



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Elizabeth Shavelson, Assistant to the City Manager

Reviewed by: Lisa Soghor, Assistant City Manager

Approved by: Steve McClary, Interim City Manager

Date prepared: December 27, 2021 Meeting date: January 10, 2022

Subject: Amendment No. 1 to Professional Services Agreement with Granicus LLC

RECOMMENDED ACTION: Authorize the Mayor to execute Amendment No. 1 to Professional Services Agreement with Granicus LLC for short-term rental administration.

FISCAL IMPACT: Funding for this agreement is \$40,122.19 annually. Funding for this item is included in the Adopted Budget for Fiscal Year 2021-2022 in Account No. 100-7054-5100 (Finance - Professional Services). Funding for the second year will be included in next fiscal year's budget.

WORK PLAN: This item was included as item 4.b. in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: On February 12, 2018, after conducting a thorough request for proposals process, the City executed an agreement with Host Compliance LLC for short-term rental (STR) administration. In November 2019, Host Compliance LLC was acquired by Granicus LLC.

On September 29, 2020, the City Council adopted Ordinance No. 468 (STR Enforcement Ordinance), which created a new permit system to regulate the short-term rental of residential property and went into effect January 15, 2021. In November 2020, the City launched its online STR permitting process and City staff have been successfully using the Granicus system to process permits and monitor STR listings since that time.

On November 23, 2020, the City Council adopted Ordinance No. 472, the Hosted STR Ordinance, to establish provisions to regulate short-term rental of property citywide which include, but are not limited to, requiring the presence of an onsite host during short-term rentals, primary residency requirements and multifamily restrictions. The Hosted STR Ordinance is intended to supersede the short-term rental regulations and permit program currently in place. The Hosted STR Ordinance regulations cannot go into effect until the associated amendments to the City's Local Coastal Program and Land Use Plan are certified by the California Coastal Commission (CCC). In September 2021, the CCC voted to extend the time limit to schedule the public hearing and not take action on the City's proposed amendments until June 29, 2022.

In accordance with the STR Enforcement Ordinance, STR Permits are issued for one year from the date of issuance and must be renewed annually. The City is currently preparing to enter the second-year of the STR permit program. Staff recommends the Council authorize the Mayor to execute Amendment No. 1 to the Professional Services Agreement with Granicus LLC extending the term for an additional two years and updating some of the provisions in the agreement to reflect the transition from Host Compliance LLC to Granicus LLC so that the City can continue to implement the STR Enforcement Ordinance without disruption while awaiting the response from the CCC on the City's Hosted STR Ordinance.

ATTACHMENTS: Amendment No. 1 to Professional Services Agreement with Granicus LLC

AMENDMENT NO. 1 TO AGREEMENT

THIS AMENDMENT NO. 1 TO AGREEMENT is made and entered in the City of Malibu on January 10, 2022, by and between the CITY OF MALIBU, hereinafter referred to as City, and Granicus LLC, a Minnesota Limited Liability Company, hereinafter referred to as Consultant.

The City and the Consultant agree as follows:

RECITALS

- A. On February 13, 2018, the City entered into an Agreement with Host Compliance LLC for consulting and software services related to permitting, compliance monitoring and enforcement of the City's ordinances, regulations and tax rules related to short term rentals. (the "Agreement").
- B. Host Compliance LLC was acquired by Granicus LLC, a Minnesota Limited Liability Company on November 8, 2019 and the parties desire to assign the Agreement to Granicus.
- C. The City desires to amend the Agreement to extend the term and increase the budget, and Consultant has submitted a proposal for this purpose that is acceptable to the City.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. Granicus LLC hereby assumes all rights and obligations of Host Compliance LLC under the Agreement. All references to Host Compliance LLC in the Agreement are hereby replaced with Granicus LLC.
2. Section 1.0 – Scope of the Consultant's Services, of the Agreement, is hereby amended to add the following paragraph:

