

## AMENDMENT TO CONTRACT

### #1

The County of San Benito ("COUNTY") and Hindeliter de Llamas and Associates ("CONTRACTOR") enter into this agreement on the date stated next to the signatures below. In consideration of the mutual promises set forth herein, the parties agree as follows:

#### 1. Existing Contract.

##### a. Initial Contract.

COUNTY and CONTRACTOR acknowledge that the parties entered into a contract, dated July 20, 2018.

##### b. Prior Amendments. (Check one.)

☒ The initial contract previously has not been amended.

☐ The initial contract previously has been amended. The date(s) of prior amendments are as follows: \_\_\_\_\_

##### c. Incorporation of Original Contract.

The initial contract and any prior amendments to the initial contract (hereafter collectively referred to as the "original contract") are attached to this amendment as Exhibit 1 and made a part of this amended contract.

#### 2. Purpose of this Amendment.

The purpose of this amendment is to change the agreement between the parties in the following particulars:

##### a. Term of the Contract. (Check one.)

☒ The term of the original contract is not modified.

☐ The term of the original contract (Exhibit 1) is extended from the current expiration date of \_\_\_\_\_, to a new expiration date of \_\_\_\_\_.

##### b. Scope of Services. (Check one.)

☒ The services specified in the original contract (Exhibit 1) are not modified.

☐ The services specified in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☐ The services specified in the original contract are modified only as specified below:

##### Modified or New Scope of Services:

(Insert modified or new services.)

☐ The services specified in the original contract are deleted in their entirety and replaced with the following services:

##### New Scope of Services:

(Insert new services.)

**c. Payment Terms.** (Check one.)

☐ The payment terms in the original contract (Exhibit 1) are not modified.

☒ The payment terms in the original contract (Exhibit 1) are modified as specified below: (Check one.)

☒ The payment terms are modified only as specified below:

**Modified or New Payment Terms:**  
(Insert modified or new payment terms.)

Paragraph B-3 (Compensation) of Attachment B (Payment Schedule) to the original contract (Exhibit 1), is hereby modified to add additional compensation in an amount not to exceed \$5,000.00 for the continuation of services described in Attachment A (Scope of Services) to the original contract (Exhibit 1) in order to continue providing cannabis regulatory program development and implementation services. Accordingly, Paragraphs B-3 and B-4, are hereby amended to read as follows:

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (Check one.)

☐ a total lump sum payment of \$\_\_\_\_\_, or

☒ a total sum not to exceed \$15,000.00,  
comprising the original contract amount (\$10,000.00) and Amendment #1 (\$5,000.00) for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

**B-4. SPECIAL COMPENSATION TERMS:** (Check one.)

☐ There are no additional terms of compensation.

☒ The following specific terms of compensation shall apply:  
(Specify)

A. CONTRACTOR shall invoice the COUNTY on a time and materials basis, as follows:

TYPE OF SERVICE:	HOURLY RATE:
Subject matter expertise & technical support	\$250/hour
Application development & support	\$250/hour
Cost recovery fee & fiscal analysis	\$250/hour

B. Cost Assumptions: The cost of services includes attendance, in person, at up to two (2) Board of Supervisors' meetings. In the event the COUNTY requests that CONTRACTOR attend additional meetings in person, CONTRACTOR shall invoice the COUNTY for an additional two (2) hours' time per

additional meeting, at the hourly rates set forth above, plus a flat rate of \$300.00 per day for CONTRACTOR'S travel time.

- ☐ The payment terms are deleted in their entirety and replaced with the following payment terms:

**New Payment Terms:**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (Check one.)

- ☐ One month in arrears.  
☐ Upon the complete performance of the services specified in the original agreement (Exhibit 1) and this amendment.  
☐ The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of the original contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (Check one.)

- ☐ a total lump sum payment of \$\_\_\_\_\_, or  
☐ a total sum not to exceed \$\_\_\_\_\_,  
for services rendered pursuant to the terms and conditions of the original contract (Exhibit 1) and this amendment, and pursuant to any special compensation terms specified in paragraph B-4.

**B-4. SPECIAL COMPENSATION TERMS: (Check one.)**

- ☐ There are no additional terms of compensation.  
☐ The following specific terms of compensation shall apply:  
(Specify)

**d. Other Terms. (Check one.)**

- ☒ There are no other terms of the original contract that are modified.  
☐ Other terms of the original contract are modified only as specified below:

**Other Modified or New Terms:**

(Insert other modified or new terms.)

**3. Other Terms.**

All other terms and conditions of the original contract (Exhibit 1) which are not changed by this amendment shall remain the same.

