



CITY COUNCIL STAFF REPORT

DATE: SEPTEMBER 8, 2010

CONSENT CALENDAR

SUBJECT: CONTRACT WITH MUNISERVICES, LLC FOR AUDITING AND ASSOCIATED CONSULTING SERVICES FOR THE CITY'S TRANSIENT OCCUPANCY TAX COMPLIANCE PROGRAM

FROM: David H. Ready, City Manager

BY: Finance Department

SUMMARY

A request for approval of a contract with MuniServices, LLC for Transient Occupancy Tax (TOT) audit services in accordance with the City's tax compliance program. The cost per audit under the contract will be \$1,250 plus travel expenses and cover a period of two fiscal years for a total not to exceed \$175,000.

RECOMMENDATION:

1. Approve a Contract Services Agreement in an amount not to exceed \$175,000 with MuniServices, LLC to provide the City with Transient Occupancy Tax (TOT) compliance audits over a period of two years, in a form acceptable to the City Attorney.
2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The City of Palm Springs has approximately 130 hotels and motels representing over 6,000 rooms and 1,051 registered vacation rental homes. With the advent of City Hall's reduction in hours through furloughs and reductions in staff, additional assistance is required for audit services. Under this contract, MuniServices will audit each hotel, motel and vacation rental agency. City Finance Department staff will perform audits for individual vacation rental homes.

Section 7.04.030 of the Municipal Code provides that the City Council may authorize the acquisition of supplies, equipment or services without competition when it is determined that an unusual or unique situations exists, in that due to experience and expertise demonstrated in prior contracts with the City, a particular contractor is uniquely qualified for a particular task that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Pursuant to the requirements of Section 7.04.030, the Procurement Manager and the Director of Finance have determined that prior exemplary contract performance and special

ITEM NO. 2.4

expertise of MuniServices LLC for similar tax auditing services (sales tax and utility users tax) for the City is acceptable and will adequately protect the public interest in that the total cost of the services to be provided will likely be equal to or less than what could be obtained through an independent City competitive process at this time.

FISCAL IMPACT:

The total contract price of \$175,000 will cover approximately 135 audits (x \$1,250 = \$168,750) and up to \$5,000 to \$6,000 in travel expenses.

Funding for this contract will be covered over two fiscal years. In the current fiscal year (2010-2011), \$50,000 is currently appropriated in General Fund account number 001-1300-43200 (Finance Department) for TOT audits. An additional \$40,000 will be transferred from previous budget carryover line items in Contingency Account 001-9001-42690. Next fiscal year (2011-2012), \$85,000 will be budgeted in the Finance Department to cover the second year of services.



Geoffrey S. Kiehl, Finance Director



David H. Ready, City Manager

CONSULTING SERVICES AGREEMENT

TOT Compliance Program Auditing Services by MuniServices LLC,

THIS AGREEMENT FOR CONSULTING SERVICES ("Agreement") is made and entered into on [REDACTED], 201[REDACTED], by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and MuniServices LLC, a Delaware limited liability company, its subsidiaries and affiliates ("Consultant"). City and Consultant are individually referred to as "Party" and are collectively referred to as the "Parties".

RECITALS

A. City has concluded the initial first phase "pilot TOT compliance program" of Category F hotels and now requires the services of a professional auditing firm to perform a TOT compliance program audit of the City's remaining 135 lodging providers (excluding individual vacation rentals (Category I). The Audit will be performed in a manner consistent with MuniServices's Transient Occupancy Tax ("TOT") analysis and Compliance Program ("Compliance Program") as described in MuniServices's Proposal ("Project").

B. Consultant has submitted to City a proposal to provide Transient Occupancy Tax (TOT) Auditing Services to City under the terms of this Agreement.

C. Based on its experience, education, training, and reputation, Consultant is qualified and desires to provide the necessary services to City for the Project.

