "HdL" herein) will conduct a review of system setup & configuration, renewal form accuracy, and CPI increases based on information provided by the City. If a City has an Anniversary renewal cycle, HdL will conduct one annual review at a period agreed upon by HdL and the City.
- HdL will request CPI increase information/updated fee scheduled from the City approximately 90 days prior to expiration date/period.
- The City must provide the CPI increases to HdL no later than 75 days prior to expiration date/period, otherwise we will need to extend the renewal notice mailing deadline.
- Upon review and validation of the rates, calculations and contents of the Renewal Forms by the City, Consultant will proceed with next steps in the timeline.

2. **January 25-30: 90-95 Days Prior to Due Date – Renewal Notice #1**

- Email Online Renewal Notices to all accounts with email addresses on file.
- Mail Renewal Notices to all accounts without email addresses on file.

3. **February 9-14: 75-80 Days Prior to Expiration date – Renewal Notice #2**

- Email Online Renewal Notices to all accounts who have not renewed with email addresses on file.

4. **February 24 – March 6: 55-65 Days Prior to Due Date – Renewal Notice #3**

- Mail Renewal Notices to all accounts who have not renewed for the current filing period.

5. **March 21-26: 35-40 Days Prior to Due Date – Renewal Notice #4**

- Email Online Renewal Notices to all accounts who have not renewed with email addresses on file.

6. **April 1-10: 20-30 Days Prior to Due Date – Renewal Notice #5**

- Email Online Renewal Notice #4 to all accounts that have not yet renewed and that have emails on file (Accounts who have not renewed yet)

7. **May 11-16: 10-15 Days After Due Date – Notice #6 (Delinquency Notice)**

- Mail Delinquency Notices to all accounts that have not yet renewed.
- Includes language on late penalties due.
- License Status is set to Delinquent by operations.

8. **June 1: 90 Days after Expiration Date**

- Accounts will be transferred over to our Compliance Department.

- The Compliance Department will proceed with collection efforts for accounts who remain delinquent or have unpaid balances for the current renewal period and have received at least (2) Renewal Notices.
- Following the extensive collections process, a list of outstanding delinquent accounts will be sent to the City for further escalation through Code Enforcement and other legal means.

9. Once the taxpayer has paid the tax owed, they will be sent their business tax certificate. HDL will email a copy of the certificate within 24 hours after receiving full payment and process that payment.

- If a business does not have an email address on file, HDL will mail them a copy of their certificate by the first week of the month following the completion of their application and full payment of their tax.
- If a business requests a physical copy of their certificate, HDL will mail them a copy of their certificate within 24 hours of the request and after confirming full payment has been made.
- For certain businesses that operate out of a vehicle (i.e. gardeners, catering/food trucks, etc.), MBMC 6.01.130 requires they obtain a vehicle decal as part of the licensing process, therefore, HDL will mail the applicable vehicle decal(s) to the business, along with a copy of their certificate, following confirmation that full payment has been made.

4.3. Customer Complaint Portal / Dispute Resolution: HDL will develop a complaint portal within the business license system where customers may submit disputes and escalate issues.

- 1.** This Customer Complaint Portal shall include the process as illustrated in the flowchart described below.

