



CITY COUNCIL STAFF REPORT

DATE: SEPTEMBER 4, 2013

CONSENT CALENDAR

SUBJECT: CONTRACT AMENDMENT NO. 1 TO MUNISERVICES, LLC
AGREEMENT #6017 FOR AUDITING SERVICES FOR THE CITY'S
TRANSIENT OCCUPANCY TAX COMPLIANCE PROGRAM

FROM: David H. Ready, City Manager

BY: Finance Department

SUMMARY

Transient Occupancy Tax (TOT) represents the City's largest source of General Fund revenue. On September 8, 2010, the City Council awarded Agreement #6017 with MuniServices to conduct audits of TOT-generating properties. The City's contracted auditing firm is nearing the completion of the first full cycle of audits of our hotels, vacation rental agencies, and individual vacation rental units, and are ready to start a new cycle of audits. The City will be auditing all of our TOT payors, including all hotels, vacation rental agencies, and individual vacation rental units over a period of three years. In addition, expedited audits will be performed on properties that are going through an ownership change.

RECOMMENDATION:

- 1) Approve Amendment No. 1 to Agreement #6017 with MuniServices, LLC, to provide the City TOT compliance audit and other related services on a per-unit price basis as per the attached unit price schedule, and extend the contract term to June 30, 2018 to cover audits through the 16-17 fiscal year.
- 2) Authorize the City Manager to execute all necessary documents, subject to review and approval of the City Attorney.

STAFF ANALYSIS:

The proposed contract amendment to the contract with MuniServices includes auditing and compliance services that focus on the tax collection responsibilities of our numerous TOT property owners, and employs tools to assure the proper and full collection of the City's TOT by hotels, vacation rental agencies and individual vacation rental units.

Under the proposed contract amendment, the City retains full control over the timing and administration of the MuniServices audits of our hotels, motels, vacation rental agencies and individual vacation rentals. Pricing is offered on a unit-price basis per the

attached schedule and therefore is flexible to accommodate any hotels, motels, vacation rental agencies or individual vacation rentals that may need to be audited. The period covered under the audit for each TOT permit is up to forty eight (48) months.

There are two distinct proposals by MuniServices. The first proposal, "TOT Analysis and Compliance Program", has two purposes: (1) to audit all TOT payors; and (2) to audit properties that are going through an ownership change.

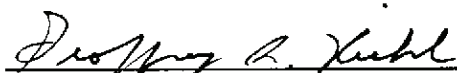
For this second complete cycle of audits, it is important to reinforce continued compliance and to provide further reviews for potential noncompliance of the TOT ordinance. For the ownership-change audits, it is imperative for the City to be able to make a timely determination of any potential amounts owed, and then register a claim for payment through the escrow process.

The second proposal, "TOT Vacation Rental Audit Services", provides audit services for the complex vacation rental audits to MuniServices.

FISCAL IMPACT:

\$50,000 in funds are available in General Fund account 001-1300-43251 for the 2013-2014 fiscal year to pay for the scheduled first-year costs of this contract amendment. Based upon the past experience of our recent audits, the additional revenue generated from these TOT audits and the increased compliance with our ordinances through the on-going monitoring of monthly tax returns pay for the audit fees. To date, the audits on these properties have generated over \$500,000 in findings that have been paid or are in the process of being paid to the City, which is about three-times the cost of the audits. The annual revenue generated from increased compliance is believed to be substantially higher.


For future fiscal years staff will budget funds appropriate for the anticipated number of audits to be performed in any given year, and they will be submitted to the City Council as part of the budget adoption process.



Geoffrey S. Kiehl
Director of Finance and Treasurer



James Thompson
Chief of Staff and City Clerk



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

- Draft Contract Amendment No. 01
- TOT Analysis and Compliance proposal from MuniServices
- TOT Vacation Rental Audit Services proposal from MuniServices

**AMENDMENT NO. 1
TO
CONSULTING SERVICES AGREEMENT
TOT Compliance Program Auditing Services by MuniServices, LLC
(Agreement No. 6017)**

THIS FIRST AMENDMENT to the Consulting Services Agreement No. 6017 for TOT Compliance Auditing Program Services is made and entered into to be effective on the _____ day of _____, 2013 by and between the City of Palm Springs, a California charter city and municipal corporation (hereinafter referred to as the City), and MuniServices LLC, a Delaware limited liability company, its subsidiaries and affiliates (hereinafter referred to as "MuniServices") collectively, the "Parties".

