

## MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT ("Agreement") is entered into as of \_\_\_\_\_, 2021 (the "Agreement Date") by and between Hinderliter De Lamas and Associates (Hinderliter De Lamas and Associates (HdL) ("Consultant"), and the County of El Dorado ("Client"), which is located within the state of California (the "State").

### WITNESSETH:

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

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

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

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

#### 1. Services.

1.1 Consultant shall perform those services included within Consultant's Business that are described in any and all Schedule(s), Exhibit A, marked "Statement of Work," Exhibit B, marked "Service Requirements," Exhibit C, marked "SLA for Prime Hosted Services," and Exhibit D, marked "HdL Prime Technical Information Guide," all incorporated herein and made by reference a part hereof, referencing this Agreement and signed by Client and Consultant as of the Agreement Date or hereafter (individually and collectively, the "Schedule(s)"), upon the terms and conditions contained in this Agreement (including Schedule J, Exhibit A, Exhibit B, Exhibit C, and Exhibit D) (such services are, collectively, the "Services"). In performing the Services, Consultant is acting as an independent contractor (and not as an agent or employee of Client).

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

1.3 This Agreement does not limit the right of Consultant to enter into additional contracts with Client or to contract with third parties to provide them with merchandise or services of any kind whatsoever, including, but not limited to, services similar to the Services. During the Term of this Agreement, Client will not, directly or indirectly (except through Consultant), engage any third party to provide the Services or any services similar to the Services.

1.4 Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to Client's computer, and that are acceptable to Client Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by Client's Contract Administrator. Consultant shall submit all deliverables to Client's Contract Administrator in accordance with completion time schedules identified in the individual Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in Section 7, Term and Termination herein.

1.5 Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Work Orders issued pursuant to this Agreement, ownership and title to all reports, documents, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in Client without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to Client. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from Client's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by Client. Consultant shall furnish Client all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

1.6 For each work assignment, the specific services for each assignment shall be determined at a meeting, by email, or telephone conference between Client and Consultant. For each work assignment, Consultant shall provide a written quote to Client's Contract Administrator. Upon receipt and approval of each quote, Client's Contract Administrator will issue a separate written Work Order to Consultant for each work assignment identifying the description of the services to be performed, any required deliverables, including reports or other documents to be supplied in connection with the work assignment, a specific date by which the work shall be completed, and a not-to-exceed cost to complete the work. Consultant shall not commence work until receiving the written Work Order.

No payment will be made for any work performed prior to approval and full execution of the Work Order or beyond expiration date of the Work Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Work Order.

The period of performance for Work Orders shall be in accordance with dates specified in each Work Order. No payment will be made for any work performed before or after the period of performance in the Work Order, unless Client's Contract Administrator and Consultant amend the Work Order.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly.

All of the services included in the Scope of Work, or in the individual Work Orders issued pursuant to this Agreement, are the responsibility of Consultant unless specifically described as a task or item of work to be provided by Client.

2. **Fees.** As compensation for performing the Services, Client will pay Consultant the fees, costs, taxes, and, expenses as described in Schedule J and Exhibit A (individually and collectively these fees and costs are, the "**Fees**"). Consultant may perform the Services using professionals from its staff or Consultant's affiliated entities, and such Services shall be invoiced to Client under the same terms applicable to Consultant's staff. Consultant may increase the Fees from time to time (including, without limitation, as may be described in Schedule J or Exhibit A) with thirty (30) days advance notice and written approval from Client's Contract Administrator. Other than a Fee increase as described in Schedule J and Exhibit A, Client may notify Consultant of a request that such Fee increase be modified or revoked and, if Consultant fails to do so to Client's satisfaction within thirty (30) days after the receipt of such request, Client may terminate this Agreement without cause pursuant to Section 7.3. *During the term of the Agreement, any changes to the scope of services shall be deemed enforceable if such modification has been reduced to writing and has been agreed to and duly executed by both Parties. If the core business license and tax system in the Treasurer-Tax Collector portion are cancelled, additional pricing shall incur on the stand-alone modules in this Agreement. Additional pricing and increased costs will be approved by Client in the form of a written amendment to the Agreement. However, if the modules in this Agreement are cancelled, but the Treasurer-Tax Collector retains the core business license and tax system, pricing shall remain the same.*

Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel, lodging, per diem, and mileage expenses, if applicable, for Consultant's claims for reimbursement shall not exceed the rates to be paid to Client employees under the current Client Board of Supervisor's Travel Policy in effect at the time the expenses are incurred. Any individual travel expense exceeding one hundred dollars (\$100) and any work requiring overnight stay must be approved in writing and in advance by the Contract Administrator or designee. Consultant is responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Consultant shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and the Contract Administrator or designee has determined that the reasons are valid.

### 3. Invoices; Payment.

3.1 Consultant shall invoice Client for the Fees earned and/or incurred by Consultant in the individual Work Orders issued pursuant to this Agreement.

3.2 For services provided herein, including any deliverables that may be identified in the individual Work Orders issued pursuant to this Agreement, Client agrees to pay Consultant upon the satisfactory completion and Client's acceptance of work, in arrears. Payment shall be made within sixty (60) days following Client's receipt and approval of invoices identifying the services rendered. Itemized invoices shall follow the format specified by Client and shall reference this Agreement number and the Client-supplied Work Order number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Consultant shall bill Client for only one (1) Work Order per invoice. Interest will begin to accrue on the sixty-first (61st) day following the invoice date on all unpaid balances at a rate of one and one-half percent (1½%) per month, or the maximum rate permitted by law, whichever is less. Payments will first be credited to interest and then to principal. In the event that Client disputes an invoice, only that portion so disputed in good faith will be withheld from payment, and the undisputed portion must be timely paid. Interest shall accrue on any disputed portion of the invoice not timely paid and will be payable immediately if the disputed invoice is resolved in favor of Consultant.

3.3 If Client fails to fully pay an invoice within sixty (60) days after the invoice date, Consultant may, after giving five (5) days' prior written notice to Client, suspend the rendering of Services under this Agreement until said invoice is paid in full, together with all interest that has accrued thereon. In the event of such a suspension of Services, Consultant shall have no liability to Client for any delays or damages arising therefrom.

4. Insurance. Consultant shall provide proof of a policy of insurance satisfactory to Client's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.

E. Consultant shall furnish a certificate of insurance satisfactory to Client's Risk Management Division as evidence that the insurance required above is being maintained.