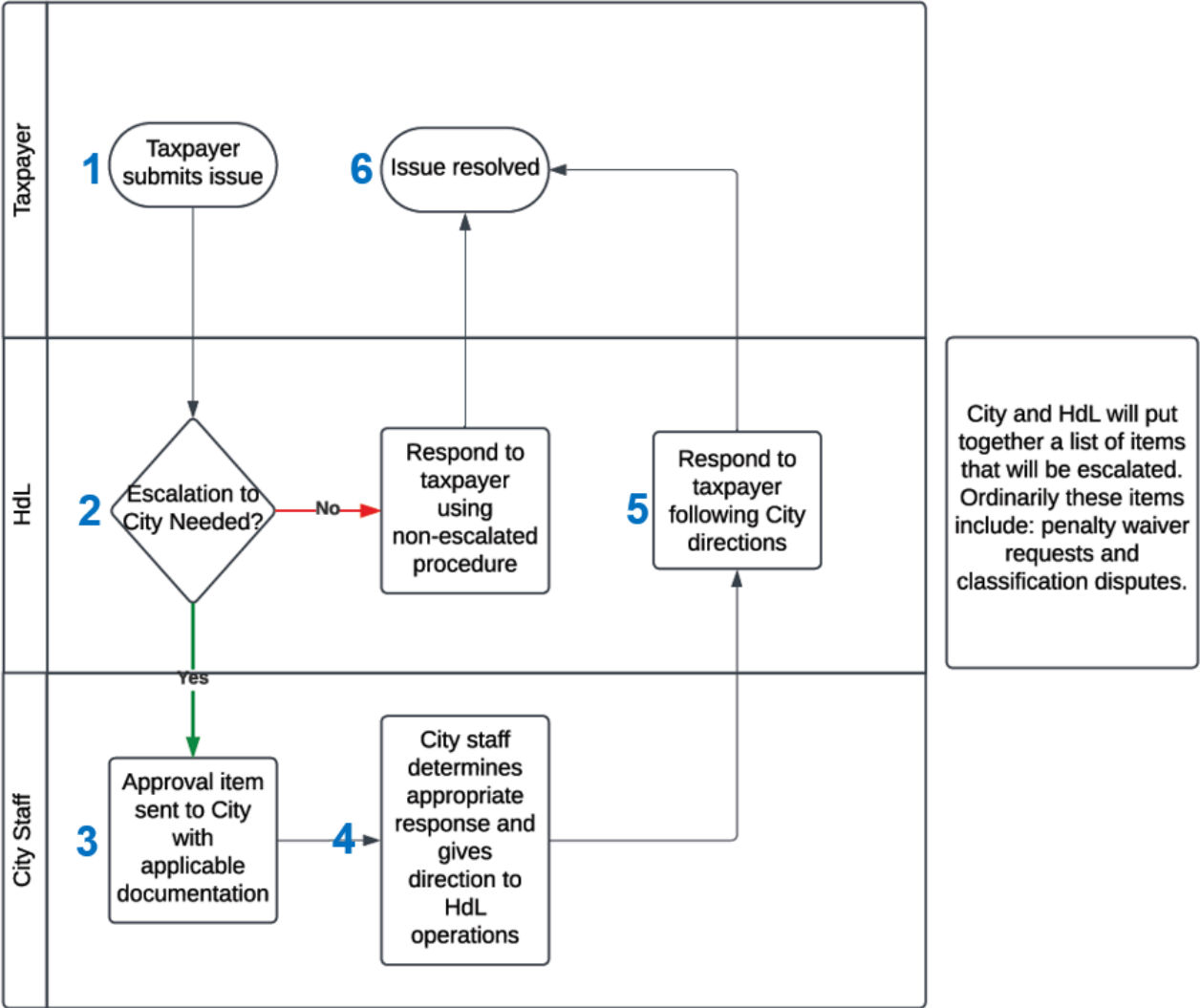


EXHIBIT B APPROVED FEE SCHEDULE

1. Operations Management Services

- 1.1. Fees for performing operations management Services shall be \$17.00 for each processed account, which is any account for which an application or renewal/return was processed, or active account which was sent a renewal notice.
- 1.2. Fees 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%.
- 1.3. Fees related to travel and lodging expenses are billed at cost and apply to all meetings (including implementation, training, operations and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by City.
- 1.4. Fees will be invoiced monthly to City for Services performed during the prior month. Fees will be netted out of City's monthly revenue disbursement. City will submit payment for any balance due to Consultant within 30 days of receiving the invoice.

2. Compliance Services

- 2.1. Fees for performing Compliance Services apply to all monies received for the current tax/license period and any other prior period collected (including monies received for taxes, penalties, interest, and fees).
 - 2.1.1. Fees for performing discovery Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.
 - 2.1.2. In the event that City discovers a non-compliant business and reports the business to Consultant (including a calculation of all taxes/fees due), Consultant will categorize the business as a collection service effort and thus apply the lower collection Services contingency Fee rate.
 - 2.1.3. Fees for performing collection Services shall be a contingency Fee of 25% of the revenues received as a result of the Services.
 - 2.1.4. Fees for performing audit Services shall be a contingency Fee of 35% of the revenues received as a result of the Services.

- 2.2. Consultant recognizes City's authority to waive or reduce the tax/fee debt of a business. Should City decide to do so for a business whose deficiency was identified by Consultant, Consultant shall be entitled to compensation in the amount of one half (1/2) of the Fees Consultant would have otherwise earned. Deficiencies which are uncollectable due to insolvency or dissolution of the business, or for deficiencies which are otherwise incapable of collection (i.e. statute of limitation or other legal defense) shall not be considered a City voluntary election to waive, and thus, Consultant would not be entitled to compensation related thereto under this provision. Should the City change the existing business license tax structure, this section shall be re-assessed and negotiated.
 - 2.3. The fee shall be paid notwithstanding any related City assistance, work in parallel, and/or incurrence of attorneys' fees or other costs or expenses in connection, with the relevant Services.
 - 2.4. Fees related to travel and lodging expenses are billed at cost and applied to all meetings (including implementation, training, operations, and support). Travel expenses only apply to out of scope travel and must therefore be pre-approved by City.
 - 2.5. Fees will be invoiced monthly to City for Services performed during the prior month. Fees will be netted out of City's monthly revenue disbursement. City will submit payment for any balance due to Consultant within 30 days of receiving the invoice.
 3. **Payment Processing** – Consultant will configure payment processing services to utilize either a taxpayer funded model (convenience fee) or City funded model, as directed by City. City may switch between these models upon written request to Consultant. Fees for each of these payment processing models are detailed here.
 - 3.1. Taxpayer funded model – City authorizes Consultant to collect each convenience fee from the taxpayer at time of payment.
 - 3.1.1. Credit and debit card processing – 2.9% of transaction amount, minimum of \$2.00
 - 3.1.2. ACH/eCheck processing - \$1.25 per transaction
 - 3.2. City funded
 - 3.2.1. Credit and debit card processing – 2.9% of transaction amount
 - 3.2.2. ACH/eCheck processing - \$0.50 per transaction
 - 3.3. Returned payments/NSF fee – Each occurrence of a card chargeback, returned payment or insufficient funds will incur a fee of \$25.00, to be applied to the taxpayers account.
 - 3.4. Consultant reserves the right to review and reasonably adjust pricing related to payment processing services on an annual basis upon written agreement by both parties (City and Consultant). Consultant will

communicate any such adjustment to City 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.