RECITALS

A. City and Consultant previously entered into a consulting services agreement for TOT Compliance Auditing Program Services, which was made and entered into on October 6, 2010 (the "Agreement") in the amount of \$175,000 through June 30, 2012.

B. Section 3.3 of the Agreement provides that the Agreement may be amended at any time with the mutual written consent of the Parties for Additional Services.

C. City and Consultant desire to amend the Agreement to authorize Consultant to perform additional TOT Compliance Auditing Program Services as per the Unit Rates in the attached "TOT Analysis & Compliance Program" and "TOT Backstop Audit Services" scope of work in accordance with the per unit rates and charges for the period July 1, 2012 through June 30, 2018.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

AGREEMENT

1. Amendment to Section 1.1, Exhibit "A" of the Agreement, entitled "Scope of Services": Exhibit "A" of the Agreement is hereby amended to include the following additional services, which shall read as follows:

SCOPE OF WORK: Consultant shall provide TOT Analysis & Compliance Program Services as well as TOT Backstop Audit Services to the City per the scope of work as defined in the attached proposals.

2. Amendment to Section 3.1, Exhibit "A" of the Agreement, entitled "Compensation of Consultant": Exhibit "A" of the Agreement, concerning total compensation, is hereby amended to read as follows:

"Compensation of Consultant": For the services rendered pursuant to this Agreement, Consultant shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "A", and TOT compliance audit services at the Unit Rates defined in the attached proposals for the period of July 1, 2012 through June 30, 2018.

3. Amendment to Section 4.2, Exhibit "A" of the Agreement, entitled "Schedule of Performance": Exhibit "A" of the Agreement is hereby amended to include the following additional provisions:

"Schedule of Performance:

Effective July 1, 2012 thru September 5, 2013, Consultant shall provide TOT audit compliance services to cover audits through June 30, 2018 covering audit through FY 16-17.

4. Full Force and Effect. This modifying Amendment is supplemental to the Agreement and is by reference made part of said Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment and any provisions of the Agreement, the provisions of this Amendment shall in all respects govern and control.

5. Corporate Authority. The persons executing this Amendment on behalf of the Parties hereto warrant that (1) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the dates stated below.

ATTEST:

**"CITY"
CITY OF PALM SPRINGS, CA.**

By _____
James Thompson, City Clerk

By _____
David H. Ready, City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

By _____
City Attorney

Date: _____

**"CONSULTANT"
MuniServices, LLC**

Date: _____

By: _____

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____



On _____ before me, _____

Date

Here Insert Name and Title of the Officer

personally appeared _____

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

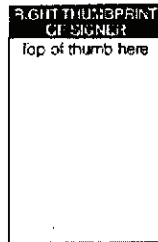
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

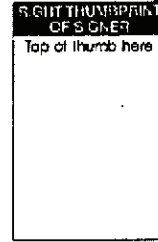
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

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IN WITNESS WHEREOF, the City and the Consultant have caused this Agreement to be executed the day and year first above written.

EXHIBIT A

TRANSIENT OCCUPANCY TAX (TOT) ANALYSIS & COMPLIANCE PROGRAM

Article 1-Objectives and Methods

MuniServices TOT Analysis and Compliance Program (“Compliance Program”) is designed to assist the City in realizing TOT revenue to which it is entitled, and to educate collectors and remitters of TOT to assist in future compliance with the City’s ordinances.

Article 2-Scope of Work

1. **The Compliance Program.** Within 90 days of MuniServices receipt of the lodging provider return information from the City for the most recent forty eight (48) months, or the period covered by the applicable statute of limitation, whichever is shorter, MuniServices will provide its Compliance Program as a single service consisting of the following two-phase process.

