

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT

This Agreement is made and entered into this ____ day of January, 2019 by and between the City of Fort Bragg, a California Municipal Corporation, 416 N. Franklin Street, Fort Bragg, California, 95437 ("City"), and Avenu Insights and Analytics, LLC, a Delaware Limited Liability Company, 7625 N. Palm Avenue, Suite 108, Fresno, California 93711 ("Consultant").

RECITALS

WHEREAS, City has determined that it requires the following professional services from a consultant: to provide audit services of City Transient Occupancy Tax (TOT) taxpayers; and

WHEREAS, Consultant represents and warrants that it is fully qualified to perform such professional services by virtue of specialized experience and training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, the legislative body of the City on January 28, 2019, by Resolution No. ____-2019 authorized execution of this Agreement on behalf of the City in accordance with Chapter 3.20 of the City Municipal Code and/or other applicable law;

NOW, THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. CONTRACT DOCUMENTS

This Agreement consists of the following documents, all of which are incorporated into and made a part of the Agreement:

- a. Professional Services Agreement;
- b. Consultant's Proposal (Exhibit 1)

2. DESCRIPTION OF SERVICES OR SCOPE OF WORK

The services to be performed under this Agreement ("Services") are as follows: Audit of City TOT taxpayers. The Services are further described in Consultant's proposal (the "Proposal"), which is attached to and made a part of this Agreement as Exhibit 1. Changes in the scope, character, or complexity of the Services, if such changes become desirable or necessary as the work progresses, shall be agreed upon by both parties in a written change order. For special cases where it is essential that the extra

work be performed immediately, execution of a change order or amendment to the Agreement covering the changes shall be completed as soon as possible.

3. TERM

The Agreement term will commence on February 10, 2019, and expire on February 10, 2020, unless the Agreement term is amended or the Agreement is terminated in accordance with its terms.

4. PAYMENT TERMS

a. City agrees to pay Consultant for Services that are actually performed within thirty (30) days of receipt of a proper invoice, in accordance with this Agreement. To be eligible for payment, Consultant invoices must be submitted not more often than monthly to the City and list the Services performed and the amounts to be paid according to the cost categories and prices in the Proposal.

b. NOT TO EXCEED CONTRACT: In no event will the City's obligation to pay the Consultant under this Agreement exceed **Thirty Thousand Four Hundred Dollars (\$30,400.00)** (the "Not to Exceed Amount"), unless this Agreement is first modified in accordance with its terms. The Not to Exceed Amount includes salary, fringe benefits, overhead, profit, and all other expenses incurred by the Consultant in completing its Services under this Agreement.

c. [SECTION REMOVED.]

d. [SECTION REMOVED.]

e. [SECTION REMOVED.]

5. TIME OF COMPLETION

Consultant must commence performance of the Services upon receipt of written direction to proceed from City. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 9 below and to satisfy Consultant's obligations hereunder. Consultant will complete the Services in accordance with this Agreement by **February 10, 2020** (the "Time of Completion"). The Time of Completion may only be modified by a written amendment of the Agreement signed by both the City and the Consultant and in accordance with its terms.

6. INDEPENDENT CONTRACTOR

Consultant and City agree that the Consultant will perform the Services as an independent contractor and not as an employee or agent of the City. Persons employed or utilized by Consultant in the performance of the Services will not be employees or

agents of the City. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7. SUBCONTRACTING

a. The Consultant shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted out without written authorization by the City's Contract Manager, except that, which is expressly identified in the approved Cost Proposal.

b. Any subcontract in excess of \$25,000 entered into by the Consultant relating to this Agreement shall incorporate by reference all of the provisions of this Agreement and make them applicable to said subcontractor.

c. Consultant will be solely responsible for payment of such subcontracted Services.

d. Any substitution of subcontractors must be approved in writing by the City's Contract Manager.

e. Subcontractors are bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under the Agreement. Subcontractor further must agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

f. If the Consultant uses subcontractors, it must comply with Civil Code § 8814 and all other California law relating to the prompt payment of subcontractors.

8. RECORD RETENTION

For the purpose of determining compliance with Public Contracts Code §§ 10115, *et seq.* and Title 21, California Code of Regulations, Chapter 21, §§ 2500 *et seq.*, when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code § 8546.7, the Consultant, subcontractors, and the City shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement.