D. City desires to retain the services of Consultant for the Project.

In consideration of these promises and mutual agreements, City agrees as follows:

AGREEMENT

1. CONSULTANT SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide TOT auditing services for approximately 123 hotels and motels representing over 6,000 rooms and 12 vacation rental agencies representing approximately 726 registered vacation rental homes in a manner consistent with the provisions of the Compliance Program as described in the MuniServices Proposal to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated by reference (the "services" or "work"). Exhibit "A" includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner consistent with prevailing industry standards. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in this Agreement, the terms set forth in this Agreement shall govern.

1.2 Compliance with Law. Consultant services rendered under this Agreement shall comply with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations.

1.3 Licenses and Permits. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Familiarity with Work. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. TIME FOR COMPLETION

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A." Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONSULTANT

3.1 Compensation of Consultant. Consultant shall be compensated and reimbursed for the services rendered under this Agreement in accordance with the schedule of fees set forth in Exhibit "A". The total amount of Compensation shall not exceed \$175,000.00 (one hundred seventy five thousand dollars).

3.2 Method of Payment. In any month in which Consultant wishes to receive payment, Consultant shall submit to City an invoice for services rendered prior to the date of the invoice, no later than the first working day of such month, in the form approved by City's finance director. Payments shall be based on the rates set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated in the invoice that are approved by City and consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

3.3 Changes. In the event any change or changes in the Scope of Services/Work is requested by City, Parties shall execute a written amendment to this Agreement, specifying all proposed amendments, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents, work product, or work, when required by the enactment or revision of any subsequent law; or

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

3.4 Appropriations. This Agreement is subject to, and contingent upon, funds being appropriated by the City Council of City for each fiscal year. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City.

4. PERFORMANCE SCHEDULE

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

4.2 Schedule of Performance. All services rendered under this Agreement shall be performed under the agreed upon schedule of performance set forth in Exhibit "A." Any time period extension must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered under this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, if Consultant notifies the Contract Officer within ten (10) days of the commencement of such condition. Unforeseeable causes include, but are not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather. After Consultant notification, the Contract Officer shall investigate the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if, in the Contract Officer's judgment, such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 4.5 of this Agreement, this Agreement shall continue in full force and effect for a period of two (2) years, commencing on October 1, 2010, and ending on September 30, 2012, unless extended by mutual written agreement of the parties.

4.5 Termination Prior to Expiration of Term. City may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant. Where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the City. Upon receipt of the notice of termination, Consultant shall immediately cease all services except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer after such notice. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

5. COORDINATION OF WORK

5.1 Representative of Consultant. The following principal of Consultant is designated as being the principal and representative of Consultant authorized to act and make all decisions in its behalf with respect to the specified services and work: Bryan Whitford, National Manager. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services under this Agreement. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager or his/her designee ("Contract Officer"). Consultant shall be responsible for keeping the Contract Officer fully informed of the progress of the performance of the services. Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified, any approval of City shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall not contract with any other individual or entity to perform any services required under this Agreement without the City's express written approval. In addition, neither this Agreement nor any interest may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

5.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required, except as otherwise specified. Consultant shall perform all required services as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

5.5 Personnel. Consultant agrees to assign the following individuals to perform the services in this Agreement. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer. Acting through the City Manager, the City shall have the unrestricted right to order the removal of any personnel assigned by Consultant by providing written notice to Consultant.

<u>Name:</u>	<u>Title:</u>
Bryan Whitford	National Manager
Tim Olson	Senior Auditor
Gennaro DiMassa	Senior Auditor
Tami Nguyen	Auditor
Tom Manning	Auditor
Ted Kamel	Auditor
Kandi Warnock	Auditor

6. INSURANCE

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in the attached Exhibit "B", incorporated herein by reference.

