

**Third Amendment to Consultant Services Agreement with MuniServices, LLC**

**THIS THIRD AMENDMENT TO CONSULTANT SERVICES AGREEMENT** ("Agreement") is made and entered into on this 21st day of June, 2022, by and between MuniServices, LLC, a Delaware limited liability company (hereinafter "Consultant"), and the City of Santa Ana, a charter City and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City"), collectively "the Parties".

**RECITALS**

- A. On October 4, 2016, the City and Consultant, pursuant to a Request for Proposals process, entered into that certain agreement entitled "Consultant Services Agreement" (Agreement #A-2016-290) (hereinafter referred to as "said Agreement") for Sales and Use Tax Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring Services.
- B. On June 19, 2018, the City and Consultant agreed to a First Amendment to said Agreement (#A-2018-161) to add provisions relating to Change Orders, and to identify additional consulting services to include, but not be limited to: potential transaction and use taxes, potential business license taxes and/or potential medical marijuana and/or cannabis taxes or operating agreement fees (as applicable), and to set forth the renewal Term of said Agreement for a period of two and one-half (2 ½) years, effective July 1, 2018 through December 31, 2020.
- C. On January 15, 2019, the City and Consultant agreed to a Second Amendment to said Agreement (#A-2019-017) to increase the Scope of Services and Compensation to expressly include Transactions and Use Tax Recovery, Reporting, and Analysis and to amend the Term of said Agreement for a period of one and one-half (1 ½) years, effective January 1, 2021 through June 30, 2022.
- D. The Parties hereto now desire to extend the Term of said Agreement for an additional period of two (2) years, effective July 1, 2022 through June 30, 2024.
- E. The Parties hereto now also desire to amend said Agreement to conform Compensation to an annual amount not to exceed \$10,000 covering the web-based reporting systems Sales Tax Analysis Reporting Systems ("STARS") and Geographic Revenue Information Application Systems ("GRIA"); plus an annual Cost Price Index ("CPI") adjustment not less than two percent (2%) or greater than four percent (4%); plus a 13% of recovered sales tax of revenues over the life of said Agreement, with a contingency of up to \$60,000 to cover other consulting services.

**NOW THEREFORE**, in consideration of the mutual and respective covenants and promises hereinafter contained and made, and subject to all of the terms and conditions of said Agreement as hereby amended, the Parties hereto do hereby agree as follows:

- 1. Section 1. – Scope of Services to read as follows:
  - a. Consultant, or Consultant's subcontractor(s), will provide City with the consulting services described in EXHIBITS A and C, which are attached hereto and incorporated by reference. Consultant, or Consultant's subcontractor(s), shall provide said services at the time, place, and in the manner specified in EXHIBITS A and C.

- b. Consultant, or Consultant's subcontractor(s), shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.
2. Section 2. – Compensation is amended to read as follows:
  - a. Upon the Effective Date of this Third Amendment, City will pay Consultant as outlined in EXHIBITS B and D, incorporated and included herein. The fees will not exceed \$10,000 for the STARS and GRIA reporting systems, plus an annual CPI adjustment of not less than two percent (2%) or greater than four percent (4%).
  - b. Fees paid for recovered sales tax and/or other associated recovered revenues shall not exceed thirteen percent (13%) of the amount recovered. Such fees are not chargeable against contingency monies but are revenues directly payable from recovered sales tax. Payments made to Consultant for recovered revenues will be recognized when the fees related to Consultant auditing and reporting activities are incurred.
  - c. In addition, a contingency amount of \$60,000 shall be available for the Term of said Agreement to cover payment of additional consultant services the City may request via the Change Order process, as set forth under Section 1. — Scope of Services of said Agreement.
  - d. Payment by CITY shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures and proof of insurance as set forth in Section 3-9. Payment need not be made for work which fails to meet the standards of performance set forth in the Recitals which may reasonably be expected by CITY.
3. Section 3. - General Provisions., subsection 3-1., Term of the Agreement is amended to read as follows:
  - 3-1. - Term of the Agreement: The renewal term for the provision of consultant services under said Agreement shall be for a period of two (2) years, effective July 1, 2022 through June 30, 2024, , if neither party has terminated said Agreement in accordance with section 3- 2.
4. The effective date for the application of amendments to said Agreement relating to “Scope of Services”, “Compensation”, and “Term” shall be July 1, 2022 (“Effective Date”).
5. Where applicable, in accordance with state law, relevant references to the California State Board of Equalization (“BOE”) within said Agreement, including all exhibits attached hereto and incorporated by reference, shall now refer to the California Department of Tax and Fee Administration (“CDTFA”).
6. Except as hereinabove modified, the terms and conditions of said Agreement remain unchanged and in full effect.