1.1. Analysis & Discovery - Phase 1. During this phase, MuniServices will:

1. Analyze lodging provider return information from the most recent 48 months or the period covered by the applicable statute of limitation, whichever is shorter, in order to identify unusual or suspicious reporting and/or activities that warrant further review;
2. Conduct unobtrusive collection of information on each property, including number of rooms, occupancy rate, property’s condition, business dynamics;
3. Provide a detailed analysis report to the City identifying lodging providers who might require additional investigation or review to determine their compliance with the City’s TOT ordinance;
4. Coordinate with designated City official(s) as necessary to review the analysis report;
5. Develop with the designated City staff a list of lodging providers to be subject to a compliance review of lodging and tax records; and
6. During the term of this Agreement, provide up to ten (10) hours of additional consulting time to assist the City in evaluating or implementing any of the proposed actions suggested by the above report.

1.2. Compliance Review - Phase 2. *Based on our previous experiences, on average only about 30% of the properties will be recommended for Phase II.*

During this phase, MuniServices will conduct a compliance review consisting of some or all of the following procedures:

- a. Provide City staff with a detailed list of all records required to be made available by lodging providers for the reviews, together with a draft engagement announcement letter to be sent to each lodging provider;

- b. Examine records pertaining to TOT for each lodging provider selected for a compliance review.
- c. Verify accuracy of filed TOT returns with daily and monthly activity summaries;
- d. Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries;
- e. If MuniServices believes such a review is necessary, review secondary and tertiary documentation such as bank statements to verify that deposits reconcile with the reported revenue on the TOT returns or other tax filings;
- f. Review exempted revenue for proper supporting documentation;
- g. Submit to designated City staff a compliance review report that includes:
 - MuniServices review findings;
 - For each error/omission identified and confirmed, accompanying documentation that MuniServices believes is necessary to facilitate recovery of revenue due from lodging providers for prior periods;
 - Draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations;
- h. Coordinate with designated City official(s) as necessary to review compliance review report;
- i. Provide assistance to City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- j. Prepare and document any changes to the compliance review findings and provide revised tax, interest or penalty amounts due the City.

Article 3-Deliverables

The Compliance Program - Analysis & Discovery - Phase 1

Provide a detailed analysis report to the City identifying lodging providers who might require additional investigation or review to determine their compliance with the City's TOT ordinance.

The Compliance Program - Compliance Review - Phase 2

Provide City staff with a detailed list of all records required to be made available by lodging providers for the reviews, together with a draft engagement announcement letter to be sent to each lodging provider.

Submit to designated City staff a compliance review report that includes:

- MuniServices review findings;
- For each error/omission identified and confirmed, accompanying documentation that MuniServices believes is necessary to facilitate recovery of revenue due from lodging providers for prior periods;
- Draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations;

Article 4-Compensation

What the City will pay MuniServices

1. **Compliance Program.** City will compensate MuniServices for the Compliance Program as follows.

1.1 Phase 1. City shall pay MuniServices a fixed fee of \$500 per each lodging property. This fee applies to all lodging properties located in the City limits. MuniServices will invoice fifty percent (50%) of this fixed fee upon execution of the contract and the City providing a list of properties to be audited. Over the contract period, the City will be providing Muni Services with various lists of properties to be audited. The remaining fifty percent (50%) upon delivery of the analysis report (see subparagraph 1.1(d) above). Payment will be made to MuniServices within thirty-days (30) of receipt of MuniServices' invoice. Any amounts which remain unpaid after thirty-days (30) shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.