“Consultant services are purchased by City as subscriptions. Consultant hereby to City, solely for its internal use, a worldwide, revocable, non-exclusive, non-transferrable right to use the Consultant services during the term of this Agreement. Consultant reserves all right, title and interest in the Consultant services, the documentation, and resulting product including all related intellectual property rights. No implied licenses are granted to City. The Consultant name, logo, and the product names are trademarks of Consultant, and no right or license is granted to use them. City will assign to Consultant any suggestion, enhancement, request, recommendation, correction or other feedback provided by City relating to the use of the Consultant services. City shall not: (i) Misuse any Consultant resources or cause any disruption, including but not limited to, the display of adult content, advertisements, or solicitations; (ii) Use any process, program, or tool for gaining unauthorized access to the systems, networks, or accounts of third parties; (iii) Use the Consultant services in a manner in which system or network resources are unreasonably denied to third parties; (iv) Use the services as a door or signpost to another server; (v) Access or use any portion of Consultant services except as expressly allowed by this Agreement; (vi) Disassemble, decompile, or otherwise reverse engineer all or any portion of the Consultant services; (vii) Use, export, or allow access to the Consultant services in violation of U.S. laws or regulations; (viii) subcontract, disclose, or lease the Consultant services, or any portion thereof; or (ix) Modify, adapt, or use the Consultant services to develop any software application intended for resale which uses the Consultant services in whole or in part.”
3. Section 2.0 – Term of Agreement, of the Agreement, is hereby extended to February 12, 2024.
4. Section 4.0 – Compensation for Services, of the Agreement, is hereby amended to not exceed \$40,122.19 for February 13, 2022 to February 12, 2023 and \$40,122.19 for February 13, 2023

to February 12, 2024. The total amount paid under this Agreement is hereby increased to \$264,144.38.

5. Section 4.1, of the Agreement, is hereby amended as follows:

“The Consultant shall submit to the City, by no later than the 10th day after the initiation of services, its bill for the initial year of services itemizing the fees and costs incurred to be prepaid by City. After the first year, if the Agreement is extended, bills will be submitted for subsequent twelve-month periods to the City for prepayment no later than the 10th day after such twelve-month period begins. The City shall pay the Consultant all uncontested amounts set forth in the Consultant’s bills within 30 days after it is received.”

6. Section 6.1 – Termination, of the Agreement, is hereby revised so that the termination notice without cause will be thirty (30) days.

7. Section 6.1.2, of the Agreement, is hereby revised so that either Party will have thirty (30) days to cure any failure to fulfill in a timely and proper manner its obligations under the Agreement or any violation of the covenants, agreements, or stipulations of the Agreement in order to nullify the termination notice provided pursuant to this paragraph.

8. Section 6.1.4 is hereby added to the Agreement as follows:

“In the event of termination pursuant to this Section 6.1, City will receive a prorated refund of any fees paid subsequent to the effective date of such termination.”

9. Section 6.5 – Indemnification, of the Agreement, is hereby revised so that the existing language is designated as subsection 6.5.1 and the following paragraph is added as subsection 6.5.2:

“Consultant will defend City from and against all losses, liabilities, damages and expenses arising from any claim or suit by a third party unaffiliated with either Party to this Agreement (“Claims”) and shall pay all damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, “Losses,” and including reasonable attorneys’ fees and court costs), to the extent arising out of any Claims that Consultant services infringe a valid U.S. copyright or U.S. patent issued as of the date of this Agreement. In the event of such a Claim, if Consultant determines that this Agreement is likely affected, or if the solution is determined in a final, nonappealable judgment by a court of competent jurisdiction, to infringe a valid U.S. copyright or U.S. patent, Consultant will, in its discretion: (i) replace the affected Consultant services; (ii) modify the affected Consultant services to render it non-infringing; or (iii) terminate this Agreement with respect to the affected solution and refund to City any prepaid fees for the then-remaining or unexpired portion of the Agreement term. Notwithstanding the foregoing, Consultant will have no obligation to indemnify, defend, or hold City harmless from any Claim to the extent it is based upon: (i) a modification to any solution by City (or by anyone under City’s direction or control or using logins or passwords assigned to City); (ii) a modification made by Consultant pursuant to City’s required instructions or specifications or in reliance on materials or information provided by City; or (iii) City’s use (or use by anyone under City’s direction or control or using logins or passwords assigned to City) of any Consultant services other than in accordance with this Agreement. This Section sets forth City’s sole and exclusive remedy, and Consultant’s entire liability, for any Claim that the Consultant services or any other materials provided by Consultant violate or infringe upon the rights of any third party.

With regard to any Claim subject to indemnification pursuant to this Section: (i) the Party seeking indemnification shall promptly notify the indemnifying Party upon becoming aware of the Claim; (ii) the indemnifying Party shall promptly assume sole defense and control of such Claim upon becoming aware thereof; and (iii) the indemnified Party shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its expense, with counsel of its choice, but shall not

settle any such Claim without the indemnifying Party's prior written consent. The indemnifying Party shall not settle or compromise any Claim in any manner that imposes any obligations upon the indemnified Party without the prior written consent of the indemnified Party."

