



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 6/14/2011

Report Type: Consent

Title: Agreement: Revenue Audit and Business Tax System (2/3 Vote Required)

Report ID: 2011-00541

Location: Citywide

Recommendation: Adopt 1) a Resolution suspending competitive bidding and authorizing the Director of Finance to execute a new revenue audit, recovery services, and business tax system agreement with MuniServices, LLC for a new three-year term, and 2) a Resolution designating MuniServices, LLC as the authorized City representative to examine sales and use tax records.

Contact: Brad Wasson, Revenue Manager (916) 808-5844, Finance Department

Presenter: Brad Wasson, Revenue Manager, (916) 808-5844, Finance Department,

Department: Finance

Division: Revenue Administration

Dept ID: 06001211

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Resolution
- 4-Resolution
- 5-Exhibit A Prof Svc Agreement

City Attorney Review

Approved as to Form
Larry Duran
6/2/2011 11:20:24 AM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
5/26/2011 10:21:55 AM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 6/1/2011 4:36:46 PM

Assistant City Manager: Patti Bisharat - 6/2/2011 9:46:51 AM

1 of 68



Description/Analysis

Issue: The current fiscal climate and financial condition of the City requires the Finance Department to ensure the continued and uninterrupted billing of business tax accounts and the uninterrupted audit of sales tax allocations to the City. Migrating to a new business tax billing system at this time would not only delay and interrupt the current pace of billing, but would also require the expenditure of funds not currently budgeted for the replacement of the existing business tax billing system, migration to that system, and staff training in order to implement the system.

In addition, delaying and postponing ongoing sales tax audits at this time, or transferring to a new consultant, would potentially interrupt revenues to the City. Therefore, staff does not believe that it is in the best interest of the City to change consultants at this time. We are recommending that competitive bidding be suspended and that the Finance Department be authorized to execute a new three-year agreement with MuniServices, LLC for various revenue audits, recovery services, and the provision and maintenance of the current business tax billing system, under the same terms and conditions as the current agreement.

Policy Considerations: The recommendation is consistent with Sacramento City Code section 3.56.230 (C), when, upon a two-thirds vote of the City Council, it is determined that it is in the best interests of the City to suspend competitive bidding. The collection and recovery of tax revenues due the City is consistent with the City Council's policy of collecting funds for General Fund operations in order to provide essential City services.

Environmental Considerations: Under the California Environmental Quality Act (CEQA) Guidelines, this action does not constitute a project, as defined in section 15378, and is therefore exempt from review.

Sustainability: None

Commission/Committee Action: None

Rationale for Recommendation: The primary reason for recommending that competitive bidding be suspended at this time is to ensure the continued timely billing of new and renewal business tax accounts and to avoid any delays and interruptions in the collection of business taxes, generating approximately \$7.5 million in General Fund revenues annually. Migrating to a new business tax billing system at this time would delay and interrupt the current pace of quarterly billing while the database is being transferred and integrated into another vendor's system and until City staff is fully trained in the functionality of a new system. In the past two years, staff have already been required to learn a number of new systems and processes and we currently do not have the staff time or resources available to dedicate to the transition and training that would be required with a new vendor for the business tax billing system, in addition to keeping pace with current workload.

Additionally, transferring responsibility for ongoing sales tax audits at this time could delay and postpone additional sales tax revenues due to the City from the discovery and notice to the Board of Equalization of misallocated sales and use taxes. Projected net new sales tax revenues to the City

over the next four quarters is approximately \$1.8 million, based on previous years audit results. Any potential delay or interruption in these ongoing audits resulting from a change of consultants at this time would more than likely result in a negative impact on revenue to the City. On July 25, 2006, Resolution No. 2006-545 designated MuniServices, LLC (fka MBIA MuniServices Company) as the authorized consultant to examine sales and use tax records maintained by the Board of Equalization on behalf of the City. It is also recommended that MuniServices, LLC again be designated as the authorized consultant to examine sales and use tax records for the duration of a new three-year agreement.

Financial Considerations: Approval of the new agreement with MuniServices, LLC will allow for uninterrupted existing and potential new revenues to the City. Reduced or delayed revenues to the City during the current fiscal climate would potentially disrupt and negatively impact cash flows to the City's General Fund.

It is anticipated that in three years, the fiscal climate and financial condition of the City will have stabilized, and a new RFP will be issued requesting these services for a five-year term.

MuniServices, LLC has agreed to offer the current terms, conditions, and pricing for the next three years under a new agreement, with a potential discount from the previous agreement pricing on the compliance auditing of transient occupancy taxes and property taxes if the City requests these specific services be initiated. Both of these audits are currently being considered by the Finance Department in order to ensure that the City is collecting all due revenues.

Fees for these services are to be paid on a contingency basis, as a percentage of new revenues recovered by the City due to the efforts of MuniServices, LLC, plus an annual fixed fee amount on certain services requested, as follows:

Sales and use tax audit services:	20% contingency
Sales and use tax information services:	\$18,815 annual fixed fee, with CPI adj
Business tax compliance services:	30% contingency
Business tax system (BizLINK):	\$30,000 annual fixed fee, with CPI adj, plus \$3,000 annual not-to-exceed additional user, transfer, and replacement fees
Utility user tax audit services:	25% contingency
Utility user tax revenue protection services:	\$36,000 annual fixed fee
Transient occupancy tax audit services:	\$83,000 not-to-exceed fixed fee
Transient occupancy tax seminar services:	\$4,000 not-to-exceed fixed fee
Property tax and tax increment audit services:	25% contingency

At this time, there is no budget available for replacement of the current business tax system. The cost for the current services will be covered under the Revenue Division operating budget in FY2011/12 through FY2013/14.

Emerging Small Business Development (ESBD): Not applicable.

Background:

The current agreement with MuniServices, LLC (No. 2006-0789) resulted from a Request for Proposals issued in May 2006, with proposals received from only two qualified firms capable of providing the full range of services requested. MuniServices, LLC was awarded the contract based on qualifications, experience, scope of services, and cost and has been providing these services to the City for approximately the past 20 years, after successfully bidding on each RFP issued every five years or so. During these years, MuniServices, LLC has provided the City with sales and use tax auditing, sales and use tax analysis and reporting, business tax compliance auditing, utility user tax compliance auditing and revenue protection services, and transient occupancy tax compliance auditing. In February 2009, MuniServices, LLC, also began providing the City with a proprietary business tax system (BizLINK) after the City's previous legacy system was discontinued. Implementing this system was an option available under the current agreement.

The current business tax system is fully operational and allows for the timely billing of business tax accounts on a quarterly basis. After initial problems with inaccurate account information, mainly due to implementation issues and staff assimilation of a new system, the database is now accurate and functional. The current system costs are paid for on an ongoing quarterly basis and are allocated for within the Finance Department's current budget. Migrating to another vendor system in the current environment would result in the interruption and disruption of a continuous stream of General Fund revenues (approximately \$7.5 million in FY10) and the expenditure of funds not currently budgeted for procurement and implementation of a new business tax system. Additionally, staff is presently fully trained in the operation and use of the current system. Implementing another vendor system at this time would potentially impact performance levels, as staff is already at or near capacity in terms of assimilating any new systems at this time. In the past two years, staff has been required to learn a new cashiering system, a new parking citation system, a parking garage permit system, and an online parking citation contest process.

The sales and use tax audit services provided by MuniServices, LLC are ongoing. These services detect and correct point of sale distribution and allocation errors, thereby generating new sales and use tax revenues which would not otherwise have been realized by the City. Specifically, these services include taxable nexus field audits, permit audits, deficiency assessment audits, accounts payable audits, and quarterly distribution report (QDR) audits. Misallocated Bradley-Burns sales tax revenue may be recovered for only three quarters prior to the State Board of Equalization (SBOE) being notified of the reporting error, and misallocated District sales tax revenue 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 revenues. These audits are conducted each and every quarter in order to minimize the potential of lost revenue to the City. Based on previous years audit results, projected net new sales tax revenue to the City over the next four quarters is approximately \$1.8 million. Any potential delay or interruption in these ongoing

audits would impact the projected net new revenue to the City, adding additional strain to budgets during the current fiscal climate. Changing consultants at this time would potentially cause delay or interruption of these audits during a transition period, which would require Council action to authorize a new consultant to examine SBOE records and for a new consultant to initiate and implement their audit schedule.



RESOLUTION NO.

Adopted by the Sacramento City Council

SUSPENDING COMPETITIVE BIDDING AND APPROVING THE PROPOSED THREE-YEAR AGREEMENT WITH MUNISERVICES, LLC TO PROVIDE REVENUE AUDITS, RECOVERY SERVICES, AND A BUSINESS TAX SYSTEM

BACKGROUND

- A. On July 25, 2006 the Finance Department informed the City Council that a Request for Proposals for revenue audit and revenue recovery services had been issued, and MuniServices, LLC (fka MBIA MuniServices Company) had been selected to provide those services for a five-year period.
- B. In February 2009, MuniServices, LLC began providing the City with a proprietary business tax system (BizLINK) as an option under the 2006 agreement.
- C. The Finance Department is requesting authorization to suspend competitive bidding and to enter into a new three-year agreement with MuniServices, LLC at the same terms, conditions, and pricing as under the agreement expiring July 31, 2011.
- D. In accordance with City Code Chapter 3.60, Section 170, the City Council may, by two-thirds vote, suspend competitive bidding for any contract in the best interests of the City. Suspending competitive bidding for these services at this time is in the best interests of the City, in order to avoid delays in tax collections and minimize any adverse impact to cash flows to the General Fund.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council hereby approves a three-year agreement with MuniServices, LLC for revenue audits, recovery services and a business tax system, attached hereto as Exhibit A.
- Section 2. The City Council hereby suspends competitive bidding in the best interest of the City and authorizes the City Manager or designee to execute the Agreement for Revenue Audit, Recovery Services, and Business Tax System.
- Section 3. Exhibit A, and all Exhibits attached thereto, are part of this resolution.

Table of Contents:

Exhibit A – Professional Services Agreement with MuniServices, LLC.



RESOLUTION NO.

Adopted by the Sacramento City Council

DESIGNATING A CITY CONSULTANT AS THE AUTHORIZED CITY REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS

BACKGROUND

- A. Pursuant to California Revenue and Taxation Code Sections 7200, et seq., and 7215, et seq., the City of Sacramento has adopted a sales, use, and transaction tax ordinance (or ordinances) which meet the requirements of those code sections; and
- B. Pursuant to California Revenue and Taxation Code Section 7056, the City of Sacramento, by resolution, may designate any officer, employee or any other person to examine all of the sales, transaction, and use tax records of the State Board of Equalization pertaining to sales and use taxes collected for the City; and
- C. The City of Sacramento has entered into an agreement for sales tax audit and information services with the firm of MuniServices, LLC, to designate MuniServices, LLC as the authorized Consultant to examine such tax records maintained by the Board on behalf of the City of Sacramento, and
- D. All legal prerequisites prior to the adoption of this Resolution have occurred.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. That the Revenue Manager, or other officer or employee of the City or any other person designated in writing by the Finance Director to the State Board of Equalization (hereafter referred to as Board), is hereby appointed to represent the City with authority to examine sales, transaction, and use tax records of the Board pertaining to sales, transaction, and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales, transaction, and use taxes by the Board pursuant to that contract.
- Section 2. That the Revenue Manager, or other officer or employee of the City or any other person designated in writing by the Finance Director to the Board, is hereby appointed to represent the City with authority to examine those sales, transaction, and use tax records of the Board, for purposes related to the governmental functions of the City.

- Section 3. In all respects as set forth above, the City Council of the City of Sacramento hereby certifies to the State Board of Equalization that MuniServices, LLC is the designated representative of the City of Sacramento to examine all of the sales, transaction, and use tax records of the Board pertaining to sales and use taxes collected by the Board on behalf of the City of Sacramento.
- Section 4. Pursuant to California Revenue and Taxation Section 7056(b), the City Council of the City of Sacramento certifies that MuniServices, LLC (the "Consultant") meets all of the following conditions:
- a. Consultant has an existing contract with the City to examine sales tax records;
 - b. Consultant is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information;
 - c. Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and
 - d. Consultant is prohibited from retaining the information contained in, or derived from, those sales tax records after the contract has expired.



