

CONTRACT FOR PROFESSIONAL SERVICES

Transient Occupancy Tax Audit Services Agreement

THIS AGREEMENT is executed this 10 day of July, 2015, by and between the CITY OF MONTEREY, a municipal corporation, hereinafter called "City", and County of Monterey, hereinafter referred to as "Contractor".

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. Scope. Contractor hereby agrees to provide to the City of Monterey, as the scope of services under this Agreement, the following services: Transient Occupancy Tax (TOT) Audits as further described on the following attachments: the approved proposal dated May 15, 2015 (attached hereto as Exhibit "A") and Transient Occupancy Tax Audit Program (attached hereto as Exhibit "B").

2. Timely Work. Contractor shall perform all tasks in a timely fashion, as set forth more specifically in paragraph 3 below. Failure to so perform is hereby deemed a material breach of this Agreement, and City may terminate this Agreement with no further liability hereunder, or may agree in writing with Contractor to an extension of time.

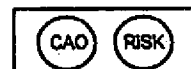
3. Term. The work under this Agreement shall commence upon execution of contract and shall continue for a period of one year, unless City grants a written extension of time as forth in paragraph 2 above.

4. Compensation. City agrees to pay and Contractor agrees to accept as full and fair consideration for the performance of this Agreement, an hourly fee as set forth in Contractor's Proposal (Exhibit A), and reimbursement for mileage in a total amount not to exceed Fifteen Thousand Dollars (\$15,000.00). Compensation under this Agreement shall become due and payable 30 days after City's approval of Contractor's submission of monthly written invoices to the City of Monterey, Finance Director. Written invoices shall clearly show the hours worked for each audit and shall include a copy of timesheets. The payment of any compensation to Contractor hereunder shall be contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If City determines that the work set forth in the written invoice has not been performed in accordance with the terms of this Agreement, City shall not be responsible for payment until such time as the work has been satisfactorily performed.

5. Additional Services. In the event that City should request additional services not covered by the terms of this Agreement, said services will be provided by Contractor and paid for by City only after a fee for said services has been agreed upon between Contractor and City project manager and the project manager provides written authorization for the additional work.

6. Meet and Confer. Contractor agrees to meet and confer with City or its agents or employees with regard to services as set forth herein as may be required by City to insure timely and adequate performance of this Agreement.

7. Indemnification. Contractor hereby agrees to the following indemnification clause:



To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Contractor shall defend (with legal counsel reasonably acceptable to the City of Monterey), indemnify and hold harmless the City of Monterey and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Contractor, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the negligence, or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Contractor agrees to indemnify and hold harmless the City from and against any and all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Contractor or Contractor's employees, contractors, representatives, patrons, guests or invitees.

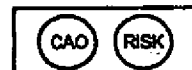
Contractor further agrees to indemnify City for damage to or loss of City of Monterey property to the proportionate extent they arise out of Contractor's negligent performance of the work associated with this agreement or to the proportionate extent they arise out of any negligent act or omission of Contractor or any of Contractor's employees, agents, contractors, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of the City.

8. Insurance. Contractor certifies that it has adequate self insured retention of funds to meet any obligation arising from this Agreement. Any deductibles or self-insured retentions must be declared to the City of Monterey.

9. Ownership of Work and Copyrights. Upon completion of the work under this Agreement, ownership, title and copyrights to all materials and deliverables produced as part of this Agreement will automatically be vested in the City and no further agreement will be necessary to transfer ownership to City.

10. Licensing - Standard of Care. Contractor represents as follows: that it is experienced in the professional services and a specialist in the work performed under this Agreement; is duly organized, existing and in good standing under applicable state law; and is properly licensed and/or certified to perform the work specified under this Agreement, and will only employ persons with all required licenses and certifications.

11. Non-Discrimination. No discrimination shall be made by Contractor or any subconsultant in the hiring and employment of persons for the work under this Agreement or any other City project because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person. Every person in violation of this section is subject to the penalties in accordance with the provisions of Section 1735 of the Labor Code..



12. Termination. City may terminate this Agreement upon ten days' written notice. The amount of damages, if any, as a result of such termination may be decided by negotiations between the parties or before a court of competent jurisdiction.

13. Agency. In performing the services specified under this Agreement, Contractor is hereby deemed to be an independent Consultant and not an agent or employee of City.

14. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter thereof. Any modification of this Agreement will be effective only if it is in writing signed by both parties hereto.

15. Validity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

16. Assignment of Interest. The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which City may terminate this Agreement and be entitled to damages.

17. Conflict of Interest. Contractor hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement. Contractor is required to file a Form 700 in compliance with the City's Conflict of Interest Code (Resolution No. 12-173 C.S. and any amendment thereof) unless a written determination by the City Manager is made modifying or eliminating said requirement, or unless otherwise exempted by law.

18. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

19. Laws. Contractor agrees that in the performance of this Agreement it will reasonably comply with all applicable State, Federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Monterey.

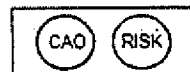
IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto on the day and year first above written in Monterey, California.