*{Signatures on following page}*

**IN WITNESS WHEREOF**, the Parties hereto have executed this Third Amendment to Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

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Daisy Gomez  
Clerk of the Council

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Kristine Ridge  
City Manager

APPROVED AS TO FORM:  
CITY ATTORNEY  
Sonia R. Carvalho



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Ryan O. Hodge  
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

  
Kathryn Downs (Jun 6, 2022 16:29 PDT)

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Kathryn Downs, Executive Director  
Finance and Management Services Agency

CONSULTANT



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Carl Kumpf  
Chief Financial Officer

## **EXHIBIT A**

### **SCOPE OF WORK**

#### **Sales & Use Tax and Transactions & Use Tax - Audit Services (SUTA) Services**

In performing the sales, transactions and use tax audit program MuniServices shall:

1. Identify and correct the sales & use tax and transactions and use tax reporting errors of businesses that, based on the nexus of their activities, are not properly registered with the City.
2. Identify and correct the reporting of businesses that are improperly reporting taxes to state and county pools (i.e. classifying sales tax and/or transactions tax as use tax) and thereby depriving the City of sales tax and/or transactions tax revenue.
3. Detect, document and correct sales & use tax and transactions & use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for the City.
4. Ensure through comprehensive audit measures that the revenue information used for ongoing economic analysis includes all sales & use tax and transactions & use tax generators.
5. Assist the City with strategies to preserve and even enhance sales & use tax and transactions & use tax revenue generated by existing businesses within the City.

MuniServices' proposed sales & use tax and transactions & use tax allocation audit services for the City includes five distinct types of audits:

- Taxable Nexus Field audits
- Permitization audits
- Deficiency assessment audits
- Accounts payable audits
- Quarterly Distribution Report audits

#### **Taxable Nexus Field Audits**

MuniServices' initial and periodic taxable nexus field audits include a physical canvassing and evaluation of sales & use tax and transactions & use tax generating businesses located in the City. In the absence of this undertaking, significant misallocations will remain undetected. MuniServices' field audits focus on those businesses located in the City from which the City has not been receiving sales & use tax and transactions & use tax revenue.

#### **Permitization Audits**

Wholesalers, contractors, processors, manufacturers and other non-retail businesses will frequently not have a sales tax permit properly registered to the City in which they are located because their business operations do not include a point-of-sale qualifying activity. However, these companies will often generate local sales & use tax and transactions & use tax from the California Department of Tax and Fee Administration (CDTFA) audit deficiency assessments, occasional sales (i.e., mergers and acquisitions), and self-accrual of use tax on purchases. MuniServices' field audits facilitate the identification and correction of improperly registered permits for companies having point-of-sale operations in the City.

#### **Deficiency Assessment Audits**

When the California CDTFA audits taxpayers for sales & use tax and transactions & use tax compliance, it is not uncommon for the taxpayer to receive a substantial deficiency assessment due to underpayments and/or under-collections. In many cases, the local allocation portion of the deficiency assessment is distributed in error to the State pool, county pools, or other jurisdictions. Accordingly, MuniServices has developed proprietary criteria and techniques to detect and correct CDTFA deficiency assessment misallocations and thus expand the benefits produced by MuniServices' allocation audit service.

