

## CONSULTANT SERVICES AGREEMENT BETWEEN CITY OF REEDLEY AND MUNISERVICES, LLC

This Consultant Services Agreement (the "Agreement") is made as of the 5<sup>th</sup> day of July, 2017 ("Effective Date") by and between MuniServices, LLC, a Delaware limited liability company ("CONSULTANT") and The City of Reedley, a municipal corporation of the State of California ("CITY"). In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

### A. Services

1. CONSULTANT will provide CITY with the services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

### B. Compensation

1. Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBIT B, incorporated and included herein.

### C. General Provisions

1. Term of the Agreement: The initial term of this Agreement shall be for a period of three (3) years following the date of execution. Thereafter the parties will have the option to extend the term if neither party has cancelled (the "Term"). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days' written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANT's fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.
3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector

clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

4. Subcontractors: CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
5. Notice: Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

**If to City:**

City of Reedley  
Attn: Paul Melikian, Assistant City Manager  
845 G Street  
Reedley, CA 93654  
Phone: 559.637.4200 ext. 300  
Facsimile: 559.638.1093  
Email: [paul.melikian@reedley.ca.gov](mailto:paul.melikian@reedley.ca.gov)

**If to MuniServices:**

MuniServices, LLC  
Attn: Contract Department  
7625 N. Palm Ave., Ste. 108  
Fresno, CA 93711  
Phone: 559.271.6852  
Facsimile: 559.271.6852  
Email: [contracts@muniservices.com](mailto:contracts@muniservices.com)

6. Representative or designees: CONSULTANT Primary Representative/Project Manager shall be:

Mary DeLaRosa, Client Services Manager  
7625 N. Palm Ave., Ste. 108, Fresno, CA 93711  
Phone: 559.271.6809/Email: [Mary.Delarosa@MuniServices.com](mailto:Mary.Delarosa@MuniServices.com)

For the convenience of the CITY, a short list of helpful contacts is attached and incorporated herein as EXHIBIT C.

7. Indemnity: CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.
8. Limitation of Liability: In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT's total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks between CONSULTANT and the CITY and CONSULTANT's pricing reflects the allocation of risk and limitation of liability specified herein.

9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the City, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CITY, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. Equal Opportunity to Draft: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. Ownership of Documents: Except for CONSULTANT preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.
13. Intellectual Property Rights: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
14. Public Release and Statements: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
17. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
18. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

***[Signatures on following page]***

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

**"CITY"**

**City of Reedley**  
a Municipal Corporation

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

Name: Nicole R. Zieba

Title: City Manager

**ATTEST:**

W/A

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

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

**APPROVED AS TO FORM:**

W/A

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

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

**"CONSULTANT"**

**MuniServices, LLC,**  
a Delaware limited liability company

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

Doug Jensen, SVP Client Services

## **EXHIBIT A – SCOPE OF WORK**

### **TRANSIENT OCCUPANCY TAX (TOT) COMPLIANCE AUDIT**

#### **Objectives and Methods**

MuniServices TOT Compliance Audit is designed to assist the City in maximizing TOT revenue it is entitled to through an on-site examination of records and to educate lodging providers of TOT to assist in future compliance with the City's ordinances.

#### **Scope of Work**

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:

1. Perform on-site examinations of the records of those providers requested by City;
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;
3. Examine records pertaining to TOT for each lodging provider selected for a compliance review.
4. Verify accuracy of filed TOT returns with daily and monthly activity summaries;
5. Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries;
6. 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;
7. Review exempted revenue for proper supporting documentation;
8. Submit to designated City staff a compliance review report that includes:
  - a) MuniServices review findings;
  - b) 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;
  - c) Draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations;
9. Coordinate with designated City official(s) as necessary to review compliance review report;
10. Provide assistance to City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
11. Prepare and document any changes to the compliance review findings and provide revised tax, interest or penalty amounts due the City.

#### **Deliverables**

1. 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.
2. Submit to designated City staff a compliance review report that includes:
  - a) MuniServices review findings;
  - b) 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;
  - c) Draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations;

#### **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.



**EXHIBIT B - COMPENSATION**  
**TRANSIENT OCCUPANCY TAX (TOT) COMPLIANCE AUDIT**

**What the City will pay MuniServices**

City will compensate MuniServices for the Compliance Audit as follows:

The Audit Services shall be provided for a fixed fee of one thousand five-hundred dollars (\$1,500) for each lodging property audited with 50% due at the time of audit approval and 50% upon completion of the audit.