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.

PROJECT #:
PROJECT NAME: Revenue Audit, Recovery Services, and Business Tax System
DEPARTMENT: Finance
DIVISION: Revenue

CITY OF SACRAMENTO

PROFESSIONAL SERVICES AGREEMENT *

THIS AGREEMENT is made at Sacramento, California, as of August 1, 2011, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("CITY"), and

MuniServices, LLC
7335 N. Palm Bluffs Avenue, Fresno, CA 93711
Ph 559-271-6800 / Fax 559-312-2852

("CONTRACTOR"), who agree as follows:

1. **Services.** Subject to the terms and conditions set forth in this Agreement, CONTRACTOR shall provide to CITY the services described in Exhibit A. CONTRACTOR shall provide said services at the time, place, and in the manner specified in Exhibit A. CONTRACTOR shall not be compensated for services outside the scope of Exhibit A unless prior to the commencement of such services: (a) CONTRACTOR notifies CITY and CITY agrees that such services are outside the scope of Exhibit A; (b) CONTRACTOR estimates the additional compensation required for these additional services; and (c) CITY, after notice, approves in writing a Supplemental Agreement specifying the additional services and amount of compensation therefor. CITY shall have no obligations whatsoever under this Agreement and/or any Supplemental Agreement, unless and until this Agreement or any Supplemental Agreement is approved by the Sacramento City Manager or the City Manager's authorized designee, or by the Sacramento City Council, as required by the Sacramento City Code.
2. **Payment.** CITY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to CONTRACTOR for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, CITY approves additional compensation for additional services. CONTRACTOR shall submit all billings for said services to CITY in the manner specified in Exhibit B, or, if not specified in Exhibit B, according to the usual and customary procedures and practices that CONTRACTOR uses for billing clients similar to CITY.
3. **Facilities and Equipment.** Except as set forth in Exhibit C, CONTRACTOR shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. CITY shall furnish to CONTRACTOR only the facilities and equipment listed in Exhibit C according to any terms and conditions set forth in Exhibit C.
4. **General Provisions.** The General Provisions set forth in Exhibit D, that include indemnity and insurance requirements, are part of this Agreement. In the event of any conflict between the General Provisions and any terms or conditions of any document prepared or provided by CONTRACTOR and made a part of this Agreement, including without limitation any document

* This form to be used for all professional services, except professional services related to a construction project and professional services performed by licensed architects, landscape architects or professional land surveyors or registered professional engineers.

relating to the scope of services or payment therefor, the General Provisions shall control over said terms or conditions.

5. **Non-Discrimination in Employee Benefits.** This Agreement is subject to the provisions of Sacramento City Code Chapter 3.54, Non-Discrimination in Employee Benefits by City Contractors. The requirements of Sacramento City Code Chapter 3.54 are summarized in Exhibit E. CONTRACTOR is required to sign the attached Declaration of Compliance (Equal Benefits Ordinance), to assure compliance with these requirements.
6. **Authority.** The person signing this Agreement for CONTRACTOR hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the performance of its obligations hereunder.
7. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: _____

Print name: _____

Title: _____

For: William H. Edgar, Interim City Manager

APPROVED TO AS FORM:



City Attorney

ATTEST:

City Clerk

Attachments

- Exhibit A - Scope of Service
- Exhibit B - Fee Schedule/Manner of Payment
- Exhibit C - Facilities/Equipment Provided
- Exhibit D - General Provisions
- Exhibit E - Non-Discrimination in Employee Benefits

CONTRACTOR:

MuniServices, LLC
NAME OF FIRM

13-3528885
Federal I.D. No.

455-32868
State I.D. No.

153042
City of Sacramento Business Op. Tax Cert. No.

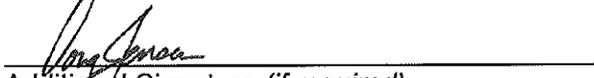
TYPE OF BUSINESS ENTITY (*check one*):

- Individual/Sole Proprietor
- Partnership
- Corporation (*may require 2 signatures*)
- Limited Liability Company
- Other (*please specify: _____*)



Signature of Authorized Person

Marc Herman, President
Print Name and Title



Additional Signature (*if required*)

Doug Jensen, SVP Client Services
Print Name and Title

**DECLARATION OF COMPLIANCE
Equal Benefits Ordinance**

Name of Contractor: _____ MuniServices, LLC _____

Address: ___ 7335 N. Palm Bluffs Avenue, Fresno, CA 93711 _____

The above named Contractor ("Contractor") hereby declares and agrees as follows:

1. Contractor has read and understands the Requirements of the Non-Discrimination In Employee Benefits Code (the "Requirements") attached hereto as Exhibit E.
2. As a condition of receiving this Agreement, Contractor agrees to fully comply with the Requirements, as well as any additional requirements that may be specified in the City of Sacramento's Non-Discrimination In Employee Benefits Code codified at Chapter 3.54 of the Sacramento City Code (the Ordinance).
3. Contractor understands, to the extent that such benefits are not preempted or prohibited by federal or state law, employee benefits covered by the Ordinance are any of the following:
 - a. Bereavement Leave
 - b. Disability, life, and other types of insurance
 - c. Family medical leave
 - d. Health benefits
 - e. Membership or membership discounts
 - f. Moving expenses
 - g. Pension and retirement benefits
 - h. Vacation
 - i. Travel benefits
 - j. Any other benefit offered to employees

Contractor agrees that if Contractor offers any of the above-listed employee benefits, Contractor will offer those benefits, without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouses and domestic partners of such employees.

4. Contractor understands that Contractor will not be considered to be discriminating in the provision or application of employee benefits under the following conditions or circumstances:
 - a. If the actual cost of providing a benefit to a domestic partner or spouse exceeds the cost of providing the same benefit to a spouse or domestic partner of an employee, Contractor will not be required to provide the benefit, nor shall it be deemed discriminatory, if Contractor requires the employee to pay the monetary difference in order to provide the benefit to the domestic partner or to the spouse.
 - b. If Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, if Contractor provides the employee with a cash equivalent Contractor will not be deemed to be discriminating in the application of that benefit.
 - c. If Contractor provides employee benefits neither to employee's spouses nor to employee's domestic partners.
 - d. If Contractor provides employee benefits to employees on a basis unrelated to marital or domestic partner status.
 - e. If Contractor submits written evidence of making reasonable efforts to end discrimination in employee benefits by implementing policies that will be enacted before the first effective date after the first open enrollment process following the date this Agreement is executed by the City of Sacramento ("City"). Contractor understands that any delay in the implementation of such

policies may not exceed one (1) year from the date this Agreement is executed by the City, and applies only to those employee benefits for which an open enrollment process is applicable.

- f. Until administrative steps can be taken to incorporate nondiscrimination in employee benefits. The time allotted for these administrative steps will apply only to those employee benefits for which administrative steps are necessary and may not exceed three (3) months from the date this Agreement is executed by the City.
 - g. Until the expiration of a current collective bargaining agreement(s) if employee benefits are governed by such collective bargaining agreement(s).
 - h. Contractor takes all reasonable measures to end discrimination in employee benefits by either requesting that the union(s) involved agree to reopen the agreement(s) in order for Contractor to take whatever steps are necessary to end discrimination in employee benefits or by ending discrimination in employee benefits without reopening the collective bargaining agreement(s).
 - i. In the event Contractor cannot end discrimination in employee benefits despite taking all reasonable measures to do so, Contractor provides a cash equivalent to eligible employees for whom employee benefits are not available. Unless otherwise authorized in writing by the City Manager, Contractor understands this cash equivalent must begin at the time the union(s) refuse to allow the collective bargaining agreement(s) to be reopened or not longer than three (3) months after the date this Agreement is executed by the City.
- 5. Contractor understands that failure to comply with the provisions of Section 4(a) through 4(i), above, will subject Contractor to possible suspension and/or termination of this Agreement for cause; repayment of any or all of the Agreement amount disbursed by the City; debarment for future agreements until all penalties and restitution have been paid in full and/or for up to two (2) years; and/or the imposition of a penalty, payable to the City, in the sum of \$50.00 for each employee, for each calendar day during which the employee was discriminated against in violation of the provisions of the Ordinance.
 - 6. Contractor understands and agrees to provide notice to each current employee and, within ten (10) days of hire, to each new employee, of their rights under the Ordinance. Contractor further agrees to maintain a copy of each such letter provided, in an appropriate file for inspection by authorized representatives of the City. Contractor also agrees to prominently display a poster informing each employee of these rights.
 - 7. Contractor understands that Contractor has the right to request a waiver of, or exemption from, the provisions of the Ordinance by submitting a written request to the City's Procurement Services Division prior to Agreement award, which request shall identify the provision(s) of the Ordinance authorizing such waiver or exemption and the factual basis for such waiver or exemption. The City shall determine in its sole discretion whether to approve any such request.
 - 8. Contractor agrees to defend, indemnify and hold harmless, the City, its officers and employees, against any claims, actions, damages, costs (including reasonable attorney fees), or other liabilities of any kind arising from any violation of the Requirements or of the Ordinance by Contractor.

The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that he or she is authorized to bind the Contractor to the provisions of this Declaration.



Signature of Authorized Representative

May 17, 2011

Date

Doug Jensen

Print Name
SVP Client Services

Title

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

SCOPE OF SERVICES

1. Representatives.

The CITY Representative for this Agreement is:

*Brad Wasson / Revenue Manager
City of Sacramento, Revenue Division, 915 "I" Street, Room 1201, Sacramento, CA 95814
916-808-5844 / FAX 916-808-5248 / bwasson@cityofsacramento.org*

All CONTRACTOR questions pertaining to this Agreement shall be referred to the CITY Representative or the Representative's designee.

The CONTRACTOR Representative for this Agreement is:

*Doug Jensen / Senior Vice President of Client Services
1400 K Street, Suite 301, Sacramento, CA 95814
Ph 800-800-8181 x 5012 / Fax 559-312-2920 / doug.jensen@muniservices.com*

All CITY questions pertaining to this Agreement shall be referred to the CONTRACTOR Representative. All correspondence to CONTRACTOR shall be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the CITY shall be addressed to the CITY Representative.

- 2. Professional Liability Insurance.** Professional Liability (Errors and Omissions) insurance is X is not [check one] required for this Agreement. If required, such coverage must be continued for at least 1 year(s) following the completion of all Services and Additional Services under this Agreement. (See Exhibit D, Section 11, for complete insurance requirements.)

3. Conflict of Interest Requirements.

- A. **Generally.** Under the California Political Reform Act, Government Code §§ 81000 et seq., designated employees of the CITY are required to comply with the CITY's Conflict of Interest Code. The term "designated employees" is a term of art and includes individuals who are working for contractors who are providing services or performing work for the CITY and who are considered to be "consultants" under the Political Reform Act. The term "consultant" generally includes individuals who make, or participate in making, governmental decisions or who serve in a staff capacity. Individuals who perform work that is solely clerical, ministerial, manual or secretarial are not "consultants."

The CITY's Conflict of Interest Code requires designated employees, including individuals who qualify as "consultants", to file the following statements of economic interests:

- (1) An "assuming office" statement of economic interests to be filed within 30 days after execution of the agreement between the City and the contractor;
- (2) Annual statements of economic interests while the agreement remains in effect, to be filed not later than April 30 of each year; and
- (3) A "leaving office" statement of economic interests to be filed within 30 days of completion of the contract.

The above statements of economic interests are public records subject to public disclosure under the California Public Records Act.

The CITY's Conflict of Interest Code also requires individuals who qualify as "consultants" under the Political Reform Act to comply with the conflict of interest provisions of the Political Reform Act, which generally prohibit individuals from making or participating in the making of decisions that will have a material financial effect on their economic interests.