7. INDEMNIFICATION.

7.1 Indemnification. To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, that arise out of or relate to Consultant's performance under this Agreement. This indemnification clause excludes Claims arising from the sole negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability under this Agreement. Consultant's indemnification obligation shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

7.2 Design Professional Services Indemnification and Reimbursement. If the Agreement is determined to be a "design professional services agreement" and Consultant is a "design professional" under California Civil Code Section 2782.8, then:

A. To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless City and its elected officials, officers, employees, agents and volunteers and all other public agencies whose approval of the project is required, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liabilities, claims, judgments, arbitration awards, settlements, costs, demands, orders and penalties (collectively "Claims"), including but not limited to Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City and its elected officials, officers, employees, agents and volunteers.

B. The Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant to perform the Services or Work required under this

Agreement, to execute an Indemnification Agreement adopting the indemnity provisions in subsection 7.1 in favor of the Indemnified Parties. In addition, Consultant shall require all non-design-professional sub-contractors, used or sub-contracted by Consultant to perform the Services or Work required under this Agreement, to obtain insurance that is consistent with the Insurance provisions as set forth in this Agreement, as well as any other insurance that may be required by Contract Officer.

8. RECORDS AND REPORTS

8.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer reports concerning the performance of the services required by this Agreement, or as the Contract Officer shall require.

8.2 Records. Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

8.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of this Agreement shall be the property of City. Consultant shall deliver all above-referenced documents to City upon request of the Contract Officer or upon the termination of this Agreement. Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials. Consultant may retain copies of such documents for Consultant's own use. Consultant shall have an unrestricted right to use the concepts embodied in such documents.

8.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

8.5 Cost Records. Consultant shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred while performing under this Agreement. Consultant shall make such materials available at its offices at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment for inspection by City and copies shall be promptly furnished to City upon request.

9. ENFORCEMENT OF AGREEMENT

9.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of

California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

9.2 Interpretation. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The terms of this Agreement are contractual and the result of negotiation between the Parties. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement. The caption headings of the various sections and paragraphs of this Agreement are for convenience and identification purposes only and shall not be deemed to limit, expand, or define the contents of the respective sections or paragraphs.

9.3 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing. No such waiver shall be a waiver of any other default concerning the same or any other provision of this Agreement.

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

9.5 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

10. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

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

10.2 Conflict of Interest. No officer or employee of the City shall have any direct or indirect financial interest in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects their financial interest or the financial interest of any corporation, partnership, or association in which he/she is, directly or indirectly, interested in violation of any state statute or regulation. Consultant warrants that Consultant has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

10.3 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be

no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

11. MISCELLANEOUS PROVISIONS

11.1 Notice. Any notice, demand, request, consent, approval, or communication that either party desires, or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section. Either party may change its address by notifying the other party of the change of address in writing.

To City: City of Palm Springs
Attention: City Manager/ City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262

To Consultant: MuniServices, LLC
Attention: Patricia Dunn, Legal Dept.
7335 North Palm Bluffs Ave.
Fresno, CA 93711

11.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and supersedes all other written agreements.

11.3 Amendment. No amendments or other modifications of this Agreement shall be binding unless through written agreement by all Parties.

11.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties.

11.5 Successors in Interest. This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

11.6 Third Party Beneficiary. Except as may be expressly provided for in this Agreement, nothing contained in this Agreement is intended to confer, nor shall this Agreement

be construed as conferring, any rights, including, without limitation, any rights as a third-party beneficiary or otherwise, upon any entity or person not a party to this Agreement.

11.7 Recitals. The above-referenced Recitals are hereby incorporated into the Agreement as though fully set forth in this Agreement and each Party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

11.8 Authority. The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of Parties and that by so executing this Agreement the Parties are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates stated below.

