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| Council/Agency Meeting Held: _____ | _____ City Clerk's Signature |
| Deferred/Continued to: _____ | |
| <input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied | |
| Council Meeting Date: 11/5/2007 | Department ID Number: FN 07-011 |

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, DPA, CITY ADMINISTRATOR

PREPARED BY: DAN T. VILLELLA, CPA, FINANCE DIRECTOR *DTV*

SUBJECT: APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH MUNISERVICES, LLC FOR UTILITY TAX COMPLIANCE REVIEW, REVENUE RECOVERY, AND CONSULTING SERVICES

| |
|--|
| Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s) |
|--|

Statement of Issue:

Approval of a three-year professional services agreement with MuniServices, LLC for utility tax compliance review, revenue recovery, and consulting services related to the City's utility taxes revenues.

Funding Source:

Funds are budgeted in the FY 2007-08 adopted budget, account 10035206.69365. Funds for future years will be budgeted accordingly.

Recommended Action: Motion to:

Approve a three-year professional services agreement with MuniServices, LLC for utility tax compliance review, revenue recovery, and consulting services not-to-exceed \$191,250.

Alternative Action(s):

1. Do not use a consultant for utility tax revenues. This may result in a decrease in net revenues.
2. Attempt to do revenue recovery using in-house personnel.

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Analysis:

Utility taxes are a major portion of the City's General Fund revenues. The City collects utility taxes on electric, gas, water, cable, and telecommunications. MuniServices, LLC offers the City services for electric, gas, and telecommunications. Below is a summary of the estimated revenues the City receives from electric, gas, and telecommunications utility taxes.

| Fiscal Year | Revenues |
|-------------|--------------|
| 2006-07 | \$18,675,000 |
| 2007-08 | 18,725,000 |

The City has utilized MuniServices, LLC since 1991 to help assure that the City receives all of the utility taxes that are due. MuniServices, LLC revenue recoveries since 1991 to the City total over \$22 million. For FY 2006-07, the revenues recovered for the City from MuniServices, LLC totaled \$1.85 million.

The City sent Request for Proposals for utility tax compliance review, revenue recovery, and consulting services to four consultants, and posted the Request for Proposal (RFP) on the City's website. MuniServices, LLC was the only proposal received. MuniServices, LLC has over 260 cities as clients in the United States, including 56 in California. Additionally, eight of the largest ten cities in California utilize MuniServices, LLC.

This professional services contract will provide the following services to the City:

1. A compliance review of major utility providers to ensure that utility tax is being properly collected from all sources.
2. Assist the City in identifying users that may be employing new telecommunication technologies related to wireless communications.
3. Develop and maintain address ranges for utility tax information.
4. Review exemption lists for accuracy.
5. Review payment history for gaps and inaccuracies.
6. Provide periodic training, seminars, newsletters, review potential legislation, and changes due to technology to City staff.
7. Assist the City in complying with appropriate Public Utilities Code law.
8. Assist the City in preparing forms for exemptions and remittances.

This professional services agreement will be for a total of three years, with a total maximum payment amount of \$191,250 over the three years. In no one year, will the total payment exceed \$63,750 per year. The annual payment will be the greater of .0375% of the City's total utility tax revenues (excluding water, cable TV, sewer), or \$10,000.

If this agreement is not approved, there is a strong possibility that the City would not receive all due revenue. There is currently not sufficient in-house staff with the expertise to provide these services. Currently, there are potential changes to laws regarding utility tax revenues, especially those concerning wireless communications. Staff feels it is important to retain

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MuniServices, LLC to ensure that staff is aware of all potential changes to the laws that could potentially affect the City's revenue sources.

Strategic Plan Goal:

Financial - Fully understand the financial implications of financial decisions before they are made and recognize and disclose fiscal impacts of the pension crisis.

Environmental Status:

Not Applicable.