**CONTRACTOR**

Hinderliter, de Llamas and Associates

  
Name/Title: Jeffrey Schmehr, Chief Financial Officer

January 11, 2019  
Date

**COUNTY**

San Benito County Board of Supervisors

\_\_\_\_\_, Chair

\_\_\_\_\_  
Date

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office

  
Sarah M. Dickinson, Deputy County Counsel

JAN 11, 2019  
Date

**EXHIBIT 1  
TO AMENDMENT #1**

**ORIGINAL  
CONTRACT**

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

## C O N T R A C T

The COUNTY OF SAN BENITO ("COUNTY") and Hinderliter, de Llamas and Associates ("CONTRACTOR") enter into this contract which shall be effective on the date stated in Paragraph 1.

**1. Duration of Contract.**

This contract shall commence on July 24, 2018, and end on July 24, 2019, unless sooner terminated as specified herein.

**2. Scope of Services.**

CONTRACTOR, for COUNTY's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

**3. Compensation for Services.**

In consideration for CONTRACTOR's performance, COUNTY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

**4. General Terms and Conditions.**

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

**5. Insurance Limits.**

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: \$minimum required by law

**6. Termination.**

The number of days of advance written notice required for termination of this contract is 30 days.

**7. Specific Terms and Conditions (check one)**

- ☐ There are no additional provisions to this contract.
- ☒ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment E. Attachment E is made a part of this contract.

**8. Information about Contract Administrators.**

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY:

Name: Dulce Alonso

Title: Management Analyst

Address: 481 4<sup>th</sup> Street

Hollister, California 95023

Telephone No.: 831-636-4000

Fax No.: 831-636-4010

Contract Administrator for CONTRACTOR:

Name: Andrew Nickerson

Title: President


Address: 1340 Valley Vista Drive, Suite 200

Diamond Bar, California 91765

Telephone No.: (909) 861-4335

Fax No.: (909) 861-7726

APPROVED BY COUNTY:



Name: Ray Espinosa

County Administrative Officer

Date: 7/20/18

**SIGNATURES**

APPROVED BY CONTRACTOR:



Name: Andrew Nickerson

Title: President

Date: 7/20/18

**APPROVED AS TO LEGAL FORM:**

San Benito County Counsel's Office



By: Shirley L. Murphy, Deputy County Counsel

Date: July 20, 2018

**ATTACHMENT A**  
**Scope of Services**

CONTRACTOR, for COUNTY'S benefit, shall provide the following services related to the COUNTY'S development and implementation of a cannabis regulatory program:

**A. Provide Subject Matter Expertise & Technical Support:**

1. CONTRACTOR will attend a kick-off conference call with COUNTY staff, participate in additional conference calls, respond to COUNTY staff's inquiries via phone and email, review and advise COUNTY staff regarding draft staff reports to the San Benito County Board of Supervisors, and assist COUNTY staff, on a limited basis, with responses to inquiries from the public;
2. CONTRACTOR will attend, in person, two (2) meetings of the Board of Supervisors;
3. CONTRACTOR will develop and design a regulatory commercial cannabis activity ordinance for cannabis businesses, with input from COUNTY staff and the Board of Supervisors, which will establish best practices for ensuring public safety and preservation of the general health and welfare within the County of San Benito;
4. CONTRACTOR will advise COUNTY staff regarding best practices in the development of a land use ordinance and the evaluation of sensitive buffers;
5. CONTRACTOR will advise COUNTY staff, based on CONTRACTOR'S technical and policy expertise, regarding the operations and understanding of the Cannabis Industry, to ensure the proposed Ordinances comply with the Medical Cannabis and Safety Act (MCRSA), Adult Use Marijuana Act (AUMA), SB 94, the Medicinal Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), and all applicable local ordinances, and conform to the best practices to regulate the cannabis business located within San Benito County;
6. CONTRACTOR will work with COUNTY staff on issues related to cannabis regulatory and tax policies;
7. CONTRACTOR will identify legal issues or other problems which COUNTY staff will need to mitigate prior to issuing regulatory permits to individual cannabis businesses; and
8. CONTRACTOR will monitor MAUCRSA policy development and provide feedback to COUNTY staff to ensure that the COUNTY follows any changes which may impact the development of the COUNTY'S strategy to regulate and tax businesses which will be permitted within the County of San Benito.

