

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:

JUNE 19, 2018

TITLE:

**AUTHORIZE FIRST AMENDED AGREEMENT
FOR SALES AND USE TAX REVENUE
AUDITING AND CONSULTING SERVICES
WITH MUNISERVICES, LLC
{STRATEGIC PLAN NO. 4, 2}**

A handwritten signature in black ink, appearing to read "R. Martinez", is written over a horizontal line.

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED

- ☐ As Recommended
- ☐ As Amended
- ☐ Ordinance on 1st Reading
- ☐ Ordinance on 2nd Reading
- ☐ Implementing Resolution
- ☐ Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute a First Amended Agreement ("Amended Agreement") with MuniServices, LLC ("MuniServices") for Sales and Use Tax Revenue Auditing and Consulting Services for a period of two and one-half (2½) years. Amended Agreement to become effective July 1, 2018 through December 31, 2020 for a stated amount not to exceed \$12,000 annually (prorated to \$6,000 for the final six month period) covering the web based Sales Tax Analysis Reporting System (STARS) and Geographic Revenue Information Application system (GRIA) reporting systems, inclusive of an annual CPI adjustment not less than two percent (2%) or greater than four percent (4%), annually; plus 15% of recovered sales tax of revenues over the life of the Amended Agreement, with a contingency of up to \$100,000 to cover other consulting services subject to non-substantive changes approved by the City Manager and the City Attorney.

BACKGROUND

The Sales and Use Tax represents approximately 18.4% of the City's total General Fund revenue. Sales tax is levied upon the retailers who sell tangible property in the State of California. The sales tax is measured by gross receipts from retail sales. For the City of Santa Ana the effective sales tax rate is 7.75%. The distribution of the sales tax rate is as follows: State of California (6.00% Combined), County of Orange (0.25%), Measure M (0.50%), and City of Santa Ana (1.0%). A Use Tax complements the sales tax and is imposed on the storage, use, or other consumption of tangible personal property purchased from any out-of-state retailer. The Use tax is measured by the sales price of the property and the rate is the same for both the Sales Tax and the Use Tax.

DISCUSSION

Currently, MuniServices provides the City with Sales & Use Tax revenue auditing and consulting services and the STARS and GRIA software applications; however, the current agreement will lapse at the end of this fiscal year. In February 2016, a Request for Proposals (RFP No. 16-022) was issued

which included Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring services for Sales and Use Tax, as well as Municipal Utility Users' Tax, Property Tax, Hotel Visitors' Tax, and Medical Marijuana. To realize the most competitive bidding across the board, these items are scheduled to be rebid together and new agreements entered into prior to December 31, 2020. The 2½ year term of this Amended Agreement is intended to facilitate that future RFP process and represents an elapse of four years since the last comprehensive RFP.

With respect to the Sales & Use Tax component of the 2016 RFP, the proposal submitted by MuniServices for the Sales & Use Tax component was found to be most responsive to the City's needs, offered the best value, and was most appropriate for the services requested.

As part of the submitted Sales and Use Tax proposal and agreed terms for the auditing services, MuniServices provides the following services:

1. Audit and recovery services of unreported, underreported and misallocation of Sales and Use Tax as well as correction of reporting errors and corrections through the appeals process.
2. Comprehensive reporting and analytics including economic dashboards, ad hoc reporting and increased data mining and integration.
3. Monitoring and analysis of the California Department of Tax and Fee Administration's (formerly, State Board of Equalization's) quarterly distribution reports.
4. Legislative services and analysis regarding pertinent Sales and Use Tax legislation and regulations and state agency liaison and implementation monitoring.
5. Sales and Use Tax web-based software application (STARS), enabling staff to access the City's Sales and Use Tax data to extract, analyze, and utilize the available data for budgetary and community/economic development purposes as well as a web-based geographic revenue information application (GRIA) to aggregate a variety of general fund revenue data geographically (including but not limited to: Sales Tax, Property Tax, Property Transfer Tax, Hotel Visitors' Tax, and Business License Tax revenues) enabling staff to extract, analyze, and utilize the available data also for budgetary and community/economic development purposes.
6. Assist in the development of a multi-year Sales and Use Tax revenue forecast model.
7. Ongoing consultation on all aspects of the auditing, compliance and consulting services.