10. Section 6.6 – Limitation on Amount of Liability, of the Agreement, is hereby deleted in its entirety and replaced with the following:

"NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, EXCEPT FOR CONSULTANT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6.5.2 OR CONSULTANT'S WILLFUL MISCONDUCT, IN NO INSTANCE SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR DIRECT DAMAGES UNDER THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR OTHERWISE) EXCEED \$250,000.00. IN NO INSTANCE SHALL EITHER PARTY BE RESPONSIBLE FOR ANY LOST PROFITS OR OTHER DAMAGES, INCLUDING INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES, HOWEVER CAUSED. THIS SECTION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT."

11. Section 6.13, of the Agreement, is hereby revised to delete the final sentence.

12. Section 6.14, of the Agreement, is hereby deleted in its entirety and replaced with the following:

"All files provided by or created exclusively for the City shall remain and be the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement."

13. Section 6.15, of the Agreement, is hereby revised to delete the final sentence.

14. Section 6.22, of the Agreement, is hereby deleted in its entirety.

15. Section 6.23.5(b), of the Agreement, is hereby deleted in its entirety and replaced with the following:

"All data provided by or created exclusively for the City in the performance of this Agreement shall remain and be the property of the City."

16. Section 6.23.7, of the Agreement, is hereby deleted in its entirety and replaced with the following:

"Consultant shall promptly, and in no event longer than three (3) business days, inform the City of any data breach of City's data, cooperate with the City in addressing the matter, and promptly implement measures to cure the breach."

17. Section 6.20 – Notices, of the Agreement, is hereby revised to update the Consultant's notice information:

Granicus
Attn: Contracts
408 Saint Peter Street, Suite 600
Saint Paul, MN 55102
contracts@granicus.com

18. The following paragraph is hereby added to Section 6 as a new subsection:

"**Warranty.** Consultant warrants that it takes all precautions that are standard in the industry to increase the likelihood of a successful performance for the Consultant services. Consultant

also warrants that the Consultant services shall function in accordance with all documentation, standards and specifications provided under this Agreement or otherwise by the Contractor. EXCEPT AS PROVIDED ABOVE, EACH PARTY HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER WHETHER ORAL AND WRITTEN, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CONSULTANT DOES NOT WARRANT THAT CONSULTANT SERVICES WILL MEET CITY'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE."

19. The following paragraphs are hereby added to Section 6 as a new subsection:

"Confidentiality. It is expected that one Party may disclose to the other Party certain information which may be considered confidential or trade secret information ("Confidential Information"). Confidential Information shall include: (i) non-public information if it is clearly and conspicuously marked as "confidential" or with a similar designation at the time of disclosure; (ii) non-public information of a Party if it is identified as confidential or proprietary before, during, or promptly after presentation and (iii) any information that should be reasonably understood to be confidential or proprietary to a Party, given the nature of the information and the context in which disclosed.

Subject to applicable law, each Party agrees to receive and hold any Confidential Information in strict confidence. Each Party also agrees: (i) to protect and safeguard the Confidential Information against unauthorized use, publication or disclosure; (ii) not to reveal, report, publish, disclose, transfer, copy or otherwise use any Confidential Information except as specifically authorized by the other Party; (iii) not to use any Confidential Information for any purpose other than for performance under this Agreement; (iv) to restrict access to Confidential Information to those of its employees, agents, and contractors who have a need to know, who have been advised of the confidential nature thereof, and who are under express written obligations of confidentiality or under obligations of confidentiality imposed by law or rule; and (v) to exercise at least the same standard of care and security to protect the Confidential Information received by it as it protects its own confidential information. If a Party is requested or required in a judicial, administrative, or governmental proceeding to disclose any Confidential Information, it will notify the other Party as promptly as practicable so that such Party may seek a protective order or waiver for that instance.

Confidential Information shall not include information which: (i) is or becomes public knowledge through no fault of either Party; (ii) was in a Party's possession before receipt from the other Party; (iii) is rightfully received by a Party from a third party without any duty of confidentiality; (iv) is independently developed by a Party without use or reference to the other Party's Confidential Information; or (v) is disclosed with the prior written consent of the Parties.

Each Party shall return or destroy the Confidential Information upon written request by the other Party; provided, however, that each Party may retain one copy of the Confidential Information in order to comply with applicable law.

Notwithstanding any of the foregoing, the City's obligations under the California Public Records Act and applicable document retention requirements shall supersede any requirements of this subsection."

20. The Parties agree that this Amendment will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.
21. All terms and conditions of the Agreement not amended by this Amendment No. 1 remain in

full force and effect.

This Agreement is executed on _____, 2021, at Malibu, California, and effective as of February 13, 2022.

CITY OF MALIBU:

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney

CONSULTANT:

DocuSigned by:
Kelly Oliver
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By: Kelly Oliver

Title: Vice President of Contracts