1.2 Phase 2.

a. City shall pay MuniServices a fixed fee of \$750 per each lodging property reviewed. MuniServices will invoice this fixed fee fifty percent (50%) upon approval by the City of the list of lodging providers to be subject to a Phase 2 compliance review of lodging and tax records. The remaining fifty percent (50%) upon delivery of the compliance review report. Payment will be made to MuniServices within thirty-days (30) of receipt of MuniServices' invoice. Any amounts which remain unpaid after thirty-days (30) shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.

b. City shall reimburse MuniServices for out-of-pocket expenses and travel costs ("Travel Costs" include, but are not limited to, the costs of car rental, gasoline, and traveling time at a reduced hourly rate of \$50 per hour). Provided that no more than 30% of the properties will be reviewed under Phase II, City shall reimburse MuniServices for out-of-pocket expenses and Travel Costs not to exceed \$2,000 per trip. If MuniServices expects to spend more than \$2,000 for out-of-pocket expenses and Travel Costs per trip, MuniServices shall get prior approval from the City for the amount greater than \$2,000. MuniServices will invoice these out-of-pocket expense and Travel Costs immediately upon delivery of the compliance review report. Payment will be made to MuniServices within thirty-days (30) of receipt of MuniServices' invoice. Any amounts which remain unpaid after thirty-days (30) shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law, whichever is greater.

- 3. Additional Consulting.** City may request that MuniServices provide additional consulting services at any time during the term of the Agreement. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices shall provide the additional consulting on a time and materials basis. Depending on the personnel assigned to perform the work, MuniServices' standard hourly rates range from \$75 per hour to \$300 per hour.

The following are sample hourly rates based on the job classification:

- Principal: \$300 per hour
- Client Services: \$250 per hour
- Information Technology (IT) support: \$200 per hour
- Operational Support:
 - Director: \$175 per hour
 - Manager: \$150 per hour
 - Senior Analyst: \$125 per hour
 - Analyst: \$100 per hour
 - Administrative: \$75 per hour

These additional consulting services will be invoiced at least quarterly based on actual time and expenses incurred.

Hours of consulting expressly included in MuniServices compliance service or the seminar service are not "additional consulting services" for purposes of this section.

Article 5 – City Obligations

Data City shall provide copies of returns submitted by all domiciled lodging providers for the most recent forty-eight (48) months or the period covered by the applicable statute of limitation, whichever is shorter, to MuniServices prior to the start of Phase I. If the City has the full return data digitized, submitting such in electronic format would be preferable.

TRANSIENT OCCUPANCY TAX (TOT) Vacation Rental AUDIT SERVICES

Article 1-Objectives and Methods

MuniServices TOT Audit Services for Vacation Rentals is designed to assist the City in maximizing TOT revenue to which it is entitled, and to minimize the cost of lost revenue by educating collectors and remitters of TOT to assist in future compliance with the City's ordinances. This agreement is to perform audits of Vacation Rental properties at the City's direction. MuniServices will be directed by the City to perform audits described in the "Scope of Services" below on a case by case basis.

Article 2-Scope of Vacation Rental Compliance Audit

The Vacation Rental concept supports open communication between MuniServices staff and City staff. MuniServices experience in providing the Vacation Rental compliance audit service has demonstrated that the program generates the maximum amount of revenue possible to the City when the City's audit staff and MuniServices audit staff work closely together.

Within 90 days of MuniServices receipt of the lodging provider return information from the City for the most recent forty-eight (48) months, or the period covered by the applicable statute of limitation, whichever is shorter, MuniServices will provide its Vacation Rental Compliance Audit service as a single service consisting of the following:

- a. For each lodging property that the City identifies as being potentially non-compliant, MuniServices will coordinate with the business and the City to make the necessary corrections plus retroactive adjustments for eligible amounts of Transient Occupancy taxes due to the City. MuniServices coordinates and communicates between typically three parties; (a) sales/operations personnel at the taxpayer's local operation; (b) tax personnel at the company's corporate headquarters; and (c) the in-state/out-of-state district offices. Correction of the account is considered to have been made once the payments on identified taxpayer accounts are being properly allocated by the taxpayer to the City in the period in which the payment was made.

Since MuniServices is operating as an additional support and resource to the City's internal program, the City will have the opportunity to review any individual error and/or omission prior to MuniServices Vacation Rental Compliance Audit of any particular account. MuniServices will detect and document any subsequent errors or omissions not identified by the City.

MuniServices Obligations

- a. Prepare a draft engagement announcement letter to be sent to each lodging provider and review the letter with the designated City staff member before sending to the lodging provider;
- b. Examine records pertaining to TOT for each lodging provider selected for a compliance review.