F. The insurance will be issued by an insurance company acceptable to Client's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, Client may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

H. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Client; and
2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

I. Consultant's insurance coverage shall be primary insurance in respect to Client, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Client, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

J. Any deductibles or self-insured retentions must be declared to and approved by Client. At the option of Client, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to Client, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to Client, its officers, officials, employees, or volunteers.

L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

O. The certificate of insurance shall meet such additional standards as may be determined by the contracting Client department, either independently or in consultation with Client's Risk Management Division as essential for protection of Client.

## **5. Client Support.**

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

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

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

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

5.5 The Services do not include services to support, prepare, document, bring, respond to subpoenas, act as a witness, defend or otherwise assist in litigation undertaken or defended by Client, which Consultant may be required by legal process or otherwise or requested by Client to provide (collectively, "Litigation Services"). In this regard, if Consultant agrees with Client or is otherwise required to perform Litigation Services, Client will promptly pay or reimburse Consultant for all of Consultant's costs and expenses related to Litigation Services (including, without limitation, Consultant's attorneys' fees and costs) at Consultant's actual cost, plus ten percent (10%) thereof (all of which are deemed to be additional Fees). This paragraph does not apply to any attorneys' fees, costs, Consultant time, or litigation services that are the responsibility of Consultant under Section 8.1.

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

6.1 Consultant shall comply with the requirements of the applicable laws, ordinances, and/or regulations concerning the confidentiality of tax records. Consultant may publicly state that it performs Services for Client. Consultant shall maintain the confidentiality of all data Client provides to Consultant and use the data only for the benefit of Client and in furtherance of the Agreement.

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

6.3 If access to any software which Consultant owns is provided to Client as part of the Services under this Agreement (including, without limitation, if Client chooses to subscribe to such software and/or related reports as part of the Services pursuant to a Schedule to this Agreement) (such Consultant-owned software is, collectively, the “Software”), Consultant hereby provides a limited, non-exclusive, non-transferable license to Client (including such of Client’s staff as may be designated from time to time by Client and approved by Consultant in writing) to use the Software pursuant to and during the Term of this Agreement.

6.4 The Software must only be used by such authorized Client staff, and Client must not sublicense, sublet, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software. The license granted hereunder does not imply ownership by Client or any of Client’s staff of the Software nor any rights of Client or any of Client’s staff to sublicense, transfer or sell the Software, or rights to use the Software for the benefit of others. Client may not create (or allow the creation of) any derivative work or product based on or derived from the Software or the Software’s documentation, nor modify (or allow the modification of) the Software or the Software’s documentation without the prior written consent of Consultant. In the event of a breach of this provision (and without limiting Consultant’s remedies), such modification, derivative work or product based on the Software or the Software’s documentation is hereby deemed assigned to Consultant. Upon termination of this Agreement or this Software license, this Software license will be deemed to have expired and Client must immediately deactivate, cease using and remove, delete and destroy all the Software (including, without limitation, from Client’s computers and network). **Consultant warrants that the Software will perform in accordance with the Software’s documentation.**

6.5 Notwithstanding anything to the contrary in this Agreement (including any Schedule hereto), if access to any software which Consultant does not own is provided to Client as part of the Services pursuant to this Agreement (including pursuant to any Schedule hereto), Client hereby agrees (i) to comply with all of the terms and conditions imposed on Client's access to such software (including, without limitation, by Consultant, such software's owner, and pursuant to applicable law), and (ii) Consultant has no obligation during the Term of this Agreement or thereafter to provide Client with access to such software.

6.6 All documents, preliminary drafts, communications and any and all other work product related to the Services and provided by Consultant to Client either in hard copy or electronically are the joint property of Client and Consultant while this Agreement is in effect. Upon termination of this Agreement the requirements of Section 1.5 shall be in full force and effect. This does not include the Software or any other software, any programs, any methodologies or any systems used in the creation of such work product, nor does it include any drafts, notes or internal communications prepared by Consultant in the course of performing the Services that were not otherwise provided to Client in either hardcopy or electronic form, all of which may be protected by Consultant or third party copyrights or other intellectual property and remain Consultant's or such third parties' exclusive property (as the case may be). It is possible that any documents, drafts, communications or other work product provided to Client may be alleged to be public records under applicable law and/or may be discoverable through litigation. Well in advance of when Client may disclose such information in response to any request for public records, Client must notify Consultant in writing about the request. Consultant shall be solely responsible for applying for any potential exemption from disclosure that may exist under applicable law and providing Client with evidence of approved exemption.

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

6.8 Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

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

7.1 The initial term of this Agreement commences as of the Agreement Date and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in



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

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

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

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

7.5 The parties to this Agreement recognize and acknowledge that Client is a political subdivision of the State of California. As such, Client is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of Client business, Client will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, Client shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and Client released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any Client department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of Client, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

**8. Indemnification.**

To the fullest extent permitted by law, Consultant shall defend at its own expense, indemnify, and hold the Client harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, Client employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Consultant or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the Client, its officers and employees, or as expressly prescribed by statute. This duty of Consultant to indemnify and save Client harmless includes the duties to defend set forth in California Civil Code Section 2778.

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

9.1 To the maximum extent permitted by law:

9.1.1 Except for Consultant's gross negligence or willful misconduct in connection with the performance of its obligations under this Agreement, Client's sole and exclusive remedies for any breaches of Consultant's obligations under this Agreement (including, without limitation, for any breaches relating to the Services or the Software, including any breaches of warranty, express or implied) (i) are limited to making reasonable and necessary repairs, replacements or corrections without additional cost to the Client, and (ii) will not exceed, under any circumstances, the amount of the Fees paid by Client to Consultant for the twelve-month period prior to the alleged breaches, calculated without reference to any payments constituting the payment of costs or expenses. All amounts paid to Consultant hereunder are deemed first to be for the reimbursement of costs or expenses and then any excess will be regarded as payments for other portions of the Fees under this Agreement. Any references to breaches of this Agreement will include any supplements, additions or amendments to this Agreement.

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

9.1.3 In no event shall any of Consultant Group be liable for any lost revenues or lost profits, or any special, incidental, or consequential damages of any nature whatsoever, even if such restrictions deprive one or more remedies of their essential purpose. This damage exclusion is independent of any remedies provided for herein.