### **Accounts Payable Audits**

When California taxpayers purchase tangible personal property for which title passes out-of-state, the transactions are subject to use tax (rather than sales tax or transaction tax) which is collected by the vendor who in turn remits it to the CDTFA, with the local allocation typically distributed statewide or countywide through the pools.

Under certain conditions, the seller may allocate the local tax by situs or the City may elect to self-accrue the use tax and remit it directly to the CDTFA, in which case the local portion will come back to the City in the same manner as sales tax.

MuniServices' accounts payable audit will include a review of the City's purchases to identify opportunities for the City to capture the local allocation on purchases subject to use tax and the local district tax where applicable. In this regard, MuniServices will prepare the documentation to facilitate the election, including assistance in preparing and filing the tax returns.

### **Quarterly Distribution Report Audits**

Every three months, the City and MuniServices receive a Quarterly Distribution Report (QDR) from the CDTFA with the local allocation amount reflected by permit number.

MuniServices' QDR audits detect and correct taxpayer-reporting errors and thereby generate new, previously unrealized sales & use tax and transactions & use tax revenue for the City. MuniServices' QDR audits focus on those accounts where MuniServices observes a substantial decline in the sales & use and transactions & use tax revenue allocation for a particular business entity in a given quarter. In most cases, accounts showing zero balances have either relocated or simply reported late, in which case the payments will not be reflected until the next quarter's QDR. Therefore, six months must lapse before the QDRs indicate whether a zero balance account can be attributed to a late payment or a misallocation.

Cities and counties may only recover misallocated Bradley-Burns sales tax or transactions tax revenue for three quarters prior to the CDTFA being notified of the reporting error and misallocated District tax revenues for between three quarters and three years. Therefore, QDR audits must be conducted in a timely manner in order to preserve the opportunity for the City to recover misallocated revenue. MuniServices shall conduct the QDR audit each and every quarter to minimize the potential of lost revenue to the City.

### **Confidentiality Provisions**

MuniServices is authorized by this Agreement to examine sales & use tax and transactions and use tax records of the CDTFA provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law and California Revenue & Taxation Code applicable to transactions and use taxes. With reference to the City's adoption of a transactions and use tax the Parties intend for the work under this Agreement to include that tax (or taxes).

MuniServices is required to disclose information contained in, or derived from, those sales & use and transactions & use tax records only to an officer or employee of the City who is authorized by resolution to examine the information.

MuniServices is prohibited from performing consulting services for a retailer during the term of this Agreement.

MuniServices is prohibited from retaining the information contained in, or derived from, those sales & use and transaction and use tax records, after this Agreement has expired.

This Agreement, and MuniServices' and City's obligations with respect to confidentiality of taxpayer data pursuant to the Bradley Burns Revenue and Taxation Code, shall continue until final payment for all services rendered hereunder.

## **Deliverables**

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### **SUTA Detection and Documentation**

MuniServices shall represent the City for purposes of examining CDTFA records pertaining to sales & use tax and transaction & use tax to identify errors and omissions. MuniServices' procedures for detecting and documenting misallocations are as follows:

1. Review applicable provisions of the City's municipal code and ordinance adopted by the City to determine applicability.
2. Procure a computer tape of sales & use and transactions & use tax permit records from the CDTFA.
3. Analyze sales tax and transactions tax distribution reports provided by the CDTFA for five or more of the most recent consecutive quarters.
4. Clean-up, standardize and computerize data from City's quarterly sales tax/transactions tax distribution reports provided by CDTFA for previous quarters (as applicable), current quarter (as applicable) and each future quarter service is provided.
5. Prepare an aggregated list of business entities on electronic media; this list is derived from multiple private and public sources (hard copy and electronic), including specialized business listings and directories, the City's sales & use tax and transactions & use payment files, and an electronic copy of the City's Business License Tax registry, updated no less than twice per year.
6. Clean, standardize and integrate, in address-order, each entity's business name, address and payment file information, to eliminate redundancies, using MuniServices' proprietary software.
7. Physically canvas commercial/industrial area within the City's borders.
8. Develop a target list of potential point of sale/use reporting errors/omissions based on:
  - a. An electronic comparison of MuniServices' comprehensive inventory against the CDTFA's quarterly distributions for the City, and
  - b. An analysis of each potentially misallocated account based on proprietary guidelines established by MuniServices.
9. Meet with designated City official(s) to review service objectives and scope, MuniServices workplan schedule, public relations and logistical matters.
10. Contact personnel in sales, operations and/or tax accounting at each target business to determine whether a point-of-sale/use reporting error exists. (Note: this is accomplished with the highest regard to discretion and professional conduct. MuniServices' allocation audits are predicated on a non- controversial, constructive public relations approach which emphasizes the importance of each business to the City and the mutual benefits of correcting reporting errors.)
11. Provide to the City and CDTFA reports addressing each taxpayer reporting error individually, including the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure and, if available, estimated sales & use tax and transactions and use tax revenue which should be forthcoming to the City.
12. MuniServices may also provide suggested language for letters to be sent to the taxpayers and/or CDTFA from the City (or from MuniServices on behalf of the City) urging cooperation in promptly correcting the distribution error.
13. Respond to negative findings by CDTFA with timely reconfirmation documentation in order to preserve the City's original dates of knowledge.
14. Receive and process registration control record information monthly.
15. Receive and process sales tax distribution reports quarterly.
16. Coordinate with the taxpayer and CDTFA to make the necessary corrections and collect eligible back quarter's amounts.
17. Monitor and analyze the quarterly distribution reports with an audit focus on the following:
  - a. Accounts with previously reported point-of-sale/use distribution errors to ensure that the corrections are made for current quarters and all eligible back quarters.
  - b. Major accounts comprising 90% or more of the City's total sales tax and transactions tax

revenue to identify any irregularities or unusual deviations from the normal pattern (e.g. negative fund transfers, significant decreases, unusual increases, etc.) and ensure that the City is not receiving less revenue than it is entitled to.

- c. Those accounts receiving deficiency assessments to ensure that the City receives its local allocation

18. Identify opportunities for the City to recover local allocation on purchase transactions subject to use tax. Prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

#### **SUTA Detection Timing Considerations**

For each misallocated account detected, MuniServices will coordinate with the business and CDTFA to make the necessary corrections plus retroactive adjustments for eligible amounts of sales & use tax and transactions & use tax improperly distributed in prior quarters. MuniServices coordinates and communicates between typically four parties; sales/operations personnel at the taxpayer's local operation, tax personnel at the company's corporate headquarters, and CDTFA personnel and the in-state/out-of-state district offices. Correction of the account is considered to have been made once the payments on identified taxpayer accounts are being properly allocated by the taxpayer to the City in the period in which the payment was made.

As needed, MuniServices will represent the City before state officials, boards, commissions and committees for the purpose of correcting sales tax distribution errors that have deprived the City of revenue to which it is entitled.

## **EXHIBIT B**

### **COMPENSATION**

#### **Sales & Use and Transactions and Use Tax - Audit Services (SUTA) Services**

##### **What the City will pay MuniServices**

During the term of this Agreement MuniServices' compensation for the Sales & Use Tax and Transactions & Use Tax Audit Service shall be a 13% fee. This fee applies to revenue received for six quarters beginning with the quarter in which the Date of Correction falls and all eligible prior quarters back to and including the three quarters prior to the Date of Knowledge quarter for Bradley-Burns sales tax revenues and all eligible prior quarters back to and including all corrected quarters prior to the Date of Knowledge quarter for district tax revenues. As used herein, the Date of Knowledge is the quarter during which MuniServices notifies the CDTFA of the existence of a misallocation. As used herein, the Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the CDTFA distributes the local tax properly to City based on the taxpayer's reporting. For QDR Misallocations detected and corrected, MuniServices' compensation shall only include the quarters for which the misallocation actually occurred.