“CITY”
City of Palm Springs

Date: _____

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

ATTEST

By: _____
Douglas C. Holland,
City Attorney

By: _____
James Thompson,
City Clerk

“CONSULTANT”
MuniServices, LLC

Date: _____

By : _____
Marc Herman, President

Date: _____

Kevin Cerutti, VP Finance

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: _____

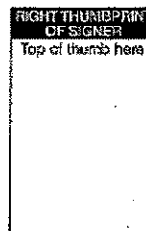
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



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: _____

EXHIBIT "A"

**CONSULTANT'S
SCOPE OF SERVICES/WORK**

Including,

Schedule of Fees

And

Schedule of Performance

PROPOSAL
Transient Occupancy Tax (TOT) Compliance Program

PROJECT SCOPE OF WORK

MuniServices' TOT Audit Program ("Compliance Program") is designed to assist the City of Palm Springs ("City") identify and collect deficient TOT revenue through audit of fiduciary collectors for the period of the statute of limitations. From this performance it is anticipated that City can derive retrospective revenue exceeding the cost of the Program. Additionally, the Program is designed to promote the timely and appropriate return and remittance of the TOT revenue in the future through instruction of fiduciary collectors in their duties, and strengthening the compliance ethic among them. This too can benefit City through receipt of more revenue to which it is entitled sooner rather than later.

Ancillary services related to audit performance shall include analysis of past returns and other relevant data to better target auditing; preparation of audit and related analytical reports to City; preparation of draft correspondence for City to inform those audited of outcomes -- that is, notices of deficiency determination, or commendation, credit or warning letters; review of any matters submitted in extenuation or mitigation of audit findings and preparation of draft responses thereto on behalf of City; provision of other collection advice as requested by City; etc. Ancillary services related to instructional performance shall include preparation of and dissemination to fiduciary collectors such informational materials as guidelines on taxable and non-taxable nature of charges (upon City approval); recommendation to City of enhancements in administration; conduct of seminars for fiduciary collectors as deemed helpful; provision of particular and specific advice as may be requested by fiduciary collectors and City; etc.

The compliance ethic can be strengthened among the fiduciary collectors through awareness that they are under heightened scrutiny and subject to audit. Recognition that a level playing field exists for them and their competitors can also serve to enhance compliance and promote satisfaction.

Such performance and the benefits to be derived have been demonstrated to City through the Pilot Program. City has requested a proposal to expand this performance from the Pilot Program to 135 additional transient lodging properties and rental agencies. MuniServices understands that Individual Vacation Rentals (City Category I) will be audited by City, and therefore, as requested, those fiduciary collectors of the TOT are excluded from this proposal.

SCHEDULE OF PERFORMANCE

The Compliance Program shall be conducted over a two-year period beginning October 1, 2010 and concluding September 30, 2012, if not completed sooner. Audits shall be conducted at the rate of 20 to 30 audits per quarter. Instructional performance shall be in concert with and proportional to audit performance. It is assumed that City shall strive to timely make available to MuniServices copies of returns and materials requested, and otherwise be responsive to the coordination necessary for this timetable to be achieved, as it has done and been during the Pilot Program.

If City wishes, it may have an option to authorize each quarterly increment. MuniServices assumes that City shall exercise such in a manner consistent with the two-year timeframe. Candidates for audit can be as arrayed by City. Delivery of reporting shall be as each audit is completed, unless City would prefer block delivery by quarterly increment. In that instance, delivery shall be by the end of the quarter, cooperation of those fiduciary collectors audited permitting.

COST PROPOSAL

MuniServices shall provide the Compliance Program for an aggregate fee of \$168,750.00, plus reimbursement of expenses. This fee equates to \$1,250.00 each for the 135 lodging properties and rental agencies encompassed. With audits being conducted at a pace of 20 to 30 audits per quarter, quarterly fees will be paid for accordingly. Once the number of audits for a given upcoming quarter has been determined, then the appropriate amount of the advance and delivery payments for that quarter may be determined.

The quarterly rate shall be payable 50% in advance with the remaining 50% payable upon delivery to City of applicable audit reporting and draft findings correspondence. However, should MuniServices be unreasonably delayed in completion of audits by lack of cooperation from fiduciary collectors, it shall be entitled to payment at the conclusion of a quarter of the remaining 50% plus expenses for those audits on which delivery has been made to City.

