

ORDINANCE 2022-12-15-0977

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH AVENU INSIGHTS AND ANALYTICS, LLC FOR HOTEL AND SHORT-TERM RENTAL HOTEL OCCUPANCY TAX FULL-SERVICE ADMINISTRATION TO INCLUDE DISCOVERY, RECOVERY AND AUDIT FOR A TOTAL CONTRACT AMOUNT ESTIMATED AT \$3,472,500.00 FOR A THREE-YEAR TERM COMMENCING NOT LATER THAN JANUARY 2, 2023 WITH TWO, ONE-YEAR RENEWAL TERMS AT THE CITY'S OPTION.

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WHEREAS, on November 1, 2018, the City Council approved an ordinance for the regulation of Short Term Rental ("STR") properties in the City: and

WHEREAS, the City issued a Request for Proposals for Short Term Rental Monitoring and Compliance Services on December 13, 2017 and Host Compliance LLC was selected to provide the services. The agreement was amended and renewed upon the same terms and conditions and is currently scheduled to terminate December 20, 2022; and

WHEREAS, the Development Services Department is in the process of converting their use of Host Compliance, LLC for STR permitting to Accela. As such, the Finance Department developed a Request for Proposals ("RFP") specifically for the collection of Hotel Occupancy Tax ("HOT") with components related to compliance and monitoring. This RFP was broadened from the City's current contract to incorporate the collection of HOT for STRs and Hotels including the collection of the Tourism Public Improvement District ("TPID") assessment fees; and

WHEREAS, on October 4, 2021, the City issued the RFP for Collection, Monitoring, and Compliance Services for Hotel Occupancy Tax which was advertised in the San Antonio Express News and posted on the City's website; and

WHEREAS, on November 22, 2021, the City received four responses to the RFP which were deemed eligible for evaluation. All four responses included proposals for both components of the RFP. On May 6, 2022, the proposals were evaluated by an Evaluation Committee consisting of representatives from the Finance Department and Information Technology Services Department. On June 14, 2022, interviews were conducted, and the respondents were again scored by the Evaluation Committee. Avenu Insights & Analytics, LLC received the highest ranking for the RFP and is being recommended for award; and

WHEREAS, the City is proposing one contract to address both components of the RFP in this *Professional Services Agreement for Hotel and Short-Term Rental Hotel Occupancy Tax Full-Service Administration* with Avenu Insights & Analytics, LLC; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the *Professional Services Agreement for Hotel and Short-Term Rental Hotel Occupancy Tax Full-Service Administration*, a copy of which is attached hereto as **Exhibit A**, by and between the City and Avenu Insights & Analytics, LLC are hereby approved.

SECTION 2. The City Manager or his designee is authorized to execute the *Professional Services Agreement for Hotel and Short-Term Rental Hotel Occupancy Tax Full-Service Administration*, which has been incorporated into this Ordinance for all purposes.

SECTION 3. Funding in the amount of \$572,400.00 for this Ordinance is available in Fund 29006000, Cost Center 8002120002 and General Ledger 5201040 as part of the Fiscal Year 2023 Adopted Budget approved by City Council.

SECTION 4. Funding in the amount of \$122,100.00 for this Ordinance is available in Fund 29097000, Cost Center 2901010001 and General Ledger 5201040 as part of the Fiscal Year 2023 Adopted Budget approved by City Council.


SECTION 5. Payment is authorized to Avenu Insights & Analytics, LLC and should be encumbered with a purchase order.

SECTION 6. Additional funding is contingent upon City Council approval of the Fiscal Year 2024 and subsequent budgets that fall within the contract terms of this ordinance.

SECTION 7. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 8. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED and APPROVED this 15th day of December, 2022.



M A Y O R
Ron Nirenberg

ATTEST:



Debbie Racca-Sittre, City Clerk

APPROVED AS TO FORM:



Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting December 15, 2022

37.

2022-12-15-0977

Ordinance approving a professional services agreement with Avenu Insights and Analytics, LLC for Hotel and Short Term Rental Hotel Occupancy Tax Full Service Administration to include discovery, recovery and audit for a total contract amount estimated at \$3,472,500 for a three year term commencing not later than January 2, 2023, with two renewal terms of one year each at the City's option. [Ben Gorzell, Jr., Chief Financial Officer; Troy Elliott, Deputy Chief Financial Officer].

Councilmember Rocha Garcia moved to Approve on the Consent Agenda. Councilmember Castillo seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Gallagher

TR
12/15/2022
Item No. 37

EXHIBIT A

AVENU INSIGHTS AND ANALYTICS CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (the "Agreement") is made as of January 2, 2023 ("Effective Date") by and between the City of San Antonio, a Texas Home-Rule Municipal Corporation ("CITY"), acting by and through its Deputy Chief Financial Officer ("DCFO") pursuant to Ordinance No. _____ passed and approved on the ____ day of _____ 2022 and Avenu Insights & Analytics, LLC, a Delaware limited liability company ("CONSULTANT") by and through its Chief Financial Officer. 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. All work performed by CONSULTANT hereunder shall be performed, in the first instance, to the reasonable satisfaction of the DCFO. CONSULTANT must, in the final instance, seek to resolve every difference concerning the performance of all work to the reasonable satisfaction of the DCFO; however, in the event that the CONSULTANT and the DCFO are unable to resolve their difference(s), CONSULTANT may initiate a dispute in accordance with the procedures set forth in Section 27, Dispute Resolution Procedure. Exhaustion of these procedures shall be a condition precedent to any right of CITY to terminate this Agreement, in accordance with Termination provisions under Section C., in whole or in part, should CONSULTANT's work not be reasonably satisfactory to DCFO.
2. Upon execution of this Agreement, CITY will pay CONSULTANT fees as outlined in EXHIBIT B, incorporated, and included herein.
3. In the event that CITY participates in an agreement with a short term rental platform to collect HOT on behalf of the CITY within their platform, the compensation paid to CONSULTANT for the services set forth in Exhibit B may be reduced, proportionately based on the number of STR's that are part of the agreement with the platform, at any time after the six (6) month anniversary of the Effective Date of this Agreement and upon ninety (90) calendar days' written notice, which notice shall be provided in accordance with Section 10, Notice.