- B. **Conflict of Interest Statements.** The individual(s) who will provide services or perform work pursuant to this Agreement are "consultants" within the meaning of the Political Reform Act and the CITY's Conflict of Interest Code: yes no *[check one]*

If "yes" is checked above, CONTRACTOR shall cause the following to occur within 30 days after execution of this Agreement:

- (1) Identify the individuals who will provide services or perform work under this Agreement as "consultants";
- (2) Cause these individuals to file with the CITY Representative the assuming office statements of economic interests required by the CITY's Conflict of Interest Code.

Thereafter, throughout the term of the Agreement, CONTRACTOR shall cause these individuals to file with the CITY Representative annual statements of economic interests, and "leaving office" statements of economic interests, as required by the CITY's Conflict of Interest Code. The CITY may withhold all or a portion of any payment due under this Agreement until all required statements are filed.

4. Scope of Services.

The services provided shall be as set forth in Attachment 1 to Exhibit A, attached hereto and incorporated herein.

- 5. Time of Performance.** The services described herein shall be provided for a three (3) year period, from August 1, 2011 through July 31, 2014, unless either party provides notice of its intention not to renew 15 days prior to the end of each one (1) year period.

**ATTACHMENT 1 TO EXHIBIT A
SCOPE OF SERVICES**

SALES AND USE TAX AUDIT (SUTA) ADDENDUM

OBJECTIVES AND METHODS

MuniServices, LLC ("MuniServices") sales and use tax audit service is designed to maximize the City's income - and minimize the cost of lost revenue - by detecting and documenting misallocations of local district tax (also known as Transactions & Use Tax), Bradley-Burns sales tax and local use tax activity within the statute of limitations on recoverability.

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

- Identify and correct the sales/use tax reporting errors of businesses that, based on the nexus of their activities, are not properly registered with the City.
- 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.
- Detect, document and correct sales/use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for the City.
- Ensure through comprehensive audit measures that the revenue information used for ongoing economic analysis includes all sales/use tax generators.
- 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/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 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 revenue. The result is new or 'found' revenue for the City.

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 from the State Board of Equalization (SBE) 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 State Board of Equalization audits taxpayers for sales/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 SBE 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 SBE, 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 SBE, 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 SBE 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 revenue for the City. MuniServices' QDR audits focus on those accounts where MuniServices observes a substantial decline in the sales/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 SBE 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.

SUTA DETECTION AND DOCUMENTATION

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

- Review applicable provisions of the City's municipal code and ordinance adopted by the City to determine applicability.
- Procure a computer tape of sales/use tax permit records from the State Board of Equalization (SBE).
- Analyze sales tax distribution reports provided by the SBE for five or more of the most recent consecutive quarters.
- Clean-up, standardize and computerize data from City's quarterly sales tax distribution reports provided by SBE for previous quarters, current quarter and each future quarter service is provided.
- 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.
- Clean, standardize and integrate, in address-order, each entity's business name, address and payment file information, to eliminate redundancies, using MuniServices' proprietary software.
- Physically canvas commercial/industrial area within the City's borders.
- Develop a target list of potential point of sale/use reporting errors/omissions based on:
 - 1) An electronic comparison of MuniServices' comprehensive inventory against the SBE's quarterly distributions for the City, and
 - 2) An analysis of each potentially misallocated account based on proprietary guidelines established by MuniServices.
- Meet with designated City official(s) to review service objectives and scope, MuniServices workplan schedule, public relations and logistical matters.
- 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.)
- Provide to the City and SBE 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 revenue which should be forthcoming to the City.
- MuniServices may also provide suggested language for letters to be sent to the taxpayers and/or SBE from the City (or from MuniServices on behalf of the City) urging cooperation in promptly correcting the distribution error.
- Respond to negative findings by SBE with timely reconfirmation documentation in order to preserve the City's original dates of knowledge.
- Receive and process registration control record information monthly.
- Receive and process sales tax distribution reports quarterly.

- Coordinate with the taxpayer and State Board of Equalization to make the necessary corrections and collect eligible back quarters amounts.
- Monitor and analyze the quarterly distribution reports with an audit focus on the following:
 - 1) 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.
 - 2) 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.
 - 3) Those accounts receiving deficiency assessments to ensure that the City receives its local allocation
- Identify opportunities for the City to recover local allocation on purchase transactions subject to use tax. MuniServices will prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

COROLLARY CONSULTING

Upon mutual agreement between MuniServices and the City as to the scope of services to be provided, MuniServices shall provide to City such additional consulting services as City may request. Consulting services otherwise included in this Addendum will not be subject to MuniServices' fees for Corollary Consulting as set forth below.

SUTA DETECTION TIMING CONSIDERATIONS

For each misallocated account detected, MuniServices will coordinate with the business and SBE to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/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 State Board of Equalization 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.

TIMING

MuniServices shall commence auditing the sales/use tax and preparing the sales tax Query System within 10 working days of receipt of a fully executed contract and Confidentiality Resolution designating MuniServices as the authorized City Consultant to examine sales and use tax records.

CONFIDENTIALITY PROVISIONS

MuniServices is authorized by this Agreement to examine district tax, sales tax and use tax records of the State Board of Equalization 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.

MuniServices is required to disclose information contained in, or derived from, those sales 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 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.

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS) ADDENDUM

OBJECTIVES AND METHODS

MuniServices' STARS Digest provides a summary that features a general analysis regarding statewide trends that may affect the City's sales tax plus a specific analysis of the City's sales tax composition, changes and performance. Report graphically illustrates the data and analysis presented in the Summary. Each MuniServices STARS Digest includes the Quarterly Management Summary. The MuniServices STARS Digest also includes specialized reports that provide analysis of the City's sales tax economic base and performance for the latest complete quarter and benchmark year.

TIMING & REPORTS

MuniServices shall:

- Provide the City with quarterly updated STARS Digests.
- Install the STARS Query System on a City designated PC
- Update quarterly the City's sales tax registration and allocation data from the State Board of Equalization (SBE) from MuniServices' proprietary STARS Query System on IBM compatible PCs with Microsoft Access export capacity. (note: STARS is provided in encrypted formats)
- Train authorized City staff in the use of the STARS Query System.

QUARTERLY STARS DIGEST

MuniServices will provide the City with quarterly updated bound STARS Digests including accounts from which the City receives sales tax revenue. The primary reports included in the STARS Digest are:

- **Allocation Summary** - Reconciles SBE advances, cleanup payments and pool allocations with budget projections to assist the City with revenue forecasting and receipt monitoring.
- **Cash Analysis** - Quarterly aberrations due to SBE audits, fund transfers, and other causes are also identified and analyzed for budget planning and revenue forecasting purposes.
- **Top 100 Five-Year** - Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- **Top 100 Detail** - Sales tax performance of the City's top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of City sales tax produced is also shown by each account.
- **Economic Category Performance** - An analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.
- **Significant Change Analysis** - A report reflecting magnitude of change, indicating which key businesses grew or declined, measured in absolute dollars and percentages.

- **Business Code Classification** - This report shows the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- **Historical Economic Composition** - Data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by each category and segment is also shown to indicate trends in sales tax composition as well as performance.
- **Geo-Area Reports** - Tracks sales tax performance within designated areas of the City (e.g., key shopping centers, business parks, and downtown /business districts,). Charts and printed reports are included for each geo-area.
- **Cross-Reference Reports** - These reports allow the user to look up any account shown in the STARS Digest by name, address or account number.

STARS QUERY SYSTEM

MuniServices shall install the STARS Query System (a software program) on a City designated, IBM-compatible PC. Each quarter, MuniServices shall provide the City with updated information from SBE on CD-ROM. The data shall be provided in an encrypted format allowing the City to export sales tax information from the Query System in an Access-compatible format.

- The Query System enables City staff to analyze the contribution of sales/use tax revenue from each taxpayer in the City on an individual, grouped or sorted-order basis by business name, business type, permit number, size ranking, street address, development, shopping center or other geographic area. Reports may be generated by any year (i.e., calendar, fiscal, benchmark) or for any particular quarter for all periods stored in the historical database.

The initial STARS Digest and Sales Tax Query System shall be delivered and installed within 45 working days following receipt of a fully executed contract, confidentiality resolution and the SBE sales tax registration and payment data. Subsequent quarterly Query System updates and STARS reports will be delivered to the City within 30 days following receipt of the quarterly distribution reports from the SBE.

LOCAL TAX COMPLIANCE ADDENDUM

PURPOSE & SCOPE

Upon written authorization for City to proceed, MuniServices' Local Tax Compliance ("LTC") service assists the City of Sacramento ("City") to realize revenue to which they may be entitled but may not be receiving from their local tax registry. MuniServices provides the detection, documentation and correction of errors and omissions causing deficiencies thereby producing new revenue that would not otherwise have been realized by the City. Moreover, our team works in full and collaborative partnership with City revenue staff to supplement and bolster the operation and procedures currently in place.

LTC works to inform local businesses of accurate compliance with the Local Tax ordinance in a way that minimizes for the City the burden of follow up. The business owner is educated on the requirement of the ordinance to prevent future misapplication.

Services in a full LTC program include:

SERVICE PROCEDURES

MuniServices' LTC program is conducted as follows:

- Meet with City staff to review service objectives and scope, procedures, entity relations and logistical matters; establish an appropriate liaison with City management and staff and logical checkpoints for measuring progress;

Discovery Services

Discovery Services are designed to identify entities subject to taxation by City which are not properly registered with City or otherwise not reporting taxes to City. In performing the Discovery Services, MuniServices shall:

- Establish a comprehensive inventory of the entities subject to taxation by City and the database elements needed to facilitate a comparative analysis with City's records of those entities that are properly registered;
- Compare MuniServices records with City records to identify potential non-reporting and non-registered entities subject to taxation;
- For each unregistered or non-reporting entity identified and confirmed, assist the entity, as necessary, to complete City's applicable registration form(s) and determine the amount of tax due for current and prior periods (plus applicable interest and penalties, where appropriate);
- Invoice entity on behalf of City for the amount of identified deficiencies, together with supporting documentation therefore, with payment to be remitted by each entity directly to the City or to MuniServices;
- Establish a call center open during normal business hours to assist entities regarding questions concerning application of City's taxes and entity's reporting and remittance requirements;
- Educate entity regarding City's reporting requirements to prevent recurring deficiencies in future years.

Audit Services

Audit Services are designed to identify entities subject to taxation by City which are not properly reporting the full amount of tax to which they are subject. Audit Services identify entities who are potentially underreporting applicable taxes and MuniServices reviews the entity's records to ensure compliance with City's taxes. In performing the Audit Services, MuniServices shall:

- Establish a comprehensive inventory of the registered entities subject to taxation by City and the database elements needed to facilitate an analysis of records of those entity's current and prior years tax remittance;
- Compare MuniServices records with City records to identify potential under-reporting entities subject to taxation;
- Meet with designated City staff to review and discuss potential audit candidates and mutually agree which entities will be subject to review;
- For potential under-reporting entities identified, obtain authorization from City to conduct a review of the entities' records and determine the amount of tax due for current and prior periods (plus applicable interest and penalties, where appropriate);
- Submit audit summaries (also referred to as "Deficiency Notice") to City to permit City to determine the amount of a deficiency owed, if any;
- Invoice entity on behalf of City for the amount of identified deficiencies, together with supporting documentation therefore, with payment to be remitted by each entity to City or to MuniServices;
- Educate entity regarding City's reporting requirements to prevent recurring deficiencies in future years;

TIMING

MuniServices shall commence project planning within 10 working days following authorization.

UTILITY USERS TAX/FRANCHISE COMPLIANCE AND REVENUE PROTECTION PROGRAM

Upon written authorization to proceed, this AGREEMENT is made by and between the City of Sacramento, a municipal corporation (hereinafter referred to as "City") and MuniServices, LLC, a Delaware limited liability company (hereinafter referred to as "MuniServices"). MuniServices agrees to provide the City with certain professional services in furtherance of a comprehensive utility users tax/franchise compliance and revenue protection program (hereinafter "PROGRAM"), with broad participation by California public agencies, that is designed to preserve, protect, and enhance its utility users tax (UUT) and utility franchise revenues.