For clarification and to encourage communication and collaboration between MuniServices and the City, MuniServices shall be entitled to full payment of all compensation as provided herein even if any one or more of City, its personnel, agents, or representatives, or any third party or parties provide(s) information to MuniServices that assists or is used by MuniServices in the identification, detection, and correction of point-of-sale distribution errors or the reporting and/or misallocation of revenue.

In the event that the City identifies, documents, and notifies the CDTFA of a point-of-sale distribution error, reporting error or misallocation as those terms are used herein, the City will notify MuniServices of the City's discovery no later than ten days after the Date of Knowledge as defined in Title 18 of the California Code of Regulations, Regulation 1807 ("Date of Knowledge"). The City also agrees to notify MuniServices promptly if it is working on a local tax misallocation issue independently of MuniServices and to maintain and promptly make available to MuniServices on request contemporaneous documentation of such work and its timing so we do not duplicate work.

##### **Invoicing/Billing**

MuniServices will invoice City quarterly based on past and/or prospective compliance secured on behalf of City. Invoices are due and payable within forty-five (45) days upon receipt.

All expenses incurred by MuniServices in providing the Sales Tax service are the sole and exclusive responsibility of MuniServices, except those expenses that receive prior written approval by City.

##### **Additional Consulting Services**

City may request via the Change Order process that MuniServices, and/or MuniServices' subcontractor(s), provide additional optional consulting services within the scope of the Agreement any time during the term of the Agreement. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices, or MuniServices' subcontractor(s), shall provide the additional consulting services on a Time and Materials basis.

Standard Hourly Rates: Depending on the personnel assigned to perform the work, MuniServices' standard hourly rates range from \$75 per hour to \$200 per hour.

The following are sample hourly rates based on the job classification:

- Principal: \$200 per hour



- Client Services: \$175 per hour
- Information Technology (IT) support: \$150 per hour

Operational Support:

- o Director or Manager: \$175 per hour
- o Senior Analyst: \$125 per hour
- o Analyst: \$100 per hour
- o Administrative: \$75 per hour

These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. All reimbursable expenses shall receive prior approval from the City and shall be reimbursed at cost to MuniServices.

### **Completion of Services**

Notwithstanding any other provision of this Agreement, because Consultant's services performed hereunder result in corrections of misallocations and other revenue after cessation of services by Consultant for City, City agrees that with regards to misallocations identified to the CDTFA whose Date of Knowledge occurred during Consultant's performance of services for City or for other revenue resulting from Consultant's actions taken during the term of this Agreement, that City's obligation to pay Consultant in accordance with the compensation language of this Agreement shall survive expiration or termination of this Agreement for any reason. Additionally, notwithstanding any other provision of this Agreement, if this Agreement is terminated or expires, Consultant shall continue to pursue corrections of accounts identified during the term of this Agreement that have not been corrected by the CDTFA as of the effective date of termination or expiration. The period after termination during which Consultant is pursuing correction of accounts identified before termination is referred to as the "completion period." City shall compensate Consultant in accordance with the compensation language of this Agreement for corrected misallocations that result from Consultant's efforts during the completion period. City will also take all necessary steps to allow Consultant to continue to receive the required information from the CDTFA during this completion period.

## EXHIBIT C

### SCOPE OF WORK

#### SALES & USE TAX AND TRANSACTIONS & USE TAX - ANALYSIS & REPORTING SERVICE (STARS)

1. **Stars Reports.** Within thirty (30) days of receipt of monthly and/or quarterly sales tax/transactions tax data from the applicable governmental authorities, Consultant shall provide City with electronic access to updated STARS Reports.