**B. Application Development and Support:**

**1. Application Development and Submittal Requirements:**

- a. CONTRACTOR will assist COUNTY staff in the design of the procedures and application requirements for a permittee selection process that will be used to invite, review, score, and provide



recommendations regarding applicants who seek to operate cannabis businesses within the County of San Benito;

- b. CONTRACTOR will work collaboratively with COUNTY staff in developing the cannabis business application materials and recommending fees for all phase of the process, to ensure recovery of the costs of staff resources and CONTRACTOR'S assistance, in developing and managing the process;
- c. CONTRACTOR will identify for COUNTY staff the necessary steps to screen and review applications to determine if they should move forward in the next phase of the application process;
- d. CONTRACTOR will work collaboratively with COUNTY staff in developing application materials and submittal requirements. CONTRACTOR will design Phase I of the application process to require each member of an applicant's team to complete the application materials, which will include a Live Scan form or other alternative background checks, a Release and Authorization form, and a Disclosure and Acknowledgement form;
- e. Prior to development of Phase II of the application process, CONTRACTOR'S staff who are experienced with developing "best practice" cannabis facility applications will collaborate with COUNTY staff in order to ensure all information desired by the COUNTY is incorporated into the Request for Permit Application (RFPA);
- f. CONTRACTOR will review the COUNTY'S ordinance requirements, the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (2008), and new regulatory requirements established by the Medical Cannabis Safety Act (MCRSA), the Adult Use Marijuana Act (AUMA), and SB 94, and the Medicinal Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), and develop evaluation criteria for COUNTY staff to use during the application review process, in accordance with the San Benito County Cannabis Ordinance;
- g. CONTRACTOR will design a process whereby in addition to evaluating the documents and minimum standard requirements for the filing of the RFPA, COUNTY staff will consider seven (7) key components of the application, using the following criteria in evaluating and deciding upon applications:
  - i. Location of the proposed facility;
  - ii. Articles of incorporation;
  - iii. Live scan submissions;
  - iv. Proof of capitalization;
  - v. Proof of insurance;
  - vi. Business plan (includes building & construction, security plan and fire plan); and

vii. Industry experience.

2. **Application Review and Initial Ranking:**

- a. CONTRACTOR will design a process which will allow COUNTY staff to review all applications to identify incomplete submissions for immediate disqualification, omissions of live scan submissions and background checks of all business partners, and applications which do not conform to zoning requirements for their prospective permit specifically authorized by the RFPA;
- b. The process to be designed by the CONTRACTOR will solicit as the best submissions, those that are forward thinking and deploy solutions that identify the best "green" practices, while employing "sustainable" energy and waste solutions, and implementing the "best practices" available in the cannabis industry, with consideration given to applications that are designed to reduce and address actual or potential concerns the COUNTY may have regarding nuisance behavior, environmental issues, or product safety;
- c. CONTRACTOR will develop specific criteria, based on "best practices" recommendations, which COUNTY staff will use in evaluating and rating the applications, including, but not limited to the following:
  - i. Overall quality of the proposal including responsiveness and conformance to the RFPA requirements for content and format;
  - ii. Quality and appropriateness of the proposed applicant team, including the professional experience and background of primary applicants and key subleases;
  - iii. Quality of the project location, and identification of key personnel and other management staff with required experience and skills relevant to the project;
  - iv. Quality of the primary applicant's experience and ability to manage operations of the proposed facility, scheduling of work, cost estimating and budget management;
  - v. Quality of the primary makeup of the applicant's corporate board, and prior experience working with local government agencies;
  - vi. Quality of patient tracking, product inventory management and recordkeeping;
  - vii. Quality and appropriateness of proposed site, business model, organization, and knowledge and experience working with specific legal codes and regulations;
  - viii. Quality of the transportation plan describing the procedures for safely and securely transporting cannabis products and currency;
  - ix. Quality of the applicant's use, and implementation of

- solutions designed to reduce or address any actual or potential concerns of the COUNTY and its residents; and
- x. Any other additional information which the COUNTY directs CONTRACTOR to incorporate into the selection process.

- d. The services provided under this contract do not include CONTRACTOR'S review and evaluation of individual applications.

3. **Preliminary Results and Recommendations:**

- a. CONTRACTOR shall design a scoring spreadsheet for COUNTY staff's use when reviewing and scoring applications, with COUNTY staff preparing the individual scoring spreadsheets and reviewer's recommendations, and with the spreadsheet designed to provide that those applicants which have passed Phase II of the application process, with at least an 80% or higher score, as determined by the application guideline for each permitted category, will move on to Phase III;
- b. CONTRACTOR shall design guidelines to provide that each of the final applicants from each category will be reviewed and rated based on the following ten (10) categories, with an applicant's score for points to be based on their ability to meet or exceed minimum requirements in the ten (10) categories, and with applicants' acknowledgment that failure to meet or comply with these requirements after a permit is issued will subject them to penalties and/or revocation proceedings:
  - i. Proposed Location;
  - ii. Business Plan;
  - iii. Community Benefits;
  - iv. Enhanced Product Safety;
  - v. Environmental Benefits;
  - vi. Labor and Employee Practices;
  - vii. Local Enterprise;
  - viii. Neighborhood Compatibility Plan;
  - ix. Qualification of Principals; and
  - x. Safety and Security Plan
- c. The services provided under this contract do not include CONTRACTOR'S review and evaluation of individual applications.