1. PROGRAM OBJECTIVES

MuniServices' auditing, geocoding, information, and associated services and skills, in conjunction with the legal and "protective" services of the City's outside counsel, Donald H. Maynor, A Professional Law Corporation (LAW FIRM), will be used to establish and implement a PROGRAM that will allow participating California public agencies to preserve, protect and enhance their UUT and utility franchise revenues through a combination of auditing, geocoding, tax application compliance, business detection, ordinance update, legislative monitoring, technology update, and other essential compliance and protective services. An effective compliance PROGRAM will assist the City, and other participating public agencies, in identifying and correcting errors/omissions causing revenue deficiencies, and thereby produce new or previously unrealized revenue for such participants. The PROGRAM's tax preservation services will protect the City's existing UUT revenues from erosion due to new legislation, new technologies, outdated ordinance language and inaccurate information. By offering these essential services through a comprehensive PROGRAM, with widespread participation, there are the additional benefits of: i) achieving lower individual costs for such joint activities; and, ii) developing consensus-based decisions regarding ordinance interpretations and tax implementation that utility industries require of California public agencies.

2. FIXED FEE SERVICES

A. Compliance Review Services

At any time during the term of this AGREEMENT, with the prior consent of the City where specifically indicated, MuniServices may perform compliance review activity on behalf of the City in any of the following areas:

1. **UUT Tax Application and Franchise Fee Review**: MuniServices will perform compliance reviews of major utility providers, with a focus on common client issues, to assure that the UUT is being properly applied to taxable services and charges, and that the franchise fee formula is being properly applied to the revenue base (as provided in standard franchise agreements). MuniServices will use the legal expertise of LAW FIRM on matters requiring legal analysis or an interpretation of ordinances, standard utility franchises, laws, and IRS letter rulings, which will be coordinated with the City Attorney.
2. **Geocode Information and Review**: MuniServices will develop and maintain a proprietary address range database to assure accurate address range information regarding the City's boundaries. Such databases will reflect the latest available LAFCO information regarding City boundary changes due to annexations or other municipal reorganizations. Upon request, this service will be made available to any utility service provider that serves customers within the City.

3. **UUT Business Detection**: MuniServices will perform periodic compliance reviews of major utility providers and utilize other detection tools to verify whether such companies are doing business within the City, and then identify such possible non-complying companies to the City's staff for enforcement actions. MuniServices will assist the City in developing compliance correspondence and enforcement procedures.
4. **UUT Payment Calculations and Deviations**: If the City provides MuniServices with regular and accurate UUT payment history (i.e., copies of all UUT remittances), MuniServices will identify to the City's staff possible gaps in payments, calculation mistakes, and other payment errors. MuniServices will assist the City in developing compliance correspondence and enforcement procedures. On request, MuniServices will provide the City, on a semi-annual basis, with a spreadsheet reflecting the City's UUT payments (based on remittance data provided by the City to MuniServices).

B. Revenue Protection Services

MuniServices will work cooperatively with LAW FIRM in providing the following revenue protection services designed to protect the City's existing and future UUT and utility franchise revenues:

1. Ordinance Update and Legislative/Regulatory Review Services

- a. **Ordinance/Franchise and Technology Update**. Provide a comprehensive review and update of the City's existing UUT ordinance. Thereafter, provide periodic reviews and recommended updates to the UUT ordinance, administrative rulings and standard utility franchise agreements, to address new issues that may arise because of deregulation, litigation, changes in laws or regulations, the unbundling of traditional utility services, or the introduction of new technologies to provide utility services. Such recommendations will clarify or add procedural protections to the existing ordinance, and should not require a Proposition 218 election approval.
- b. **State and Federal Legislation**. Monitor proposed state and federal legislation to identify issues affecting the City's UUT or utility franchise revenues, and make appropriate recommendations to the City, the League of California Cities, the National League of Cities and other lobbyists of California public agencies.

- c. **Regulatory Agencies.** Monitor proceedings at the various regulatory proceedings (e.g., California Public Utilities Commission, California Energy Commission, Federal Commerce Commission, Federal Energy Regulatory Commission) that affect the deregulation of the various utilities and make appropriate recommendations to the City.
- d. **Information Services.** Provide the City with periodic newsletters, special communications, and legislative bulletins. LAW FIRM may also provide instruction to the City's staff through workshops and seminars on such subjects as industry deregulation, new technologies, complying with new utility-related legislation, and other timely subjects.

2. Statutory Compliance and Consulting Services

- a. **Publication of Ordinance Requirements.** Prepare and maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the uutinfo.org website, and otherwise assist the City in complying with Public Utilities Code § 495.6.
- b. **Web-Based Data Links.** Prepare and maintain on the uutinfo.org website (and provide a link to the City's web page, if desired) the City's UUT ordinance and administrative rules and rulings, frequently asked questions, e-mail inquiry feature, and model forms for exemption applications, UUT remittances, information requests, and other tax compliance documents.
- c. **Access to Client-Only Webpage.** Provide the City's staff (with UUT responsibilities) access to the client-only features of the utlaw.com webpage and periodic newsletters, including legislative tracking, legal memos, breaking news, special utility issue features (e.g., new technologies), and practice hints.
- d. **Access to Information.** Assist the City's staff in obtaining SB 278 lists, tax compliance information, exemption lists of utility service providers, and in determining the exempt status of utility customers pursuant to the exemption provisions of the City's UUT ordinance or federal excise tax law relating to telecommunications.
- e. **Revenue Forecasts.** Provide staff with revenue forecasts based on industry trends, historical trends, and other relevant factors.

3. Assistance to City's Internal UUT Staff

- a. **Assist City with Utility Users Tax Technical Task Force Issues.** Assist the City with analysis of UUT TTF issues and recommend appropriate responses. Bring important UUT issues to the attention of the UUT TTF, and recommend appropriate action consistent with the City's interests.

- b. **Timely Response to Tax Application Inquiries.** Provide legal and technical assistance to existing City staff and the City Attorney's office, and provide timely analysis and draft responses to tax application inquiries from taxpayers or tax-collecting entities (e.g., utility providers, hotels, businesses) using Web-based interactive technology.
- c. **Enforcement Assistance.** Provide the City's staff and the City Attorney's office with: i) legal advice on specific issues that arise in the enforcement of the tax ordinance (e.g., nexus issues and questions from taxpayers or tax collectors); and, ii) compliance correspondence and legal notices as required by ordinance and due process.
- d. **Audit Assistance.** Assist the City's staff and the City Attorney's office in, i) gaining access to audit-related information under existing legal authorities; ii) addressing legal issues that arise in the course of an audit; iii) providing exemption analysis; and, iv) reviewing and developing legal measures to improve existing or proposed tax compliance programs, including tax amnesty programs.
- e. **UUT Exemption Review.** Review for accuracy the gas and electric exemption lists and telecommunication exemption certificates for non-residential customers, as provided by the City, and identify possible errors to the City's staff.

C. MuniServices Does Not Provide Legal Services.

It is agreed and understood MuniServices will provide no legal services that may be required under any of the PROGRAM activities described in this AGREEMENT, but rather LAW FIRM will provide such legal services by separate agreement with the City. It is also acknowledged that in providing such legal services, LAW FIRM's client will be the City, and not MuniServices.

3. CITY-SPECIFIC AUDITS WITH PERFORMANCE-BASED FEE

A. Scope of City-Specific Audits

At any time during the term of this AGREEMENT, with the prior mutual consent of the City and MuniServices, MuniServices may perform a City-specific audit of a utility franchise or UUT payments from a specific utility, when the audit intends to focus on City-specific issues.

B. MuniServices' Responsibilities for City-Specific Activities

- 1. **Work Plan Approval for City-Specific Activities.** MuniServices will submit to the City's staff a proposed Work Plan for review and approval that will serve as the basis for City-specific compliance activities (e.g., CATV UUT or franchise review, gas or electric franchise review, or payment deviation from a specific utility).

2. **City Approval of Discovery Actions.** For City-specific activities, MuniServices will receive prior authorization from the City's staff to obtain and examine utility and customer records (hard copy and data format) necessary to assure compliance with the City's UUT ordinance through the use of administrative subpoenas, nondisclosure agreements, and other procedures required by the utility service provider as a condition of providing access to confidential customer information.
3. **MuniServices to Comply with Local Laws.** In performing the compliance review services described in this subsection, MuniServices agrees to abide by the provisions of the City's UUT ordinance, any administrative rules the City may adopt relating to such ordinance, and the confidentiality requirements of state law (Revenue and Taxation Code Section 7284.6-.7). Throughout the above process, MuniServices shall be available to meet with the City, utility service providers, or their customers to review any MuniServices findings or recommendations arising out of its compliance review activities for the City.

4. CITY'S RESPONSIBILITIES

To facilitate and maximize the effectiveness of the above compliance review activities, the City shall diligently assist MuniServices by performing the following:

A. Necessary Information.

The City will provide MuniServices, on a timely basis, with information necessary to conduct its compliance review activities including but not limited to: monthly UUT payment histories, exemption lists, and SB 278 gas and electric lists (including names of customers refusing to pay surcharges), and certified copies of the UUT ordinance and any subsequent amendments.

B. Letter of Authorization.

The City will provide a letter of authorization identifying MuniServices as an authorized agent of the City to perform utility users tax compliance audits, to receive and examine appropriate utility and customer records (hard copy and data format) necessary to assure UUT tax compliance, and to execute necessary nondisclosure agreements approved by the City.

C. Legal Interpretations of Ordinance.

Upon request, the City will provide MuniServices with appropriate legal and administrative interpretations of its UUT ordinance. It is agreed and understood that the City will retain the exclusive authority and responsibility to administer, interpret, and enforce its UUT ordinance, recognizing that the role of MuniServices and LAW FIRM is limited to employing their unique expertise and proprietary tools for: i) detecting and identifying errors/omissions by utility service providers or utility users in the application, calculation, collection, and/or remittal of UUT; and, ii) providing the City with technical assistance, without assuming or being delegated the authority or responsibility of the City to administer, interpret, and enforce its UUT ordinance and standard utility franchise agreements.

5. TERMINATION OF UTILITY USERS TAX / FRANCHISE COMPLIANCE AND REVENUE PROTECTION SERVICES

Either the City or MuniServices may terminate this Utility Users Tax / Franchise Compliance and Revenue Protection Services, by thirty (30) days prior written notice as provided in this Section. Upon termination by either party of the AGREEMENT as provided herein, MuniServices shall be entitled to retain any fees it may have received from the City pursuant to Attachment 1 to Exhibit B. In addition, MuniServices shall be entitled to payment according to the terms of Attachment 1 to Exhibit B, Utility Users Tax Section A(1), below, for all additional revenues, including interest and penalties, that MuniServices is able to reasonably substantiate resulted from its compliance review activities. Within thirty (30) days following termination, MuniServices shall provide the City with a list of detections of non-compliance resulting from the compliance review activities of MuniServices. The City shall, in good faith, diligently seek to: i) correct such detections of non-compliance made by MuniServices prior to the date of termination; and, ii) collect the additional revenues that are due the City and MuniServices for past periods and for the twelve quarters going forward following the correction, even though the date of actual correction may occur after the termination date. MuniServices shall assist the City in this correction/collection effort, if so requested by the City.

TRANSIENT OCCUPANCY TAX (TOT) ANALYSIS & COMPLIANCE PROGRAM

MuniServices will not begin its TOT service until MuniServices receives written authorization to proceed. MuniServices' TOT Analysis and Compliance Program ("Compliance Program") assists the City of Sacramento ("City") to realize TOT revenue to which it is entitled and educates collectors and remitters of TOT to assist in future compliance with the City's ordinances.

