

1 AGREEMENT

2 **32329**

3 THIS AGREEMENT is made and entered, in duplicate, as of August 3,
4 2011, for reference purposes only, pursuant to a minute order adopted by the City
5 Council of the City of Long Beach at its meeting on August 2, 2011, by and between
6 MUNISERVICES, LLC, a Delaware limited liability company ("Consultant"), with a place
7 of business at 7335 N. Palm Bluffs Avenue, Fresno, California 93711, and the CITY OF
8 LONG BEACH, a municipal corporation ("City").

9 WHEREAS, City requires specialized services requiring unique skills to be
10 performed in connection with sales and use tax auditing, projection, recovery and
11 consultant services ("Project"); and

12 WHEREAS, City has selected Consultant in accordance with City's
13 administrative procedures and City has determined that Consultant and its employees
14 are qualified, licensed, if so required, and experienced in performing these specialized
15 services; and

16 WHEREAS, City desires to have Consultant perform these specialized
17 services, and Consultant is willing and able to do so on the terms and conditions in this
18 Agreement;

19 NOW, THEREFORE, in consideration of the mutual terms, covenants, and
20 conditions in this Agreement, the parties agree as follows:

21 1. SCOPE OF WORK OR SERVICES.

22 A. Consultant shall furnish specialized services more particularly
23 described in Exhibit "A", "Scope of Project," attached to this Agreement and
24 incorporated by this reference, in accordance with the standards of the profession,
25 and City shall pay for these services in the manner described in Exhibit "B," "Cost
26 Proposal," and as set forth below, in an amount not to exceed One Hundred
27 Thousand Dollars (\$100,000), annually, at the rates or charges shown in Exhibit
28 "B".

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Consultant may select the time and place of performance for these services; provided, however, that access to City documents, records and the like, if needed by Consultant, shall be available only during City's normal business hours and provided that milestones for performance, if any, are met.

C. Consultant has requested to receive regular payments. City shall pay Consultant in due course of payments following receipt from Consultant and approval by City of invoices showing the services or task performed, the time expended (if billing is hourly), and the name of the Project. Consultant shall certify on the invoices that Consultant has performed the services in full conformance with this Agreement and is entitled to receive payment. Each invoice shall be accompanied by a progress report indicating the progress to date of services performed and covered by the invoice, including a brief statement of any Project problems and potential causes of delay in performance, and listing those services that are projected for performance by Consultant during the next invoice cycle. Where billing is done and payment is made on an hourly basis, the parties acknowledge that this arrangement is either customary practice for Consultant's profession, industry or business, or is necessary to satisfy audit and legal requirements which may arise due to the fact that City is a municipality.

D. In addition, City shall pay to Consultant for services relating to Sales and Use Tax Audits (as defined in Exhibit "A") an audit fee equal to twenty percent (20%) of all new sales and use tax revenue received by the City as a result of audit and recovery work performed by Consultant. New sales and use tax revenue shall not include any amounts determined by the City or Consultant to be increments attributable to causes other than Consultant's services hereunder. If Consultant is responsible for an increase in the tax reported by businesses already properly making tax payments to the City, then Consultant shall separate such incremental amounts attributable to its efforts prior and support them with appropriate documentation prior to submitting an invoice for payment of the audit

1 fee. The audit fee will apply to state fund transfers received for previous quarter
2 allocations and monies received in the first three (3) consecutive reporting
3 quarters prior to the Date of Knowledge, and six (6) consecutive quarters after the
4 date of correction, following completion of the audit by Consultant and confirmation
5 of corrections by the State Board of Equalization ("SBOE"), contingent on the
6 City's receipt of payment by the SBOE. Consultant shall provide to the City an
7 itemized quarterly invoice showing calculations on which the audit fee in such
8 invoice is based.

9 E. Consultant shall obtain the City's written approval prior to
10 beginning services relating to correction of tax reporting methodology or "point of
11 sale" for specific businesses where Consultant intends to submit an invoice for the
12 audit fee related to such services. City shall pay audit fees related to such
13 services following Consultant's submittal of evidence of state fund transfers and
14 payments to the City from businesses identified in the audit and approved by the
15 City.

16 F. COMPLETION PERIOD. Within thirty (30) days of the
17 termination or expiration of this Agreement, Consultant shall provide the City with
18 the list off all pending Sales and Use Tax Audit corrections with the SBOE.
19 Consultant shall be authorized under this Agreement to pursue the correction and
20 resolution of only those specific errors and/or omissions detected and documented
21 by Consultant and with a date of knowledge prior to expiration or termination of
22 Primary Services (as defined in Exhibit "A") whichever is applicable. Subsequent
23 payments for reallocations will be based on whether the misallocation is on the
24 final certified list provided at termination and containing the rationale accepted by
25 the SBOE. In the event that reallocation by the SBOE is not specifically due to the
26 efforts of Consultant, as supported by documentation from the SBOE, Consultant
27 shall not be entitled to payment.

28 G. City shall not be liable to pay for any other fees or

1 reimbursable costs or expenses.

2 H. Consultant represents that Consultant has obtained all
3 necessary information on conditions and circumstances that may affect its
4 performance and has conducted site visits, if necessary.

5 I. CAUTION: Consultant shall not begin work until this
6 Agreement has been signed by both parties and until Consultant's evidence of
7 insurance has been delivered to and approved by City.

8 2. TERM. The term of this Agreement shall commence at midnight on
9 October 1, 2011, and shall terminate at 11:59 p.m. on September 30, 2014, unless
10 sooner extended or terminated as provided in this Agreement, or unless the services or
11 the Project is completed sooner.

12 3. COORDINATION AND ORGANIZATION.

13 A. Consultant shall coordinate its performance with City's
14 representative, if any, named in Exhibit "C", attached to this Agreement and
15 incorporated by this reference. Consultant shall advise and inform City's
16 representative of the work in progress on the Project in sufficient detail so as to
17 assist City's representative in making presentations and in holding meetings on
18 the Project. City shall furnish to Consultant information or materials, if any,
19 described in Exhibit "D", attached to this Agreement and incorporated by this
20 reference, and shall perform any other tasks described in the Exhibit.

21 B. The parties acknowledge that a substantial inducement to City
22 for entering this Agreement was and is the reputation and skill of Consultant's key
23 employee, Doug Jensen. City shall have the right to approve any person
24 proposed by Consultant to replace that key employee.

25 4. INDEPENDENT CONTRACTOR. In performing its services,
26 Consultant is and shall act as an independent contractor and not an employee,
27 representative or agent of City. Consultant shall have control of Consultant's work and
28 the manner in which it is performed. Consultant shall be free to contract for similar

1 services to be performed for others during this Agreement; provided, however, that
2 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
3 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from
4 Consultant's compensation; (b) City will not secure workers' compensation or pay
5 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide
6 and Consultant is not entitled to any of the usual and customary rights, benefits or
7 privileges of City employees. Consultant expressly warrants that neither Consultant nor
8 any of Consultant's employees or agents shall represent themselves to be employees or
9 agents of City.

10 5. INSURANCE.

11 A. As a condition precedent to the effectiveness of this
12 Agreement, Consultant shall procure and maintain, at Consultant's expense for the
13 duration of this Agreement, from insurance companies that are admitted to write
14 insurance in California and have ratings of or equivalent to A:V by A.M. Best
15 Company or from authorized non-admitted insurance companies subject to
16 Section 1763 of the California Insurance Code and that have ratings of or
17 equivalent to A:VIII by A.M. Best Company, the following insurance:

18 (a) Commercial general liability insurance (equivalent in scope to
19 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
20 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
21 coverage shall include but not be limited to broad form contractual liability,
22 cross liability, independent contractors liability, and products and
23 completed operations liability. City, its boards and commissions, and their
24 officials, employees and agents shall be named as additional insureds by
25 endorsement (on City's endorsement form or on an endorsement
26 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85 or
27 both CG 20 10 07 04 and CG 20 37 07 04 or both CG 20 33 07 04 and
28 CG 20 37 07 04), and this insurance shall contain no special limitations on

1 the scope of protection given to City, its boards and commissions, and
2 their officials, employees and agents. This policy shall be endorsed to
3 state that the insurer waives its right of subrogation against City, its boards
4 and commissions, and their officials, employees and agents.

5 (b) Workers' Compensation insurance as required by the California
6 Labor Code and employer's liability insurance in an amount not less than
7 \$1,000,000. This policy shall be endorsed to state that the insurer waives
8 its right of subrogation against City, its boards and commissions, and their
9 officials, employees and agents.