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, with the option to renew for two (2) additional one-year periods under the same terms and conditions if neither party has cancelled (the "Term"). The consent of CITY's City

Council for either of such extensions shall not be required. If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation

2. Termination: For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement Term, or earlier termination pursuant to any of the provisions hereof.
3. Termination for Convenience: This Agreement may be terminated by CITY in whole or in part at any time after the six (6) month anniversary of the Effective Date and upon ninety (90) calendar days' written notice, which notice shall be provided in accordance with Section 10, Notice. After a termination for convenience, the rights granted by CONSULTANT to CITY will cease immediately and CITY will no longer have the right to utilize the data obtained through the use of the Services for systematic or mass outreach activities (including traditional mail, electronic mail, and/or telephone campaigns).
4. Termination for Cause: 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 prior 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. Provided, however, this Agreement is subject to termination upon not less than thirty (30) days written notice to CONSULTANT if CITY has failed to receive funds for the continued procurement of the Products or Services after every reasonable effort has been made by CITY to secure the necessary funding and if no substitute arrangement is made by CITY to obtain the same or similar System or Services from another source. CITY agrees to discontinue use of all hardware, software, and other CONSULTANT-owned materials no later than the effective date of termination and return the hardware, software, and other CONSULTANT-owned materials to CONSULTANT within thirty (30) calendar days after termination.
5. Termination By Law: If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
6. 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. Termination of this Agreement for any reason will not affect any liabilities or obligations of either party arising before termination or out of events causing termination and will not affect any damages or other remedies to which a party may be entitled under this Agreement, at law, or in equity, arising from any breach or default.
7. Transfer of Documentation due to Termination: Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as CITY may designate, all completed or partially completed documents, papers, records, charts, reports, and any other materials

or information produced as a result of or pertaining to the services rendered by CONSULTANT, or provided to CONSULTANT, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by CONSULTANT. Any record transfer shall be completed by CONSULTANT within thirty (30) calendar days of a written request by CITY and, in such event that the record transfer includes the transfer of paper or other non-electronic documentation and/or includes customized, non-standard data outputs or transfers, shall be completed by CONSULTANT on a time and material basis. Payment of compensation due or to become due to CONSULTANT is conditioned upon delivery of all such documents, if requested.

8. 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.
9. 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.
10. 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:

Finance Department – City of San Antonio
PO Box 839966
San Antonio, TX 78283-3966
Attn: Troy Elliott
Deputy Chief Financial Officer
Email: troy.elliott@sanantonio.gov

If to CONSULTANT:

5860 Trinity Parkway, Suite 120
Centreville, VA 20120
Attn: Contracts Department
Email: contracts@avenuinsights.com

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

Brandi Sanner, Account Executive
Address: 5860 Trinity Parkway, Suite 120 Centreville, CA 20120
Phone: (985) 335 - 7570/Email: brandi.sanner@avenuinsights.com

12. Indemnity: **CONSULTANT COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO NEGLIGENCE, WILLFUL MISCONDUCT, OR UNLAWFUL PERFORMANCE OR BREACH BY CONSULTANT, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONTRACTOR OR SUBCONTRACTOR OF CONSULTANT, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT., THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY, CLAIMS, OR LOSSES RESULTING FROM THE NEGLIGENCE OF CITY, ITS OFFICERS OR EMPLOYEES. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
13. Benefit of Indemnity: The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSULTANT shall advise the CITY in writing within forty-eight (48) hours of any claim or demand against the CITY or CONSULTANT known to CONSULTANT related to or arising out of CONSULTANT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONSULTANT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSULTANT of any of its obligations under this paragraph.
14. Defense Counsel: CITY shall have the right to select or to approve defense counsel to be retained by CONSULTANT in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by CITY in writing. CONSULTANT shall retain CITY approved defense counsel within fifteen (15) business days of CITY's written notice that CITY is invoking its right to indemnification under this Agreement. If CONSULTANT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and CONSULTANT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
15. Employee Litigation: In any and all claims against any party indemnified hereunder by any employee of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or any subcontractor under worker's compensation or other employee benefit acts.

16. Payment Card Industry Security Standards Council Standards Compliance: In the event that CONSULTANT either stores, processes, Manages, transmits, and/or is provided physical or logistical access to systems, networks or applications that handle CITY credit card transactions, CONSULTANT shall comply with Payment Card Industry ("PCI") Security Standards Council ("SSC") standards (i.e. Payment Application ("PA"), Data Security Standards ("DSS") and/or Credit Card Brand Service Provider Registration) and provide and maintain any certification and/or other documentation required to ensure PCI-SSC compliance as requested. CONSULTANT will be required to provide an Attestation of Compliance from a Qualified Security Assessor ("QSA") at least annually. This provision is applicable to any proposed subcontractors that are referenced in the CONSULTANT's bid response or added at a later date.
17. Subscription: Subject to and conditioned on CITY's payments pursuant to EXHIBIT A of this Agreement, CONSULTANT hereby grants CITY a revocable, non-exclusive, non-transferable right to access and use the certain hosted software and provide all other services necessary for Customer's productive use of such software to accomplish the Statement of Work described in EXHIBIT A (together, the "Services") during the term of this Agreement, in accordance with the terms and conditions of this Agreement. Any and all writings, reports, or documents in whatsoever form and character produced by CONSULTANT as work product pursuant to the provisions of this Agreement is the exclusive property of CITY; and no such writing, report, or document shall be the subject of any copyright or proprietary claim by CONSULTANT. Notwithstanding the foregoing, this Agreement does not grant CITY any Intellectual Property Rights or Ownership Rights in the Services, the Data transmitted by CONSULTANT to CITY ("CONSULTANT Data"), all copies of such CONSULTANT Data transmitted to CITY, including any improvements, modifications, derivative works or additions or any portion thereof from any source, any other products or offerings of CONSULTANT, CONSULTANT trademarks and brand features, or any improvements, modifications or derivative works of any of the foregoing. "Intellectual Property Rights" means current and future worldwide rights under patents, copyright, trade secret, trademark, moral rights and other similar rights.
18. Intellectual Property Rights Ownership by CONSULTANT: CONSULTANT shall be the sole and exclusive owner of all software used or to be used in connection with this Agreement ("Software"), subject only to the ownership rights of CONSULTANT's third-party licensors and of all copyright in the Software. Ownership of the Intellectual Property Rights in the Software will inure to the benefit of CONSULTANT from the date of creation or of fixation in a tangible medium of expression, as applicable, of such Software. The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, tradenames, and all other 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 "CONSULTANT'S Work Product") shall vest exclusively in CONSULTANT or its subcontractors. CONSULTANT shall own all right, title and interest in and to CONSULTANT's Data, including any improvements, modifications, derivative works or additions or any portion thereof from any source. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
19. Property of CITY: Nothing herein shall be construed to grant any right or license to CONSULTANT in or to any non-publicly available material provided to CONSULTANT hereunder by CITY, including, but not limited to any non-publicly available data, financial information, user data, resident data or

information (together the "CITY Non-Public Data") and, other than the right to use CITY Non-Public Data solely on behalf of CITY in accordance with the terms hereof. All of the foregoing CITY Non-Public Data, including, but not limited to, any and all copyrights, trademarks, service marks, and trade names related thereto, are and shall remain the property of CITY. CITY shall own all right, title and interest in and to CITY Non-Public Data, as well as any reports that are derived from CITY Non-Public Data and provided to CITY as part of this Agreement.