1. **The Compliance Program.** After MuniServices receives the lodging provider return information from the City for the most recent forty-eight (48) months or the period covered by the applicable statute of limitation, whichever is shorter, MuniServices will provide its Compliance Program as a single service consisting of the following two-phase process.

1.1 **Analysis & Discovery—Phase 1.** During this phase, MuniServices will:

- a. Perform discovery services designed to identify and locate lodging providers not properly registered with the City and not appearing on the City rolls as TOT remitters;
- b. Analyze lodging provider return information from the most recent 48 months or the period covered by the applicable statute of limitation, whichever is shorter, in order to identify unusual or suspicious reporting and/or activities that warrant further review;
- c. Conduct unobtrusive collection of information on each property, including number of rooms, occupancy rate, property's condition, business dynamics;
- d. Provide a detailed analysis report to the City identifying lodging providers who might require additional investigation or review to determine their compliance with the City's TOT ordinance;
- e. Coordinate with designated City official(s) as necessary to review the analysis report;
- f. Develop with the designated City staff a list of lodging providers to be subject to a compliance review of lodging and tax records; and
- g. During the term of this Addendum, provide up to ten (10) hours of additional consulting time to assist the City in evaluating or implementing any of the proposed actions suggested by the above report.

1.2 **Compliance Review—Phase 2.** During this phase, MuniServices will conduct a compliance review consisting of some or all of the following procedures:

- a. Provide City staff with a detailed list of all records required to be made available by lodging providers for the reviews, together with a draft engagement announcement letter to be sent to each lodging provider;
- b. Examine records pertaining to TOT for each lodging provider selected for a compliance review.
- c. Verify accuracy of filed TOT returns with daily and monthly activity summaries;
- d. Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries;
- e. If MuniServices believes such a review is necessary, review secondary and tertiary documentation such as bank statements to verify that deposits reconcile with the reported revenue on the TOT returns or other tax filings;
- f. Review exempted revenue for proper supporting documentation;

- g. Submit to designated City staff a compliance review report that includes:
- MuniServices' review findings;
 - for each error/omission identified and confirmed, accompanying documentation that MuniServices believes is necessary to facilitate recovery of revenue due from lodging providers for prior periods ;
 - draft notices of deficiency determination, commendation and warning letters as applicable; and recommendations; ;
- h. Coordinate with designated City official(s) as necessary to review compliance review report;
- i. Provide assistance to City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination; and
- j. Prepare and document any changes to the compliance review findings and provide revised tax, interest or penalty amounts due the City.

1.3 Term. This addendum automatically terminates 1 year after the date of the last signature on this Addendum. Notwithstanding termination of this Agreement, City shall be obligated to pay MuniServices for services performed through the effective date of termination for which MuniServices has not been previously paid.

2. Data. City shall provide copies of returns submitted by all domiciled lodging providers for the most recent forty-eight (48) months or the period covered by the applicable statute of limitation, whichever is shorter, to MuniServices prior to the start of phase 1. In the alternative, if the City has the full return data digitized, submitting such in electronic format would be preferable.

PROPERTY TAX ADDENDUM

MuniServices will not begin its Property Tax Compliance Service until MuniServices receives written authorization to proceed. Once written authorization to proceed is received, MuniServices shall provide to the City of Sacramento and Sacramento Housing and Redevelopment Agency (City/RDA), MuniServices' Property Tax Compliance Services which consists of Discovery, Audit and Recovery Services.

OBJECTIVES AND METHODS

MuniServices' property tax audit assists City/RDA in recovering all of the revenue to which it is entitled from its Property Tax and RDA Tax Increment. Administrative errors and omissions combined with general compliance problems are inevitable given the non-standard, complex nature of state and local property taxes. Error rates rise with respect to property tax applicability, rates, exceptions, exemptions, quirks and other inconsistencies.

Because there are time limitations on the City's ability to recover misallocated revenue, prompt correction of these errors and omissions is essential to maximizing revenue potential.

The following steps are taken in conducting MuniServices' Property Tax Audit:

- o Contact City/RDA designated staff to review service objectives, scope, workplan schedule, public relations and logistical matters. MuniServices will also establish an appropriate liaison with the City/RDA's coordinator and logical checkpoints for progress reviews.
- o Represent the City/RDA for purposes of examining records pertaining to property tax and RDA tax increment to identify and confirm any errors/omissions that are resulting in deficient payment of tax revenues to the City/RDA.
- o For each error/omission identified and confirmed, prepare documentation to substantiate and facilitate recovery of revenue due from prior periods plus applicable interest and penalties (collectively "Misallocations").
- o Meet with designated CityRDA official(s) as necessary to review our findings and recommendations.
- o Prepare and forward to the appropriate parties requests for corrective action and revenue recovery for Misallocations. The date appropriate parties receive and acknowledge these requests is the Date of Knowledge.
- o Provide additional assistance as necessary to support the City/RDA in recovering and preventing tax allocation errors/omissions.

From the Date of Knowledge, the County Assessor's office will review the identified Misallocations, and for those Misallocations for which a correction is required, an Assessor's Roll Correction (ARC) will be processed by the County correcting those Misallocations, typically triggering a reallocation. The Roll Year in which the assessments first appear corrected is the Date of Correction. Corrected assessments result in proper allocations in subsequent Roll Years ("Corrected Allocations").

Specifically, MuniServices shall:

- o Establish a comprehensive inventory of every parcel located within the City and within the RDA project(s), including the database elements needed to facilitate a comparison analysis with County secured and unsecured taxable values.
- o Conduct an audit of the City/RDA local secured and unsecured valuations, on a parcel-by-parcel basis to determine tax rate area (TRA) miscoding errors and omissions.

TIMING AND REPORTING

MuniServices shall commence the revenue enhancement audits and annual report services within 10 working days of authorization (unless instructed otherwise by the City/RDA) with the objective of delivering the initial audit reports within 90 to 120 working days. Thereafter, MuniServices shall provide the City with audit progress reports to include, but not be limited to, the following:

- o Actual revenue produced for the City/RDA by MuniServices' service on an annual and cumulative basis.
- o Projected revenue forthcoming to the City/RDA as a result of MuniServices' audit service, specified according to source, timing and one-time payment versus ongoing.
- o Listing of all errors/omissions detected for the City/RDA including, for each, the account number, correction status, payment amount received by the City/RDA, period to which payment is related and payment type (e.g. reallocation, deficiency assessment, etc.).
- o Status of the work including copies of reports provided by the County addressing each reporting error/omission individually, the Incorrect Parcel Number, Correct Parcel Number, Assessee, Correct TRA assignment, Business ID, Address, Secured and Unsecured Valuation, Exemptions, Net Total Valuation of misallocated assessments.

Pursuant to California Revenue and Taxation Section 7056(b), the City Council of the City of Sacramento, by Resolution, certifies that MuniServices, LLC (the "Consultant") meets all of the following conditions:

- a. Consultant has an existing contract with the City to examine sales tax records;
- b. Consultant is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the City who is authorized by resolution to examine the information;
- c. Consultant is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and
- d. Consultant is prohibited from retaining the information contained in, or derived from, those sales tax records after the contract has expired.

EXHIBIT B

PROFESSIONAL SERVICES AGREEMENT

FEE SCHEDULE/MANNER OF PAYMENT

1. **CONTRACTOR's Compensation.** The total of all fees paid to the CONTRACTOR for the performance of all services set forth in Exhibit A, including normal revisions (hereafter the "Services"), and for all authorized Reimbursable Expenses, shall not exceed the contingent percentages established in Attachment 1 to Exhibit B for the sales and use tax audit services (SUTA), utility users tax/franchise compliance program (UUT), business operations tax – local tax compliance (LTC), and property tax and tax increment audit services (PTX). In addition, as specified in Attachment 1 to Exhibit B, the fixed price portion of the sales and use tax information services (STARS) shall not exceed \$26,000 per year, the utility users tax revenue protection compliance program shall not exceed \$36,000 per year, the BizLINK annual services shall not exceed \$30,000 per year, and the BizLINK additional user, transfer, and replacement fees shall not exceed \$9,000 per year. Additionally, if requested the fixed price portion of the transient occupancy tax compliance program (TOT) shall not exceed \$83,000 including out of pocket expenses and travel cost, and the optional TOT seminar service shall not exceed \$4,000 including out of pocket expenses and travel costs.

2. **Billable Rates.** CONTRACTOR shall be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in Attachment 1 to Exhibit B, attached hereto and incorporated herein

3. **CONTRACTOR's Reimbursable Expenses.** Reimbursable Expenses shall be limited to actual expenditures of CONTRACTOR for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by CITY.

4. **Payments to CONTRACTOR.**
 - A. Payments to CONTRACTOR shall be made within a reasonable time after receipt of CONTRACTOR's invoice, said payments to be made in proportion to services performed or as otherwise specified in Attachment 1 to Exhibit B. CONTRACTOR may request payment on a monthly basis. CONTRACTOR shall be responsible for the cost of supplying all documentation necessary to verify the monthly billings to the satisfaction of CITY.

 - B. All invoices submitted by CONTRACTOR shall contain the following information:
 - (1) Job Name
 - (2) Description of services billed under this invoice, and overall status of project
 - (3) Date of Invoice Issuance
 - (4) Sequential Invoice Number
 - (5) CITY's Purchase Order Number
 - (6) Total Contract Amount
 - (7) Amount of this Invoice (Itemize all Reimbursable Expenses)
 - (8) Total Billed to Date
 - (9) Total Remaining on Contract

(10) Updated project schedule. This shall identify those steps that shall be taken to bring the project back on schedule if it is behind schedule.

C. Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to CONTRACTOR for correction. CITY shall not be responsible for delays in payment to CONTRACTOR resulting from CONTRACTOR's failure to comply with the invoice format described below.

D. Requests for payment shall be sent to:

*City of Sacramento Revenue Division
915 "I" Street, Room 1201, Sacramento, CA 95814
916-808-5724 / FAX 916-808-5248
Attn: Brad Wasson, Revenue Manager*

5. **Additional Services.** Additional Services are those services related to the scope of services of CONTRACTOR set forth in Exhibit A but not anticipated at the time of execution of this Agreement. Additional Services shall be provided only when a Supplemental Agreement authorizing such Additional Services is approved by CITY in accordance with CITY's Supplemental Agreement procedures. CITY reserves the right to perform any Additional Services with its own staff or to retain other contractors to perform said Additional Services.

6. **Accounting Records of CONTRACTOR.** During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, CONTRACTOR shall maintain all accounting and financial records related to this Agreement, including, but not limited to, records of CONTRACTOR's costs for all Services and Additional Services performed under this Agreement and records of CONTRACTOR's Reimbursable Expenses, in accordance with generally accepted accounting practices, and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

7. **Taxes.** CONTRACTOR shall pay, when and as due, any and all taxes incurred as a result of CONTRACTOR's compensation hereunder, including estimated taxes, and shall provide CITY with proof of such payment upon request. CONTRACTOR hereby agrees to indemnify CITY for any claims, losses, costs, fees, liabilities, damages or injuries suffered by CITY arising out of CONTRACTOR's breach of this Section 7.

ATTACHMENT 1 TO EXHIBIT B

COMPENSATION

SALES AND USE TAX (SUTA) COMPENSATION

MuniServices' compensation for the Sales and Use Tax Audit Service is a 20% contingency fee. This fee applies to revenue received for all eligible quarters prior to the quarter in which the Date of Correction falls, back to and including the three quarters prior to the Date of Knowledge quarter, and for four quarters beginning with the quarter in which the Date of Correction falls. As used herein, the Date of Knowledge is the quarter during which MuniServices notifies the SBE 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 SBE 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 in which the misallocation actually occurred.

City Responsibilities

MuniServices' services performed hereunder may result in corrections of misallocations after cessation of services by MuniServices for City. Therefore, City agrees that with regards to misallocations identified to the State Board of Equalization whose Date of Knowledge occurred during MuniServices' performance of services for City, that City's obligation to pay MuniServices in accordance with the above compensation language shall survive expiration or termination of this Agreement for any reason.