9. STANDARD OF PERFORMANCE

a. Consultant will perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession and will prepare all work products required by this Agreement in accordance with such standards. Consultant will comply with federal, state, and local laws and regulations applicable to performance of the Services, including, but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, any air pollution control laws and regulations applicable to Consultant, and any laws and regulations related to any copyright, patent, trademark, or other intellectual property right involved in performance of the services. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the services hereunder shall constitute a material breach of this agreement.

b. The Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subcontractors without prior written approval from the City. The Consultant must request and justify the need for the substitution and obtain approval from the City prior to use of a different subcontractor on the Agreement. Such approval shall not be unreasonably withheld or denied. The proposed substituted person or subcontractor must be as qualified as the original, and at the same or lower cost.

c. If this Agreement includes engineering services, the Consultant's Project Manager must be a registered Engineer in the State of California.

d. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its reasonable discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

10. OTHER GOVERNMENTAL REGULATIONS

To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

11. USE OF RECYCLED PRODUCTS

Consultant shall endeavor to prepare and submit all reports, written studies, and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

12. INDEMNITY

To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, and agents ("Indemnitees") from and against all liability, loss, direct damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorneys' fees and costs and litigation costs) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the negligent performance of the Consultant's Services, or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees but excepting the sole negligence or willful misconduct of the Indemnitees.

The Consultant's obligation to indemnify, defend, and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding is extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code § 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to Cal. Civil Code § 2782.8, as amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by Civil Code § 2782.8.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for

PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement.

Consultant/subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

13. INSURANCE

a. Before commencing performance of the Services, Consultant, at its own cost and expense, must: (1) procure "occurrence coverage" insurance of the kinds and in the amounts specified below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by the Consultant or its agents, representatives, employees, or subcontractors; and (2) submit to the City certificates of insurance and endorsements evidencing insurance coverage that meets the requirements of this section. Consultant must maintain the insurance policies required by this section throughout the Agreement term.

Consultant agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. The Consultant shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any work and Consultant will provide proof of compliance to the City.

Consultant may not allow any subcontractor to commence work on the Services until Consultant and/or the subcontractor have obtained all insurance required by this Agreement for the subcontractor(s) and submitted certificates of insurance and endorsements evidencing such coverage to City.

b. **Workers Compensation Insurance.** Consultant must, at its sole cost and expense, maintain Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. Workers' Compensation Insurance as required by the State of California, with coverage providing Statutory Limits, and Employer's Liability Insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence must be provided. The insurance must be endorsed to waive all rights of subrogation against City and its officials, officers and employees for loss arising from or related to the Services.

c. For the Term of this Agreement, Consultant, at its own cost and expense, must maintain: (1) commercial general liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, TWO MILLION DOLLARS (\$2,000,000.00) aggregate, combined single limit coverage for risks associated with Services; and (2) automobile liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit coverage. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

d. Except for Workers' Compensation insurance and Professional Liability insurance, all other insurance coverages required pursuant to this Agreement must include or be endorsed to include the following:

(1) City and its officials, officers, employees and agents ("Additional Insured") shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles leased or used by Consultant. The coverage may contain no special limitations on the scope of protection afforded to City or its officials, officers, employees, agents, or volunteers.

(2) The Additional Insured coverage under the Consultant's policy shall be "primary and non-contributory" and Consultant's coverage will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

e. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

f. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

g. Insurance coverage required pursuant to this Agreement must include or be endorsed to include the following:

(1) Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees and agents.

(2) Required insurance coverage may not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

h. Consultant, at its own cost and expense, must maintain for the period covered by this Agreement professional liability insurance in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering errors and omissions. Any deductible or self-insured retention under the required professional liability insurance may not exceed \$150,000 per claim.

i. All insurance required under this Agreement must be placed with insurers with a Best's rating of no less than A:VII unless otherwise approved by the City.

j. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

k. All self-insured retentions (SIR) must be disclosed to City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or by the City. City reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

l. To the extent this Agreement is a "construction contract" as defined by California Civil Code § 2783, as may be amended from time to time, Consultant shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following completion of the Services. In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.