9.1.4 None of Consultant Group shall have any Liability (whether direct or indirect, in contract or tort or otherwise) related to, arising out of, or in connection with this Agreement or to any of Client Group acting on any advice given or opinion rendered by any of Consultant Group, except to the extent that such Liability is found by a court of competent

jurisdiction in a judgment which has become final and that it is no longer subject to appeal or review to have resulted solely from such Consultant Group's willful misconduct or gross negligence.

9.1.5 No claim may be brought by Client against any one or more of Consultant Group arising out of this Agreement (including, without limitation, in connection with the Services or the Software) more than one (1) year after the date on which such claim arose (regardless of the date when Client may have discovered a basis for the claim).

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

9.1.7 Nothing in this Section 9.1 and all subsections within it shall limit Consultant's obligations to defend and indemnify the Client under Section 8.

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

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

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

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

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

10.2 Force Majeure. Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.

2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

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

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

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

10.6 Assignment. This is a bilateral personal services agreement. Neither party will have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. This Agreement is binding on the successors and assigns of the parties hereto. Notwithstanding anything to the contrary, Consultant may, from time to time, utilize one or more third parties to provide certain of the Services (including, but not limited to, as may be set forth in Schedule J, Exhibit A, and Exhibit B).

10.7 Notices. All notices under this Agreement must be in writing and will be deemed to have been given when such notice is received (i) from United States Postal Service First Class Certified Mail, Return Receipt Requested, (ii) by courier service, or (iii) by email; provided, however, that notices received on a weekend or holiday or on a business day after 4:00 p.m. local time will be deemed to have been received on the next business day. Notices will, unless another address is specified in writing, be sent to the addresses indicated below (each of which must include a street address and an email address): 120 S State College Blvd, Suite 200,

Brea, CA 92820 Consultant: Hinderliter De Lamas and Associates (HdL Software, LLC), Attn: George Bonnin, Email: gbonnin@hdlcompanies.com; and Client:

To Client:

With a copy to:

County of El Dorado  
Planning and Building Department  
2850 Fairlane Court  
Placerville, California 95667

County of El Dorado  
Chief Administrative Office  
330 Fair Lane  
Placerville, California 95667

Attn.: Brendan Ferry  
Brendan.ferry@edcgov.us  
Deputy Director  
Tahoe Planning and Stormwater

Attn.: Michele Weimer  
Michele.weimer@edcgov.us  
Procurement and Contracts Manager

or to such other location as Client directs.

10.8 Entire Agreement; Conflict. This Agreement (which includes any Schedules Exhibit A, Exhibit B, Exhibit C, Exhibit D, or amendments dated as of the Agreement Date or hereafter, including without limitation, amendments of the main body of this Agreement or the Schedules that may add to, subtract from, modify or clarify the Term, the scope of Services and/or the amount of Fees) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements, or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof. Should there ever be a conflict between the terms and conditions of any Schedules, Exhibit A, Exhibit B, Exhibit C, Exhibit D, and the remainder of this Agreement as set forth in the main body of this Agreement, the terms and conditions of the remainder of this Agreement as set forth in the main body of this Agreement will prevail and be controlling; provided, however, that should there ever be a conflict between the terms and conditions of this Agreement (including any Schedules, Exhibit A, Exhibit B, Exhibit C, and Exhibit D) and (i) any amendments hereof, the terms and conditions of the amendments hereof will prevail and be controlling, and (ii) the terms and conditions of any Schedule that expressly provides for them to supersede any terms and conditions of the main body of this Agreement, such terms and conditions of such Schedule will prevail and be controlling.

10.9 Counterparts; Electronic Signatures; Authority. This Agreement may be signed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signed signature pages of this Agreement transmitted by email or other electronic means in a portable document format (PDF) or other clear and visible electronic format will have the same legal effect as an original. Each of the persons signing on behalf of a party hereto represents that he or she has the authority to sign this Agreement on such party's behalf.

10.10 No Adverse Construction. Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. This Agreement will not be construed against either party based upon authorship. The section headings contained in this

Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

10.11 Contract Administrator. The Client Officer or employee with responsibility for administering this Agreement is Brendan Ferry, Deputy Director, Tahoe Planning and Stormwater, Planning and Building Department, or successor.

10.12 Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for Client and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with Client's Conflict of Interest Code. Client's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and Client's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of Client that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify Client of the existence of that conflict, and Client may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Section 7, Term and Termination.

10.13 California Residency (Form 590): If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or Client shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

10.14 County Payee Data Record Form: All independent contractors or corporations providing services to Client who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with Client must file a Client Payee Data Record Form with Client.

10.15 Business License: Client's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a Client business license unless exempt under Client Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of Client's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

10.16 Licenses: Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

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

**CONSULTANT:**

Hinderliter De Llamas & Associates (HdL  
Software, LLC)

By: R. Andrew Nickerson  
R. Andrew Nickerson (Jan 13, 2022 15:48 PST)

01/13/2022

Name: Robert Nickerson

Its: President

By: Robert Gray  
Robert Gray (Jan 17, 2022 16:18 PST)

01/17/2022

Name: Robert Gray

Its: Member

**CLIENT:**

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

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_



**SCHEDULE J**  
HdL Prime Software Solution  
Planning and Building Department

**SCHEDULE J** – This Schedule J provides the scope of Services and Fees for Consultant’s Prime Software Solution (Software) pursuant to the Master Services Agreement dated \_\_\_\_\_, 2021\_ (“MSA”).

The MSA includes the main body of the MSA, this Schedule, Exhibit A, Exhibit B, Exhibit C, and Exhibit D. Terms not otherwise defined herein have the definitions given to them within the main body of the MSA.

**SERVICES**

**1. Software Services Implementation**

**1.1. Consultant Responsibilities**

- 1.1.1. **Project manager** – Consultant will provide a project manager (PM) to guide the software implementation process. The primary responsibility for the Consultant PM is to ensure successful and timely completion of each step of the Software implementation schedule. The Consultant PM will work closely with the Client’s designated Contract Administrator to define the Software implementation schedule, identify Client needs and configure the Software accordingly, validate the data conversion, and provide user training. Consultant’s PM, or Client-approved designee, shall be accessible to Client’s Contract Administrator, or designee, during normal Client working hours and shall respond within twenty-four (24) hours to Client inquiries or requests. Consultant’s PM shall be responsible for all matters related to Consultant’s personnel, operations, and any subconsultants authorized under this Agreement including, but not limited to, (1) assigning qualified personnel to perform the required work and to prepare the deliverables required by the individual Work Orders issued pursuant to this Agreement; and (2) reviewing, monitoring, training, and directing Consultant’s personnel and any subconsultants authorized herein.
- 1.1.2. **IT support** - Consultant shall provide a dedicated IT staff member to provide IT support during the Software implementation process.
- 1.1.3. **Management support** - Consultant shall assist Client in evaluating current policies and procedures in order to enhance operational efficiency. This may include suggestions to redesign forms/reports, implement new processes, or adopt new strategies for improving communication with the business community and other Client departments.
- 1.1.4. **Training** - Consultant shall provide Software training for Client users as further described in the Fees portion of this Schedule. The timing, size, and participants of each training session will be determined by Consultant’s and Client’s respective PM and Contract Administrator.
- 1.1.5. **Software documentation** - Consultant shall provide Client with access to digital copies of the available Software documentation. Client may use the Software’s documentation as needed for internal use only. As with all other provisions of the MSA, Client is aware of and agrees to abide by the provisions of MSA Section 6 entitled “Confidentiality; Software Use and Warranty; Records.”.