In the event that City identifies, documents, and notifies the State Board of Equalization of a reporting error or misallocation as those terms are used herein, City agrees to notify MuniServices of City's discovery no later than ten (10) days after the Date of Knowledge. If City fails to so notify MuniServices and MuniServices later detects, documents, and reports the misallocation or reporting error to the State Board of Equalization, or if MuniServices has established a Date of Knowledge with the State Board of Equalization prior to notification to the Board by City, then MuniServices shall be entitled to compensation for the affected account in accordance with this Agreement.

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS) COMPENSATION

COST PROPOSAL

MuniServices' compensation for Sales and Use Tax Information Services (STARS) shall be \$18,815.24 annual fixed fee, to be paid in quarterly installments of \$4,703.81. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The adjustments are based on the CPI-WU from the last month of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).

Not-to-Exceed (NTE) amount for SUTA/STARS

Total amount of fees paid to MuniServices for SUTA service, including all authorized reimbursable expenses, shall not exceed the contingency percentages as set forth above in SUTA compensation section. Total amount fees paid for STARS service shall not exceed \$62,445 for the 3-year period.

BUSINESS OCCUPATION TAX / LOCAL TAX COMPLIANCE (LTC) COMPENSATION

MuniServices' compensation for the LTC service shall be 30% contingency fee. The 30% contingency fee applies to revenue received by the City as a result of MuniServices detecting and documenting the error(s)/omission(s) causing the deficiencies resulting in additional revenue realized by the City for the current tax year, the following tax year and any applicable prior periods as a result of MuniServices' Local Tax Compliance Service.

At the request of the City, as part of the LTC program, MuniServices will provide BizLINK™ at no charge for one year for up to 5 users. Additionally, MuniServices shall waive the setup fee up to \$20,000 value at MuniServices' \$150 standard hourly rate. Based on prior experience, MuniServices estimates that the total setup fee will be under \$20,000. This fee estimate is based on the anticipated cooperation from the City's personnel and the assumption that unexpected circumstances will not be encountered during the setup. If unexpected circumstances, such as requests by the City to modify the core functionality of the BizLINK™ system, arise that would cause the total setup fee to exceed \$20,000, MuniServices will bill the City for excess hours at the standard hourly rate of \$150 per hour to complete the setup.

After the first year, MuniServices' compensation for BizLINK™ shall be set forth below under the BizLINK™ compensation section.

City Obligations

City agrees to provide an electronic copy of City's License Registration File and License Payment History file to MuniServices, together with any other information necessary for MuniServices to compute MuniServices' billing for services, in electronic format, to MuniServices on no less than a quarterly basis during the term of the Agreement and thereafter for so long as MuniServices' right to invoice for services rendered continues. City agrees to use reasonable and diligent efforts to collect, or to assist MuniServices in the collection of, deficiencies identified by MuniServices pursuant to this Agreement. City agrees to notify MuniServices within 10 days following receipt by City of payments resulting from deficiencies identified by MuniServices pursuant to this Agreement. MuniServices shall invoice City for the contingency fee on no less frequently than a quarterly basis, based on revenue actually received by City from deficiencies identified by MuniServices. Because MuniServices' LTC Service may result in collection of deficiencies after termination of the Agreement, City's obligation to collect fees and notify MuniServices, and MuniServices' right to continue to receive contingency fees, shall survive termination of this Addendum or the Agreement for any reason.

City shall have the right, at City's option, to elect not to proceed with recovery of any identified deficiencies. Deficiencies which are uncollectable due to insolvency or dissolution of the entity liable, or for deficiencies which are otherwise incapable of collection (e.g. statute of limitations expiration or other legal defense) shall not be considered an "election" by the City for the purposes of this Agreement. For deficiencies otherwise collectable but for which City elects not to collect, City shall notify MuniServices of its election not to pursue ("waive") collection of said deficiencies. MuniServices shall be entitled to one-half (½) of the fee MuniServices would have been entitled to for the waived portion of the deficiency.

UTILITY USERS TAX / FRANCHISE COMPENSATION

A. COMPLIANCE REVIEW SERVICES

1. **Total Annual Fixed Fee.** In the event that the CITY's Finance Director requests the Revenue Protection Services of Attachment 1 to Exhibit A, Utility User's Tax Section 3, MuniServices and the City shall agree, in advance and in writing, on an annual fixed fee of \$36,000 for said Revenue Protection Services.
2. **Allocation of Annual Fixed Fee.** Said annual fixed fee payment shall be allocated, and paid separately, to LAW FIRM and MuniServices as follows: a) to LAW FIRM, twenty-five percent (25%) of the total annual fixed fee, as reflected in a separate attorney client agreement with the CITY; and b) to MuniServices, the remaining seventy-five percent (75%) of the total annual fixed fee. At any time, LAW FIRM and MuniServices may, by mutual agreement, adjust their proportional share of said total annual fixed fee, provided that such parties shall receive prior approval of such adjustment from the CITY.
3. **Quarterly Payments of Fixed Fee.** Said annual fixed fee shall be paid in four equal quarterly payments with due dates of: March 31, June 30, September 30, and December 31. These quarterly payments are nonrefundable. The first quarterly payment shall be due on the next quarterly due date following the Finance Director's request.
4. **Integration of Contingency Fee Audit Work into Fixed Fee.** At the written request of the CITY'S Finance Director, MuniServices agrees to prospectively (from the date of receipt of the written request) provide the Compliance Review Services and the Revenue Protective Services, as more fully described in Attachment 1 to Exhibit A, Utility Users Tax , for a total annual fixed fee not to exceed eighty-five thousand dollars (\$85,000); provided, however, that any compensation earned prior to the written request shall be paid to MuniServices under the original compensation formula described above.

B. CITY-SPECIFIC AUDITS

1. For the services described in Attachment 1 to Exhibit A, Utility Users Tax Section 3, MuniServices shall be entitled to additional compensation in the event that MuniServices' compliance review activities result in the City receiving additional revenues from such City-specific audit activity. Accordingly, the City shall pay MuniServices twenty-five percent (25%) of the additional revenues the City receives, including interest and penalties, that MuniServices is able to reasonably substantiate has resulted from its City- specific compliance review activities. Said 25% applies to the additional revenue received by the City for the first twelve quarters following the correction of the error/omission. MuniServices will also receive 25% of any retroactive recovery collected by the City due to MuniServices compliance activities. As used in this subsection, the term "additional revenues" includes the value of any other services, credits, property of every kind or nature, or other consideration received by the City in lieu of monetary payment. Compensation for the Non-Core Gas compliance reviews would be included under the City-specific fee calculation.
2. Notwithstanding subsection (1) above, nothing herein shall prohibit the parties from entering into a written agreement on compensation for City-specific audit services on a fixed fee or any other

separately negotiated basis.

3. In the event that any legal services from LAW FIRM are required in connection with a City-specific audit, the cost of such services to the City shall be paid by MuniServices, and MuniServices shall disclose to the City the financial arrangement between MuniServices and LAW FIRM regarding the payment of such costs.
4. MuniServices shall absorb all expenses incurred by MuniServices in providing its services as described herein. These expenses include items such as employee salaries and benefits, insurance, airfare, auto rentals, meals, lodging, Federal Express, mail, telephone, copying, directories, on-line resources, and other overhead and miscellaneous expenses

C. CITY'S OBLIGATIONS

Regarding the City-specific compliance review activities described above, the City agrees to:

1. Invoice the responsible party for tax deficiencies (plus interest and penalties if applicable) identified and confirmed by MuniServices within thirty (30) days following receipt of MuniServices' detection report or correspondence. In the event the City does not pursue retroactive taxes from MuniServices' audit finds, MuniServices should be compensated on a time and materials basis not to exceed \$2,000 per each business not pursued.;
2. Provide MuniServices with a copy of any settlement agreement with a taxpayer/tax collector within ten (10) days of entering into such agreement; and,
3. Notify MuniServices within ten (10) days following receipt by the City of payments (cash, installment, or other compensation directly benefiting the City) of such tax deficiencies, whether invoiced or not. Upon receipt of such notice, MuniServices will promptly invoice the City. MuniServices' compensation is due and payable within thirty (30) days of the City's receipt of MuniServices' invoice. Any amounts which remain unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.

TRANSIENT OCCUPANCY TAX (TOT) ANALYSIS & COMPLIANCE PROGRAM

Phase 1 – Discovery and Analysis

City shall pay MuniServices a fixed fee of \$300 per lodging property with ten or fewer guest accommodations and \$600 per lodging property with more than ten guest accommodations. This fee applies to all lodging properties located in the City limits, including lodging properties located via discovery.

Phase 2 – Compliance Review

For those properties where the City elects, within 90 days after the completion of MuniServices' analysis report, a full Compliance Review to be completed per Phase 2, City shall pay MuniServices an additional fixed fee of \$900 per lodging property reviewed. Should the City not approve the list of lodging providers to be subject to a Compliance Review of lodging and tax records within 90 days, MuniServices' fee shall be \$1,100 per lodging property reviewed.

Compensation Example

City has 20 lodging properties with ten or fewer guest accommodations and 65 properties with more than 10 guest accommodations. Compensation for Phase 1 would be \$45,000 (\$6,000 + \$39,000). Typically, based on the results of Phase 1, there will be approximately 33% of the properties that will be recommended for the Phase 2 Compliance Review. The estimated compensation for Phase 2 would be \$25,200 (28 X \$900). Total estimated compensation for the TOT program would be \$70,200 plus out of pocket and Travel Costs.

City shall reimburse MuniServices for out of pocket expenses and Travel Costs to be mutually agreed based on number of properties that are subject to the compliance review. ("Travel Costs" includes but is not limited to the costs of car rental, gasoline, and traveling time at a reduced hourly rate of \$50 per hour.) MuniServices will invoice these out of pocket expense and Travel Costs immediately upon delivery of the compliance review report and the invoice is payable in accordance with the Agreement to which this addendum is attached.

Compensation for Optional TOT Seminar Service

A fixed fee of three thousand dollars (\$3,000) and City shall reimburse MuniServices for out of pocket expenses and Travel Costs related to this Seminar Service. ("Travel Costs" includes but is not limited to the costs of car rental, gasoline, and traveling time at a reduced hourly rate of \$50 per hour.)

PROPERTY TAX COMPENSATION

Cost Proposals

MuniServices performs this work for a 25% contingency fee. This fee applies to all reallocations for the fiscal year during which the Date of Correction falls and all eligible prior period revenues corrected.

City Obligations

MuniServices shall invoice City for the above fee on no less frequently than a quarterly basis, based on recoveries actually received by City. Because MuniServices' TAX COMPLIANCE Service may result in collection of deficiencies after termination of the Agreement, City's obligation to collect fees and notify MuniServices, and MuniServices' right to continue to receive payment, shall survive termination of this Addendum or the Agreement for any reason.

PropertyLINK™ COMPENSATION

Cost and Term. Pricing for PropertyLINK™ is divided into Set-Up Fees, which are one-time costs to implement the Service, and Annual Fees, paid quarterly for the Service following implementation.

Set-Up Fees. MuniServices will charge City a one-time fee \$2,500 for set-up to implement the PropertyLINK™ Service. If the SHRA activates the Tax Increment Audit, MuniServices will waive the setup fee. Set-Up Fees shall be billed immediately following execution of this Addendum.

(A.) Defining Set-Up. Set-Up includes the following:

- Conversion of existing City data to the PropertyLINK™ system (applies to City data available to MuniServices in electronic format only. City is responsible for any direct data entry not available in electronic format.)
- Installation and configuration of the VPN software.
- Eight (8) hours of on-site user training for five (5) Users.
- SecureID's and UserID's for five (5) Users.