**Out-of-Pocket Expenses**

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, lodging and fuel). City shall reimburse MuniServices for out-of-pocket expenses and Travel Costs up to a combined total not-to-exceed \$1,000. If MuniServices expects to spend more than \$1,000 for out-of-pocket expenses and Travel Costs, MuniServices shall get prior approval from the City for the amount greater than \$1,000. 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.

**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 \$200 per hour.

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

**EXHIBIT C**  
**MUNISERVICES HELPFUL CONTACTS**

<b>Contact</b>	<b>Project Role</b>	<b>Phone</b>	<b>Email</b>
Mary DeLaRosa	Client Services Manager	559.271.6809	<a href="mailto:mary.delarosa@muniservices.com">mary.delarosa@muniservices.com</a>
Doug Jensen	SVP Client Services	559.288.8943	<a href="mailto:doug.jensen@muniservices.com">doug.jensen@muniservices.com</a>
Tami Nguyen	Senior TOT Auditor	800.800.8181 ext. 76513	<a href="mailto:tami.nguyen@muniservices.com">tami.nguyen@muniservices.com</a>
Francesco Mancia, MBA	VP Government Relations	559.288.7296	<a href="mailto:fran.mancia@muniservices.com">fran.mancia@muniservices.com</a>
Brenda Narayan	Dir. Government Relations	916.261.5147	<a href="mailto:brenda.narayan@muniservices.com">brenda.narayan@muniservices.com</a>
Patricia A. Dunn, MSHR	Contracts Manager	559.271.6852	<a href="mailto:patricia.dunn@muniservices.com">patricia.dunn@muniservices.com</a>





## REEDLEY CITY COUNCIL

- ☒ Consent
- ☐ Regular Item
- ☐ Workshop
- ☐ Closed Session
- ☐ Public Hearing

ITEM NO: 3

**DATE:** June 13, 2017

**TITLE:** APPROVE AND AUTHORIZE THE CITY MANAGER OR DESIGNEE TO ENGAGE MUNISERVICES, LLC FOR TRANSIENT OCCUPANCY TAX AUDIT SERVICES

**SUBMITTED:** Paul A. Melikian, Assistant City Manager *PM*

**APPROVED:** Nicole R. Zieba, City Manager *NZ*

### **RECOMMENDATION**

Staff recommends that the City Council approve and authorize the City Manager or designee to engage MuniServices, LLC for Transient Occupancy Tax Audit Services.

### **EXECUTIVE SUMMARY**

A Transient Occupancy Tax (TOT) is charged in most California cities to travelers when renting accommodations (a room, rooms, entire home or other living space) in a hotel, inn, tourist home or house, motel or other lodging. The City of Reedley's Uniform Transient Occupancy Tax Ordinance was established in 1990, and is still in place today. A full copy of the ordinance has been attached to this report. The City received \$42,156 in TOT revenue last fiscal year (2015-16) and has averaged \$44,413/year over the last 15 years. Staff does not recall that this tax has ever been audited, though this is a common occurrence in cities. The City's sales tax reporting and audit consultant, MuniServices, provides TOT audit services, and has submitted a proposal to audit this tax for a fixed \$1,500, plus out of pocket expenses not to exceed \$2,500. The final audit report is due back to the City within three months.

### **BACKGROUND**

MuniServices, LLC has provided TOT audit services since 1990, and in the past five years reviewed more than 9,000 lodging providers and identified more than \$20 million in unreported, underreported, and otherwise delinquent tax revenue for their clients. TOT audits conducted by MuniServices, LLC have three primary objectives: 1) ensure compliance in the most cost effective way, 2) the audit must not only recover tax revenue, but also improve the relationships between the City and the lodging operators, and 3) the audit must not unduly burden the fully compliant lodging properties.

### **FISCAL IMPACT**

The cost to provide the audit will be covered from the TOT revenue stream, and therefore does not require additional appropriations. The City can go back up to three years to collect should the audit uncover any unreported/underreported tax revenue.

### **ATTACHMENTS**

Proposal for Transient Occupancy Tax Audit Services

Title 3, Chapter 7 of Reedley Municipal Code: Uniform Transient Occupancy Tax (1990)