10 (c) Professional liability or errors and omissions insurance in an
11 amount not less than \$1,000,000 per claim.

12 (d) Commercial automobile liability insurance (equivalent in scope
13 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
14 amount not less than \$500,000 combined single limit per accident.

15 B. Any self-insurance program, self-insured retention, or
16 deductible must be separately approved in writing by City's Risk Manager or
17 designee and shall protect City, its officials, employees and agents in the same
18 manner and to the same extent as they would have been protected had the policy
19 or policies not contained retention or deductible provisions.

20 C. Each insurance policy except errors and omissions or
21 professional liability insurance shall be endorsed to state that coverage shall not
22 be reduced, non-renewed or canceled except after thirty (30) days prior written
23 notice to City, shall be primary and not contributing to any other insurance or self-
24 insurance maintained by City, and shall be endorsed to state that coverage
25 maintained by City shall be excess to and shall not contribute to insurance or self-
26 insurance maintained by Consultant. Consultant shall notify City in writing within
27 five (5) days after any insurance has been voided by the insurer or cancelled by
28 the insured.

1 D. If this coverage is written on a "claims made" basis, it must
2 provide for an extended reporting period of not less than one hundred eighty (180)
3 days, commencing on the date this Agreement expires or is terminated, unless
4 Consultant guarantees that Consultant will provide to City evidence of
5 uninterrupted, continuing coverage for a period of not less than three (3) years,
6 commencing on the date this Agreement expires or is terminated.

7 E. Consultant shall require that all subconsultants or contractors
8 that Consultant uses in the performance of these services maintain insurance in
9 compliance with this Section unless otherwise agreed in writing by City's Risk
10 Manager or designee.

11 F. Prior to the start of performance, Consultant shall deliver to
12 City certificates of insurance and the endorsements for approval as to sufficiency
13 and form. In addition, Consultant shall, within thirty (30) days prior to expiration of
14 the insurance, furnish to City certificates of insurance and endorsements
15 evidencing renewal of the insurance. City reserves the right to require complete
16 certified copies of all policies of Consultant and Consultant's subconsultants and
17 contractors, at any time. Consultant shall make available to City's Risk Manager
18 or designee all books, records and other information relating to this insurance,
19 during normal business hours.

20 G. Any modification or waiver of these insurance requirements
21 shall only be made with the approval of City's Risk Manager or designee. Not
22 more frequently than once a year, City's Risk Manager or designee may require
23 that Consultant, Consultant's subconsultants and contractors change the amount,
24 scope or types of coverages required in this Section if, in his or her sole opinion,
25 the amount, scope or types of coverages are not adequate.

26 H. The procuring or existence of insurance shall not be
27 construed or deemed as a limitation on liability relating to Consultant's
28 performance or as full performance of or compliance with the indemnification

1 provisions of this Agreement.

2 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
3 contemplates the personal services of Consultant and Consultant's employees, and the
4 parties acknowledge that a substantial inducement to City for entering this Agreement
5 was and is the professional reputation and competence of Consultant and Consultant's
6 employees. Consultant shall not assign its rights or delegate its duties under this
7 Agreement, or any interest in this Agreement, or any portion of it, without the prior
8 approval of City, except that Consultant may with the prior approval of the City Manager
9 of City, assign any moneys due or to become due Consultant under this Agreement. Any
10 attempted assignment or delegation shall be void, and any assignee or delegate shall
11 acquire no right or interest by reason of an attempted assignment or delegation.
12 Furthermore, Consultant shall not subcontract any portion of its performance without the
13 prior approval of the City Manager or designee, or substitute an approved subconsultant
14 or contractor without approval prior to the substitution. Nothing stated in this Section
15 shall prevent Consultant from employing as many employees as Consultant deems
16 necessary for performance of this Agreement.

17 7. CONFLICT OF INTEREST. Consultant, by executing this
18 Agreement, certifies that, at the time Consultant executes this Agreement and for its
19 duration, Consultant does not and will not perform services for any other client which
20 would create a conflict, whether monetary or otherwise, as between the interests of City
21 and the interests of that other client. And, Consultant shall obtain similar certifications
22 from Consultant's employees, subconsultants and contractors.

23 8. MATERIALS. Consultant shall furnish all labor and supervision,
24 supplies, materials, tools, machinery, equipment, appliances, transportation and services
25 necessary to or used in the performance of Consultant's obligations under this
26 Agreement, except as stated in Exhibit "D".

27 9. OWNERSHIP OF DATA. All materials, information and data
28 prepared, developed or assembled by Consultant or furnished to Consultant in

1 connection with this Agreement, including but not limited to documents, estimates,
2 calculations, studies, maps, graphs, charts, computer disks, computer source
3 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
4 information, material and memorandum ("Data") shall be the exclusive property of City.
5 Data shall be given to City, and City shall have the unrestricted right to use and disclose
6 the Data in any manner and for any purpose without payment of further compensation to
7 Consultant. Copies of Data may be retained by Consultant but Consultant warrants that
8 Data shall not be made available to any person or entity for use without the prior approval
9 of City. This warranty shall survive termination of this Agreement for five (5) years.

10 Notwithstanding the foregoing, "Data" shall not include materials,
11 information, documents, processes, methods, computer files or media, including but not
12 limited to software, business processes or methods, and report formats that are created,
13 prepared, developed or assembled by Consultant for use in its business generally and
14 not for exclusive use in connection with this Agreement.

15 10. TERMINATION. Either party shall have the right to terminate this
16 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
17 prior notice to the other party. In the event of termination under this Section, City shall
18 pay Consultant for services satisfactorily performed and costs incurred up to the effective
19 date of termination for which Consultant has not been previously paid. The procedures
20 for payment in Section 1.C. and 1.F. with regard to invoices shall apply. On the effective
21 date of termination, Consultant shall deliver to City all Data developed or accumulated in
22 the performance of this Agreement, whether in draft or final form, or in process. And,
23 Consultant acknowledges and agrees that City's obligation to make final payment is
24 conditioned on Consultant's delivery of the Data to City.

25 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
26 shall not disclose the Data or use the Data directly or indirectly, other than in the course
27 of performing its services, during the term of this Agreement and for five (5) years
28 following expiration or termination of this Agreement. In addition, Consultant shall keep

1 confidential all information, whether written, oral or visual, obtained by any means
2 whatsoever in the course of performing its services for the same period of time.
3 Consultant shall not disclose any or all of the Data to any third party, or use it for
4 Consultant's own benefit or the benefit of others except for the purpose of this
5 Agreement.

6 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
7 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
8 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
9 without breach of this Agreement by Consultant; or (c) a third party who has a right to
10 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
11 disclosed pursuant to subpoena or court order.

12 13. ADDITIONAL COSTS AND REDESIGN.

13 A. Any costs incurred by City due to Consultant's failure to meet
14 the standards required by the scope of work or Consultant's failure to perform fully
15 the tasks described in the scope of work which, in either case, causes City to
16 request that Consultant perform again all or part of the Scope of Work shall be at
17 the sole cost of Consultant and City shall not pay any additional compensation to
18 Consultant for its re-performance.

19 B. If the Project involves construction and the scope of work
20 requires Consultant to prepare plans and specifications with an estimate of the
21 cost of construction, then Consultant may be required to modify the plans and
22 specifications, any construction documents relating to the plans and specifications,
23 and Consultant's estimate, at no cost to City, when the lowest bid for construction
24 received by City exceeds by more than ten percent (10%) Consultant's estimate.
25 This modification shall be submitted in a timely fashion to allow City to receive new
26 bids within four (4) months after the date on which the original plans and
27 specifications were submitted by Consultant.

28 14. AMENDMENT. This Agreement, including all Exhibits, shall not be

1 amended, nor any provision or breach waived, except in writing signed by the parties
2 which expressly refers to this Agreement.

3 15. LAW. This Agreement shall be governed by and construed pursuant
4 to the laws of the State of California (except those provisions of California law pertaining
5 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
6 regulations of and obtain all permits, licenses and certificates required by all federal, state
7 and local governmental authorities.

8 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
9 constitutes the entire understanding between the parties and supersedes all other
10 agreements, oral or written, with respect to the subject matter in this Agreement.

11 17. INDEMNITY.