Data Costs. MuniServices will procure the data necessary to generate the database that will underlie the service. City will reimburse MuniServices for the direct costs MuniServices incurs in procuring any property-tax related data needed for conversion into PropertyLINK™, including, but not limited to, secured rolls, unsecured rolls, or property characteristics file. Prior to incurring costs for procuring data, MuniServices will provide City with the estimated cost for acquiring the data. MuniServices will not acquire the data unless City approves the cost for acquiring the data. The costs for procuring the data may be a one-time cost or may be a cost incurred for each year that the City has access to PropertyLINK™. These yearly purchases of data are not covered by the Annual Fees and will be reimbursable under the terms of this paragraph.

Annual Fees. The Annual Fee for PropertyLINK™ is \$10,500 to be paid in quarterly installments of \$2,625 at the beginning of each calendar quarter after implementation of the Service. Partial fees for the quarter during which the Service is implemented shall be billed thirty (30) days from the date of implementation. Thereafter, MuniServices shall invoice City quarterly, at the beginning of each calendar quarter, for Service to be provided during that quarter. If SHRA activates the Tax Increment Audit, MuniServices shall provide PropertyLINK™ for free for the first year for up to five users.

The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics, with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service. The current available CPI-WU is 206.9 based on May 2006 index. The adjustments thereafter will be based on the CPI-WU from the last month of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%). The Annual Fee includes:

- 24 Hour access to the PropertyLINK™ systems
- User support for up to 5 users (Additional users may be added at an increased Base Price.)

- Periodic maintenance releases of PropertyLINK™

Additional Users. Additional Users may be added for a one-time set-up fee of four hundred dollars (\$400) per additional User plus two hundred dollars (\$200) per additional User in Annual Fees. SecureID's may be transferred to a new user for a one-time transfer fee of one hundred dollars (\$100.00) per transfer. A lost or damaged SecureID can be replaced for a one-time fee of three hundred dollars (\$300.00) per replacement. Malfunctioning SecureID's will be replaced at no charge. City may authorize additional Users by providing MuniServices with written authorization that specifies the number of additional Users and authorizes MuniServices to charge City the set-up fee and the additional Annual Fees. The written authorization must be from a person with the authority to bind the City. The written authorization may be provided by email. Upon request, City will also provide MuniServices with any additional information MuniServices needs to add the additional User(s).

Additional costs. Additional fees may apply for consulting services, added data layers, customized upgrades, or other services requested by City, which are not reasonably included with the services described in this Addendum. Additional fees will be agreed upon in writing by both parties prior to any commencement of services. Unless City and MuniServices have agreed in writing before the performance of extra services, no liability and no right to claim compensation for such extra services or expenses shall exist.

Training. Additional training classes are available from MuniServices in Fresno, CA for the cost of \$750 per day for up to 5 users. On site training, at the client site, is \$1,200 per day for each group of up to 5 users plus expenses.

BizLINK COMPENSATION

COST & TERM

Pricing for BizLINK is divided into Set-Up Fees, which are one-time costs to implement the Service, and Annual Fees, paid quarterly for the Service following implementation.

Set-Up Fees. A one-time fee of \$20,000 shall be charged for set-up to implement the BizLINK Service. Set-Up Fees shall be billed immediately following execution of this Addendum. Set-Up shall include the following:

- Conversion of existing City data to the BizLINK system (applies to City data available to MuniServices in electronic format only. City shall be responsible for any direct data entry not available in electronic format.)
- Installation and configuration of the VPN software.
- Eight (8) hours of on-site user training for five (5) Users.
- SecureID's and UserID's for five (5) Users.

If the City also contracts with MuniServices for the LTC program, MuniServices shall waive the above setup fee up to \$20,000 value at our \$150 standard hourly rate for an estimated 133 hours of setup time. Based on prior experience, MuniServices estimates that the total setup fee will be under \$20,000. This fee estimate is based on the anticipated cooperation from the City's personnel and the assumption that unexpected circumstances will not be encountered during the setup. If unexpected circumstances arise that would cause the total setup fee to exceed \$20,000, MuniServices will bill the City for excess hours at the standard hourly rate of \$150 per hour to complete the setup.

Annual Fees

The Annual Fee for BizLINK is \$30,000 to be paid in quarterly installments at the beginning of each calendar quarter after implementation of the Service. Partial fees for the quarter during which the Service is implemented shall be billed thirty-days (30) from the date of implementation. Thereafter, MuniServices shall invoice City quarterly, at the beginning of each calendar quarter, for Service to be provided during that quarter. If the City has contracted with MuniServices for the Business Operations Tax Discovery and Audit program, MuniServices will provide BizLINK™ for free for the first year for up to 5 users.

The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics, with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service. The current available CPI-WU is 206.9 based on May 2006 index. The adjustments thereafter will be based on the CPI-WU from the last month of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%). The Annual Fee includes:

- 24 Hour access to the BizLINK systems
- User support for up to 5 users (Additional users may be added at an increased Base Price.)
- Periodic maintenance releases of BizLINK

Additional Users may be added for a one-time set-up fee of four hundred dollars (\$400) per additional user plus two hundred dollars (\$200) per additional User in Annual Fees. SecureID's may be transferred to a new user for a one-time transfer fee of one hundred dollars (\$100.00) per transfer. A lost SecureID can be replaced for a one-time fee of three hundred dollars (\$300.00) per replacement. Malfunctioning SecureID's will be replaced at no charge.

Additional costs. Additional fees may apply for consulting services, added data layers, customized upgrades, or other services requested by City. Additional fees shall be agreed upon in writing by both parties prior to any commencement of services.

Training. Additional training classes are available from MuniServices in Fresno, CA for the cost of \$750 per day for up to 5 users. On site training, at the client site, is \$1,200 per day for each group of up to 5 users plus expenses.

Not-To-Exceed (NTE) amount for Optional Services

Total amount of fees paid to MuniServices for LTC and PTX, as well as UUT City-specific work performed under a contingency fee basis, including all authorized reimbursable expenses, shall not exceed the contingency percentages as set forth above in each compensation section.

Total amount fees paid for

- UUT Compliance Program shall not exceed \$108,000 , or \$36,000 per year, for the 3-year period;
- STARS compensation shall not exceed \$18,815.24 plus annual CPI adjustments per year, or \$62,445 for the 3-year period.
- City-specific audit under the UUT Compliance Program shall be determined later when both the City and MuniServices agree mutually on the compensation;
- TOT Compliance Program shall not exceed \$83,000, including out of pocket expenses and travel cost, assuming that the compensation example outlined above is reasonably accurate;
- Optional TOT seminar service shall not exceed \$4,000, including out of pocket expenses and travel cost assuming that the City provides the facility for the seminar;
- BizLINK annual fee services shall not exceed \$30,000 per year, or \$90,000 for the 3-year period; plus additional user, SecureID transfer, and SecureID replacement fees shall not exceed \$3,000 per year, or \$9,000 for the 3-year period.
- PropertyLINK™ service shall not exceed \$22,050 in 3-year period assuming that MuniServices waives the setup fee and first-year annual fee when SHRA activates the Tax Increment Audit. However, if the SHRA does not activate the Tax Increment Audit service, the total fees for PropertyLINK™ shall not exceed \$37,255 in 3-year period.

Corollary Consulting

City may request that MuniServices provide additional corollary consulting services at any time during term of the Agreement. If MuniServices and City agree on the scope of the consulting services requested, then MuniServices shall provide these consulting services on a Time and Materials basis at the following hourly rates:

Principal - \$175/hour
Director - \$150/hour
Manager - \$125/hour
Senior Analyst - \$100/hour
Analyst - \$75/hour
Administrative Support - \$50/hour

These additional consulting services will be invoiced no less frequently than monthly based on actual time and expenses incurred.

EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT
FACILITIES AND EQUIPMENT TO BE PROVIDED BY CITY

CITY shall *[check one]* Not furnish any facilities or equipment for this Agreement; or
 furnish the following facilities or equipment for the Agreement; *[list, if applicable]*

**EXHIBIT D
PROFESSIONAL SERVICES AGREEMENT**

GENERAL PROVISIONS

1. Independent Contractor.

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of CITY. CITY is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this Agreement, and CONTRACTOR shall be issued a Form 1099 for its services hereunder. As an independent contractor, CONTRACTOR hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of CONTRACTOR's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of any Services under this Agreement. (As used in this Exhibit D, the term "Services" shall include both Services and Additional Services as such terms are defined elsewhere in this Agreement.)
- B. It is further understood and agreed by the parties hereto that CONTRACTOR, in the performance of its obligations hereunder, is subject to the control and direction of CITY as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by CONTRACTOR for accomplishing such results. To the extent that CONTRACTOR obtains permission to, and does, use CITY facilities, space, equipment or support services in the performance of this Agreement, this use shall be at the CONTRACTOR's sole discretion based on the CONTRACTOR's determination that such use will promote CONTRACTOR's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the CITY does not require that CONTRACTOR use CITY facilities, equipment or support services or work in CITY locations in the performance of this Agreement.
- C. If, in the performance of this Agreement, any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. Except as may be specifically provided elsewhere in this Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR. It is further understood and agreed that CONTRACTOR shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of CONTRACTOR's assigned personnel and subcontractors.

- D. The provisions of this Section 1 shall survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to create an exclusive relationship between CITY and CONTRACTOR. CONTRACTOR may represent, perform services for, or be employed by such additional persons or companies as CONTRACTOR sees fit provided that CONTRACTOR does not violate the provisions of Section 5, below.
2. **Licenses; Permits, Etc.** CONTRACTOR represents and warrants that CONTRACTOR has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for CONTRACTOR to practice its profession or provide any services under the Agreement. CONTRACTOR represents and warrants that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for CONTRACTOR to practice its profession or provide such Services. Without limiting the generality of the foregoing, if CONTRACTOR is an out-of-state corporation, CONTRACTOR warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
 3. **Time.** CONTRACTOR shall devote such time and effort to the performance of Services pursuant to this Agreement as is necessary for the satisfactory and timely performance of CONTRACTOR's obligations under this Agreement. Neither party shall be considered in default of this Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.
 4. **CONTRACTOR Not Agent.** Except as CITY may specify in writing, CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONTRACTOR and CONTRACTOR's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.
 5. **Conflicts of Interest.** CONTRACTOR covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder CONTRACTOR's performance of Services under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. CONTRACTOR agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement. If CONTRACTOR is or employs a former officer or employee of the CITY, CONTRACTOR and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.
 6. **Confidentiality of CITY Information.** During performance of this Agreement, CONTRACTOR may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, customer lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "City Information") that are

valuable, special and unique assets of the CITY. CONTRACTOR agrees to protect all City Information and treat it as strictly confidential, and further agrees that CONTRACTOR shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of CITY. In addition, CONTRACTOR shall comply with all CITY policies governing the use of the CITY network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by CONTRACTOR of this Section 6 shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

7. CONTRACTOR Information.

- A. CITY shall have full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement. In this Agreement, the term "information" shall be construed to mean and include: any and all work product, submittals, reports, plans, specifications, and other deliverables consisting of documents, writings, handwritings, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communications, or representation, including letters, works, pictures, drawings, sounds, or symbols, or any combination thereof. CONTRACTOR shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose by CITY.
- B. CONTRACTOR shall fully defend, indemnify and hold harmless CITY, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by CONTRACTOR pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights. CITY shall make reasonable efforts to notify CONTRACTOR not later than ten (10) days after CITY is served with any such claim, action, lawsuit or other proceeding, provided that CITY's failure to provide such notice within such time period shall not relieve CONTRACTOR of its obligations hereunder, which shall survive any termination or expiration of this Agreement.
- C. All proprietary and other information received from CONTRACTOR by CITY, whether received in connection with CONTRACTOR's proposal to CITY or in connection with any Services performed by CONTRACTOR, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to CITY, CITY shall give notice to CONTRACTOR of any request for the disclosure of such information. The CONTRACTOR shall then have five (5) days from the date it receives such notice to enter into an agreement with the CITY, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by CITY in any legal action to compel the disclosure of such information under the California Public Records Act. The CONTRACTOR shall have sole responsibility for defense of the actual "trade secret" designation of such information.
- D. The parties understand and agree that any failure by CONTRACTOR to respond to the notice provided by CITY and/or to enter into an agreement with CITY, in accordance with

the provisions of subsection C, above, shall constitute a complete waiver by CONTRACTOR of any rights regarding the information designated "trade secret" by CONTRACTOR, and such information shall be disclosed by CITY pursuant to applicable procedures required by the Public Records Act.