**1.1 General Reporting Contents.** The STARS Reports are dependent on availability of data received from applicable governmental authorities. The online STARS Reports allow City's staff to interact with sales tax/transaction tax data from the permit level to citywide level; on a cash or economic basis; by quarter or year; and by classification grouping include economic category and segment. The STARS Reports provide City with access to sales & use tax and transactions & use data online and via mobile devices. In addition, reports can be exported to Microsoft Excel or Adobe PDF formats. The reports available may include:

- A Cash Dashboard.
- An Economic Dashboard.
- An Economic Change Report.
- A business look-up report.
- A Taxpayer Ranking Report.
- Geo-Areas.

**1.2 Sales Tax/Transactions Tax Forecast.** Consultant also provides a Sales Tax Forecast that identifies historical sales tax and projected sales tax for pessimistic, most likely and optimistic scenarios including Transactions and Use Taxes (as applicable).

**1.3 GRIA Application.** Consultant will include the Geographic Revenue Information Application (GRIA), as part of the STARS and forecasting service and at the same cost. The GRIA will provide and separately present combined geographically based (GEO/GIS) revenue information to include:

- Sales and Use Tax
- Transaction and Use Tax (as applicable)
- Secured and Unsecured Property Tax
- Hotel Visitors' Tax
- Documentary Stamp Tax (Property Transfer Tax)
- Business License Tax (including Business Improvement District Assessments/Charges)
- Medical Marijuana Tax
- Adult-Use Cannabis Retail Operating Agreement Fees; and
- Commercial Cannabis Operating Agreement Fees (to include, but not limited to: Cultivation, Manufacture, Distribution, and Testing)

GRIA data became fully available to the City on January 1, 2020 and is subject to MuniServices receiving certain City data matching:

- a. City Hotel Visitors' Tax data to City Business License Tax accounts; and
- b. City Business License Tax account data to California Department of Tax and Fee Administration Sales and Use Tax Permits.
- c. City Adult-Use Cannabis Retail Business Operating Agreement account data.
- d. City Commercial Cannabis Operating Agreement account data (to include, but not limited to: Cultivation, Manufacture, Distribution, and Testing).

To be included in the GRIA, City data must be received in a mutually agreeable format at least thirty (30) calendar days prior. MuniServices and City shall update (GEO/GIS) revenue information data on a quarterly basis (or more often as may be mutually agreeable).

**1.4 Accuracy.** The STARS Reports rely on information provided by applicable governmental authorities and third-parties. Consultant will endeavor to verify, remove redundancies, or otherwise clean or standardize the information provided by governmental authorities or any third parties.

**1.5 Timing.** Consultant's obligation to provide the STARS Reports is conditioned on City's delivery of required, signed documentation to Consultant to access the proper data from the applicable governmental authorities.

**1.6 Paper reports.** Some of the reports may be delivered in paper-based or excel formats while our online report platform continues to be expanded. For example, Geo Area reports are currently still being provided in paper format. As we expand the online portal, additional reports will become available on your home page.

## City Assistance

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- 1. Confidentiality.** The information provided to the City in the STARS Reports is confidential. It is not open to public inspection. A City may use the information only for lawfully permitted purposes. City shall not distribute the STARS Reports to any person unless that person is legally entitled to access the information in the STARS Reports, or except as may otherwise be required by law or court order.

Consultant is authorized by this Agreement to examine sales & use tax and transactions & use tax records of the California Department of Tax and Fee Administration (CDTFA). Consultant is required to disclose information contained in, or derived from, those sales & use tax and transactions & use tax records only to an officer or employee of the City who is authorized by resolution to examine the information. Consultant is prohibited from performing consulting services for a retailer during the term of this Agreement. Consultant is prohibited from retaining the information contained in, or derived from, those transaction, sales, and use tax records, after this Agreement has expired.

- 2. Data.** In order for Consultant to provide the STARS Reports, the City will need to deliver to Consultant the signed documents/authorizations required to access the proper data from the applicable governmental authorities as may be required by law.