Expenses shall be billed at the conclusion of the quarter in which they are incurred. It is anticipated that expenses will be approximately \$1,000 per quarter depending upon the level of cooperation from the fiduciary collectors, but is not expected to exceed \$6,250 in the aggregate.

City may request MuniServices to provide additional consulting services at any time during the term of the Program. If MuniServices and City agree on the scope of additional consulting services requested, then MuniServices shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform that work, MuniServices' hourly rates shall range from \$75.00 per hour to \$300.00 per hour. These additional consulting services shall be invoiced no less frequently than monthly based on actual time and expenses incurred.

KEY STAFF

Bryan Whitford shall direct the Compliance Program. He joined MuniServices in 1998. He holds B.A. and M.P.A. degrees and served for two decades as a city and county manager before entering the government revenue enhancement business in 1991. Since then, he has conducted or directed thousands of compliance audits on behalf of hundreds of clients nationwide, including an approximate 100 municipal and county clients in California. He is a recognized expert on local excise taxation, having published articles, assisted in the drafting of ordinances and statutes, developed return forms and systems, consulted with governments and affected industries, spoken at numerous seminars, and testified before Congress and state legislatures. His testimony in court on excise tax issues is generally qualified as "expert".

Other personnel to be assigned have a combined experience of more than forty years in performing lodging tax audits, 10 years in lodging hospitality management and 12 years in State and local government, as well as significant other audit and analysis experience. Tim Olson, Gennaro DiMassa and Tami Nguyen shall be principally involved with the work. Assistance as needed shall be provided by Tom Manning, Ted Kamel and Kandi Warnock. No substitution to this exceptional staffing is anticipated.

EXHIBIT “B”

INSURANCE PROVISIONS

Including

Verification of Coverage,

Sufficiency of Insurers,

Errors and Omissions Coverage,

Minimum Scope of Insurance,

Deductibles and Self-Insured Retentions, and

Severability of Interests (Separation of Insureds)

INSURANCE

1. Procurement and Maintenance of Insurance. Consultant shall procure and maintain public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall procure and maintain all insurance at its sole cost and expense, in a form and content satisfactory to the City, and submit concurrently with its execution of this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extensions. Such insurance shall not be cancelable without thirty (30) days advance written notice to City of any proposed cancellation. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

2. Minimum Scope of Insurance. The minimum amount of insurance required under this Agreement shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) combined single limit coverage per occurrence and two million dollars (\$2,000,000) general aggregate;

2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;

3. Professional liability (errors and omissions) insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) annual aggregate is:

_____ required

_____ is not required;

4. Workers' Compensation insurance in the statutory amount as required by the State of California and Employer's Liability Insurance with limits of at least one million dollars \$1 million per occurrence. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

3. Primary Insurance. For any claims related to this Agreement, Consultant's insurance coverage shall be primary with respect to the City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and

contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

4. **Errors and Omissions Coverage.** If Errors & Omissions Insurance is required, and if Consultant provides claims made professional liability insurance, Consultant shall also agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Consultant's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Consultant's services under this Agreement. Consultant shall also be required to provide evidence to City of the purchase of the required tail insurance or continuation of the professional liability policy.

5. **Sufficiency of Insurers.** Insurance required in this Agreement shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless otherwise acceptable to the City.

6. **Verification of Coverage.** Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. ____" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. ____" or "for any and all work performed with the City" may be included in this statement).*

3. *"Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail 30 days written notice to the Certificate Holder named." Language such as, "endeavor to" mail and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative" is not acceptable and must be crossed out.*

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies.

All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

7. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City prior to commencing any work or services under this Agreement. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its elected officials, officers, employees, agents, and volunteers; or (2) Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Consultant guarantees payment of all deductibles and self-insured retentions.

8. **Severability of Interests (Separation of Insureds).** This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.