20. CONSULTANT represents that it has valid rights for the sale, resale, licensing, use and distribution of all software and third-party software proposed and/or used in connection with this Agreement.
21. CONSULTANT agrees that CITY may use the Software in executing CITY business processes. This right includes, but is not limited to, use by third parties necessary to complete CITY's business. Third parties may include residents, citizens, customers, auditors, CONSULTANT and CITY organization units, including, but not limited to, agencies, boards and commissions, and quasi city entities. CONSULTANT's responsibilities do not extend to internal management or administration of the Services. CITY is responsible for: (i) maintaining the confidentiality of passwords and accounts; (ii) managing access to administrator accounts; and (iii) ensuring that administrators' use of the Services complies with this Agreement. CITY is responsible for use of the Services, including use of the Services by the above referenced third parties, and will comply with laws and regulations, and such provisions of this Agreement that are applicable to CITY's use of the Services, if any. CITY will prevent unauthorized use of the Services, will terminate any unauthorized use of or access to the Services, and will promptly notify CONSULTANT of any unauthorized use of or access to the Services. CITY will not: (i) sell, resell, or lease the Services; (ii) reverse engineer or attempt to reverse engineer the Services, nor assist anyone else to do so; or (iii) use the Services in any way that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
22. Confidentiality: Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of CONSULTANT includes non-public information regarding features, functionality, and performance of the Software. Proprietary Information of CONSULTANT does not include the features and functionality of the Software that has heretofore been publicly released. Proprietary Information of CITY includes CITY Non-Public Data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Proprietary Information does not include any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required to be disclosed by law. Notwithstanding the foregoing, each party may disclose Proprietary Information to the limited extent required (i) by law, in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. With regard to the above, the Parties acknowledge that during the term of this Agreement, CITY may receive an Open Records Request ("Request") pursuant to Texas Government Code Chapter 552, the Public Information Act ("Act") seeking records related to

this Agreement ("Records"). In the event CITY does receive such a request, CITY shall within ten (10) business days after receipt of the Request: (a) seek a determination from the Open Records Division ("Division") of the Texas Attorney General's Office as to whether or not the Records are required to be disclosed to the person submitting the Request, making such arguments as CITY deems appropriate (if any) as to why they are not; and (b) in accordance with the provisions of Section 552.305 of the Act, provide written notice to CONSULTANT of CITY's receipt of the Request and CONSULTANT's right to submit a letter, memorandum or brief to the Division setting out each reason why the Records of any portion of them should be withheld and not disclosed. In the event CONSULTANT receives any requests for information from a third party, which pertain to the documentation and records referenced herein, CONSULTANT understands and agrees that CITY will process and handle all such requests.

23. Intellectual Property: CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the performance of services. CONSULTANT shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process, or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to CITY.
24. Intellectual Property Claims: Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONSULTANT will immediately obtain, at CONSULTANT's sole expense, the necessary license(s) or rights that would allow CITY to continue using programs, hardware, or both programs and hardware, as the case may be. In the alternative, CONSULTANT may alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and reimburse CITY for any expenses incurred by CITY to implement emergency backup measures, if CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.
25. Satisfaction of Intellectual Property Claims: CONSULTANT further agrees to assume the defense of any claim, suit, or proceeding brought against CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Contract, assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify CITY against any monetary damages and/or costs awarded in such suit, provided that CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement of any intellectual property claim, but that CONSULTANT agrees to consult with CITY Attorney of CITY during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of CITY, the Software or equipment is used by CITY in the form, state or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim, the liability claimed shall have not arisen out of CITY's negligent act or omission, and CITY promptly provided CONSULTANT with written notice within 15 days following the formal assertion of any claim with respect to which CITY asserts that CONSULTANT assumes responsibility under this section.
26. 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 CITY'S EXCLUSIVE REMEDY FOR CLAIMS ARISING FROM OR OUT OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS BETWEEN CONSULTANT AND CITY AND CONSULTANT'S PRICING REFLECTS THE ALLOCATION OF RISK AND LIMITATION OF LIABILITY SPECIFIED HEREIN.

27. Dispute Resolution Procedure: CONSULTANT and CITY agree to act immediately to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this article. Time is of the essence in the resolution of disputes. CONSULTANT will seek to resolve all differences concerning the Agreement with the DCFO. Neither party shall delay or suspend its performance during the Dispute Resolution Procedure, except for the work relating to the disputed item. In the event that CONSULTANT and DCFO are unable to resolve their differences, within a reasonable time, not to exceed fifteen (15) calendar days from the date of submission of the dispute, then the Parties agree to participate in a one-day good faith mediation session before a mutually acceptable mediator. The Parties shall split the fees of the mediator equally. The Parties shall each submit a list containing 3 names of proposed mediators to conduct the mediation session. If the Parties are unable to agree on one of the six proposed mediators to conduct the mediation session, the Parties shall utilize the services of the Bexar County Dispute Resolution Center to designate the mediator, in which case the Parties shall utilize and comply with all procedures, forms, etc. of the Center in arranging for and conducting the mediation session. In the event that following mediation there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Agreement and/or its rights and remedies as provided by law. All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. All parties shall act in good faith to resolve all disputes.
28. Non-Discrimination: As a party to this contract, CONSULTANT understands and agrees to comply with the Non-Discrimination Policy of CITY contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.
29. Insurance: CONSULTANT shall keep in full force and effect insurance coverage as set forth in Exhibit C.
30. 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.
31. 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 be given by the DCFO of CITY and 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.