### 3. Additional Terms.

- a. License.** Consultant grants to City a license for each of City's designated users to access the New STARS reports service for so long as this Agreement is in effect. Each of City's designated users must be submitted in writing to Consultant. Consultant will provide the user with the necessary log-in information. Any passwords issued for this service may only be used by the person to whom the password is issued; sharing of passwords is STRICTLY PROHIBITED. City has the obligation to protect those passwords.
- b. Limitations of Liability.** Consultant is not responsible for any breach of data resulting from City's failure to protect passwords or systems used to access the Service. Consultant does not warrant that the service is error free. CONSULTANT DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT OF THIRD PARTY RIGHTS. Some jurisdictions do not allow the exclusion of implied warranties or limitations of how long an implied warranty may last, or the exclusion of limitation of incidental damages, so the above limitations or exclusions may not apply to City. In no event shall Consultant or its licensors, suppliers, or licensees be liable to City for any consequential, special, incidental, or indirect damages of any kind arising out of the performance or use of the service, even if Consultant has been advised of the possibility of such damages.

- c. **Non-disclosure.** City's use of the New STARS services is conditioned on City's agreement not to make the service or any of output of the system available to Consultant's competitors. Nothing in this provision prohibits the City from exporting data and formatting it for its own use or from making documents marked as 'public' known to the public.

## EXHIBIT D

### COMPENSATION

#### Sales & Use Tax and Transactions & Use - Analysis & Reporting Service (STARS)

1. **Base Package Annual fee.** During the term of this Agreement City shall pay Consultant an annual fee of \$10,000 ("annual fee") payable in four equal quarterly payments as shown below, proratable on a quarterly basis for any contractual period less than twelve months. This includes a mutually agreeable number of Geo Areas. Consultant will invoice the City on a quarterly basis. Invoices are due and payable within forty-five (45) days of receipt. If this Agreement is terminated ahead of its agreed to term for any reason, the City remains obligated to pay Consultant the quarterly payments of the annual fee for the quarters before the effective date of termination.
2. **Adjustments.** The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index - Los Angeles-Long Beach-Anaheim, CA (formerly Los Angeles- Riverside-Orange County) (CPI-U) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the Consumer Price Index - Los Angeles-Long Beach- Anaheim, CA (formerly Los Angeles- Riverside-Orange County) (CPI-U) for the month in which the agreement is fully signed with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service. For instance, if the agreement is signed in April, year 1, the adjustment would not occur until January of year 3. The adjustments thereafter will be based on the CPI-U from December of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than four percent (4%).
3. **Additional Paper Copies.** Consultant shall provide City additional paper, bound copies of the STARS Reports upon City's request at the rate of \$200 annually per additional copy, payable by City in quarterly installments of \$50 per additional copy.
4. **Additional Consulting.** City may request via the Change Order process that MuniServices, and/or MuniServices' subcontractor(s), provide additional optional consulting services within the scope of the Agreement any time during the term of the Agreement. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices, or MuniServices' subcontractor(s), shall provide the additional consulting services on a Time and Materials basis.

Standard Hourly Rates: Depending on the personnel assigned to perform the work, Consultant's standard hourly rates range from \$75 per hour to \$200 per hour.

The following are sample hourly rates based on the job classification:

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- Client Services: \$175 per hour
- Information Technology (IT) support: \$150 per hour
- Operational Support:
  - o Director or Manager: \$175 per hour
  - o Senior Analyst: \$125 per hour
  - o Analyst: \$100 per hour
  - o Administrative: \$75 per hour

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







# MuniServices\_Third Amendemnt with Exhibits(205892.)\_Signed

Final Audit Report

2022-06-06

Created:	2022-06-06
By:	Kristin Andrade (kandrade@santa-ana.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAR5uXCpJGFix0NIB8KGXNvWZEImwE32IF

## "MuniServices\_Third Amendemnt with Exhibits(205892.)\_Signed" History

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