14. NON DISCRIMINATION

During the performance of this Agreement, Consultant will not discriminate against any employee of the Consultant or applicant for employment because of race, religion, creed, color, national origin, gender, sexual orientation, or age. Consultant will take affirmative action to ensure that applicants are employed and that employees are

treated during employment without regard to their race, religion, creed, color, national origin, gender, sexual orientation, or age.

15. FAIR EMPLOYMENT PRACTICES ADDENDUM AND NON-DISCRIMINATION ASSURANCES

The Consultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as recipient deems appropriate.

16. [SECTION REMOVED.]

17. LICENSES & PERMITS

a. BUSINESS LICENSE

Before the City will issue a notice to proceed with the Services, Consultant and any subcontractors must acquire, at their expense, a business license from City in accordance with Chapter 5.04 of the Fort Bragg Municipal Code. Such licenses must be kept valid throughout the Agreement term.

b. OTHER LICENSES AND PERMITS

Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

18. CONSULTANT REPORTS AND/OR MEETINGS

a. The Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the Contract Manager to determine, if the Consultant is performing to expectations, or is on schedule; to provide communication of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

b. The Consultant's Project Manager shall meet with the City's Contract Manager, as needed, to discuss progress on the contract.

19. DOCUMENTATION, OWNERSHIP OF WORK PRODUCTS, AND TREATMENT OF DOCUMENTS

a. [SECTION REMOVED.]

b. [SECTION REMOVED.]

c. All plans, specifications, reports, designs and other documents prepared by Consultant specifically for City pursuant to this Agreement shall be and remain the property of the City. Any modification or reuse of such documents by the City without Consultant's prior consultation will be at the City's sole risk. Except as may be otherwise required by law, Consultant will disclose no data, plans, specifications, reports or other documents pertaining to the Services without the prior written consent of City. Notwithstanding the foregoing, Consultant shall retain ownership (including, without limitation, copyright ownership) and all rights to use and disclose its ideas, concepts, know-how, methods, techniques, processes and skills, and adaptations thereof in conducting our business regardless of whether incorporated in any way in any work product or deliverables provided by Consultant hereunder.

20. DISPUTES

a. Any dispute, other than an audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of the City's Contract Manager and the City Manager, who may consider written or verbal information submitted by the Consultant.

b. Not later than thirty (30) days after completion of all work under the Agreement, the Consultant may request review by the City Council of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.

c. Neither the pendency of a dispute, nor its consideration by the committee will excuse the Consultant from full and timely performance in accordance with the terms of this Agreement.

d. Should a dispute not be resolved by the procedures set forth above, then the parties must mediate the dispute before a mutually agreed upon neutral party within ninety (90) days of the completion of all Services under the Agreement. If mediation is not successful, the Consultant and City may pursue all rights and remedies available under California law.

21. TERMINATION AND REMEDIES

a. City or Consultant may terminate this Agreement for convenience by giving at least 30 days written notice to the other party specifying the termination effective date. Upon receipt of such notice from City, Consultant may continue performance of the Services through the date of termination. City shall pay Consultant for all Services actually performed in accordance with this Agreement through the termination effective date.

b. If Consultant materially breaches any term of this Agreement, in addition to any other remedies the City may have at law or equity, the City may:

(1) Terminate the Agreement by notice to the Consultant specifying the termination effective date;

(2) Retain, and/or recover from the Consultant at no additional cost to the City, the plans, specification, drawings, reports, and other design documents and work products prepared by Consultant, whether or not completed;

(3) Complete the unfinished Services itself or have the unfinished Services completed, and/or;

(4) Charge Consultant, or deduct from monies that may be due or become due the Consultant under this Agreement, the difference between the cost of completing the unfinished Services pursuant to this Agreement and the amount that would otherwise be due Consultant had Consultant completed the Services in accordance with this Agreement.

22. BINDING EFFECT AND ASSIGNMENT PROHIBITION

This Agreement is binding upon City, Consultant, and their successors. Except as otherwise provided herein, neither City nor Consultant may assign, sublet, or transfer their interest in this Agreement or any part thereof without the prior written consent of the other, such consent shall not be unreasonably withheld or denied, and any purported assignment without such consent will be void.