12 A. Consultant shall indemnify, protect and hold harmless City, its
13 Boards, Commissions, and their officials, employees and agents ("Indemnified
14 Parties"), from and against any and all liability, claims, demands, damage, loss,
15 obligations, causes of action, proceedings, awards, fines, judgments, penalties,
16 costs and expenses, including attorneys' fees, court costs, expert and witness
17 fees, and other costs and fees of litigation, arising or alleged to have arisen, in
18 whole or in part, out of or in connection with (1) Consultant's breach or failure to
19 comply with any of its obligations contained in this Agreement, or (2) negligent
20 acts or willful misconduct, errors, omissions or misrepresentations committed by
21 Consultant, its officers, employees, agents, subcontractors, or anyone under
22 Consultant's control, in the performance of work or services under this Agreement
23 (collectively "Claims" or individually "Claim").

24 B. In addition to Consultant's duty to indemnify, Consultant shall
25 have a separate and wholly independent duty to defend Indemnified Parties at
26 Consultant's expense by legal counsel approved by City, from and against all
27 Claims, and shall continue this defense until the Claims are resolved, whether by
28 settlement, judgment or otherwise. No finding or judgment of negligence, fault,

1 breach, or the like on the part of Consultant shall be required for the duty to defend
2 to arise. As a precondition to Consultant's obligation under this paragraph B, City
3 shall timely notify Consultant of any Claim and shall timely tender the defense of
4 the Claim to Consultant. City shall assist Consultant, as may be reasonably
5 requested, in the defense. Following Consultant's written acknowledgment of the
6 Claim or Claims for which Consultant has agreed to indemnify and defend the City
7 (an "acknowledged Claim"), City shall not have the right to settle, compromise, or
8 otherwise resolve any such acknowledged Claim without prior written approval
9 from Consultant.

10 C. If a court of competent jurisdiction determines that a Claim
11 was caused by the sole negligence or willful misconduct of Indemnified Parties,
12 Consultant's costs of defense and indemnity shall be (1) reimbursed in full if the
13 court determines sole negligence by the Indemnified Parties, or (2) reduced by the
14 percentage of willful misconduct attributed by the court to the Indemnified Parties.

15 D. The provisions of this Section shall survive the expiration or
16 termination of this Agreement.

17 18. AMBIGUITY. In the event of any conflict or ambiguity between this
18 Agreement and any Exhibit, the provisions of this Agreement shall govern.

19 19. COSTS. If there is any legal proceeding between the parties to
20 enforce or interpret this Agreement or to protect or establish any rights or remedies under
21 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

22 20. NONDISCRIMINATION.

23 A. In connection with performance of this Agreement and subject
24 to applicable rules and regulations, Consultant shall not discriminate against any
25 employee or applicant for employment because of race, religion, national origin,
26 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
27 disability. Consultant shall ensure that applicants are employed, and that
28 employees are treated during their employment, without regard to these bases.

1 These actions shall include, but not be limited to, the following: employment,
2 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or
3 termination; rates of pay or other forms of compensation; and selection for training,
4 including apprenticeship.

5 B. It is the policy of City to encourage the participation of
6 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
7 procurement process, and Consultant agrees to use its best efforts to carry out
8 this policy in its use of subconsultants and contractors to the fullest extent
9 consistent with the efficient performance of this Agreement. Consultant may rely
10 on written representations by subconsultants and contractors regarding their
11 status. Consultant shall report to City in May and in December or, in the case of
12 short-term agreements, prior to invoicing for final payment, the names of all
13 subconsultants and contractors hired by Consultant for this Project and information
14 on whether or not they are a Disadvantaged, Minority or Women-Owned Business
15 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec.
16 637).

17 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
18 accordance with the provisions of the Ordinance, this Agreement is subject to the
19 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
20 Long Beach Municipal Code, as amended from time to time.

21 A. During the performance of this Agreement, the Consultant
22 certifies and represents that the Consultant will comply with the EBO. The
23 Consultant agrees to post the following statement in conspicuous places at its
24 place of business available to employees and applicants for employment:

25 "During the performance of a contract with the City of Long Beach,
26 the Consultant will provide equal benefits to employees with spouses and its
27 employees with domestic partners. Additional information about the City of
28

1 Long Beach's Equal Benefits Ordinance may be obtained from the City of
2 Long Beach Business Services Division at 562-570-6200."

3 B. The failure of the Consultant to comply with the EBO will be
4 deemed to be a material breach of the Agreement by the City.

5 C. If the Consultant fails to comply with the EBO, the City may
6 cancel, terminate or suspend the Agreement, in whole or in part, and monies due
7 or to become due under the Agreement may be retained by the City. The City
8 may also pursue any and all other remedies at law or in equity for any breach.

9 D. Failure to comply with the EBO may be used as evidence
10 against the Consultant in actions taken pursuant to the provisions of Long Beach
11 Municipal Code 2.93 et seq., Contractor Responsibility.

12 E. If the City determines that the Consultant has set up or used
13 its contracting entity for the purpose of evading the intent of the EBO, the City may
14 terminate the Agreement on behalf of the City. Violation of this provision may be
15 used as evidence against the Consultant in actions taken pursuant to the
16 provisions of Long Beach Municipal Code Section 2.93 et seq., Contractor
17 Responsibility.

18 22. NOTICES. Any notice or approval required by this Agreement shall
19 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
20 postage prepaid, addressed to Consultant at the address first stated above, and to City at
21 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a
22 copy to the Director of Financial Management at the same address. Notice of change of
23 address shall be given in the same manner as stated for other notices. Notice shall be
24 deemed given on the date deposited in the mail or on the date personal delivery is made,
25 whichever occurs first.

26 23. COPYRIGHTS AND PATENT RIGHTS.

27 A. Consultant shall place the following copyright protection on all
28 Data: © City of Long Beach, California _____, inserting the appropriate year.

1 B. City reserves the exclusive right to seek and obtain a patent
2 or copyright registration on any Data or other result arising from Consultant's
3 performance of this Agreement. By executing this Agreement, Consultant assigns
4 any ownership interest Consultant may have in the Data to City.

5 C. Consultant warrants that the Data does not violate or infringe
6 any patent, copyright, trade secret or other proprietary right of any other party.
7 Consultant agrees to and shall protect, defend, indemnify and hold City, its officials
8 and employees harmless from any and all claims, demands, damages, loss,
9 liability, causes of action, costs or expenses (including reasonable attorney's fees)
10 whether or not reduced to judgment, arising from any breach or alleged breach of
11 this warranty.

12 24. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
13 that Consultant has not employed or retained any entity or person to solicit or obtain this
14 Agreement and that Consultant has not paid or agreed to pay any entity or person any
15 fee, commission or other monies based on or from the award of this Agreement, except a
16 bona fide employee. If Consultant breaches this warranty, City shall have the right to
17 terminate this Agreement immediately notwithstanding the provisions of Section 10 or, in
18 its discretion, to deduct from payments due under this Agreement or otherwise recover
19 the full amount of the fee, commission or other monies.

20 25. WAIVER. The acceptance of any services or the payment of any
21 money by City shall not operate as a waiver of any provision of this Agreement or of any
22 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
23 Agreement shall not constitute a waiver of any other or subsequent breach of this
24 Agreement.

25 26. CONTINUATION. Termination or expiration of this Agreement shall
26 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
27 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

28 27. TAX REPORTING. As required by federal and state law, City is

1 obligated to and will report the payment of compensation to Consultant on Form 1099-
2 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
3 resulting from payments under this Agreement. Consultant shall submit Consultant's
4 Employer Identification Number (EIN), or Consultant's Social Security Number if
5 Consultant does not have an EIN, in writing to City's Accounts Payable, Department of
6 Financial Management. Consultant acknowledges and agrees that City has no obligation
7 to pay Consultant until Consultant provides one of these numbers.

8 28. ADVERTISING. Consultant shall not use the name of City, its
9 officials or employees in any advertising or solicitation for business or as a reference,
10 without the prior approval of the City Manager or designee.

11 29. AUDIT. City shall have the right at all reasonable times during the
12 term of this Agreement and for a period of five (5) years after termination or expiration of
13 this Agreement to examine, audit, inspect, review, extract information from and copy all
14 books, records, accounts and other documents of Consultant relating to this Agreement.

15 30. THIRD PARTY BENEFICIARY. This Agreement is not intended or
16 designed to or entered for the purpose of creating any benefit or right for any person or
17 entity of any kind that is not a party to this Agreement.