32. 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.
33. Records Retention: CONSULTANT and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.
34. Retention Period: CONSULTANT shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, CONSULTANT shall retain the records until the resolution of such litigation or other such questions. CONSULTANT acknowledges and agrees that CITY shall have reasonable access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period. CITY may, at its election, and, in such event that any and all such documents include paper or other non-electronic documentation and/or include customized, non-standard data outputs or transfers, on a time and material basis, require CONSULTANT to return the documents to CITY. prior to or at the conclusion of the retention period. In such event, CONSULTANT may retain a copy of the documents.
35. Audit Requirements: In the event that this Agreement is selected for audit by CITY's auditors, CONSULTANT shall comply with any request for documents from the auditor. Additionally, CONSULTANT shall submit a copy of all yearly audit reports and any management letter prepared on behalf of CONSULTANT by an independent Certified Public Accountant in accordance with generally accepted auditing standards to CITY. CONSULTANT will provide to the CITY an annual "SOC 1" Type 2 report in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, which supersedes the SAS 70.

36. 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, quarantines, pandemics, endemics, weather, fire, flood, earthquake, weather, climate change, elements of nature, war, terrorism, civil disturbance, labor disruptions, strikes, embargoes, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications, or cause beyond the reasonable control of CONSULTANT ("Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the party that has experienced a delay or failure of performance caused by the Force Majeure Event will be excused from further performance or observance of the affected obligation(s) for as long as the extenuating circumstances prevail and that party continues to attempt to recommence performance or observance whenever and to whatever extent possible without delay. The party that experienced a delay or failure of performance caused by the Force Majeure Event will immediately notify the other party and describe in reasonable detail the circumstances causing the delay or failure of performance. The provisions of this Section shall survive termination of this Agreement.
37. Relationship of the Parties: This Agreement shall not constitute, create, give effect to, or otherwise imply a joint venture, partnership, or business organization of any kind. CONSULTANT and CITY are independent parties, and neither party shall act as an agent for or partner of the other for any purpose. Nothing in this Agreement shall grant to either party any right to make any commitments of any kind for or on behalf of the other party without the prior written consent of the other party. CONSULTANT shall not be restricted from providing products or performing services for others and shall not be bound to CITY except as provided under this Agreement.
38. Conflict of Interest: CONSULTANT acknowledges that it is informed that the Charter of CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
39. Certification of No Conflict of Interest: CONSULTANT warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.
40. Severability: If all or part of any term or condition of this Agreement, or the application of any term or condition of this Agreement, is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of the terms and conditions of this Agreement (other than those portions determined to be invalid or unenforceable) shall not be affected, and the remaining terms and conditions (or portions of terms or conditions) shall be valid and enforceable to the fullest extent permitted by law. If a judicial determination prevents the accomplishment of the purpose of this Agreement, the invalid term or condition (or portions of terms or conditions) shall be restated to conform to applicable law and to reflect as nearly as possible the original intent of the parties.

41. Waiver Or Forbearance: Any delay or failure of either party to insist upon strict performance of any obligation under this Agreement or to exercise any right or remedy provided under this Agreement shall not be a waiver of that party's right to demand strict compliance, irrespective of the number or duration of any delay(s) or failure(s). No term or condition imposed on either party under this Agreement shall be waived and no breach by either party shall be excused unless that waiver or excuse of a breach has been put in writing and signed by both parties. Waiver in any instance of any right or remedy shall not constitute waiver of any other right or remedy under this Agreement. Consent to or forbearance of any breach or substandard performance of any obligation under this Agreement shall not constitute consent to modification or reduction of the other obligations or forbearance of any other breach.
42. 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.
43. Headings: The section headings used in this Agreement are merely for reference and have no independent legal meaning and impose no obligations or conditions on the parties.
44. Governing Law: This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Texas, without reference to the principles of conflict of laws.
45. Jurisdiction: Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in CITY of San Antonio, Bexar County, Texas.
46. 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.
47. 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.
48. 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 included in Exhibit A.

[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 San Antonio
a Texas Home-Rule Municipal Corporation

“CONSULTANT”

Avenu Insights & Analytics, LLC
a Delaware limited liability company

By: _____

Name: Troy Elliott

Title: Deputy Chief Financial Officer

By: Carl Kumpf
Carl Kumpf (Nov 29, 2022 16:14 EST)

Name: Carl Kumpf

Title: Chief Financial Officer

APPROVED AS TO FORM:

Name: _____

Title: _____

EXHIBIT A
STATEMENT OF WORK
HOTEL AND SHORT TERM RENTAL HOTEL OCCUPANCY TAX FULL
ADMINISTRATION DISCOVERY/RECOVERY, AND AUDIT

This Statement of Work is incorporated in the Consultant Services Agreement (“Agreement”) by and between Avenu Insights and Analytics, LLC (“CONSULTANT”) and the City of San Antonio (“CITY”).

Objectives and Methods

CONSULTANT’s Hotel and Short Term Rental full-service administration is designed to assist CITY in enhancing its Hotel Occupancy Tax (HOT) revenues by detecting, documenting, and correcting HOT errors thereby producing previously unrealized revenue for CITY. The Administration service offers a turnkey approach to ensure appropriate collection, deposit, recording, delinquency follow up, and reporting of the HOT. This service includes all correspondence, forms, and other such services to ensure appropriate and timely remittance of the HOT.

1. SHORT-TERM RENTAL SERVICES

Using its Compliance Software, CONSULTANT will be responsible for providing the following modules and components as part of this Agreement:

a. Targeted Web Crawling

- i. Data collection, reporting, and archiving from over 80 different short-term rental websites including Airbnb, HomeAway, Flipkey, Booking, Vacasa, Evolve, Corporate Housing, Craigslist;
- ii. Data collection from at least 2 unique local popular sites based on search engine ranking;
- iii. Data collection is run at least 4 times per week; staggered over day, night, weekday, and weekday;
- iv. Collect and store calendar availability data for at least 6 months each time listing data is collected;
- v. De-duplication assistance with STR listings and photos up to 10 listings at a time on one screen;
- vi. Archive and estimate gross revenue via review or calendar bookings for a 36-month retrospective view;
- vii. Identify STR calendar booked periods less than 31 nights in a row;
- viii. Generate statistics on room type, occupancy rate, dynamic heat maps, nightly rates, and other metadata in a dashboard report;
- ix. Capture of time stamped STR listings data in HTML, PNG, JPG, or PDF, reviews in JSON format;
- x. Capture of calendar data in database format, and exportable to CSV;
- xi. Detect names of the operator(s) in the reviews and count their occurrences;
- xii. Automated STR cross-checking via geo-locating and metadata match;

b. Identification Services

- i. Validate STR listing data with at least 2 different data points to public records; one for the operator, and one for the property;

- ii. Provide supporting evidence data points up-front and ready for download for the customer without the customer requesting it;
- iii. Correctly Identify single-family-dwelling STR listings with full name and exact street address at least 95% of the time, and at least 95% of the single-family-dwelling STR inventory;
- iv. Provide detailed lists to CITY of these account, to include owner identification and contact data. The information requested shall include but not be limited to:
 - a. Owner Name and Contact Information;
 - b. Bexar Appraisal District Parcel Number;
 - c. Address of Property to include ZIP Code;
 - d. Listing Platform and ID;
 - e. Booking Frequency;
 - f. Price of Nightly Rental; and
 - g. Location within the boundaries of CITY of San Antonio and/or Bexar County
- v. Identify multi-family-dwelling STR listings with full name, exact address including unit number at least 75% of the time and at least 75% of the multi-family-dwelling STR inventory;
- vi. 24/7 Hotline, fielding all tips, complaints and violations from residents, in regard to disruptions at a short term rental property. These violations are tracked and maintained in the STR database and become part of the compliance activity for a property. CONSULTANT staff will receive these violation calls and be the first line of defense to quickly resolve the complaint, and will escalate to other agencies when warranted.