## 1.2. Client Responsibilities

1.2.1. **Contract Administrator** - Client will designate a staff member to serve as the Client's Contract Administrator. This individual must be intimately involved in the daily business processes which the Software will automate, and be empowered to make, or quickly secure from management, decisions required for the configuration and implementation of the Software. The primary responsibility for the Client's Contract Manager is to ensure that all Client responsibilities during the Software implementation process are met according to the agreed upon Software implementation schedule. Client's Contract Administrator will be instrumental in the successful implementation of the Software; working closely with the Consultant's PM to verify data conversion, review and approve reports, establish business rules, and confirm configuration and behavior of the Software.

1.2.2. **IT support** - Client will designate an IT staff member to work with Consultant staff throughout the Software implementation process. This individual must be knowledgeable about the Client's computing environment and be authorized to access any equipment or services required for proper access to and operation of the Software.

1.3. **Data Conversion** - Consultant shall convert Client's existing data as provided by Client. Client agrees to provide its current data in a format agreed upon by Consultant and Client. Acceptable formats include Microsoft SQL Server backup file, Excel, Access, and ASCII delimited text file. Client will provide all available documentation to assist with identifying the contents of the data files, including but not limited to file layout documentation, database schema, and screenshots from five (5) sample accounts. Client will provide the data a minimum of two (2) times during the conversion process. Client understands that the second (and any subsequent) data must be provided in the same format and layout as the first data set. Any inconsistencies between the first and subsequent data sets will result in a delayed installation date and additional charges for conversion.

1.3.1 **Data Ownership** – All data provided by Client to Consultant shall remain the property of Client. Consultant shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Client data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures Consultant applies to its own data. Consultant shall not access or use Client's data for any purpose other than in the performance of Consultant's services under this MSA.

1.3.2 **Data Location** – Storage of Client's data shall be located solely in data centers in the United States. Consultant shall not allow its personnel or affiliates to store Client's data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers.

1.3.3 **Data Breach Notification** – Consultant shall promptly notify Client's Contract Administrator within 24 hours or sooner of any security breach of which Consultant becomes aware while Client's data is in Consultant's possession. If Consultant confirms or reasonably believes the data breach affects the security of Client's data, Consultant shall take commercially reasonable measures to address the data breach in a timely manner including, but not limited to, commencing an investigation in cooperation with Client to determine the scope of the breach, implementing necessary remedial measures, and completing all corrective actions necessary, at Consultant's expense. Consultant shall take all other actions as required by, and in accordance with, applicable security breach notification laws.

1.4. **Implementation Schedule** – The default timeline for Software implementation (including "Go Live") is approximately sixty (60) days from the date of Consultant's first receipt of Client's complete data in acceptable formats pursuant to the provisions of Section 1.3 (above), provided there are no inconsistencies between the first and subsequent data sets. When the MSA (including this Schedule and Exhibit A) is signed by all parties, Consultant shall immediately

work with Client to establish a defined implementation schedule which is agreeable to both Client and Consultant.

2. **Software Hosting Services** – Consultant’s Software hosting Services offload the majority of IT concerns to Consultant’s hosting team; including system upgrades, hardware and software maintenance, database management, and disaster recovery. Client will be responsible for maintaining its workstations and a reliable internet connection. Consultant shall handle the rest. Website functionality will be hosted using a Client specific sub-domain on Consultant’s special purpose hdlgov.com domain.
  - 2.1. **Workstation Specifications** – Workstations will access the Software through a remote application session with Consultant’s hosting service. All workstations require 4+GB Memory, 1280x1024 screen resolution, and MS Windows 7/8/10 operating system.
  - 2.2. **Network Specifications** – Consultant’s hosted service requires reliable, high speed internet connectivity. High-speed local area network connections are always helpful, but the service will also run without difficulty over slower WAN connections such as T1 or mobile broadband.
  - 2.3. **Printer Specifications** - The Software is designed to work with laser printers. A PCL compliant laser printer is recommended. Each make and model of printer has different drivers and therefore has slightly different results when printing.
3. **Software System Requirements** – The Software and related database will be installed on Client’s network on hardware supplied by Client. Any specifications provided below indicate minimum requirements. It is Client’s responsibility to ensure that any hardware used to host the Software/database or run the Software meets the specifications dictated by the operating system and any software/services hosted by the hardware. For example, minimum operating system specifications will likely not be sufficient if the file server is also hosting Client’s email system.
  - 3.1. **Application Server Specifications** - The application server will host Consultant’s web service, which serves as the business layer. Consultant’s web service requires the Microsoft Windows Server with IIS platform. The following versions are currently supported: MS Windows Server 2012 or later, with IIS v8.0 or later. The application server should have at least three hundred (300) megabytes of space available.
  - 3.2. **Database Server Specifications** - The database server will host all application data. The database server should be dedicated to server related functions. Using a client’s PC as the database server in a multi-user environment is not supported. The Software requires the Microsoft SQL Server database platform. The following versions are currently supported: MS SQL Server 2012 or later (SQL Express variants also supported). Any server operating system supported by the selected version of SQL Server is supported as a database server; provided it meets the hardware specifications indicated by both the operating system and the version of SQL Server, and is sized appropriately to handle any additional load or services installed. The database server should have at least seventy-five (75) gigabytes of space available for Consultant’s database, to allow for the initial database and growth over time.
  - 3.3. **Workstation Specifications** - The Software runs on Client’s workstation. The Software is deployed to the workstation via a click once installer. Crystal Reports and .NET 4.5 or higher runtimes will also need to be installed on the workstation. The following current hardware recommendations are based on user feedback regarding performance levels: Intel Core i3 or equivalent CPU, 4+GB Memory, 1280x1024 screen resolution, MS Windows 10 or higher operating system.
  - 3.4. **Network Specifications** - The Software communicates via web services and is designed to operate efficiently over the network. High-speed local area network connections are highly preferred, but the Software will also run over slower WAN connections.
  - 3.5. **Printer Specifications** - The Software is designed to work with laser printers. A PCL compliant laser printer is recommended. Each make and model of printer has different drivers and therefore has slightly different results when printing.