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

MUNISERVICES, LLC, a Delaware limited liability company

September 20, 2011

By [Signature]
Name Marc Herman
Title President

September 20, 2011

By [Signature]
Name Doug Jensen
Title SVP Client Services

"Consultant"

CITY OF LONG BEACH, a municipal corporation

9.30, 2011

By [Signature] **Assistant City Manager**

City Manager
EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER

"City"

This Agreement is approved as to form on Sept 22, 2011.

ROBERT E. SHANNON, City Attorney

By [Signature]
Deputy

EXHIBIT “A”

Scope of Work

MuniServices, LLC Scope of Services

A. SALES AND USE TAX AUDIT AND RECOVERY SERVICE (SUTA)

In broad terms, the objectives of MuniServices Sales and Use Tax Audit Service (SUTA) is to maximize the City's income - and minimize the cost of lost revenue - by detecting and documenting misallocations of sales and use tax activity and do so within the statute of limitations on recoverability.

Objectives

In more detailed terms, the sales and use tax audit program achieves the following objectives:

- a. Identify and correct the sales/use tax reporting errors of businesses that, based on the nexus of their activities, are not properly registered within the City.
- b. Identify and correct the reporting of businesses that are improperly reporting tax to statewide or countywide pools (i.e. classifying sales tax as use tax) and thereby depriving the City of its rightful share of sales and use tax revenue.
- c. Detect, document and correct sales and use tax reporting errors and omissions and thereby generate new, previously unrealized revenue for the City.
- d. Ensure through comprehensive audit measures that the revenue information used for ongoing economic analysis includes all sales and use tax generators.
- e. Assist the City with strategies to preserve and even enhance sales and use tax revenue generated by existing businesses within the City.

Specific Audit Types

The sales/use tax allocation audit services for the City include these distinct types of audits:

Taxable Nexus Field - This Audit focuses on those businesses located in the City from which the City has not been receiving sales and use tax revenue. The result is new or 'found' revenue for the City. MuniServices' initial and periodic Taxable Nexus Field Audits include a physical canvassing of the City's borders in addition to the commercial and industrial areas of the City, and an evaluation of sales and use tax generating businesses located in the City. In the absence of this labor-intensive undertaking, significant misallocations may remain undetected.

Permitization - This Audits focus is on the identification and correction of improperly registered permits for companies having point-of-sale or use operations in the City. Wholesalers, contractors, manufacturers and other non-retail businesses frequently do not hold a sales or use 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 and use tax from the State Board of Equalization ("SBE") audit deficiency assessments, new or changed operations, the self-accrual of use tax on purchases through direct payment permits.

Quarterly Distribution Report - This Audit focuses on those accounts where MuniServices observes a substantial decline in the sales and use tax revenue allocation for a particular business entity in a given quarter. The report enables MuniServices to conduct the QDR audit each and every quarter to minimize the potential of lost revenue to the City. Every three months, the City and MuniServices receive a QDR from the SBE with the local allocation amount reported by permit number. Considering that cities and counties may only recover misallocated revenue for three quarters prior to the SBE being notified of the reporting error, the QDR audits must be conducted in a timely manner in order to preserve the opportunity for the City to recover misallocated revenue. MuniServices' QDR audits have the same objective as the other MuniServices' audits shown above: to detect, document and assist in correcting errors and thereby generate new, previously unrealized sales and use tax revenue for the City.

Deficiency Assessment - When the SBE audits taxpayers for sales and 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 City's 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.

Use Tax - Use Tax Audit services are designed to not only capture use tax revenue through the review of past purchase activity by the businesses in the City but to assist in establishing new processes and procedures designed to prevent the pooling of these revenues and increase the direct allocation to the City. The Use Tax audits focus on identifying taxpayers purchasing tangible personal property directly from out-of-state retailers where the transactions are subject to use tax (rather than sales tax) which is often collected by the vendor who in turn remits it to the SBE, with the local allocation typically distributed statewide or county-wide through the pools. These audits include proprietary techniques used to identify purchases made by businesses located in the City from out-of-state vendors that are in excess of \$500,000. The local tax for these transactions is typically allocated through the statewide or countywide pools however MuniServices' audits work to redirect the local use tax allocation to the City. Additional use tax audits can focus on the practice of "Use Tax Accrual" in certain conditions where the purchaser 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. This can involve both purchases made by the City itself or working directly with businesses and construction contractors and developers to establish the practice of self-accrual and direct remittance of the use tax to the SBE. This can also involve assisting the City and the taxpayers where applicable, in obtaining a Direct Payment Permit to further assist in this practice to enhance the city's revenues.

Business Cooperation Program (an additional component of the Use Tax Audit) - MuniServices will also provide its well-established Business Cooperation Program (BCP) to the City of Long Beach, This program is a formal program whereby MuniServices will identify and seek cooperation from local businesses to self accrue their use tax to the City, work with contractors on major construction projects including the Port of Long Beach expansion project

Accounts Payable - The Accounts Payable Audit enables MuniServices to prepare the documentation to facilitate the issuance of a direct payment permit (use tax) to the City, where feasible, and provide assistance in preparing and filing the tax returns. MuniServices accounts payable audits will include, upon request by the City, a review of the City's purchases to identify opportunities for the City to capture the 1% local tax on purchases subject to use tax.

Sales and Use Tax Audit Timeline

Communication with City's Staff - Throughout the project and working with MuniServices' designated Project Manager, and Sales and Use Tax Manager, MuniServices will communicate with City's designated officials on the progress of the audit. Additionally, in order to keep City's staff apprised of the project status, MuniServices will provide the following reports to City:

- Audit Update Report. Quarterly reports addressing each taxpayer reporting error individually submitted to the SBE on the City's behalf, which includes 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 and use tax revenue which should be forthcoming to City.
- Open Account Status Report. MuniServices will provide bi-annual status reports containing detailed information on sales and use tax inquiries filed with the SBE on behalf of City. These status reports will include a list of accounts filed with the SBE including taxpayer name and address, date of knowledge ("DOK"), and sales and use tax permit number, current status of accounts including estimate of amount of local sales and use tax due City, plus additional information that may be requested by City to be included in this report.

- Other Documents/Reports. These documents will show the recovered amount, what economic period the recovery is for, the taxpayer's names, permit numbers, and the date of knowledge (DOK).

Project Timeline - MuniServices currently provides sales and use tax and district tax audit services to clients in the Southern California region. The firm's extensive data warehouse and experienced audit staffing allows for immediate auditing of the City's sales and use tax records.. MuniServices' audit efforts, initially require the first three months to identify, document, and submit the first batch of sales and using tax errors to the SBE for correction.

Confidentiality Provisions

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

B. SALES TAX ANALYSIS AND REPORTING SERVICES (STARS)

MuniServices' Sales Tax Analysis and Reporting Services (STARS) will provide the City with four powerful tools for economic analysis: the quarterly newsletter (including STARS Digest Executive Summary and Economic Outlook report), STARS Digest, the STARS Query System, and Quarterly Sales Tax Review Meetings, Forecasting and Consulting.

Quarterly Newsletter: STARS Digest Executive Summary/Economic Outlook - The STARS Digest Executive Summary is the first of MuniServices' two-part quarterly newsletter for its clients. This Executive Summary contains a general economic overview of the City's sales tax revenue trend and performance. The second part of the newsletter is the Economic Outlook report, which provides the review of national and regional economic news affecting the City's sales tax revenue. This Economic Outlook report also provides the City with the overview of macroeconomics and microeconomics information, such as inflation, job market, manufacturing, construction spending, etc.

STARS Digest - The STARS Digest is a summary that features a general analysis regarding statewide trends that may affect the City's sales and use tax plus a specific analysis of the City's sales and use tax composition, changes and performance. The quarterly specialized reports will provide comprehensive analysis of the City's sales and use tax economic base and performance with a minimum of 10 years of history. Utilizing this vast database, MuniServices will also provide ad hoc analysis at the City's request, geo areas, custom reports, information and consulting services such as revenue forecasting and revenue presentations. MuniServices will provide the City with quarterly updated STARS Digests, which include accounts from which the City receives sales and use tax revenue. The primary reports included in the STARS Digest are:

- Management Summary. Executive summary reviewing current performance, economic trends and audit results.
- Charts. City composition pie chart, revenue by segment bar chart, historical performance line chart, 10 largest segments line chart, six categories line chart.
- Allocation Summary. Reconciles SBE advances, cleanup payments and pool allocations with budget projections to assist 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's 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.
- Cross-Reference Reports. Allow the user to look up any account shown in the STARS Digest by name and address.
- 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 category and segment is also shown to indicate trends in sales tax composition and performance.