The reports, analysis and information derived from the sales and use tax revenue auditing and consulting program are used for budget planning, revenue forecasting, trend analysis, community/

economic development analysis and other projects requiring Sales and Use Tax revenue statistics and/or geographic general fund revenue statistics to assist in analyzing the City's economic base. Moreover, the services that MuniServices render ensure compliance with tax regulations, provide early indications of trends in the economy, as well as ensure that the revenues generated within city boundaries are properly allocated, assigned and remitted to the City of Santa Ana. The Amended Agreement continues all of these services for an extended 2½ year term.

Additionally, the Amended Agreement provides a streamlined Change Order process and expands the scope of consulting services which the City may request from MuniServices to include: potential transaction & use taxes, potential new/revised business license taxes and/or potential medical marijuana and/or cannabis taxes, or cannabis related operating agreement fees (as applicable) and may also include selection processes for adult-use retail cannabis business permitting, cannabis testing business permitting, commercial cannabis business (cultivation, manufacture, distribution) permitting as may be set forth in any Change Orders mutually agreed to by the parties.

Prior to the expiration of this Amended Agreement, staff will fully assess the extended functionality and usefulness of the Revenue Auditing, Recovery, Reporting, Analysis, and Legislative/State Agency Liaison and Implementation Monitoring services program for Sales and Use Tax and related revenues prior to issuing an RFP for future services.

STRATEGIC PLAN ALIGNMENT


Approval of this item allows the City to meet Goal #4 City Financial Stability, Objective #2 (maintain a stable, efficient and transparent financial environment).

FISCAL IMPACT

The fees for the services that MuniServices will render are available in the General Fund Sales Tax account (01102002-50020). The fees will not exceed \$12,000 annually for the STARS and GRIA reporting systems, inclusive of an annual CPI adjustment of not less than two percent (2%) or greater than four percent (4%), for each of the first two years of the Amended Agreement's 2½ year term (FY 2018-19 and FY 2019-20), and shall be prorated to not to exceed \$6,000 for the final six months of that term (July 1, 2020 to December 31, 2020) inclusive of CPI adjustment. Fees paid for recovered sales tax and other revenues shall not exceed 15% of the amount recovered. Payments made to MuniServices for recovered revenues will be recognized when the fees related to MuniServices auditing and reporting activities are incurred.

A contingency of \$60,000 shall be available for the first year of the Amended Agreement's 2½ year term (FY 2018-19) with a further contingency of \$25,000 available for the second year (FY 2019-20), and a final contingency of \$15,000 available for the final six months of that term (July 1, 2020 to December 31, 2020).

APPROVED AS TO FUNDS AND ACCOUNTS:




Francisco Gutierrez
Executive Director 
Finance and Management Services Agency

Exhibit: 1. First Amendment to Consultant Services Agreement

WH

FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT

THIS FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT, made and entered into this 19th day of June, 2018, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("City"), and MuniServices, LLC, a Delaware limited liability company ("CONSULTANT"), or, collectively "the Parties".

R E C I T A L S

A. On October 4, 2016, the City and CONSULTANT 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. The Parties hereto now desire to amend said Agreement to add some terms and set forth the renewal Term of said Agreement.

WHEREFORE, 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** is amended to read as follows:

- a. CONSULTANT, or CONSULTANT'S subcontractor(s), will provide CITY with the consulting services described in EXHIBIT A and C which are attached hereto and incorporated by reference. CONSULTANT, or CONSULTANT'S Subcontractor, 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), may provide CITY with additional consulting services described in EXHIBIT D which is attached hereto and incorporated by reference. Such additional consulting services include, but are not be limited to: potential transaction and use taxes, potential business license taxes and/or potential medical marijuana and/or cannabis taxes, or cannabis related operating agreement fees (as applicable) and may also include selection processes (to include selection process administrative guidelines/policy manuals and professional moderator services) for adult-use retail cannabis business permitting, cannabis testing business permitting, commercial cannabis business (cultivation, manufacture, distribution) permitting as may be set forth in any Change Order(s) mutually agreed to by and between the Parties pursuant to Section 3., subsection 3-22., of said Agreement.
- c. 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 3. - General Provisions**, subsection 3-1., Term of the Agreement is amended to read as follows:

3-1. - Term of the Agreement: The amended renewal term for the provision of consultant services under said Agreement shall be for a period of two and one-half (2 ½) years, effective July 1, 2018 through December 31, 2020.