- 3.6. **Functional, Technical, and Security Requirements** – Consultant’s Services must meet Client’s functional, technical, and security requirements in accordance with Exhibit B.
4. **Software Support Services**
- 4.1. **Support Hours** - Consultant shall provide Client’s users no charge support by telephone, email and the web during the Term of the MSA. In the United States support is available as follows: For customer support between the hours of 8:00 am and 5:00 pm Pacific time, Monday through Friday, email [support@hdlcompanies.com](mailto:support@hdlcompanies.com) or call (909) 861-4335 and ask for software support. For urgent off hours support before 8:00 am or after 5:00 pm Pacific time, Monday through Friday (or anytime Saturday), email [911@hdlcompanies.com](mailto:911@hdlcompanies.com) and Consultant’s on call support personnel will be notified. Client should only include its name, the name of its contact person, and its phone/text number in emails to [911@hdlcompanies.com](mailto:911@hdlcompanies.com) and Consultant will contact Client as soon as possible.
- 4.2. **Response Time** – In the event that Client encounters an error and/or malfunction whereby the Software does not conform to expected behavior in accordance with the Software’s documentation, Consultant shall assign one of the following severity levels and render support services in a timely manner consistent with the urgency of the situation.
- 4.2.1. **Severity Level 1** – a critical problem has been encountered such that the Software is essentially inoperable and without a reasonable workaround. Consultant shall respond within one (1) business hour to examine the problem. A response is defined as an email or call to Client’s designated support contact. Consultant and Client will work diligently and continuously to address the problem as quickly as possible.
- 4.2.2. **Severity Level 2** – a problem has been encountered that does not prevent use of the Software, but the Software does not appear to be operating correctly. Consultant shall examine the problem within forty-eight (48) hours and advise Client of any available workaround. Upon Consultant’s confirmation that the Software is not operating correctly, Consultant shall provide a software update to address the defect and confirm with Client if the update resolved the issue.
- 4.2.3. **Severity Level 3** – a minor problem has been encountered. The Software is usable but potentially could be improved by addressing a minor defect or addition of a usability enhancement. Consultant shall assess the request within fifteen (15) business days and, depending on priorities, schedule a Software update for a future release, advise Client that the request will not be implemented, or offer the option of implementing the request as a custom Software enhancement at an additional Fee.
- 4.3. **Support Policy Regarding Reports** - Consultant shall assist with reasonable modifications to reports as needed during the Term of the MSA. Typical report modifications require seven (7) to ten (10) business days to complete. Very complex reports or reports required in a very short time frame may incur a development Fee, in which case an estimate will be provided for approval before the work is begun.
- 4.4. **Software Upgrades** - Except to the extent that upgrades of the Software include new modules or features not previously offered as part of the Software as of the Agreement Date, Client will receive upgrades of the Software as available during the Term of the MSA. Though rare, an additional Fee may apply depending on the extent of the upgrade, such as for training, consulting, configuration, or other necessary or requested services. In such instances Consultant shall provide a minimum of thirty (30) days advance notice of the additional Fee(s). Any additional services related to Software upgrades or associated services shall require prior written approval by Client’s Contract Administrator prior to the provision of any such upgrades or services.
- 4.5. **Outside Connections to Consultant Database** – The Software relies on the integrity of Consultant’s database to operate properly. As such, it is critical that any outside connection to the database be implemented with Consultant’s full knowledge and participation. Only “read only” connections will be established to Consultant’s database. No modifications will be made to

Consultant's database (other than by Consultant), including database/table design and data content. Any repair work necessary due to violations of the above items will be billable to Client as additional Fees on a time and materials basis and shall require prior written approval by Client's Contract Administrator prior to the performance of such services. Client will contact Consultant for instructions if any added functionality is required, including reading additional data or writing to the Consultant database.

- 4.6. **Out of Scope Support** – Client agrees to pay additional hourly Fees according to Consultant's then current hourly rates if Client desires Consultant's assistance for matters which are not caused by any defects in the Software. Any additional services provided beyond this MSA, Schedule J, Exhibit A, and Exhibit B shall require prior written approval by Client's Contract Administrator prior to the provision of such services.
5. **Payment Processing Services** – The Software is bundled with PCI compliant payment gateway services powered by Consultant's current payment processor, which supports both credit card and eCheck transactions (collectively, "Transactions"). Notwithstanding anything to the contrary, if, in the future, a different payment processor is required, there will be a one-time programming Fee payable by Client to establish the custom payment gateway integration. Consultant shall be responsible for the security of cardholder data that Consultant possess, including functions relating to storing, processing, and transmitting of the cardholder data.
  - 5.1. **Payment Processing** - Consultant shall transmit Transactions for authorization and settlement through Consultant's payment processor. Funds for Transactions processed by Consultant hereunder shall be submitted to Client's designated bank account as follows: (i) no more than two (2) business banking days after all Transactions (other than electronic Check Transactions) that are successfully processed prior to 5:00 p.m. Eastern Time ("ET") on each business banking day (e.g., a Transaction authorized at 2:00 p.m. ET on Monday will be submitted on Wednesday; a Transaction successfully processed at 8:00 p.m. ET on Monday will be submitted on Thursday); and (ii) no more than five (5) business banking days for all electronic Check Transactions that are successfully processed prior to 5:00 p.m. ET on each business banking day. Consultant makes no representation or warranty as to when funds will be made available by Client's bank.
  - 5.2. **Support Protocol** - Consultant shall provide Client with certain Services in support of the Transactions as may be suggested by Consultant or requested by Client and agreed upon by Consultant from time to time. Client will report any problems encountered with the Services in a timely manner. Consultant shall promptly respond to each reported problem based on its severity, the impact on Client's operations and the effect on the Services. Consultant shall either resolve the problem or provide Client with information to facilitate Client's efforts to resolve it.
  - 5.3. **Transaction Errors** - Consultant's sole responsibility for any Transaction error or reversed Transaction is to determine whether the result indicates a problem with the Services and, if so, reprocess and resubmit the Transaction without additional charge. In the event that a Transaction is reversed or refunded to any customer of Client, for any reason, Consultant may offset such amount against funds remitted to Client, or invoice Client for such amount, at Consultant's discretion. Client will pay any such invoice within 60 days of receipt.
  - 5.4. **Electronic Check Authorization** - If Client elects to accept electronic Checks as a form of payment, the following subsections apply. For the purpose of this section, "checks" means checks drawn on accounts held in the United States ("U.S.") ("Check(s)").
    - 5.4.1. As part of the implementation plan, Client will select risk management controls governing Check acceptance and assumes sole responsibility for the choice of controls.
    - 5.4.2. Consultant shall provide confirmation on a submitted ABA number as part of the Services to assist Client with the decision on whether to accept a Check and shall route accepted Checks.
    - 5.4.3. Client hereby authorizes Consultant to debit the Client's financial institution account in the amount of any returned item that is received by Consultant.