23. REPRESENTATIVES

a. City Contract Manager for purposes of this Agreement will be Victor Damiani, Finance Director. Consultant's representative for purposes of this Agreement will be Thomas Adams, Business Development Executive. The parties' designated representatives will be the primary contact persons regarding the performance of the Services. However, Consultant's representative shall have no binding authority to make or agree to contract changes or modifications. The parties intend that their designated representatives will cooperate in all matters regarding this Agreement and in such manner so as to achieve performance of the Services in a timely and expeditious fashion.

b. Notices:

Any written notice to Consultant shall be sent to:

Attn: Contract Department
Avenu Insights and Analytics
7625 N. Palm Ave., Suite 108
Fresno, CA 93711

Any written notice to City shall be sent to:

Victor Damiani
Finance Director
City of Fort Bragg
416 N. Franklin Street
Fort Bragg, CA 95437

24. INTEGRATION AND AMENDMENT

This Agreement represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. If a discrepancy, disagreement, ambiguity, inconsistency, or difference in interpretation of terms arises as to terms or provisions of this Agreement and any Exhibit(s) attached to this Agreement, this Agreement shall control and shall be deemed to reflect the intent of the parties with respect to the subject matter hereof. This Agreement may only be amended by a writing signed by a representative authorized to bind the Consultant and a representative authorized to bind the City.

25. COVENANT AGAINST CONTINGENT FEES, REBATES, KICKBACKS, OR OTHER UNLAWFUL CONSIDERATION

a. The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the consultant, to solicit or secure this agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this agreement. For breach or violation of this covenant, the City shall have the right to annul this agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

b. The Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee. For breach or violation of this warranty, City shall have the right in its discretion, to terminate the Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

c. The Consultant warrants and represents that it has not participated in any lobbying activities.

26. CONFLICT OF INTEREST PROHIBITION

City and Consultant will comply with the requirements of the City's Conflict of Interest Code adopted pursuant to California Government Code § 87300 *et seq.*, the Political

Reform Act (California Government Code § 81000 *et seq.*), the regulations promulgated by the Fair Political Practices Commission (Title 2, § 18110 *et seq.* of the California Code of Regulations), California Government Code § 1090 *et seq.*, and any other ethics laws applicable to the performance of the Services and/or this Agreement. Consultant may be required to file with the City Clerk a completed Form 700 before commencing performance of the Services unless the City Clerk determines that completion of a Form 700 is not required, pursuant to City's Conflict of Interest Code. Form 700 forms are available from the City Clerk.

Consultant may not perform Services for any other person or entity that, pursuant to any applicable law or regulation, would result in a conflict of interest or would otherwise be prohibited with respect to Consultant's obligations pursuant to this Agreement. Consultant agrees to cooperate fully with City and to provide any necessary and appropriate information requested by City or any authorized representative concerning potential conflicts of interest or prohibitions concerning Consultant's obligations pursuant to this Agreement. Notwithstanding the foregoing, Consultant may perform similar services for other government sector clients during the term of this Agreement, and City acknowledges that Consultant's representation of such clients is not a conflict of interest.

Consultant may not employ any City official, officer, or employee in the performance of the Services, nor may any official, officer, or employee of City have any financial interest in this Agreement that would violate California Government Code § 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of City. If Consultant was an employee, agent, appointee, or official of City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Consultant's performance of the Services, including reimbursement of expenses, and Consultant will be required to reimburse City for any sums paid to Consultant under this Agreement. Consultant understands that, in addition to the foregoing, penalties for violating Government Code § 1090 *et seq.* may include criminal prosecution and disqualification from holding public office in the State of California.

Any violation by Consultant of the requirements of this provision will constitute a material breach of this Agreement, and the City reserves all its rights and remedies at law and equity concerning any such violations.

27. APPLICABLE LAW AND VENUE

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and the interpretation of this Agreement. Any action or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Agreement shall be brought in a state court in Mendocino County.

28. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

29. COUNTERPARTS

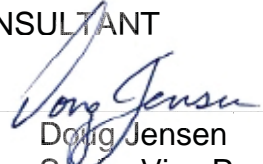
This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

By: _____
Tabatha Miller
Its: City Manager

CONSULTANT

By:  _____
Doug Jensen
Its: Senior Vice President

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

By: _____
Russell Hildebrand
City Attorney

Exhibit 1: Consultant's Proposal

28. SEVERABILITY

If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged will remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

29. COUNTERPARTS

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IN WITNESS WHEREOF, the parties have caused their authorized representative to execute this Agreement on the date first written above.