C. **Cost Recovery Fee Analysis:**

- 1. CONTRACTOR will assist COUNTY staff in developing a cost recovery fee to recoup the COUNTY'S cost for developing a regulatory program, reviewing all cannabis business applications and issuing cannabis business permits, which fee which comply with Proposition 26, including an analysis of the costs of staff time, overhead, fringe benefits, consultants and other services associated with the regulatory process;
- 2. CONTRACTOR will assist COUNTY staff in developing an annual cannabis

business regulatory fee to recover costs associated with administrative oversight of permitted cannabis facilities, conducting code/fire inspections, compliance and financial audits, as well as other regulatory functions deemed necessary by the COUNTY; and

3. CONTRACTOR will do a "fit gap" analysis of staff responsibilities and time allotted to this program to establish appropriate fees for the COUNTY'S level of oversight and enforcement of the regulatory process, based on CONTRACTOR'S staff's experience developing cannabis regulatory fees.

CONTRACTOR shall provide the services described above through the following key personnel:

- David McPherson, Cannabis Compliance Director
- Tim Cromartie, Senior Cannabis Advisor
- Matt Eaton, Cannabis Compliance Manager
- Mark Lovelace, Cannabis Policy Advisor
- Kami Miller, Cannabis Senior Auditor
- Stephanie Martin, Cannabis Outreach Coordinator
- Elizabeth Eumurian, Cannabis Senior Analyst
- Alfredo Marquez, Cannabis Senior Auditor

In the event the parties mutually agree that there is a need to refine the scope of services due to the ongoing evolution of state law on the topic, including but not limited to the state's Medical Cannabis Regulation and Safety Act (MCRSA), Proposition 64, Adult Use Marijuana Act (AUMA), and SB 94, the Medicinal Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), the parties will specify minor amendments to this Scope of Services in writing. In the event such revisions would require additional hours of work or additional budget, such revisions will require a prior amendment of this contract.

**END OF ATTACHMENT A**

**ATTACHMENT B**  
**Payment Schedule**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☒ One month in arrears.  
☐ Upon the complete performance of the services specified in Attachment A.  
☒ The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by COUNTY to CONTRACTOR at the address specified in paragraph 8 of this contract, net thirty (30) days from the invoice date.

**B-3. COMPENSATION**

COUNTY shall pay to CONTRACTOR: (check one)

- ☐ a total lump sum payment of \$\_\_\_\_\_, or  
☒ a total sum not to exceed \$10,000.00

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

**B-4. SPECIAL COMPENSATION TERMS: (check one)**

- ☐ There are no additional terms of compensation.  
☒ The following specific terms of compensation shall apply: (Specify)

A. CONTRACTOR shall invoice the COUNTY on a time and materials basis, as follows:

SCOPE OF SERVICE OBJECTIVES:	ESTIMATED HOURS OF LABOR/BUDGET:
Provide Subject Matter Expertise & Technical Support	\$250.00/hour (estimated 20 hours/\$5,000.00)
Application Development & Support	\$250.00/hour (estimated 10 hours/\$2,500.00)
Cost Recovery Fee & Fiscal Analysis	\$250.00/hour (estimated 10 hours/\$2,500.00)
<b>Total</b>	<b>40 hours/\$10,000.00</b>

B. Cost Assumptions: The cost of services includes attendance, in person, at up to two (2) Board of Supervisors' meetings. In the event the

COUNTY requests that CONTRACTOR attend additional meetings in person, CONTRACTOR shall invoice the COUNTY for an additional two (2) hours' time per additional meeting, at the hourly rates set forth above, plus a flat rate of \$300.00 per day for CONTRACTOR'S travel time.

**END OF ATTACHMENT B.**

## ATTACHMENT C

### General Terms and Conditions

#### C-1. INDEMNIFICATION.

CONTRACTOR and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

#### C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONTRACTOR's duty to indemnify COUNTY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that COUNTY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

#### C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

- (c) Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- (d) Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of COUNTY, CONTRACTOR shall file certificates of insurance with COUNTY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTOR further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to COUNTY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by COUNTY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the COUNTY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.