STARS Query System - The STARS Query System enables City staff to analyze the contribution of sales and 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, and 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. All sales tax data processed by MuniServices is located on the Query System. Each business can be called up by account number, business name or address. Each geo-area and economic segment can be analyzed in total and by each individual business. Historical amounts (starting with at least nine quarters and up to 10 years) for each account can be accessed through the Query System.

MuniServices developed the Query System to be extremely user-friendly, incorporating different types of name and address searches to capture hard to find accounts. For example, the address search requires only the street name to enable the "auto-fill" feature that adds in the direction and proper abbreviation for the street type. MuniServices will install the STARS Query System software on a City -designated PC. Each quarter, MuniServices will provide the City with updated information from SBE on CD-ROM. The data will be provided in an unencrypted format allowing the City to export sales and use tax information from the Query System in an access-compatible format. All queries may be exported and saved into .dbf or .xls formats.

MuniServices will provide training sessions for City's staff at mutually agreeable on-site timeslots at City's request.

Deliverables and Timeline

STARS Digest and Economic Outlook - The City will receive its non-confidential newsletter and STARS Digest report, quarterly, within two weeks following the end of the calendar quarter. It is likely that the reports will be available to the City within 10 days of receipt of the City's sales and use tax clean up payment. The newsletter can be produced in a PDF format or any other format that may be suitable for the City.

STARS Query System - The STARS Query System will be installed on City computer systems and the quarterly updates to the system will be received by the City with the STARS Digest within 10 to 20 days following the end of the quarter.

Quarterly Sales Tax Review Meetings and Consulting - MuniServices' Client Services Manager will schedule meetings at your earliest convenience to review the City's latest sales and use tax activity and provide updated sales and use tax forecasts.

Quarterly Sales Tax Review Meetings, Forecasting and Consulting/Sales Tax Revenue Projections

The Quarterly Sales Tax Review Meetings allow representatives from the City to meet with their MuniServices' Client Services Manager/Project Manager on an individualized basis to provide consulting services - the capstone of STARS value. MuniServices will meet with City representatives as frequently as desired to discuss consulting reports that explain the revenue received from the SBE which includes cash

receipts analysis, regional comparison report, quarterly changes report, per capita charts, historical trend analysis, top 100 businesses, and any other topic deemed necessary by the City. The reports include a five-fiscal year sales and use tax forecast, which examines one-time corrections, business openings and closings, and regional trends that may affect sales and use tax cash flow and budget forecasts.

Ad Hoc Reports

The following reports are generally hand-delivered by MuniServices' Client Service Manager/Project Manager during the quarterly meeting with City. Additional reports are continually added based on economic conditions, unique needs, and current events:

Cash Receipts Analysis Report

- a. quarter-over-quarter
- b. fiscal year-to-date
- c. benchmark year, over benchmark year

Historical Sales Tax Analysis by Quarter

- a. three-year category and segment performance in current and prior quarters with change %

Quarterly Performance Summary

- a. quarter-over-quarter change by category, segment and major businesses indicating dollar change by business

Top 100 Reports

- a. top 100 by quarter
- b. five-year top 100 ranking by benchmark year

Historical Performance

- a. three-year benchmark year historical performance for categories and segments
- b. three-year benchmark year historical performance for categories and segments adjusted for inflation
- c. regional comparison of top categories and segments indicating composition and change %

Charts

- a. regional sales tax per capita comparison
- b. 10-year historical sales tax per capita

Forecast

- a. five-year forecast projection

Economic Overview

- a. collection of economic news articles through the current month indicating performance of future sales tax

C. USE TAX PROGRAM

Purpose

MuniServices approach to a Business Cooperation Program is comprehensive in scope. To this end, MuniServices will review and evaluate the City's business makeup and industry group. From this evaluation, MuniServices would structure a multi-pronged approach to perform a more detailed analysis of specific businesses and business segments, as well as evaluate major construction projects. MuniServices would perform a second analysis of the businesses and construction projects to be targeted and priorities established. This information will be utilized for MuniServices to develop its comprehensive strategic plan, starting with a marketing campaign, if necessary. This strategic plan will be coordinated every step of the way with the City and its current efforts to develop the City's economic base. Once the strategic plan is approved

by the City, MuniServices would implement and continually monitor the program's progress and success, providing the City with regular updates and course correction of the strategic plan.

MuniServices approach is based foremost on involving and educating targeted businesses on the benefits and incentives to participate in the City's Business Cooperation Program. The proposed outreach program would include a formal system of policies and procedures designed by MuniServices and implemented for various aspects of the internal and external factors. MuniServices will evaluate the City's economic development dynamics and design internal training sessions and external workshops to educate City staff and external parties and businesses on the benefits of the Business Cooperation Program. MuniServices would also design internal workshops for City staff that may have direct contact or influence with potential business. MuniServices' policies and procedures will address various and likely scenarios to facilitate the marketing aspect of the City's Program.

Scope

The following scope of service for each respective area requested by the City represents MuniServices expectations as to the project stages and estimated timeline.

a. Direct Pay Permits

- 1) Identify processes and steps that will be undertaken to identify, in tandem with the City businesses conducting potential use tax activities within the City of Long Beach.

MuniServices approach to a partnership Business Cooperation Program with the City would include a non-controversial, non-invasive assessment approach to qualify targeted businesses to determine if there may be opportunity for participation in the program. The steps presented below would not necessarily be all inclusive and would be tailored to meet City goals and strategies in implementing its Business Cooperation Program.

Stage 1:

- Meet with City staff to discuss MuniServices' approach to the work and get the City's approval of the proposed processes and procedures.
- Establish a liaison for communications with the City.
- Meet with specific City Departments to identify potential business targets and construction opportunities.
- Work with City staff to design and develop an effective marketing and public relations campaign to increase the possibility of getting businesses to cooperate – gaining a business's cooperation can be the most difficult aspect to any Business Cooperation Program.
- Analyze the companies in the City to develop a target list of companies for inclusion in the program. This would include input from City Staff in addition to business listings prepared by MuniServices utilizing our proprietary database research. This analysis goes well beyond simply looking at county pool data, but is a refined approach using MuniServices proprietary databases and expertise in businesses' reporting of use tax.
- Contact will be initiated with the targeted companies via mail questionnaires and telephone calls to explain the Business Cooperation Program and more extensively explore the possibility of the company's purchasing patterns, accounting systems and future potential.
- MuniServices will then move to the next step with the pre-qualified businesses for 1) introduction purposes, 2) inquire as to whether or not they felt they currently have or will have enough purchases that would qualify the business for a Direct Pay Permit, and 3) determine whether there is an existing capital equipment lease (s) that would qualify for self-accrual by use of the Direct Pay Permit.
- Determine the level of interest and potential for allocation or recovery of sales and use tax revenue for the City for each targeted business.

- Review the businesses' purchasing, accounting and tax reporting procedures for additional Business Cooperation Program opportunities.

Stage 2:

- Meet with City staff to discuss MuniServices' approach to the work and get the City's approval of the proposed processes and procedures.
 - Based on the pre-qualification process, MuniServices would then, along with City personnel, secure participation of companies with significant potential for recovery of use tax and which qualify for a use tax direct payment permit.
 - Work with their purchasing, accounting and tax departments to ensure that the cooperating business understands the proper application of use tax direct payment permits.
 - Assist each company in registering for a use tax direct payment permit, obtaining and providing any additional information required to secure permit issuance by the Board.
 - Coordinate with the purchasing, accounting, tax, and information technology departments of cooperating businesses to help ensure that the maximum amount of use tax is captured within the internal guidelines established for the program by the cooperating businesses by modifying existing purchasing, accounting, tax compliance and computer systems and processes.
 - Advise purchasing, accounting and tax departments' personnel in proper data gathering and processing necessary for use tax direct pay permit reporting.
 - Review use tax direct pay permit reporting to see that it is correctly submitted and recommend necessary changes to correct mistakes.
 - Teleconference with cooperating businesses to discuss any problems or other technical issues that may arise related to the use of the direct payment permit.
 - Monitor systems to help ensure that the cooperating businesses use the use tax direct pay permit for use tax only and not sales tax. Improper direct payment of sales tax could result in the City having to later refund any sales tax revenue improperly allocated under a use tax direct payment permit.
 - Track, test and determine whether accurate reporting and direct allocation is occurring to include tracking of actual net new use tax generated by participating businesses.
- 2) If desired by the City, and in coordination with the City, develop a Marketing and Public Relations outreach plan in collaboration with the City to work with identified process and steps to ID with City business conducting use tax activities that do not have a use tax permit.

b. Use Tax Under Construction Contracts (sub-sellers permit)

- 1) Identify processes and steps that will be undertaken to identify, in tandem with the City construction projects (and subsequent construction firms) within the City of Long Beach, that would meet the State's criteria to allocate use tax under a sellers sub-permit for construction contractors.