CITY

CONSULTANT

By: _____
Tabatha Miller
Its: City Manager

By: _____
Doug Jensen
Its: Senior Vice President

[Attach Notary Acknowledgment Page]

ATTEST:

By: _____
June Lemos, CMC
City Clerk

APPROVED AS TO FORM:

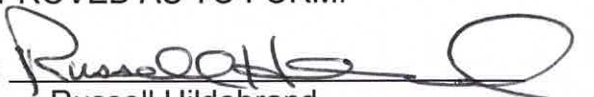
By: 
Russell Hildebrand
City Attorney

Exhibit 1: Consultant's Proposal

Project Work Plan, Approach & Innovation

TOT Audit Project Approach

Our approach to TOT Audit and Compliance has proven to be effective in successfully completing lodging tax audits on behalf of our other municipal clients. Shown below is a detailed work plan of our process.

The Compliance Program

Typically, within 90 days of Avenu's 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, Avenu will provide its Compliance Program as a single service consisting of the following two-phase process.

Analysis - Phase 1. During this phase, Avenu will:

- a. Conduct a thorough review of all the City's Ordinances and Resolutions requiring the collection and remittance of lodging taxes and fees due to the City.
- b. Establish a comprehensive inventory of all lodging properties subject to taxation by the City and the database elements (public and private databases) needed to facilitate further analysis to identify and locate lodging providers not properly registered with the City and not appearing on the City rolls as TOT remitters;
- c. 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;
- d. Conduct unobtrusive collection of information on each property, including number of rooms, occupancy rate, property's condition, business dynamics internal controls;
- e. 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;
- f. Coordinate with designated City official(s) as necessary to review the analysis report;
- g. Develop with the designated City staff a list of lodging providers to be subject to a compliance review of lodging and tax records; and
- h. 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.

Audit and Compliance Review - Phase 2.

Based on our previous experiences, on average only about 30% of the properties will be recommended for Phase 2.

During this phase, Avenu 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 from 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 Avenu 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:
 - Avenu review findings;
 - For each error/omission identified and confirmed, accompanying documentation that Avenu 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 the 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.

Please note: Phase 1 plus Phase 2 constitutes the full compliance program. Phase 1 must be performed before phase 2.

City Assistance

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 Avenu prior to the start of Phase I. If the City has the full return data digitized, submitting such in electronic format would be preferable.

Reports/Deliverables

Compliance Program

The Compliance Program – Audit - Phase 1. Avenu will provide the City a detailed Audit report 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. Avenu will 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. This Phase will include:

- Avenu review findings;
- For each error/omission identified and confirmed, accompanying documentation that Avenu 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;

Final Report to the City

At the conclusion of the Compliance Audit, the City can expect to receive:

- *Compliance Review Report.* After conducting all the phases Avenu will submit a written compliance review report to the designated City staff member(s) that include our findings; the documentation necessary to facilitate recovery of revenue due for prior periods for each error/omission identified and confirmed; and draft notices of deficiency determination, commendation and warning letters as applicable, and recommendations. A report will be provided for each lodging provider reviewed.
- Provide assistance to the City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- Prepare and document any changes to the compliance review findings and provide revised tax, interest or penalty amounts due the City.

TOT Consultation

In addition to the Analysis, Audit and Compliance Review, Avenu will provide consultation services to the City that will include the following which are described in detail above:

- Provide as-needed consultation services aimed at maintaining and enhancing the City's TOT revenue base, covering such topics as: revenue forecasting assistance, revenue tracking software, statewide trends, specific opportunities and threats to the City;
- Provide timely information regarding existing and proposed legislation that could affect TOT revenues, specifically indicating how the City might be impacted;
- Review City's TOT ordinance and provide feedback and suggestions as needed;
- Review City's TOT remittance materials and make suggestions for improvement;
- Train City staff on optimum remittance processing techniques to maximize accurate compliance.