## 5.5. Client Processing Responsibilities

- 5.5.1. As a condition to its receipt of the Services, Client will execute and deliver any and all applications, agreements, certifications or other documents required by any of the Networks or other third parties whose consent or approval is necessary for the processing of Transactions. A "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.
- 5.5.2. Client represents, warrants, and agrees that it does and will comply with applicable laws and regulations and Network rules, regulations or operating guidelines. Client will notify Consultant in writing as soon as possible in the event a claim, fine, or penalty is either threatened or filed against Client by any governmental organization having jurisdiction over Client or a customer related to the Transactions or other Services.
- 5.5.3. Client specifically represents, warrants, and agrees that it is and will continue to be in full compliance with all applicable requirements of the Client Information Security Program of VISA, the Site Data Protection Program of MasterCard, and similar programs of other Networks, and any modifications to such programs that may occur from time to time. Upon the request of Consultant, Client will provide Consultant with documentation reasonably satisfactory to Consultant verifying compliance with this Section 5.5.
- 5.5.4. Client hereby grants Consultant the full right, power and authority to request, receive and review any data or records reflected in a Transaction report. Client represents and warrants that it has the full right and authority to grant these rights.

## FEES

### 6. Software Services

- 6.1. **One-Time Fees for the scope of work as outlined within Exhibit A of this Schedule J. Contingency funds for any unforeseen additional work is also included within Exhibit A. All additional work must first be approved in writing by Client's Contract Administrator prior to start of work.**
  - 6.1.1. **Software License Fee** – The Software license Fee includes use of the Software by the specified number of users and all standard forms and reports. Additional Software user licenses are available for an additional license fee. Any additional Software user licenses shall require prior written approval by Client's Contract Administrator.
  - 6.1.2. **Data Conversion Fee** – The data conversion Fee includes up to thirty (30) hours of Programmer time, and two (2) conversions of Client data; the first for the pre-install environment used for testing and training, and the second at go-live. Abnormally complex conversions or poor data quality may require additional effort beyond the thirty (30) hours, which will be charged at the Programmer hourly Fee rate set forth below upon prior written approval by Client's Contract Administrator.
  - 6.1.3. **Parcel Data Services** – Should Client desire that the Software incorporate parcel data, Consultant supports the following three methods:
    - 6.1.3.1. If Client utilizes Consultant's property tax Services, parcel data will be provided at no additional Fee.
    - 6.1.3.2. Client may receive the parcel data from Consultant at a Fee provided upon request.
    - 6.1.3.3. Should Client desire to utilize another source of parcel data, Consultant can work with Client to create a re-useable import utility. The development of this utility will be

invoiced on a Programmer hourly Fee rate and material basis. Once the source data has been reviewed, a statement of work will be provided including a Fee estimate.

**6.2. Recurring Fees for the scope of work as outlined within Exhibit A attached to this Schedule J**

- 6.2.1. **Modules Annual Use Fee** – The Software use Fee is invoiced annually in advance, and provides for ongoing customer support and updates to the Software.
- 6.2.2. **Software Hosting Services** – The Fee for Software hosting Services is invoiced annually in advance, along with the Software use Fee.
- 6.2.3. **Customizing Services** – The Software is a customizable off the shelf system (COTS), and has been designed to meet certain issues faced by government entities. Should the need occur, Consultant is available to provide custom enhancements to the Software on a Programmer hourly Fee and material basis. No such Services shall be performed without Client's prior written approval.
- 6.2.4. **Hourly Fees** - Fees for performing the hourly Services described above and as may otherwise be provided pursuant to this Schedule shall be based on the following initial hourly rates: (i) Principal - \$325; (ii) Programmer - \$295; (iii) Senior Analyst - \$245; and (iv) Analyst - \$195.

**7. Invoicing Schedule; Fee Changes; Travel; Other Expenses**

- 7.1. All one-time and first-year Fees shall be invoiced within thirty (30) days of Agreement Date.
- 7.2. Recurring annual Fees shall be invoiced each year at least thirty (30) days in advance of the anniversary of the Agreement Date.
- 7.3. Payment processing services Fees and hourly Fees are invoiced monthly for the prior month's activity. To the extent that Consultant has the means to do so, Fees may be netted out of any disbursements otherwise payable to Client under this Schedule. Consultant shall notify the Client if any Fees are netted out of any disbursements otherwise payable to Client under this Schedule and show the itemized list of fees along with the reasons for the fees in the notification.
- 7.4. Except for increases in convenience or other fees, costs, or charges by Consultant's payment processor and subject to the terms of the Agreement regarding increased fees, Consultant may change the non-hourly Fees established above upon at least thirty (30) days' prior written notice to Client (but not more than once a year). Any such change must be with reference to the twelve (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"), and 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%. Consultant may change the rates of its hourly Fees from time to time in its sole discretion upon at least thirty (30) days' prior written notice to Client.
- 7.5. Fees related to travel and lodging expenses shall be invoiced in accordance with Section 2, Fees, and shall apply to all meetings (including process, pre-installation, installation, training, and support).

IN WITNESS WHEREOF, the parties hereto have entered into this Schedule J to the MSA through their duly authorized representatives as of \_\_\_\_\_, 2021.