2. WEB PORTAL

24/7 accessible web-portal for STR's and Hotels with keyword-search by username, address, business **name**, listing ID, HOT number

- a. CONSULTANT will provide a secure, password-protected web-based graphical user interface with the following requirements:
 - i. Provide CITY staff login to Software with CITY login credentials; and
 - ii. Two step authentication.
- b. Compatible with desktop, tablet, and mobile version of internet browsers;
- c. Schedule weekly and/or monthly downloads and delivery by email of HOT reports for STR's and Hotels, as necessary. STR reports to include inside/outside city limits, property address, owner name, contact number, reported complaints or violations reported by residents, delinquent HOT Tax violations, CITY Council Districts, registered neighborhood association, maximum number of guests;
- d. Navigate listings by keyword search and by interactive map with dynamic filtering for STR's and Hotels;
- e. Display radius and distance to nearest STR (100-1000 feet radius) on Map;
- f. Report STR permits and reported violation statistics by registered neighborhood association, HOA, or CITY Council District for STR's and Hotels;
- g. Report capabilities of 67 different data points for STR's;
- h. Report on calendar occupancy for a 3-month period in table format including weekend bookings for STR's;
- i. Generate Dynamic ad-hoc reports with up to 26 data columns and up to 20 different filters for STR's and Hotels;

- j. Dynamic Highlighting of keywords within reviews for STR's;
- k. Generate 7 different reporting templates with 6 different filters for STR's and Hotels;
- l. Enter notes and compliance activity on 40 different categories of compliance for STR's;
- m. Customer Support and Language in English or Spanish;
- n. Generate a mailout of non-compliant STR and Hotel operators within the interface;
- o. Programmable REST-based API communicating via JSON objects;
- p. Comparison View to compare up to 10 STR listings with thumbnail photos at the same time;
- q. Image Scene classification tags on STR photos (living room, kitchen, bathroom, swimming pool);
- r. Similar Images matching engine and Clustering STR listings by similar images engine around a street address up to 500 listings.

3. DISCOVERY/RECOVERY SERVICES

Discovery/Recovery Services are designed to provide a full-service solution to CITY's Hotel and Short-Term Rental enforcement procedures. It does not replace current functions but provides a focused and fulltime solution to the identification of entities subject to taxation and/or registration by CITY, which are not properly registered, or otherwise not reporting HOT to the CITY. In performing the Discovery Services, CONSULTANT shall:

- a. Establish a comprehensive inventory of the entities subject to taxation by CITY and the database elements needed to facilitate a comprehensive comparative analysis with CITY records of those entities that are properly registered.
- b. Compare CONSULTANT'S database of business records with CITY records to identify potential non-reporting and non-registered entities subject to taxation.
- c. For unregistered or non-reporting entities identified and confirmed, assist, and direct the entities, as necessary, to complete CITY applicable registration process.
- d. Invoice entities (including supporting documentation) on behalf of CITY for the amount of identified deficiencies, with payment to be remitted to CONSULTANT.
- e. Exhaust all reasonable efforts to work with the taxpayer in completing registration process correctly.
- f. Collect the amount of identified deficiencies, together with supporting documentation, and remit payment received by CONSULTANT to CITY as agreed upon in the workplan. (CONSULTANT shall follow CITY business rules in collecting partial payments or the tax in full at CITY direction.);
- g. Provide call center support during normal business hours to assist entities with questions concerning application of CITY taxes, and reporting and remittance requirements;
- h. Educate entities regarding CITY reporting requirements to prevent recurring deficiencies in future years.

4. AUDIT SERVICES

This service is optional and will be provided by CONSULTANT at the CITY's direction.

- a. Perform examinations of the records of those providers requested by CITY to warrant further investigation;

- b. Provide CITY staff with a draft engagement announcement letter to be sent to each lodging provider requiring examination;
- c. In coordination with CITY staff, schedule and conduct reviews at the property locations or remotely of those providers identified and authorized for examination;
- d. Verify accuracy of filed HOT reports with daily and monthly activity summaries;
- e. Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries if applicable;
- f. Review bank statements to verify that deposits reconcile with the reported revenue on the HOT reports, if necessary;
- g. Review exempted revenue for proper qualifying documentation;
- h. Review a random sample of exempted guest revenue and trace registration and/or other source documents to verify compliance with CITY ordinance;
- i. Where possible, compare the State HOT filings with CITY's HOT reports;
- j. For each error/omission identified and confirmed, submit substantiating documentation to designated CITY staff in order to facilitate collection of HOT revenue due from lodging providers for prior periods;
- k. Coordinate with designated CITY official(s) as necessary to review findings and recommendations;
- l. Prepare draft Notices of Deficiency Determination, commendation, and credit letters, as applicable, for CITY to advise lodging providers of examination results;
- m. Provide assistance to CITY in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- n. Prepare and document any changes to the review findings and provide revised HOT revenue due to CITY.

5. ADMINISTRATION SERVICES

a. Remittance Processing:

- 1. Taxes Processed: CONSULTANT will perform remittance processing for HOT through CONSULTANT's merchant banking processor, Authorize.net, or other merchant banking processor as agreed upon by CITY.
- 2. Taxpayer Notification and Remittance: Online filing and remittance using standard CONSULTANT formatting will be the primary method of reporting and remittance of HOT and shall include collection of HOT for both CITY and Bexar County for STR's and Hotels and Tourism Public Improvement collection of HOT for certain designated Hotels with reporting of such breakouts for each category of HOT collection. If exceptions are made for certain Hotels, CONSULTANT will collect HOT via mail. Upon reasonable notice to CITY, CONSULTANT may change the address for payments.
- 3. Deposit Process: Deposits will be made daily by CONSULTANT to the extent that funds have been received, via Automated Clearing House of the amounts for each type of tax collected, as shown in more detail on Attachment A.
- 4. Posting Process: Taxpayer accounts are posted with payment information captured in CONSULTANT revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change and address change is captured and added to the payment data and taxpayer master file (as determined necessary by CONSULTANT and approval by CITY).
- 5. Payment plans established by CITY: CONSULTANT shall make best efforts to administer existing payment plans with Lodging Providers under the direction of CITY.