Similar to working with businesses to establish and use a Direct Pay Permit, MuniServices would provide support to the city and technical assistance in meeting with each General Contractor to educate them on the need for use tax self accrual at construction sites. MuniServices will also review the list of subcontractors to identify those with the most likely opportunity for use tax self accrual.

- Identify construction projects that may involve substantial local tax allocations.
- Meet with specific City Departments to identify potential business targets and construction opportunities.
- Type of facility (retail, distribution, manufacturing, hospital, hotel, etc.)
- Identify construction items with potential for substantial local use tax allocations.
- Materials, fixtures, machinery and equipment.
- Meet with owner and general contractor to explain purpose of Business Cooperation Program.

- If sub-contracts are not awarded, attempt to obtain formal or informal agreements requiring sub-contractors' participation in the Business Cooperation Program.
 - Advise City regarding contact with sub-contractors.
 - Explain and provide copies of relevant California State Board of Equalization regulations and policies.
 - Ability of contractors to register job-site for sub-contracts of \$5 million or greater.
 - Evaluate and advise contractors' ability to apply for and obtain direct payment permit for use tax if subject to California sales tax on purchases of \$500,000 or more in preceding year.
 - Evaluate and advise suppliers of their ability (or inability) to allocate directly or contractors to self-accrue use taxes under regulation 1802 (c.)
 - Formulate action plan for each target item or items for all cooperating subcontractors.
 - Communicate plan to owner, general contractor, each participating sub-contractor and the host municipality.
 - Implement plan.
 - Follow-up and trouble-shoot problems.
 - Review compliance.
- 2) Develop outreach plan in conjunction with the City to work with identified construction firm to obtain a sub-sellers permit.
 - 3) Outline a technical assistance plan to assist participating businesses and the City with recording and tracking eligible receipts under sub-sellers permits related to construction contracts.
 - 4) Provide an estimate of the number of reviews (verifications) and total hours to be performed for a 12 (twelve) month period for providing technical assistance to firms.

Part of MuniServices due diligence would involve identifying construction projects that have potential opportunities to redirect use tax to the City. In order to meet the City's objective, MuniServices would schedule meetings with general contractors to gather listings of subcontractors assigned to the targeted project, the value of the work and nature of work. MuniServices would next review the data and determine which subcontractors are prone to use tax. MuniServices estimates that fact finding sessions would involve approximately 5 hours for each general contractor and 5 for each respective sub-contractor. MuniServices experience is that a limited number of subcontractors would meet the \$5 million threshold subject to use tax.

c. Use Tax Sharing Agreements

- 1) Demonstrate experience working with local government agencies developing Business Cooperation (Use Tax sharing) agreements with participating companies.

MuniServices will provide technical assistance to the City that includes ordinance review that ensures the City's ordinance is responsive to a rebate program and develop a brochure to educate the public about the City's program.

- 2) Submittal of a sample use tax sharing agreement between a company and a local jurisdiction that was developed by proposer.

MuniServices' advisor, Bob Cendejas, is an attorney that has drafted several sharing agreements for clients referred to as "Location Agreements". These agreements are quite large and considered confidential work product by Mr. Cendejas.

Deliverables

MuniServices will provide the City with quarterly status presentations with written reports, which contain reconciliation worksheets, to assist the City with budget projections and receipt monitoring. The reports will

contain a separate quarterly analysis of all fund adjustments and reporting aberrations impacting the projects outlined in the City's RFP. Examples of reports MuniServices will provide the City include:

Status of work in progress: This report will contain the listing of each targeted business, contact name, address, phone number, email, and summary of discussions, results of those discussions, next steps and action items. Listing of problems encountered should be incorporated into this report to track with each record.

Quarterly and year-to-date accounting of actual use tax recovered through Contractors and Direct Pay Permits: This report will be in Excel and tracks each business and contractor identified with subsequent use tax payments to the City, the quarter the revenue was received, both gross and net of county pool revenue.

Listing and status of problems encountered quarterly: This report will be incorporated into the master tracking file.

Detail of the number of Direct Pay Use Permits in the City: This report will provide those businesses that apply for a direct pay permit and status and confirmation the businesses have obtained a Direct Pay Permit and. Note: specific information as to how any businesses are in the City that have a direct payment permit is only available from the State Board of Equalization.

Program Timing

MuniServices will commence work within 10 days of receipt of an executed contract and an adopted confidentiality resolution, as required by Revenue and Taxation Code Section 7056. A sample resolution is attached hereto as Attachment D-2.

Use Tax Program

MuniServices will provide City staff with training on use tax matters, business cooperation techniques; tax forms/direct pay permits, and other related topics. MuniServices would also encourage city staff to attend meetings with taxpayers and contractors to learn additional techniques in use tax enhancement.

D. CABLE TELEVISION COMPLIANCE AUDIT SERVICES (CATV)

Purpose

The purpose of MuniServices's CATV Service is to verify that the City receiving the franchise fees due from its cable operator(s). The scope of this service includes a one year detailed review of the franchise fee calculations and reporting for the cable operator's last completed calendar year. MuniServices will determine the application of any exceptions noted, if appropriate, back to all eligible prior periods

Procedures

MuniServices will generally use the following procedures:

- Obtain a letter of authorization from the City, copies of the franchise agreements and any correspondence with the cable operators, and a three-year history of franchise payments.
- Obtain and review available documents, reports, work papers, and any prior reports prepared by the internal or external auditors, which concern the computation or methodologies for computing the franchise fee paid to the City.
- Attempt to obtain from the cable operator a waiver of statutes of limitations regarding this review.
- Review franchise agreements and correspondence relating to the City's franchise fees.
- Obtain from the cable operator the information needed to complete our review.
- Review the work papers and supporting documentation used in the computation of the franchise fee payments.
- Review and analyze the cable company's financial statements. Compare and analyze the data for reasonableness, completeness, and accuracy as related to the franchise fee and applicable UUT computations.

- Review and analyze all the cable company revenue accounts in detail. (Determine revenues that are to be included or excluded from the franchise fee computations. Review the revenues excluded from the computations, if any, and determine if they are permitted by the City's franchise agreement.)
- Sample test the cable operator's billings for completeness and accuracy of franchise fee and applicable UUT collections from subscribers and verify that all monies collected are submitted to the City.
- As an optional service for an additional fee, analyze the subscriber base to verify that subscribers are correctly coded to the proper jurisdiction. (If the cable operator provides MuniServices with the data on electronic media, MuniServices will perform a 100% test of their subscriber base and provide the cable operator with the accounts that are incorrectly coded. While most firms will sample test the accuracy of the cable operator's subscriber database, sample testing will not enable the cable operator to correct their database.)
- Verify that any monies collected from subscribers to fund cable operator's PEG (Public, Education and Government) cost are included in the appropriate account to pay for those costs.
- Compare the cable operator's payments, exclusions, and other computations as related to the franchise agreement. Compare the actual payments made to the City for timeliness and accuracy.
- Review findings with cable operator and obtain the cable operator's position on the findings.
- Prepare a written report with findings that describe and explain the results of MuniServices' review, potential additional monies due to the City, and any applicable penalties and interest. MuniServices will schedule a final presentation of these findings with the City.
- Provide any and all necessary schedules and supporting documents to assist the City in collecting underpaid franchise fees.
- If desired and for an additional fee, provide technical assistance, as necessary, to assist the City in negotiating disputed issues with the cable operator.

Timing

MuniServices will commence the Cable Television Compliance Review within 10 working days of receipt of a fully executed agreement to provide this service and the required letter of authorization and payment history from the City, and will commence the review of the franchise fee payments within 10 working days of receipt of the necessary data from the cable operator and the City. MuniServices' objective is to complete the review within 3 to 6 months, but this will vary depending on access to and the condition of the cable operator's records, as well as the level of assistance provided by the cable operator. This review may include jurisdictional coding verification of the cable operator's subscriber base from electronic media if cable operator provides MuniServices with the required electronic data.