**CONSULTANT:**

Hinderliter De Llamas & Associates (HdL Software, LLC)

By: R. Andrew Nickerson  
R. Andrew Nickerson (Jan 13, 2022 15:48 PST)

01/13/2022

Name: Robert Nickerson

Its: President

By: Robert Gray  
Robert Gray (Jan 17, 2022 16:18 PST)

01/17/2022

Name: Robert Gray

Its: Member

**CLIENT:**

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

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_



## Exhibit A Statement of Work

### Project Summary

Client will utilize Consultant's Prime - Business License Software System (Prime System). Client now desires to improve the efficacy of its operations by expanding the functionality of the Prime System to manage revenue and permits for Vacation Home Rentals (VHR) and Cannabis. The additional work is as listed below.

### Scope of Work

- Create two (2) additional modules (VHR, Cannabis).
- Create any rate types and fees associated.
- Create any necessary custom fields to track related items.
- Importing new accounts into Prime System from spreadsheet given by Client and/or copy existing accounts held in Business License (BL)/Transient Occupancy Tax (TOT)/Commercial Cannabis Activities Tax (CBT) tax collection site and update for permitting rates/fees.
- Export various system fields in a scheduled daily Structured Query Language (SQL) export. Export file format can be .csv or .txt.
- Consultant to use Client's publicly available ArcGIS rest call to obtain the Assessor's Parcel Number (APN) and the full location address (including City, State, and Zip Code) based on a query using the VHR location street address.
- Web module setup for both types.
  - Same custom payment gateway information to be utilized as built for the Tax Collection modules.
- Reports – renewals, application, certificates, and up to three (3) standard letters per module.

This Scope of Work does not include any custom software programming that is not defined in this document to the existing Prime system and Web Modules . If required, Client's Contract Administrator and Consultant's Project Manager will discuss and draft the necessary specifications for the requested work. There is no guarantee that the requested custom software will be approved.

**Costs**

**Prime Software - Additional Modules  
One-time costs**

Item	Price	Comments
Cannabis Tracking & VHR Modules + Six (6) Prime Licenses	\$19,500.00	Six (6) Named Users (Users shall be added to existing remote user Client total.)
Credit Card Payment Gateway	Included	Client must utilize existing gateway configuration and setup in the existing environment. Any customizations require a development charge of a minimum of \$5,000.00 + Specifications.
Implementation	\$5,000.00	Project management, installation, configuration, report design, and training.
County ArcGIS Integration	\$19,470.00	Consultant to use Client's publicly available ArcGIS rest call to obtain the APN and the full location address (including City, State, and Zip Code) based on a query using the VHR location street address.
Data Conversion	\$4,000.00	Up to thirty (30) hours of work. Above thirty (30) hours, billed at time and materials upon prior Client authorization.
Travel Expenses	Mileage and travel will be reimbursed in accordance with Section 2, Fees.	Mileage and travel will be reimbursed in accordance with Section 2, Fees.
Training Costs – One (1) day	Included	Included Additional days available at \$2,000/day
Contingency	\$10,000.00	Contingency for any unforeseen items. Prior Client authorization is required.
<b>TOTAL</b>	<b>\$57,970.00</b>	<b>Total one-time costs</b>

### Recurring Costs\*

Item	Price	Comments
Modules Annual Use Fee	\$2,400.00	Due at Modules "Go Live". Renewed annually + Consumer Price Index (CPI). Amount shall be added to the existing Prime System Annual Use Fee Client total.
HdL Hosting Services	\$1,080.00/year	Six (6) remote user licenses. These additional users and additional costs shall be added to the existing Prime System annual hosting services Client total.
Contingency	\$10,000.00	Contingency for any unforeseen items. Prior Client authorization is required.
Daily scheduled SQL Export functionality	\$2,500.00/year	Will be added to the annual hosting fee charge

\* The Recurring Costs listed above do not include the annual CPI increases as specified in Schedule J, section 7.4, of the MSA. Any annual CPI increases shall be in addition to these amounts.

### Requirements

- Client has existing Prime System with Web module; therefore, no technical changes or additional requirements are expected as a result of the Scope of Work as outlined above.

### Additional Services and Fees

Client will request a quote from Consultant for additional services and fees not specifically listed above. Additional services shall not be ordered and additional fees shall not be charged to Client without prior written approval from the Client Contract Administrator.

### Timeline

The timeline for the specified work shall be discussed and agreed to by and between Client's Contract Administrator and Consultant's Project Manager.

**El Dorado County**  
"Client"

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Hinderliter DeLlamos & Associates (HdL)**  
"Consultant"

Signature: *R. Andrew Nickerson*  
R. Andrew Nickerson (Jan 13, 2022 15:48 PST)

Name: R. Andrew Nickerson

Title: President/CEO

Date: 01/13/2022

## Exhibit B Service Requirements

Columns	Description
Category	Regulation, Feature, Reporting, Security, Interface
Description	
Importance	"M" means Mandatory; "HD" means Highly Desirable; "D" means Desirable and "U" means Useful.
Availability	"F" means Full Meets; "P" means Partially Meets; "N" means Does Not Meet; "C" means Custom; "3" means 3rd Party
Comment	If response in the Availability column is not "Full Meet" Comment is required