6. Changes to Attachment A: CITY shall notify CONSULTANT in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended Attachment A shall be prepared and executed by the Parties as soon as reasonably possible. In addition, CONSULTANT shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of CITY, then CITY shall immediately notify CONSULTANT and, thereafter, CONSULTANT shall take the steps necessary to insure that designated recipients receive the amounts intended by CITY.

b. Compliance Services:

1. Taxes Reviewed: CONSULTANT will perform compliance services for HOT designated by CITY under Remittance Processing Services. CONSULTANT will provide delinquency notification and follow-up. This includes correspondence, calls, and collection procedures and the related documentation. Delinquency policies and procedures will be applied consistently and within applicable tax laws. Unless otherwise directed by CITY, CONSULTANT will make reasonable efforts to collect taxes designated by CITY hereunder. Where deemed reasonably appropriate accounts may be turned over to audit or third party collection. If CITY elects to have its attorney pursue collection of certain uncollected accounts, CONSULTANT will assist CITY attorney as reasonably requested at its normal hourly rate as reflected herein.
2. Conduct of Compliance Services: To assure that all taxpayers are treated fairly and consistently and all compliance services are performed in a similar manner, CONSULTANT representatives who perform compliance services will use a similar compliance plan for each compliance service conducted. All funds due from compliance services will be remitted to CITY in the same manner as provided for pursuant to *Section B*, above.

c. General Provisions:

1. Information Provided: CITY represents that the information provided to CONSULTANT in the performance of services hereunder shall be provided free and clear of the claims of third parties. CITY represents that it has the right to provide this information to CONSULTANT and that said information shall not be defamatory or otherwise expose CONSULTANT to liability to third parties.
2. Compliance with laws: Each Party accepts responsibility for its compliance with federal, state, or local laws and regulations.
3. Taxpayer service: CONSULTANT will provide a taxpayer assistance number for taxpayer questions. CONSULTANT will provide standard informational brochures for placement in CITY offices, Chamber of Commerce offices, libraries and any other facilities as requested and/or deemed necessary.
4. Processing Fees: CONSULTANT will include in invoice to the Taxpayers a reasonable processing fee and all ACH and Credit Card fees charged for collection, payable directly to CONSULTANT.

6. HOMESTEAD / PRIMARY RESIDENCE VERIFICATION

At the Direction of CITY, CONSULTANT shall perform primary residence verification services (Primary Residence Analysis or "PRA"), which shall consist of conducting factual investigation and analysis to draw a conclusion whether primary residence exists for each property subject to PRA. CITY shall submit occasional orders to CONSULTANT of applicants/operators whom they would like reviewed for PRA. In conducting these activities, CONSULTANT shall:

- a. Combine STR registration database (as the CITY submits occasional orders of applicants/operators whom they would like reviewed for PRA) with information about unregistered properties (identified by CONSULTANT or CITY) into a master research file ("PRA File").
- b. Use a proprietary algorithm to electronically compare properties within the PRA File as selected by CITY to information from national databases and other sources, in order to identify each property appearing to violate CITY ordinance(s) requiring primary residence of STR owner/operators at the STR property ("Scored Property").
- c. Research each Scored Property to eliminate accounts that were improperly scored ("False Positives"). To facilitate that research, CITY shall provide any registration or application materials that CITY may be legally permitted to share with CONSULTANT, including but not limited to any materials used to demonstrate primary residence at the STR situs. Material transmitted under this provision shall not include any Tax Information, as that term is defined in Internal Revenue Code § 6103, or any information made confidential by 39-21-113, C.R.S.
- d. After removal of False Positives, contact each owner/operator of a Scored Property by standard (non-certified) mail at each possible residence address identified through scoring and research. Letters will be in a form approved by CITY, tailored to the circumstance that caused led to classification as a Scored Property.
- e. Letters will request that the recipient contact the PRA call center by phone or email to discuss the primary residence issue
- f. Communicate with registrants who respond to mailings, gathering and documenting information tending to prove or disprove primary residence.
- g. Prepare and submit to CITY one or more reports identifying each property within PRA file for which primary residence appears to be invalid.
- h. CONSULTANT will provide CITY with a scored list of properties indicating the suspected level of risk each property represents based upon an initial evaluation within 8 weeks of being provided the initial data by CITY.
- i. CONSULTANT shall provide the CITY with any change in active STR-1 Homestead Exemption Status
- j. CONSULTANT will provide CITY with a bi-monthly status report indicating the disposition or status of referred properties.
- k. CONSULTANT will provide CITY with the final disposition of a property within 1 calendar year of its referral.
- l. Provide a reasonable level of supporting documentation to substantiate the apparent invalidity
- m. Unless a different reporting schedule is agreed to by both parties, provide CITY with reports on the progress of PRA upon CITY's request. The form and content of such reports shall be mutually agreed upon.
- n. CONSULTANT shall be compensated for these services as detailed in Exhibit B, Section 1.2.

Deliverables

1. Hotel and Short Term Rental Services:

- a. CONSULTANT will provide CITY with login access for multiple users, as necessary to the Compliance System that allows CITY the ability to view and review Hotel and Short-Term Rental activities for properties within CITY's geographical location. Additionally, CITY will be granted

- administration access to process payments manually and modify account information as necessary.
- b. CONSULTANT will perform all on-going support of the System, including hardware and software, during the Term and Extended Term of this Agreement.
 - c. CONSULTANT will provide the initial webinar style education and training on the System. Education and training may include on-site sessions of CITY employees who will work with the System. The education and training will be adapted to the reasonable needs of CITY employees to ensure each employee is fully prepared to use the System. CONSULTANT will provide training at a minimum of one time per year after initial training. CITY may request that CONSULTANT provide on-site additional training. If CONSULTANT and CITY agree on the scope of the additional training services requested, then CONSULTANT shall provide the additional training on a Time and Materials basis. Depending on the personnel assigned to perform the training, standard hourly rates range from \$75 per hour to \$200 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

2. Discovery/Recovery Services:

- a. Provide reports addressing each taxpayer not reporting, including the business name, address, and telephone number to CITY; and
- b. Monitor and analyze the business license registration files of CITY each quarter in order to determine non-reporting businesses. Such business license registration files will be provided

3. Field Audit Services:

- a. Provide CITY staff with a draft Audit Announcement Letter to be sent to each lodging provider to be examined;
- b. For each error/omission identified and confirmed, submit a written report substantiating documentation to designated CITY staff in order to facilitate collection of revenue due from lodging providers for prior periods together with draft Notices of Deficiency Determination, and/or credit, or commendation letters as applicable;
- c. Prepare and document any changes to the review findings and provide revised tax amounts due to CITY.
- d. Review any extenuation or mitigation proffered to deficiency determinations and prepare draft response to CITY staff; and
- e. Provide other collections advice upon request.