8. **Standard of Performance.** CONTRACTOR shall perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of CONTRACTOR's profession in California. All products of whatsoever nature that CONTRACTOR delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in CONTRACTOR's profession, and shall be provided in accordance with any schedule of performance specified in Exhibit A. CONTRACTOR shall assign only competent personnel to perform Services pursuant to this Agreement. CONTRACTOR shall notify CITY in writing of any changes in CONTRACTOR's staff assigned to perform the Services required under this Agreement, prior to any such performance. In the event that CITY, at any time during the term of this Agreement, desires the removal of any person assigned by CONTRACTOR to perform Services pursuant to this Agreement, because CITY, in its sole discretion, determines that such person is not performing in accordance with the standards required herein, CONTRACTOR shall remove such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person.
9. **Term; Suspension; Termination.**
- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
- B. CITY shall have the right at any time to temporarily suspend CONTRACTOR's performance hereunder, in whole or in part, by giving a written notice of suspension to CONTRACTOR. If CITY gives such notice of suspension, CONTRACTOR shall immediately suspend its activities under this Agreement, as specified in such notice.
- C. CITY shall have the right to terminate this Agreement at any time by giving a written notice of termination to CONTRACTOR. If CITY gives such notice of termination, CONTRACTOR shall immediately cease rendering Services pursuant to this Agreement. If CITY terminates this Agreement:
- (1) CONTRACTOR shall, not later than five days after such notice of termination, deliver to CITY copies of all information prepared pursuant to this Agreement.
 - (2) CITY shall pay CONTRACTOR the reasonable value of Services rendered by CONTRACTOR prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by CONTRACTOR had the Agreement not been terminated or had CONTRACTOR completed the Services required by this Agreement. In this regard, CONTRACTOR shall furnish to CITY such financial information as in the judgment of the CITY is necessary for CITY to determine the reasonable value of the Services rendered by CONTRACTOR. The foregoing is cumulative and does not affect any right or

remedy that CITY may have in law or equity.

10. Indemnity.

- A. Indemnity: CONTRACTOR shall defend, hold harmless and indemnify CITY, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by CITY's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by CONTRACTOR, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of CITY, its agents, servants, or independent contractors who are directly responsible to CITY, except when such agents, servants, or independent contractors are under the direct supervision and control of CONTRACTOR.
- B. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of CITY's rights under this Section 10, nor shall the limits of such insurance limit the liability of CONTRACTOR hereunder. This Section 10 shall not apply to any intellectual property claims, actions, lawsuits or other proceedings subject to the provisions of Section 7.B., above. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. Insurance Requirements. During the entire term of this Agreement, CONTRACTOR shall maintain the insurance coverage described in this Section 11.

Full compensation for all premiums that CONTRACTOR is required to pay for the insurance coverage described herein shall be included in the compensation specified for the Services provided by CONTRACTOR under this Agreement. No additional compensation will be provided for CONTRACTOR's insurance premiums.

It is understood and agreed by the CONTRACTOR that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the CONTRACTOR in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less

than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the CONTRACTOR.

No automobile liability insurance shall be required if CONTRACTOR completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." _____ (CONTRACTOR initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the CONTRACTOR.

No Workers' Compensation insurance shall be required if CONTRACTOR completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." _____ (CONTRACTOR initials)

- (4) Professional Liability Insurance providing coverage on a claims made basis for errors, omissions or malpractice with limits of not less than one million (\$1,000,000) dollars if required by the CITY under Exhibit A, Section 2.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of CONTRACTOR, products and completed operations of CONTRACTOR, and premises owned, leased or used by CONTRACTOR. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.
- (3) Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 11 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) CONTRACTOR shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Exhibit A. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The CITY may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided

prior to execution of this Agreement. The CITY may withhold payments to CONTRACTOR and/or cancel the Agreement if the insurance is canceled or CONTRACTOR otherwise ceases to be insured as required herein.

F. Subcontractors

CONTRACTOR shall require and verify that all sub-consultants and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

12. **Equal Employment Opportunity.** During the performance of this Agreement, CONTRACTOR, for itself, its assignees and successors in interest, agrees as follows:

- A. Compliance With Regulations: CONTRACTOR shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".
- B. Nondiscrimination: CONTRACTOR, with regards to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. CONTRACTOR shall not participate either directly or indirectly in discrimination prohibited by the Regulations.
- C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by CONTRACTOR for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by CONTRACTOR of CONTRACTOR's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.
- D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information, CONTRACTOR shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of noncompliance by CONTRACTOR with the nondiscrimination provisions of this Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:
 - (1) Withholding of payments to CONTRACTOR under this Agreement until CONTRACTOR complies;

(2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions: CONTRACTOR shall include the provisions of subsections A through E, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. CONTRACTOR shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONTRACTOR may request CITY to enter such litigation to protect the interests of CITY.

13. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by CONTRACTOR, and by CITY, in accordance with applicable provisions of the Sacramento City Code.
14. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
15. **Waiver.** Neither CITY acceptance of, or payment for, any Service or Additional Service performed by CONTRACTOR, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
16. **Enforcement of Agreement.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
17. **Assignment Prohibited.** The expertise and experience of CONTRACTOR are material considerations for this Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on CONTRACTOR under this Agreement. In recognition of this interest, CONTRACTOR shall not assign any right or obligation pursuant to this Agreement without the written consent of the CITY. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.
18. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 17, above.
19. **Use Tax Requirements.**

[Intentionally Omitted]

EXHIBIT E

REQUIREMENTS OF THE NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

INTRODUCTION

The Sacramento Non-Discrimination In Employee Benefits Code (the "Ordinance"), codified as Sacramento City Code Chapter 3.54, prohibits City contractors from discriminating in the provision of employee benefits between employees with spouses and employees with domestic partners, and between the spouses and domestic partners of employees.

APPLICATION

The provisions of the Ordinance apply to any contract or agreement (as defined below), between a Contractor and the City of Sacramento, in an amount exceeding \$25,000.00. The Ordinance applies to that portion of a contractor's operations that occur: (i) within the City of Sacramento; (ii) on real property outside the City of Sacramento if the property is owned by the City or if the City has a right to occupy the property; or (iii) at any location where a significant amount of work related to a City contract is being performed.

The Ordinance does not apply: to subcontractors or subcontracts of any Contractor or contractors; to transactions entered into pursuant to cooperative purchasing agreements approved by the Sacramento City Council; to legal contracts of other governmental jurisdictions or public agencies without separate competitive bidding by the City; where the requirements of the ordinance will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement; to permits for excavation or street construction; or to agreements for the use of City right-of-way where a contracting utility has the power of eminent domain.

DEFINITIONS

As set forth in the Ordinance, the following definitions apply:

"Contract" means an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City or to be paid out of moneys deposited in the treasury or out of the trust money under the control or collected by the City. "Contract" also means a written agreement for the exclusive use ("exclusive use" means the right to use or occupy real property to the exclusion of others, other than the right reserved by the fee owner) or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements.

"Contract" shall not include: a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit; excavation, street construction or street use permits; agreements for the use of City right-of-way where a contracting utility has the power of eminent domain; or agreements governing the use of City property that constitute a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas

and that are generally protected by the First Amendment to the United States Constitution or that are primarily recreational in nature.

"Contractor" means any person or persons, firm partnership or corporation, company, or combination thereof, that enters into a Contract with the City. "Contractor" does not include a public entity.

"Domestic Partner" means any person who has a currently registered domestic partnership with a governmental entity pursuant to state or local law authorizing the registration.

"Employee Benefits" means bereavement leave; disability, life, and other types of insurance; family medical leave; health benefits; membership or membership discounts; moving expenses; pension and retirement benefits; vacation; travel benefits; and any other benefit given to employees. "Employee benefits" shall not include benefits to the extent that the application of the requirements of this chapter to such benefits may be preempted by federal or state.

CONTRACTOR'S OBLIGATION TO PROVIDE THE CITY WITH DOCUMENTATION AND INFORMATION

Contractor shall provide the City with documentation and information verifying its compliance with the requirements of the Ordinance within ten (10) days of receipt of a request from the City. Contractors shall keep accurate payroll records, showing, for each City Contract, the employee's name, address, Social Security number, work classification, straight time pay rate, overtime pay rate, overtime hours worked, status and exemptions, and benefits for each day and pay period that the employee works on the City Contract. Each request for payroll records shall be accompanied by an affidavit to be completed and returned by the Contractor, as stated, attesting that the information contained in the payroll records is true and correct, and that the Contractor has complied with the requirements of the Ordinance. A violation of the Ordinance or noncompliance with the requirements of the Ordinance shall constitute a breach of contract.

EMPLOYER COMPLIANCE CERTIFICATE AND NOTICE REQUIREMENTS

(a) All contractors seeking a Contract subject to the Ordinance shall submit a completed Declaration of Compliance Form, signed by an authorized representative, with each proposal, bid or application. The Declaration of Compliance shall be made a part of the executed contract, and will be made available for public inspection and copying during regular business hours.

(b) The Contractor shall give each existing employee working directing on a City contract, and (at the time of hire), each new employee, a copy of the notification provided as Attachment "A."

(c) Contractor shall post, in a place visible to all employees, a copy of the notice provided as Attachment "B."

Attachment A



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

On (date), your employer (the "Employer") entered into a contract with the City of Sacramento (the "City") for (contract details), and as a condition of that contract, agreed to abide by the requirements of the City's Non-Discrimination In Employee Benefits Code (Sacramento City Code Section 3.54).

The Ordinance does not require the Employer to provide employee benefits. The Ordinance does require that if certain employee benefits are provided by the Employer, that those benefits be provided without discrimination between employees with spouses and employees with domestic partners, and without discrimination between the spouse or domestic partner of employees.

The Ordinance covers any employee working on the specific contract referenced above, but only for the period of time while those employees are actually working on this specific contract.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

(Employee Benefits does not include benefits that may be preempted by federal or state law.)

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, or in the application of these employee benefits, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of the Ordinance, and after having exhausted all remedies with your employer,

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the Employer and obtain the following remedies:
 - Reinstatement, injunctive relief, compensatory damages and punitive damages
 - Reasonable attorney's fees and costs

Attachment B



YOUR RIGHTS UNDER THE CITY OF SACRAMENTO'S NON-DISCRIMINATION IN EMPLOYEE BENEFITS CODE

If your employer provides employee benefits, they must be provided to those employees working on a City of Sacramento contract without discriminating between employees with spouses and employees with domestic partners.

The included employee benefits are:

- Bereavement leave
- Disability, life and other types of insurance
- Family medical leave
- Health benefits
- Membership or membership discounts
- Moving expenses
- Pension and retirement benefits
- Vacation
- Travel benefits
- Any other benefits given to employees

If you feel you have been discriminated against by your employer . . .

You May . . .

- Submit a written complaint to the City of Sacramento, Contract Services Unit, containing the details of the alleged violation. The address is:

City of Sacramento
Procurement Services Division
5730 24th Street, Bldg. 1
Sacramento, CA 95822

- Bring an action in the appropriate division of the Superior Court of the State of California against the employer and obtain reinstatement, injunctive relief, compensatory damages, punitive damages and reasonable attorney's fees and costs.

Discrimination and Retaliation Prohibited.

If you feel you have been discriminated or retaliated against by your employer in the terms and conditions of your application for employment, or in your employment, because of your status as an applicant or as an employee protected by the Ordinance, or because you reported a violation of this Ordinance . . .

You May Also . . .

Submit a written complaint to the City of Sacramento, Contract Services Unit, at the same address, containing the details of the alleged violation.