Reports

MuniServices will provide the City with progress reports on a timeframe and method (email, facsimile, phone, and/or personal visit) as agreed upon. Upon completion of the Cable Television Compliance Review, MuniServices will issue a draft report to the City noting the findings. After the City reviews and approvals, MuniServices will issue its final report.

City Assistance

MuniServices will need a letter of authorization from the City, copies of the franchise agreement, amendments, and any subsequent agreements relating to franchise fee collection, any prior reports prepared by the internal or external auditors which concern the computation or methodologies for computing franchise fee, and a three-year history of franchise payments made by cable operator to the City.

E. SOLID WASTE HAULER FRANCHISE FEE COMPLIANCE PROGRAM

Purpose

MuniServices' Solid Waste Hauler Franchise Fee Compliance Program ("Solid Waste Compliance") is an agreed-upon-procedures review of the franchise fee payments made to the City from its waste haulers. This

service is designed to verify the accuracy of those payments in compliance with the City's franchise agreement. MuniServices will partner with Michael Balliet, a waste hauler management consulting expert, to perform the Solid Waste Compliance for the City.

Reasonableness Test Compliance Review

MuniServices provides an innovative approach to auditing that utilizes hauler tonnage and billing information to establish a "reasonableness test," resulting in more successful resolution to franchise fee payment issues than traditional audit methods. More than 80 percent of the haulers audited with this method pay findings without dispute. More than 95% of the audits result in fee recovery for the client. MuniServices believes that this innovative approach will be more cost effective to the City and more successful in resolving the payment issues with the franchise haulers.

Under this approach, the scope of services proposed for this Solid Waste Compliance will include:

- Review the current franchise agreements and the City's solid waste ordinances.
- Review all reports submitted by the City's franchised hauler(s) to be included in the review for the past 12 months. The findings will be applied to the review period (generally the previous two years) to ascertain gross receipts, tons hauled, tons disposed, and tons diverted.
- Review of the waste haulers' franchise fee payment calculations for the review period.
- Review of all tonnage and fee reports issued to the City by the waste haulers for the review period.
- Review waste haulers' invoices for all service types performed under the franchise and review waste haulers' records to assess quantities of each service performed.
- Review the waste haulers' tonnage data used to compute the AB939 compliance fees, if applicable.
- Utilizing proprietary "revenue-to-ton ratio process", conduct a reasonableness test of waste haulers' franchise fee payments.
- Prepare a report that establishes the waste haulers accuracy with regards to reporting franchise fees, and potential areas for improvement in both fee remittance and program services.

This report will identify areas in the City's municipal code that require attention and suggest how and why these areas should be changed.

The report will provide a review of the franchised hauler's compliance with the City's agreement and identify any potential breaches and areas where the City could benefit from additional or improved services.

Establish findings based upon the review of waste haulers' revenue and tonnage information

This step is done prior to a full financial audit and often results in City obtaining under-paid franchisee fees without the time and expense of a full audit.

It is also advisable to perform this step since the hauler is often responsible for audit costs if a finding is made.

This step allows us to "pre-qualify" where the findings are likely to be and expend hours where they will be most useful to City

Under this task we will prepare audit finding notices and establish payment deadlines for each hauler reviewed.

Agreed-Upon Procedures Franchise Fee Audit

If the waste hauler(s) declines to pay the amount prescribed by the above "reasonableness test" performed in the Solid Waste Compliance, then MuniServices will perform an agreed-upon-procedures franchise fee audit to finalize our findings. If the franchise agreement allows, the City can generally assess the audit costs to the hauler if findings are made. That way most, if not all, of MuniServices' costs would be paid by the hauler.

The agreed-upon-procedure for the franchise fee audit process will include a review of all recurring billings, all temporary services (including those paid by credit card or cash), and may include the following additional steps:

- If required, prepare and execute a Nondisclosure Agreement between MuniServices and waste haulers.
- Review of all gross revenues on waste haulers' general ledger; discuss revenue categories with waste hauler management; discuss revenue categories with City management; make a determination as to which gross revenues, if any, have been under reported to the City.
- Compare general ledger dollar amounts to other waste haulers' prepared documents, such as audited or unaudited financial statements and tax returns, to verify the validity of the general ledger numbers.
- Perform analytical reviews on the overall financial data of waste haulers; perform tests of reasonableness on gross revenue allocations to the City.
- Prepare a report; submit the report draft to City and waste haulers' management for review and comments; then prepare final report for issuance.

Optional GeoCode Review of Customer Base

MuniServices also provides an innovative approach to analyzing waste haulers' customer bases to determine that all customers located within the City are included in the customer base used to determine the City's franchise fee payments. If the waste haulers provide MuniServices with their customer bases electronically, MuniServices can perform a 100% verification of their customer base and provide the waste haulers with the specific corrections that need to be made. Most audit firms, at best, only perform a random sample review of the customer base, which identifies that errors exist, but does not provide the details for the waste hauler to correct those errors.

Timing

Upon initiation of the project, MuniServices will meet with designated City staff to review the project, procedures and timelines, local, state and federal ordinances, rules and regulations related to the project. MuniServices' team has experience of more than 16 years providing Solid Waste Compliance specifically to municipalities or other government entities. MuniServices is familiar with all of its federal, state and local procedural and legal obligations.

MuniServices will commence the Solid Waste Compliance within 10 working days of receipt of a fully executed agreement including the following: a) the required letter of authorization; b) applicable franchise agreements and ordinances; and c) franchise fee payment remittances from the City.

MuniServices' objective is to complete the reviews within 3 to 4 months, but this will vary depending on access to and the condition of the waste haulers' records, as well as the level of cooperation provided by the waste haulers. This review may include jurisdictional coding verification of the waste haulers' subscriber base from electronic media if waste haulers provide MuniServices with the required electronic data (see the above optional GeoCode review program)

City Obligations

MuniServices will need from the City a letter of authorization, copies of applicable ordinances, the current franchise agreement, amendments, and any subsequent agreements relating to franchise fee collection, any prior reports prepared by the internal or external auditors which concern the computation or methodologies for computing franchise fee, and a three-year history of franchise payments made by each waste hauler to the City.

Other Solid Waste & Recycling Services Provided

Hauler Compliance Program (An Innovative Audit Approach)

MuniServices provides an innovative approach to auditing that utilizes hauler tonnage and billing information to establish a “reasonableness test”, resulting in more successful resolution to franchise fee payment issues than traditional audit methods. More than 80 percent of the haulers audited with this method pay findings without dispute. More than 95% of the audits result in fee recovery for the client.

Hauler Monitoring Program

Utilizing the hauler compliance approach described above, MuniServices will provide a quarterly monitoring system that addresses discrepancies in fee payments in a technical assistance manner and without the imposition of fines and penalties. Each quarter we will ensure that the client is receiving 100% of the fees due. This creates a more cooperative work environment for the client and their hauler(s) because issues are addressed immediately rather than allowing for amounts due to accrue over time that are discovered under the more traditional audit approach. Over the course of one year hauler error rates typically drop to less than 2% and the cost of the program is comparable to the traditional audit approach.

RFP Preparation and Evaluation Support

Through the use of MuniServices extensive knowledge with all aspects of the franchise hauler selection and renewal process, MuniServices can work closely with the client to provide various levels of assistance based on client’s needs. In addition, MuniServices can assist in creating a funding mechanism within this process to provide compensation for these services.

Franchise Negotiation and Rate Increase Evaluations

MuniServices extensive knowledge of solid waste and recycling industry allows for successful negotiation of franchise service structures that provide maximum benefit to our clients, while avoiding untenable rate and service arrangements with hauler(s) that could produce less than desired results and possible contentious renegotiations.

Consulting Services for Clients with Client Owned Hauling Programs

MuniServices will review and evaluate how client owned operations can maximize efficiencies and reduce costs and provide the client with a report noting its recommendations. Service may include routing evaluations, equipment purchase analysis, etc.

Waste Efficiency Consulting

If you have hauler expenses greater than \$10,000 a month this program can save you money. MuniServices will manage the solid waste system for your agency or institution and will provide increased system efficiencies while maximizing available resources. The compensation for this service is generally structured as a percentage of savings realized by the client.