#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports and other materials collected or produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of COUNTY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. CONTRACTOR may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of COUNTY is prohibited.

#### **C-8. INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to COUNTY and not officers or employees of COUNTY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of COUNTY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to COUNTY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed. CONTRACTOR certifies that no one who has or will have any financial interest under this contract is an officer or employee of COUNTY.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

#### **C-11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

#### **C-12. BANKRUPTCY.**

CONTRACTOR shall immediately notify COUNTY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

**C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

**C-14. NEGOTIATED CONTRACT.**

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

**C-15. SEVERABILITY.**

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

**C-16. ENTIRE CONTRACT.**

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

**C-17. TIME IS OF THE ESSENCE.**

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

**C-18. TERMINATION.**

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, COUNTY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

**C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of

such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23. AUTHORITY AND CAPACITY.**

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

#### **C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with

respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

**C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

**C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that COUNTY shall have the right to deduct from any payments specified in Attachment B any amount owed to COUNTY by CONTRACTOR as a result of any obligation arising prior to the execution of this contract. For purposes of this paragraph, obligations arising prior to the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If COUNTY exercises the right to reduce the consideration specified in Attachment B, COUNTY shall give CONTRACTOR notice of the amount of any offset and the reason for the deduction.

**C-29. COUNTERPARTS.**

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

**END OF ATTACHMENT C.**

## ATTACHMENT D

### Specific Terms and Conditions

The rights and duties of the parties to this contract are additionally governed by the following specific, additional terms and conditions:

**D-1. INDEMNIFICATION.** Paragraph C-1 of Attachment C to this contract is hereby modified to read as follows:

With respect to losses, claims, liens, demands and causes of action arising out of the COUNTY'S use of the results of CONTRACTOR'S services as provided to the COUNTY pursuant to this contract, and except for losses, claims, liens, demands and causes of action:

- 1) arising directly or indirectly from the consumption or use of marijuana and/or marijuana containing products;
- 2) arising directly or indirectly from any civil, criminal prosecution, regulatory action or legal proceeding of any kind whatsoever involving the validity or legality of any ordinance allowing the sale of marijuana and/or marijuana containing products; and/or
- 3) arising from or involving an interpretation of the meaning of any aspect of the COUNTY'S ordinance allowing the sale of marijuana and/or marijuana containing products,

CONTRACTOR hereby agrees to protect, defend, indemnify, and hold the COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY).

Except for losses, claims, liens, demands and causes of action arising out of the COUNTY'S use of the results of CONTRACTOR'S services as provided to the COUNTY pursuant to this contract as described above, the COUNTY hereby agrees to protect, defend, indemnify, and hold CONTRACTOR free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character arising from CONTRACTOR'S performance or lack of performance under this contract including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by CONTRACTOR arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY). The COUNTY acknowledges that there is uncertainty in the interpretation, meaning and application of various state and federal laws regarding the consumption, use and regulation of marijuana and/or marijuana containing products, and in the ordinances and/or regulations under which CONTRACTOR is performing under this contract. The COUNTY'S duty

under this contract to protect, defend, indemnify and hold CONTRACTOR free and harmless includes, but is not limited to, claims, liens, demands and causes of action:

- 1) arising directly or indirectly from the consumption or use of marijuana and/or marijuana containing products;
- 2) arising directly or indirectly from any civil, criminal prosecution, regulatory action or proceeding involving the validity or legality of any ordinance allowing the sale of marijuana and/or marijuana containing products; and/or
- 3) arising from or involving an interpretation of the meaning of any aspect of the COUNTY'S ordinance allowing the sale of marijuana and/or marijuana containing products.

Each party to this contract agrees to investigate, handle, respond to, provide defense for, and defend at its sole expense any such claims, demand, or suit for which it has agreed to indemnify the other party pursuant to this paragraph. Each party also agrees to bear all other costs and expenses related to its indemnity obligation, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against CONTRACTOR or the COUNTY or to enlarge in any way the liability of CONTRACTOR or the COUNTY but is intended solely to provide for indemnification of each party from liability for damages or injuries to third persons or property arising from this contract on the terms set forth in this paragraph.

**D-2. HARMONIZATION OF CONTRACT TERMS.** Where the specific terms and conditions set forth in this Attachment D specifically conflict with the general terms and conditions set forth in Attachment C to this contract, the more specific terms and conditions shall be deemed to control. However, the general terms and conditions in Attachment C shall remain in full force and effect, to the extent they do not specifically conflict with the specific terms and conditions set forth in this Attachment D.

**END OF ATTACHMENT D.**