4. Administration Services:

- a. CONSULTANT will make available to CITY detailed online reporting, including detailed payment listing, daily/weekly/monthly reconciliation reports, etc.
- b. CONSULTANT will provide CITY with monthly reports including, but not limited to, payment listings showing all taxes received related to net receipts reported, a general ledger distribution that corresponds to CITY account numbers and all fees paid to CONSULTANT. These reports will be provided by the 10th of the month following the tax month;
- c. CITY AGREES TO EXAMINE THIS REPORT IMMEDIATELY. IF NO ERROR IS REPORTED BY CITY TO CONSULTANT WITHIN 60 DAYS, THE STATEMENT WILL BE DEEMED ACCURATE; All items credited will be subject to receipt of payment.

5. Homestead/Primary Residence Verification:

CONSULTANT will provide reports and data as a result of our testing and verification for properties within the STR community associated with issues found with properties claiming homestead exemption in error, according

to all local laws and statutes for said exemption. Reports may include: identified property found in violation, tax years in violation, estimated/proposed property tax adjustment, changes in homestead exemption status.

CITY ASSISTANCE

CITY shall assist CONSULTANT by providing necessary information and assistance to include, but not be limited to, the following:

1. Hotel, Discovery/Recovery and Administration Service:

Prior to the start of the work to be performed, provide CONSULTANT with

1. the most current list of Hotels paying HOT including mailing address, physical address, email address, and phone number;
2. the listing of Hotels included in the Tourism Public Improvement District (TPID);
3. the listing of Hotels included in Bexar County but outside the limits of the City of San Antonio's municipal boundry;
4. returns for one year to compile a historical database; and
5. all application reporting forms for CITY HOT collection.
6. Inform CONSULTANT of any circumstances concerning current existing payees.
7. Cooperate in the transition by reviewing proposed processing and materials, offering comments and suggestions and providing timely approvals.
8. Undergo training in the use of online applications.
9. Provide authorization for CONSULTANT to act as an agent of CITY to accept HOT reports and payments and to pursue compliance/collection efforts.

2. Short Term Rental, Discovery/Recovery and Administration Service:

Prior to the start of the work to be performed, provide CONSULTANT with

1. the most recent registration to collect HOT;
2. the listing of Hotels included in Bexar County but outside the limits of CITY of San Antonio's municipal boundry; and
3. returns for the time period requested as needed to compile a historical database for the period of the statute of limitations.
4. All existing Short-Term Rental Permit, License and HOT records to be converted in a file format agreed to by CITY and CONSULTANT at a time specified in an Implementation Plan agreed to by CITY.
5. Inform CONSULTANT of any circumstances concerning current existing payees.
6. Cooperate in the transition by reviewing proposed processing and materials, offering comments and suggestions and providing timely approvals.
7. Undergo training in the use of online applications.
8. Provide authorization for CONSULTANT to act as an agent of CITY to accept HOT reports and payments and to pursue compliance/collection efforts.

Provide CITY's business license registration files to CONSULTANT each quarter in order for CONSULTANT to determine non-reporting businesses.

3. Field Audit Services:

Send Audit Announcement Letter to each lodging provider to be examined with a copy to CONSULTANT, if Audit servies are requested by CITY. This service is optional and will be provided by CONSULTANT at CITY's direction.

4. Distribution Confirmation:

CITY will fill in the account information requested on Attachment A and attach the same to the fully executed Agreement. Should there be any changes to the account or percentages in Attachment A, CITY shall immediately notify CONSULTANT in writing of all changes in amounts to be deposited into the accounts of designated recipients.

EXHIBIT B
PAYMENT AND RATES SCHEDULE
HOTEL AND SHORT TERM RENTAL HOTEL OCCUPANCY TAX MONITORING,
ADMINISTRATION AND AUDIT SERVICES

This Payment and Rates Schedule is incorporated in the Consultant Services Agreement (“Agreement”) by and between Avenu Insights and Analytics, LLC (“CONSULTANT”) and the City of San Antonio (“CITY”).

1. Full Service Administration for Hotels and Short Term Rentals:

The full administration services for Hotels and Short-Term Rental properties (including the monitoring and identification services) shall be provided for an annual fixed fee of (\$170.00) per property. Fees are invoiced and due monthly, based on 1/12th of the total number of known and registered properties for the billing month.

- a. Services included in our full-service administration include:
 - i. Compliance, monitoring, outreach, administration, and advanced filing portal
 - ii. 24/7 Hotline and portal
 - iii. HOT /STR Registration Services
 - iv. Homestead/primary residence verification – Limited
 - v. Print and Mail services (Violation Notices and Postage)
 - vi. HOT delinquency outreach

2. Discovery/Recovery:

This service is optional and will be provided by CONSULTANT at CITY’s direction. The Discovery/Recovery Services (exclusive of a reasonable processing fee and all ACH and Credit Card fees charged for collection, which shall be paid by the Taxpayer directly to CONSULTANT) shall be provided for a contingency fee of thirty five percent (35%) of the additional delinquent revenue received by CITY for the services. The 35% contingency fee shall apply to the current tax year and/or period, all eligible prior period revenues collected, and any applicable penalties, interest, and late charges. The contingency fee only applies to revenue actually received by CITY. The term “current tax year/period” shall mean the most recent tax year or tax period for which local taxes are due and payable to CITY, and in which CONSULTANT has identified deficiencies.

3. Audit:

This service is optional and will be provided by CONSULTANT at CITY’s direction. The Audit Services shall be provided for a fixed fee of \$2,300.00 for each Hotel and \$750.00 for each STR property audited, with 50% due at the time of audit approval and 50% upon completion of the audit. CITY shall request a minimum of 20 audits to be performed by CONSULTANT at any given time.