- c. Verify accuracy of filed TOT returns with daily and monthly activity summaries;
- d. If MuniServices believes such a review is necessary, review secondary and tertiary documentation such as bank statements to verify that deposits reconcile with the reported revenue on the TOT returns or other tax filings;
- e. Review exempted revenue for proper supporting documentation;
- f. Submit to designated City staff a compliance review report that includes:
 - MuniServices review findings;
 - For each error/omission identified and confirmed, accompanying documentation that MuniServices believes is necessary to facilitate recovery of revenue due from lodging providers for prior periods;
 - Draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations;
- g. Coordinate with designated City official(s) as necessary to review compliance review report;
- h. Provide assistance to City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- i. Prepare and document any changes to the compliance review findings and provide revised tax, interest or penalty amounts due the City.

Article 3-Deliverables

Provide City staff with a detailed list of all records required to be made available by lodging providers for the reviews, together with a draft engagement announcement letter to be sent to each lodging provider.

Submit to designated City staff a compliance review report that includes:

- MuniServices review findings;
- For each error/omission identified and confirmed, accompanying documentation that MuniServices believes is necessary to facilitate recovery of revenue due from lodging providers for prior periods;
- Draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations;

Article 4-Compensation

What the City will pay MuniServices

City shall pay MuniServices a fixed fee of \$950 per each lodging property audited. This fee applies to all lodging properties located in the City limits. MuniServices will invoice fifty percent (50%) of this fixed fee upon receipt of the list of properties subject to the Vacation Rental Compliance Audits as directed by the City. No audits will be performed without prior authorization by the City. The remaining fifty percent (50%) upon delivery of the compliance review report. Payment will be made to MuniServices within thirty-days (30) of receipt of MuniServices' invoice. Any amounts which remain unpaid after thirty-days (30) shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.

When travel is required, City shall reimburse MuniServices for out-of-pocket expenses and travel costs ("Travel Costs" include, but are not limited to, the costs of car rental, hotel, meals, gasoline, and traveling time at a reduced hourly rate of \$50 per hour). City shall reimburse MuniServices for out-of-pocket expenses and Travel Costs not to exceed \$2000 per trip. If MuniServices expects to spend more than \$2000 for out-of-pocket expenses and Travel costs, MuniServices shall get prior approval from the City for the amount greater than \$2000. MuniServices will invoice the out-of-pocket expenses and Travel Costs immediately upon delivery of the compliance review report. Payment will be made to MuniServices within thirty-days (30) of receipt of MuniServices' invoice. Any amounts which remain unpaid after thirty-days (30) shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law, whichever is greater.

Additional Consulting

City may request that MuniServices provide additional consulting services at any time during the term of the Agreement. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices shall provide the additional consulting on a time and materials basis. Depending on the personnel assigned to perform the work, MuniServices' standard hourly rates range from \$75 per hour to \$300 per hour.

The following are sample hourly rates based on the job classification:

- Principal: \$300 per hour
- Client Services: \$250 per hour
- Information Technology (IT) support: \$200 per hour
- Operational Support:
 - Director: \$175 per hour
 - Manager: \$150 per hour
 - Senior Analyst: \$125 per hour
 - Analyst: \$100 per hour
 - Administrative: \$75 per hour

These additional consulting services will be invoiced at least quarterly based on actual time and expenses incurred.

Hours of consulting expressly included in MuniServices compliance service are not "additional consulting services" for purposes of this section.

Article 5 – City Obligations

City Obligations

7. The designated City staff member(s) will provide MuniServices with a list of the lodging providers to be subject to a compliance review of lodging and tax records.
8. Because this is a Vacation Rental Compliance Audit by MuniServices, City will provide MuniServices the following:
 - i. summary information from the most recent forty-eight (48) months or shorter, to include gross rents, exemptions, and identified reporting anomalies;

- ii. For each property, City will provide number of rooms, occupancy rate, and any business dynamics associated with the property; and
- iii. Provide MuniServices with a designated City staff to address any questions rising from the materials provided.