EXHIBIT “B”

Rates or Charges

MuniServices, LLC
Fee Schedule

A. SALES AND USE TAX AUDIT AND RECOVERY SERVICE (SUTA)

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 six 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 ADR Misallocations detected and corrected, MuniServices' compensation shall only include the quarters in which the misallocation actually occurred.

B. SALES TAX ANALYSIS AND REPORTING SERVICES (STARS)

The Compensation for the Sales Tax Analysis and Reporting (STARS), Quarterly Sales Tax Review Meetings, Forecasting and Consulting/Sales Tax Revenue Projections, Ad Hoc Reports, and Sales Tax Consultation is all inclusive.

The STARS Digest and Query System is currently and will continue to be provided to the City for an annual fixed fee of \$9,565.20 per year, paid \$2,391.30 quarterly which includes the latest CPI increase). 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 initial Consumer Price Index used for the first CPI adjustment will be the CPI-WU for the month in which the agreement is fully signed with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service. For instance, if the agreement is signed in April, year 1, the adjustment would not occur until January of year 2. The adjustments thereafter will be based on the CPI-WU from December of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).

MuniServices' Sales Tax Analysis and Reporting Services (STARS) will provide the City with four powerful tools for economic analysis: the quarterly newsletter (including STARS Digest Executive Summary and Economic Outlook report), STARS Digest, the STARS Query System, and Quarterly Sales Tax Review Meetings, Forecasting and Consulting.

C. USE TAX PROGRAM

MuniServices's compensation shall be 20% of the new sales and use tax revenue received by the City as a result of MuniServices's efforts. If MuniServices's efforts result in on-going new sales or use tax revenues to the City, then MuniServices shall participate in those applicable new revenues for the first 12 consecutive quarters in which a business reports the new revenues after beginning its participation in the BCP. With regard to new sales or use tax revenues generated from construction projects, MuniServices only participates with the new revenues generated during the life of the construction project. MuniServices will bill the City its 20% participation fee on the new sales and use taxes generated on a quarterly basis.

D. CABLE TELEVISION COMPLIANCE AUDIT SERVICES (CATV)

MuniServices's compensation for providing the CATV Review is 25% of the additional revenue realized by the City as a result of MuniServices detecting and documenting the error(s)/omission(s) causing deficiencies. Said 25% applies to the additional revenue realized by the City during the first 3 years following correction or recovery. MuniServices will also pursue recovery of revenue for eligible prior periods, if any. For retroactive adjustments MuniServices's 25% shall apply to the amount of the adjustment

E. SOLID WASTE HAULER FRANCHISE FEE COMPLIANCE PROGRAM

Typically the Compensation for the Solid Waste Compliance Program is on a fixed fee basis and will be determined when the City provides additional information regarding its waste haulers. Should the City desire to contract for this service we will negotiate the compensation. A sample of the compensation language is shown here. Please note – this sample compensation is only for standard waste hauler audits. It does not apply to work for landfill or other audits. Compensation for those other audits will be negotiated when a scope of service is agreed upon.

Reasonableness Test Compliance Review, MuniServices will provide the Reasonable Test Compliance Review for on a \$xxx fixed fee. One half of the fees shall be invoiced upon execution of the Agreement and the second half of the fees shall be invoiced upon issuance of the report of the findings to the City.

The Reasonableness Test Compliance Review provides a timely and economical approach to establish what franchise fee payments should have been during the audit term. Our pricing for this service assumes reasonable cooperation by the haulers in providing weight tickets, a representative sampling of billings for various service types, truck route data to disclose dollar to weight ratios for targeted loads, and basic information on local conditions and operations: all information that the haulers can easily provide. Our pricing for this audit assumes receipt of requested data within 30 calendar days of receipt of our initial records request by the haulers. Delays and/or failure by the haulers to provide requested information within this timeframe increase our internal costs for this audit and often require a more time consuming methodology to obtain reasonableness test results. Therefore, MuniServices will charge an additional \$xxx fee per waste hauler for the Reasonableness Test Compliance Review if requested data is not received within 30 calendar days of initial notice. This fee is invoiced upon the issuance of the report of our findings.

Within 1 week of receiving the fully-executed contract, MuniServices will issue a records request to the haulers through the City. MuniServices will draft this notice for City's review and approval. If the waste haulers do not respond or fail to fully comply with the information request contained within 2 weeks of receipt, MuniServices will request that the City send a final notice. These steps insure that the haulers have every opportunity to comply and that the City is kept apprised. In addition, MuniServices is available at all times to advise and assist the haulers in preparing their response to our request to insure timely and accurate data submission.

Agreed-Upon Procedures Franchise Fee Audit, If the waste haulers refuse to cooperate or disagree with the findings of the Reasonableness Test Compliance Review, MuniServices will provide the Agreed-upon Procedures Franchise Fee Audit for a fixed fee of \$xxx for each year reviewed. One half of the fees shall be invoiced upon the City's written authorization for MuniServices to proceed with the audit and the second half of the fees shall be invoiced upon issuance of the report of our findings to the City. Additionally, MuniServices shall be entitled to reimbursement of reasonable travel and other out-of-pocket expenses associated with the conduct of the audit. Such reimbursement shall be invoiced incrementally.

Optional Geocode Review of Customer Base, MuniServices' fee for providing the optional GeoCode review is a fixed fee of \$xxx per solid waste hauler. This fee shall be invoiced upon the completion of the report

Additional Consulting

Depending on the personnel assigned to perform the work, MuniServices' standard hourly rates range from \$75 per hour to \$250 per hour. The following are sample hourly rates based on the job classification:

- Principal: \$250 per hour
- Client Services: \$175 per hour
- Information Technology (IT) support: \$175 per hour
- Operational Support:
 - Director: \$175 per hour
 - Manager: \$150 per hour
 - Senior Analyst: \$125 per hour
 - Analyst: \$100 per hour
 - Administrative: \$75 per hour

Additionally, MuniServices shall be reimbursed for any out of pocket expenses including Travel related Expenses. All out of pocket expenses will be reimbursed at cost to MuniServices.

Examples of Additional Consulting relative to sales and use tax issues, interests, and questions are items, including but not limited to, in-depth economic studies involving economists, certain economic development strategies where additional resources are required, legal support beyond the sales tax appeals process, extraordinary requests that we must purchase data or employ expertise beyond what is listed in the statement of qualifications, and special requests beyond the scope that will take more than 4 hours to accomplish.

Examples of items that do not require the "additional consulting" clause would be providing the City with customized sales tax reports, geo areas, special presentations to chamber of commerce, city council, economic development committees, department head meetings, etc. Anything listed in the scope of services also do not apply.

It is not possible to come up with every scenario that may or may not require compensation for additional consulting. If a situation arises that additional consulting compensation is required, prior mutual and written consent will be in place prior to MuniServices doing the work and before any invoice is received by the City.

Completion of Services

Because the work MuniServices performs will result in corrections of misallocations and other revenue after cessation of services, the City agrees that with regards to misallocations identified to the SBE whose Date of Knowledge occurred during MuniServices performance of services for the City or for other revenue resulting from MuniServices actions taken during the term of a contract, that City's obligation to pay MuniServices shall survive expiration or termination of an Agreement entered between the Parties.

Additionally, if the Agreement is terminated or expires, MuniServices shall continue to pursue corrections of accounts identified during the term of the Agreement that have not been corrected by the SBE as of the effective date of termination or expiration. The period after termination during which MuniServices is pursuing correction of accounts identified before termination is referred to as the "completion period." The City shall compensate MuniServices in accordance with the compensation language of the Agreement for corrected misallocations that result from MuniServices efforts during the completion period. The City will also take all necessary steps to allow MuniServices to continue to receive the required information from the SBE during the completion period.

City Responsibilities

MuniServices's services performed under the Agreement 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 SBE whose Date of Knowledge occurred during MuniServices's 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 the Agreement for any reason. In the event that the City identifies, documents, and notifies the SBE of a reporting error or misallocation as those terms are used herein, the City agrees to notify MuniServices of the City's discovery no later than ten (10) days after the Date of Knowledge. If the City fails to so notify MuniServices and MuniServices later detects, documents, and reports the misallocation or reporting error to the SBE, or if MuniServices has established a Date of Knowledge with the SBE prior to notification to the Board by the City, then MuniServices is entitled to compensation for the affected account in accordance with the Scope of Services and Fee Schedule.

EXHIBIT “C”

City’s Representative:

Rosie Bouquin, Revenue Officer

EXHIBIT “D”

Materials/Information Furnished: None