3. Section 3. – **General Provisions**, subsection 3-22., Change Order Contingency is amended to read as follows:

3-22. – Change Order Contingency: From time-to-time, at CITY's option, CITY may request optional services of CONSULTANT, or CONSULTANT'S subcontractor(s), at mutually agreed upon scope and fees.

Change Order

- A. No extra work may be undertaken unless a written "Change Order" is first given by the Contract Officer or his/her designee, to CONSULTANT, incorporating therein any material adjustment in the contract and/or the time to perform this Agreement, which said adjustments are subject to the written approval of CONSULTANT.

- B. Representative or designees.

CITY will appoint a primary designated representative and alternate designated representative who will be in charge of administering the maintenance contract for CONSULTANT and have authority to enter into Change Orders pursuant to this Agreement. All notices regarding consulting services or requested changes in said agreement shall be sent to the representatives listed below:

CITY'S Primary Designated Representative/Contract Officer shall be:

Name Willard Holt
Title Treasury and Customer Services Manager
Address 20 Civic Center Plaza, Room 1105, Santa Ana, CA 92701
Phone # (714) 647-5456
Email wholt@santa-ana.org

CITY'S Alternate Designated Representative/Contract Officer Designee shall be:

Name Waldo Barela
Title Budget Supervisor
Address 20 Civic Center Plaza, Room 334, Santa Ana, CA 92701
Phone # (714) 647-5428
Email wbarela@santa-ana.org

4. Section 2. – **Compensation** is amended to read as follows:

- (a) Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBITS B and D, incorporated and included herein. In addition, a contract contingency amount shall be available over the two and one-half (2½) years Term of this First Amended Agreement to cover payment of additional consultant services as set forth above under Section 1. – Scope of Services. Contingency monies will be available as follows: a contingency of \$60,000 shall be available for the first year of the Amended Agreement's 2½ year term (FY 2018-19) with a further contingency of

\$25,000 available for the second year (FY 2019-20), and a final contingency of \$15,000 available for the final six months of that term (July 1, 2020 to December 31, 2020).

- (b) Fees paid for recovered sales tax and/or other associated recovered revenues shall not exceed 15% of the amount recovered. Such fees are not chargeable against contingency monies but are revenues directly payable from recovered sales tax. Payments made to MuniServices for recovered revenues will be recognized when the fees related to MuniServices auditing and reporting activities are incurred.
- (c) CITY will pay CONSULTANT as outlined in any Change Order(s) mutually agreed to by and between the Parties pursuant to Section 3, subsection 3-22., of said Agreement. Payments related to Change Orders affecting fees paid for recovered sales taxes and/or other associated revenues shall be directly payable from recovered sales tax and/or other associated recovered revenues. Stated fees for Sales/Use Tax Analysis & Reporting Service (STARS) which includes the Geographic Revenue Information Application system (GRIA) together with CPI adjustments to said stated fees as set forth in Exhibit D shall be directly payable from recovered sales tax monies.
- (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.

5. The effective date for the application of amendments to said Agreement relating to "Scope of Services", "Change Order Contingency", and "Compensation" shall be the date of City Council approval of this Amendment. The effective date for the application of the amendment of the "Term" of said Agreement shall be July, 1, 2018.

6. Where applicable, in accordance with state law, relevant references to the 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").

7. Where applicable, with respect to all processes engaged in by CONSULTANT, or CONSULTANT'S subcontractor(s), in connection with CDTFA and performed on behalf of CITY, or in connection with all services and products (electronic or otherwise) provided to CITY by CONSULTANT, or CONSULTANT'S subcontractor(s), involving CDTFA information or data received by CITY, CONSULTANT, or CONSULTANT'S subcontractor(s), shall be incorporated and conformed to all current and future changes promulgated by CDTFA. This requirement comprises all changes to sales and use tax permitization, including but not limited to: permit issuance, permit content, permit ID (numbering sequence), permit registration, permit registration reporting (AB 990) permit sales and use tax allocation, permit reporting (together with all respective permit classification and program coding including indicators or signifiers).

8. Except as hereinabove modified, the terms and conditions of said Agreement remain unchanged and in full effect.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment the date and year first above written.