Project Schedule

Detailed Work Plan for TOT Audit Services

I. Start-up of TOT Audit Process (Within first 30-60 days):

- Procedural meeting with the City
- Request Documentation from City:
 - 48 Months of Returns for all properties (or properties City selected)
 - Current TOT Ordinance

II. Property Review and Hotels Selected for Audits (Within 90 days):

- When we receive the returns, we enter the data into our worksheets to develop trends, property comparison, exempt rent to gross rent variation, etc. We research the statistics on the City and properties. Based on this data, we select specific properties for audit (if the City hasn't requested specific properties). The City will receive an Audit Report identifying the properties and why they were selected.
- Once the City approves the hotels selected for audits, we will forward the City Announcement Letters that need to be mailed to the properties on City letterhead. Once the City sends out the letters to the properties, we request they send us a copy of the signed letters.

III. Start-up of TOT Audits (30 days later):

- Auditors will contact the City for a brief conference call to discuss the audit timeline. Once the timeline has been approved, Avenu sends out Appointment Letter with a list of required information. The date for the on-site review needs to allow the property a minimum of 30 days of preparation time.

IV. Desk Audits and Field Audits (8 weeks later):

- Research specifics of hotel to determine/confirm number of rooms, any special requirement and any other charges to which guests may be charged.
- One week after the Scheduling Letters are mailed, contact hotel operator to confirm date and time of audit and explain procedures and request data for sample months selected; for example, Property Management System. Month End Reports, Profit & Loss Statements, Exemption Reports, etc.
- Conduct on-site review.

V. Provide Final Audit Report to the City (12 weeks later):

- Auditors will submit (via email) all the Commendation/Deficiency Letters that need to be submitted to the hoteliers, by the City.
- City will receive an electronic copy of the Final Audit Report.

Cost Proposal

Transient Occupancy Tax (TOT) Audit and Compliance Services

Phase I: Analysis

The City will pay Avenu a fixed fee of \$700 per lodging property. This fee applies to all lodging properties located in the City limits, including lodging properties located via discovery. Avenu will invoice this upon delivery of the analysis report.

Phase II: Audit and Compliance Review

The City will pay Avenu a fixed fee of \$1,000 per lodging property reviewed unless the City does not approve the list of lodging properties for Compliance Review within 90 days of submission, in which the cost will increase to \$1,200 per lodging property reviewed. Avenu will invoice this upon delivery of the compliance report with payment to be made within thirty-days (30) of receipt of invoice.

Based on our experiences, because of the Discovery and Audit Phase (Phase I), approximately 33% of the lodging providers are generally recommended for the Phase II Compliance Review.

Travel and Out-of-Pocket for Audit Services

For the Transient Occupancy Tax services Avenu will also charge the City out-of-pocket expenses for reasonable travel costs related to the performance of the audits. Travel Costs include, but are not limited to, the costs of car rental, gasoline, or other transportation. These out-of-pocket expenses will not exceed \$2,500 per visit. If we expect to spend more than \$2,500 we will get prior approval from the City for any amounts over the allotted \$2,500. The out-of-pocket expenses will be invoiced to the City upon delivery of the final report to the City.

Estimated Pricing Schedule Based on 27 Lodging Providers

Phase 1 at \$700 per property = \$18,900

Phase 2 at \$1,000 per property (assume 1/3) = \$9,000

Travel and Expense = up to \$2,500 per visit

Total Estimated Cost = \$30,400

Typically for years two and three there will not be a need to audit every property within the statute. Avenu however will continue to monitor the lodging properties reporting and notify the City of any anomaly and then charge \$500 per property for any of those that require further compliance review.

Should the City elect the full Phase 1 and 2 service for years two and three our standard pricing shown above will apply.

Additional Consulting Services

Our proposed services and associated costs will cover the entire scope of work requested by the City - since this is a fairly standard audit service, we do not anticipate any additional 'out-of-scope' work required. However, should the City desire additional services outside of the agreed upon scope of work, the City may request that Avenu provide additional consulting services at any time during term of the Agreement. If Avenu and the City agree on the scope of the additional consulting services requested, then Avenu shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, Avenu's standard hourly rates range from \$75 per hour to \$325 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. The following are sample hourly rates based on the job classification (these rates are subject to change):

Avenu Hourly Rate Schedule	
Position	Hourly Rate
Legal	\$325
Principal	\$200
Project Manager/Director	\$175
Client Services Executive	\$150
Senior Analyst	\$125
Information Technology	\$175
Analyst	\$100
Administrative	\$75