CITY OF MONTEREY

Hans Nee
for City Manager
HANS USLAR
ASSISTANT CITY MANAGER

COUNTY OF MONTEREY

Michael J. Miller
Michael J. Miller, Auditor-Controller



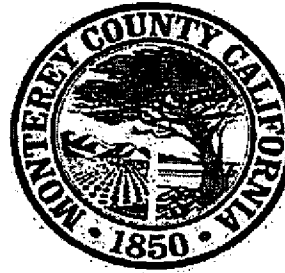
MONTEREY COUNTY

AUDITOR - CONTROLLER

(831) 755-5040 • FAX (831) 755-5098 • P.O. BOX 390 • SALINAS, CALIFORNIA 93902

MICHAEL J. MILLER, CPA, CISA
AUDITOR-CONTROLLER

ALFRED R. FRIEDRICH, CGFM
ASSISTANT AUDITOR-CONTROLLER



May 15, 2015

City of Monterey
Carol Bouchard
Revenue Division
735 Pacific St, Suite A
Monterey, CA 93940

Re: County of Monterey's Hourly Rate for Performing Transient Occupancy Tax Audits

Dear Ms. Bouchard:

Thank you for contacting our office with regards to having us perform transient occupancy tax audits for the City of Monterey. With respect to the hourly rates to be charged, the Internal Auditor II rate is \$33.93 per hour; the amount of time spent on each audit will vary depending on the complexity of systems used by the operators. Fieldwork can take anywhere from 1 day to a week. Analysis, work paper documentation write-ups, and written report can take from a couple of days to a couple of weeks; this does not include any time that may be needed should further documentation be requested from the operator. The Chief Deputy's rate for the time spent reviewing each audit is \$68.35 per hour, generally completed in less than two hours. In addition, mileage will be charged at a rate of \$0.575 per mile.

We hope the City takes us into consideration when deciding upon whether or not to pursue performing transient occupancy tax audits. Please feel free to contact Kimberly Munckton at (831) 784-5971 or Ron Holly at (831) 755-5493 should you have any questions.

Thank you,


Michael J. Miller
Auditor-Controller

COUNTY OF MONTEREY
TRANSIENT OCCUPANCY TAX AUDIT

SAMPLE AUDIT PROGRAM

Initials	Date
Prepared By: _____	_____
Reviewed By: _____	_____

AUDIT STEPS	AUDITOR INITIALS	WP REF
<p>I. Background:</p> <p>Monterey County Code Chapter 5.50, Sections 5.40.010 et al. describes the uniform transient occupancy tax (TOT) – the Uniform Transient Occupancy Tax Ordinance of the County of Monterey.</p> <p>Each operator collects the tax as the rent is collected from every transient. The amount of tax is separately stated from the amount of the rent charged. Each operator, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the tax collector, makes a return to the tax collector, on forms provided by the tax collector.</p>		
<p>II. Objectives:</p> <ol style="list-style-type: none"> 1. To determine whether the operator is in compliance with the Uniform Transient Occupancy Tax Ordinance. 2. To determine whether revenues reported in the tax return agree with the general ledger and are supported with source documents. 		
<p>III. Preliminary Work:</p> <ol style="list-style-type: none"> 1. Obtain an understanding of the following relating to the TOT: <ul style="list-style-type: none"> • TOT Ordinance • Prior year workpaper, if any • Coordination with Tax Collector's Office-ownership changes and late and/or delinquent payments during the last three years 2. Select an operator in coordination with Tax Collector's Office and send out an engagement letter. 3. Obtain tax returns from Tax Collector's Office for the selected operator and prepare a summary of tax paid for the audit period for analytical purpose. 		

**COUNTY OF MONTEREY
TRANSIENT OCCUPANCY TAX AUDIT**

SAMPLE AUDIT PROGRAM

AUDIT STEPS	AUDITOR INITIALS	WP REF
<p>IV. Field Work:</p> <ol style="list-style-type: none"> 1. Note that the operator displays a valid Monterey County Transient Occupancy Registration Certification in a conspicuous place on the premises (Section 5.040.070). 2. Obtain and document the operator's general description including but not limited to, general accounting system, lodging system, number of units to rent, and so on. 3. Understand and document the adequacy of records for internal control of transactions of the operator. 4. If the operator offers a package rate, verify the rate is separately identified on the guest receipt or other records with the components and their taxes. 5. Compare the amount on the return and in the general ledger and obtain explanation and supporting documents if there are any differences. 6. On a sample basis, test the accuracy of transferring revenues from a lodging system to a general accounting system, if available. 7. On a sample basis, test individual folios to determine the operator states the tax separately from the amount of the rent charged for each transient and the tax on each folio is accounted for and reported to the county. 8. Compare the amount on the return and in the general ledger and obtain explanation and supporting documents if there are any differences for MCTID assessment. 9. Compare the amount on the return and in the general ledger and supporting documentation for claimed exemptions. 		
<p>V. Conclusion(s):</p> <p>We have performed procedures sufficient to achieve the audit objectives for the Transient Occupancy Tax audit for the operator, and the results of these procedures are adequately documented in the accompanying workpapers.</p> <p>_____</p> <p>_____</p> <p>_____</p>		