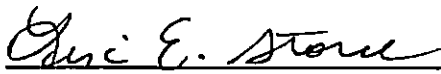
ATTEST:

CITY OF SANTA ANA

Maria D. Huizar
Clerk of the Council

Raul Godinez, II
City Manager

APPROVED AS TO FORM:
CITY ATTORNEY
Sonia R. Carvalho



Lisa E. Storck
Assistant City Attorney

RECOMMENDED FOR APPROVAL:

CONSULTANT

Francisco Gutierrez, Executive Director
Finance and Management Services Agency

Doug Jensen
SVP Client Services
MuniServices, LLC

Tax ID #

EXHIBIT A

SCOPE OF WORK Sales, Transactions And Use Tax Audit Services (SUTA) Services

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

1. Identify and correct the sales/transactions/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 tax to state and county pools (i.e. classifying sales tax as use tax) and thereby depriving the City of sales tax revenue.
3. Detect, document and correct sales/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/transactions/use tax generators.
5. Assist the City with strategies to preserve and even enhance sales and use tax revenue generated by existing businesses within the City.

MuniServices' proposed sales/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/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/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/transactions/use tax from the State Board of Equalization (BOE) 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 BOE audits taxpayers for sales/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 BOE 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) which is collected by the vendor who in turn remits it to the BOE, 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 BOE, 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 1% 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 BOE 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/transactions/use tax revenue for the City. MuniServices' QDR audits focus on those accounts where MuniServices observes a substantial decline in the sales/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 revenue for three quarters prior to the BOE 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 transaction tax, sales tax, and use tax records of the BOE 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. If the City adopts a new transaction tax or taxes after the effective date of this Agreement 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, transaction, and 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, 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

SUTA Detection and Documentation

MuniServices shall represent the City for purposes of examining BOE records pertaining to sales and 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/transactions/use tax permit records from the BOE.
3. Analyze sales tax distribution reports provided by the BOE for five or more of the most recent consecutive quarters.
4. Clean-up, standardize and computerize data from City's quarterly sales tax distribution reports provided by BOE for previous quarters, current quarter 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 and use tax 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 BOE'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 BOE 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/transactions/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 BOE 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 BOE 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 BOE 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 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 BOE to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/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 BOE 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, Transactions and Use Tax Audit Services (SUTA) Services

What the City will pay MuniServices

During the Term of this Agreement and any optional extension thereof or any amendment thereto MuniServices' compensation for the Sales and Use Tax Audit Service shall be a 15% contingency 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 BOE 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 BOE 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 BOE 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 work is not duplicated.

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 including any renewal term. 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:
 - 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 written 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 BOE 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 BOE 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 BOE during this completion period.

EXHIBIT C

SCOPE OF WORK

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

GEOGRAPHIC REVENUE INFORMATION APPLICATION (GRIA)

1. **Stars Reports.** Within thirty (30) days of receipt of monthly and/or quarterly sales 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 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 and use tax 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 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 Transaction 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 Business Operating Agreement Fees;
- Testing / Laboratory Facilities Business Operating Agreement Fees; and
- Commercial Cannabis Business Operating Agreement Fees (to include, but not limited to: Cultivation, Manufacture, and Distribution businesses).

Consultant and City agree that the GRIA data will not be fully available until January 1, 2019 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 State Board of Equalization 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

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 transaction tax, sales tax, and use tax records of the State Board of Equalization (BOE), including, but not limited to, any transaction and use tax that may become effective and be collected for City. Consultant is required to disclose information contained in, or derived from, those transaction, sales, and 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 Analysis & Reporting Service (STARS)

1. **Base Package Annual fee.** During the Term of this Agreement and any optional extension thereof or any amendment thereto City shall pay Consultant an annual fee of Ten Thousand Dollars (\$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 prior to 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-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-Riverside-Orange County 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 initial agreement is signed in April, year 1, (reference initial Agreement (#A-2016-290 signed October 4, 2016) the adjustment would not occur until January of year 3. The adjustments thereafter will be based on the CPI-WU 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%). The net annual fee including CPI adjustments shall not exceed Twelve Thousand Dollars (\$12,000) annually, or Six Thousand Dollars (\$6,000) on a sixth month basis.
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 including any renewal term. 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:

- Principal: \$200 per hour
- Client Services: \$175 per hour
- Information Technology (IT) support: \$150 per hour
- Operational Support:
 - Director or Manager: \$175 per hour
 - Senior Analyst: \$125 per hour
 - Analyst: \$100 per hour
 - Administrative: \$75 per hour

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