4. Additional Consulting:

This service is optional and will be provided by CONSULTANT at CITY’s direction. CITY may request that CONSULTANT provide additional consulting services at any time during the term of this Agreement. If CONSULTANT and CITY agree on the scope of the additional consulting services requested, then CONSULTANT shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from \$75.00 per hour to \$200.00 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

- a. The following are sample hourly rates based on the job classification:
 - i. Principal: \$200.00 per hour
 - ii. Client Services: \$175.00 per hour
 - iii. Information Technology (IT) support: \$160.00 per hour
 - iv. Operational Support:
 - 1. Director or Manager: \$175.00 per hour
 - 2. Senior Analyst: \$125.00 per hour
 - 3. Analyst: \$100.00 per hour
 - 4. Administrative: \$75.00 per hour

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

5. Travel and Out-of-Pocket:

Audit services is optional and will be provided by CONSULTANT at CITY's direction. If this service is requested by CITY, CONSULTANT will be performing most audits online which will not be subject to Travel and Out-of-Pocket fees. For the performance of field audits, CITY shall reimburse CONSULTANT for reasonable travel and other out-of-pocket expenses including but not limited to lodging, parking, mileage, per diem, etc. (Mileage and per diem shall be according to IRS regulations). Such reimbursement shall be billed incrementally.

6. Credit Card Processing Fees:

The Credit Card Processing fee for each Hotel property credit card transaction is three percent (3%) of the total payment remitted. This fee will be passed on to the Hotel property taxpayer and CONSULTANT will pay the payment processor directly.

The Credit Card Processing fee for each STR property credit card transaction is three percent (3%) of the total payment remitted and will be billed directly to CITY.

7. Bank Processing Fees – ACH:

The Bank Processing fee for each Hotel property ACH payments is fifty cents (\$.50) per ACH payment processed. This fee will be passed on to the Hotel property taxpayer.

The Bank Processing fee for each STR property ACH payment is fifty cents (\$.50) per ACH payment processed and will be billed to CITY.

EXHIBIT C

INSURANCE

Prior to the commencement of any work under this Agreement, CONSULTANT shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to CITY's Risk Management Department, which shall be clearly labeled "Short Term Rental Permitting, Collections and Compliance Services" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to CITY. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY's Finance Department. No officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.

CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY allow modification whereby CITY may incur increased risk.

CONSULTANT's financial integrity is of interest to CITY; therefore, subject to CONSULTANT's right to maintain reasonable deductibles in such amounts as are approved by CITY, CONSULTANT shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at CONSULTANT's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>INSURANCE TYPE</u>	<u>LIMITS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Products/completed operations c. Personal/ Advertising Injury d. Contractual Liability e. Independent Contractors	For Bodily Injury and Property Damage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles	Combined Single Limit for Bodily Injury and

b. Non-owned vehicles c. Hired Vehicles	Property Damage of \$1,000,000 per occurrence
5. Cyber Liability	\$1,000,000 per claim \$2,000,000 General Aggregate or its equivalent in Umbrella or Excess Liability Coverage
6. Professional Liability	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage to be maintained and in effect for no less than 2 years subsequent to the completion of the professional service.

As they apply to the limits required by CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). CONSULTANT shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to CITY at the address provided below within 10 days of the requested change. CONSULTANT shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Finance Department
P.O. Box 839966
San Antonio, Texas 78283-3966

CONSULTANT agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to CITY of San Antonio where CITY is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of CITY.
- Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CONSULTANT

shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CONSULTANT's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

In addition to any other remedies CITY may have upon CONSULTANT's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order CONSULTANT to stop work hereunder, and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractors' performance of the work covered under this Agreement.

It is agreed that CONSULTANT's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CITY for liability arising out of operations under this Agreement.

It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.

CONSULTANT and any subcontractors are responsible for all damage to their own equipment and/or property.

ATTACHMENT A

DISTRIBUTION, RATE CONFIRMATION and SCHEDULE OF FEES

October 1, 2022

Troy Elliott
Deputy Chief Financial Officer
City of San Antonio
PO Box 839966
San Antonio, TX 78283-3966

Dear Mr. Elliott:

Funds will be distributed in the following accounts pursuant to this Agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
City of San Antonio			100%	STR

Tax Type and Rate Codes will be administered at the following percentages:

Tax Type	Rate Type	Percentage
Hotel Occupancy Tax	CITY – STR	9.00%
Hotel Occupancy Tax	CITY – HOTEL	9.00%
Hotel Occupancy Tax	Bexar County – STR	1.75%
Hotel Occupancy Tax	Bexar County - HOTEL	1.75%
Assessment Fee	Tourism Public Improvement District	1.25%

If at any time there are any discrepancies between the schedule set out above and your City's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN TAX RATES OR IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

AVENU Insights & Analytics, LLC
600 Beacon Parkway West, Suite 900
Birmingham, AL 35209
ATT: Contracts Department

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,
Lis Feliciano
Client Relations Manager
AVENU
213.246.2445 direct dial
205-423-4097 direct fax

I have reviewed the above distribution and verify that it is correct.

City of San Antonio

AVENU Insights & Analytics, LLC

By: _____

Name: Troy Elliott

Title: Deputy Chief Financial Officer

By: *Carl Kumpf*
Carl Kumpf (Nov 29, 2022 16:14 EST)

Name: Carl Kumpf

Title: Chief Financial Officer


TX - City of San Antonio Agreement with Avenu for Monitoring HOT Tax Partially Executed 11.29.22

Final Audit Report

2022-11-29

Created:	2022-11-29
By:	Karen Miller-Kuwana (karen.miller-kuwana@avenuinsights.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA7W7zgUrkP94w51Jqu7esZOUty4drGUfO

"TX - City of San Antonio Agreement with Avenu for Monitoring HOT Tax Partially Executed 11.29.22" History


 Document created by Karen Miller-Kuwana (karen.miller-kuwana@avenuinsights.com)
2022-11-29 - 8:03:14 PM GMT

 Document emailed to carl.kumpf@avenuinsights.com for signature
2022-11-29 - 8:07:43 PM GMT

 Email viewed by carl.kumpf@avenuinsights.com
2022-11-29 - 9:14:08 PM GMT

 Signer carl.kumpf@avenuinsights.com entered name at signing as Carl Kumpf
2022-11-29 - 9:14:49 PM GMT

 Document e-signed by Carl Kumpf (carl.kumpf@avenuinsights.com)
Signature Date: 2022-11-29 - 9:14:51 PM GMT - Time Source: server

 Agreement completed.
2022-11-29 - 9:14:51 PM GMT