# Functional Template

Department/Division	Category	Description	Availability	Comment (Required or indicate Vendor Fully Meets)
VHR	Application Workflow	Solution must guide applicants through an application process to use their property as a Vacation Home Rental	Fully Meets	
VHR	Application Workflow	Solution must guide applicants through an application process to renew their property as a Vacation Home Rental annually	Fully Meets	
VHR and Cannabis	Application Workflow	Solution must allow application workflow steps to change the "Status" of an application. List of statuses and triggers to change status will be provided.	Partially Meets	Applications are in a pending state until staff reviews it to be accept or reject. Once accepted, staff will be able to assign a new account status.
VHR and Cannabis	Payment Processing	Solution must support payment processing	Fully Meets	
VHR	VHR Ordinance	Solution must support differing workflows, permitting, issuance caps, and application requirements by location (Tahoe vs. Non-Tahoe VHR) [bear box by school district]	Partially Meets	Agency can set different application requirements by displaying that information on the front application page. System does not support different automated workflows based on location. This would be enforced by user process.
VHR	VHR Ordinance	Solution must maintain a count of existing VHRs, in total and by location (Tahoe vs. Non-Tahoe)	Fully Meets	
VHR	VHR Ordinance	Solution must only allow 900 concurrent active VHRs for the Tahoe region. This cap will likely need to be configurable to support future ordinance changes. [the 900 count includes all submitted applications, not solely the issued permits]	Fully Meets	The system does not support an automated cap to limit the number of active accounts, but this can be easily managed as part of the application process. Applications beyond the cap would be accepted, and added to the waitlist.
VHR	VHR Ordinance	Solution must maintain a waitlist of applications for the Tahoe region once the 900 active VHR cap is hit (for each year).	Fully Meets	Waitlist functionality can be managed by user process. Applicants would be notified of the 900 application limit and possibility of a waitlist during the application process. Once 900 application limit is reached, all future applications can be bulk processed with a "waitlist" notification, and assigned "waitlist" status.
VHR	VHR Ordinance	Solution must have the ability to prioritize the approval of renewal applications over new applications (and waitlisted applications)	Fully Meets	
VHR	VHR Ordinance	The waitlisted applicant in position 1 of the waitlist will have 30 days to complete an application when there is a Tahoe VHR slot open. Applications submitted outside the 30 day window will be rejected.	Partially Meets	Notifications to applicants on the waitlist are supported, but the process is not automated. It is our recommendation to allow waitlisted applicants to submit their application to get on the waitlist. Thus, when a position opens up you can notify individuals on the waitlist of the opening and requirement to complete the process within 30 days of notification.
VHR	Workflow Step	(Pending Clustering ordinance). Notify Surveyor's office of VHR Application. Surveyor would need to help with GIS checks to see how many VHR's are already located in a designated area before an application could proceed. If clustering check is approved, proceed to next workflow step.	Fully Meets / Custom	HdL's department approvals functionality can be used to notify surveyor's office of VHR applications for a clustering check. This is built-in functionality available at no cost. If a custom integration or notification methodology is required in order to coordinate with the surveyor's office, custom development would be required.
VHR	Interface	(Pending Clustering ordinance). Solution would need to communicate the addresses/parcel numbers of current VHRs to surveyor's office for surveyor's to view VHR clustering.	Fully Meets / Custom	Reports or data exports can pull this information with standard functionality. Should an automated data integration be required to facilitate the clustering check with the surveyor's office, custom development may be required.
VHR	Interface	Solution would need to communicate the addresses/parcel numbers of current and inprocess VHRs to the surveyors office for routine online mapping function.	Fully Meets / Custom	Reports or data exports can pull this information with standard functionality. Should an automated data integration be required to facilitate online mapping, custom development may be required. Likely in the form of pushing data to the County which could then be imported as a map layer in the surveyor's office GIS.
VHR	Workflow Approval Step	Environmental Management Approval (Bear Box)	Fully Meets	
VHR	Workflow Approval Step	Environmental Management Approval (Solid Waste)	Fully Meets	
VHR	Workflow Approval Step	Treasurer Tax Collector (Business License)	Fully Meets	
VHR	Workflow Approval Step	Treasurer Tax Collector (Transient Occupancy Tax)	Fully Meets	
VHR	Workflow Approval Step	Code Enforcement Approval (No permit violations in past year - check parcel in TrakiT)	Fully Meets	
VHR	Workflow Approval Step	Building Approval (No expired permits)	Fully Meets	
VHR	Workflow Approval Step	Fire Approval – External User (Fire Clearance for all permits) [inspection valid for 2 years]	Fully Meets	
VHR	Notifications	Notification of submitted application	Fully Meets	
VHR	Notifications	Notification of complete application (waiting on sign offs listed above)	Fully Meets	
VHR	Notifications	Notification of incomplete application	Fully Meets	
VHR	Notifications	Notification of approved application; ready for fire inspection (with Fire contact info)	Fully Meets	
VHR	Notifications	Notification of denied application (incomplete for 30 days, or 30 days after approval for inspection, or 30 days after failed fire inspection)	Fully Meets	
VHR	Notifications	Notification of upcoming renewal [two notices: 60 and 30 days before expiration]	Fully Meets	

VHR	Notifications	Notification of pending denial of application	Fully Meets	
VHR	Notifications	Notification of failure to renew	Fully Meets	
VHR	Notifications	Notification of waitlist placement	Fully Meets	
VHR	Notifications	Notification of opportunity to apply (30 day window, top of waitlist)	Partially Meets	Notifications to applicants on the waitlist are supported, but the process is not automated. It is our recommendation to allow waitlisted applicants to submit their application to get on the waitlist. Thus, when a position opens up you can notify individuals on the waitlist of the opening and requirement to complete the process within 30 days of notification.
VHR	Notifications	Notification of failure to apply in application window and removal from waitlist	Partially Meets	Notifications to applicants on the waitlist are supported, but the process is not automated. It is our recommendation to allow waitlisted applicants to submit their application to get on the waitlist. Thus, when a position opens up you can notify individuals on the waitlist of the opening and requirement to complete the process within 30 days of notification.
VHR	Notifications	Notification of permit issuance	Fully Meets	
VHR	Interface	Solution would need to communicate the addresses/parcel numbers of current VHRs to the assessor's office if VHRs are assessed differently than standard residential homes.	Fully Meets / Custom	Reports or data exports can pull this information with standard functionality. Should an automated data integration be required to facilitate assessment process, custom development may be required. Likely in the form of pushing data to the County assessor in an agreed upon format, frequency, and method.
VHR	Permitting	Solution must have the ability to produce and issue both permit & license in one step to the applicant upon approval of all workflow steps. Permit and license costs should be itemized for applicant and payable in one transaction.	Fully Meets	
VHR	Permitting	Must capture the following data when issuing permit & license. VHR Permit Number, Bus. License Number, Address, Applicant (Property Manager or Owner?), Expiration Date of permit, <b>Additional Fields</b> [ add: water source (well or municipal), approved number of onsite parking spaces, day of week, etc.].	Fully Meets	
VHR	Permitting	Permit renewals must retain the same permit number/VHR number from the prior year (current system issues a new VHR permit number every year, which is inefficient and difficult to report on)	Fully Meets	
Cannabis	Permitting	Discretionary Permit Issuance - Details TBD	Fully Meets	
Cannabis	Permitting	Conditional Use Permit Issuance - Details TBD	Fully Meets	
Cannabis	Permitting	Operating Permit Issuance - Details TBD	Fully Meets	
Cannabis	Workflow Approval Step	Planning Commission Approval - Details TBD	Fully Meets	
Cannabis	Workflow Approval Step	State Environmental Review Approval - Details TBD	Fully Meets	
Cannabis	Workflow Approval Step	State Registration Approval - Details TBD	Fully Meets	