Attachment(s):

| City Clerk's Page Number | No. | Description |
|--------------------------|-----|--|
| 4 | 1. | Professional Services Agreement Between the City of Huntington Beach, and MuniServices, LLC, for Utility Users Tax Compliance Review, Revenue Recovery, and Consulting Services. |

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ATTACHMENT #1

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PROFESSIONAL SERVICES CONTRACT BETWEEN
 THE CITY OF HUNTINGTON BEACH AND
 MUNISERVICES, LLC FOR
 UTILITY USERS TAX COMPLIANCE REVIEW,
 REVENUE RECOVERY AND CONSULTING SERVICES

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
MUNISERVICES, LLC FOR
UTILITY USERS TAX COMPLIANCE REVIEW,
REVENUE RECOVERY AND CONSULTING SERVICES

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and MUNISERVICES, LLC, a Delaware limited liability company, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide comprehensive utility users tax/franchise compliance and revenue protection program, which includes broad participation by California public agencies, and is designed to preserve, protect and enhance their utility users tax (UUT) and utility franchise revenues; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates Marc Herman who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM: TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence as soon as practicable after the execution of this Agreement by CITY (the "Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date, unless sooner terminated as provided herein. All tasks specified in Exhibit "A" shall be completed no later than three (3) years from the Commencement Date. The time for performance of the tasks identified in Exhibit "A" are generally to be shown in Exhibit "A." This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT as specified in Exhibit "B," which is attached hereto and incorporated by reference into this Agreement, a fee, including all costs and expenses, not to exceed Two Hundred ~~ONE HUNDRED NINETY ONE THOUSAND TWO HUNDRED FIFTY-FIVE THOUSAND DOLLARS (\$255,000.00)~~ *FIFTY DOLLARS (\$191,250.00) EPM*

5. EXTRA WORK

In the event CITY requires additional services not included in Exhibit "A" or changes in the scope of services described in Exhibit "A," CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of Exhibit "B."

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials specifically and solely prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) negligent performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars

(\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention, "deductible" or any other similar form of limitation on the required coverage except with the express written consent of CITY. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a

copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence specifically and solely prepared for the CITY under this Agreement, shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT. CONSULTANT may terminate this Agreement if the CITY materially breaches the Agreement. A material breach includes, but is not limited to, CITY's failure to pay CONSULTANT the agreed upon amounts for services performed to the standards required by this Agreement.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all

approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced specifically and solely for the CITY as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the *California Government Code*.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN: Dan T. Villella, Finance Director
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Muniservices, LLC
ATTN: Marc Herman, President
7335 North Palm Bluffs Avenue
Fresno, CA 93711

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17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which

the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the *United States Code* regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by and through their authorized officers on _____, 20____.

MUNISERVICES, LLC,

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

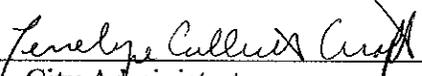
By: 
Marc Herman, President

Mayor

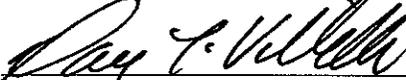
By: 
Kevin Cerutti, Chief Financial Officer

City Clerk

REVIEWED AND APPROVED:


City Administrator

INITIATED AND APPROVED:


Finance Director

APPROVED AS TO FORM:


City Attorney *mvs-3-07 10-22-07*
9.4.07

EXHIBIT "A"

A. STATEMENT OF WORK: *(Narrative of work to be performed)*

MUNISERVICES, LLC will provide comprehensive utility users tax/franchise compliance and revenue protection program, with broad participation by California public agencies that is designed to preserve, protect, and enhance its utility users tax (UUT) and utility franchise revenues.

B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

Basic Services

1. *Perform compliance review of major utility providers and assure the UUT is being properly applied to taxable services and charges and the franchise fee formula is being properly applied to the revenue base. Refer to City of Huntington Beach Municipal Code Section 3.36.*

MUNISERVICES, in conjunction with City's legal counsel, will perform compliance reviews of major utility providers, with a focus on common client issues, to assure that the UUT is being properly applied to taxable services and charges, and that the franchise fee formula is being properly applied to the revenue base (as provided in standard franchise agreements).

2. *Assist the city in identifying sophisticated telecommunication users, which may be employing new telecommunication technologies, which involve taxable telecommunication services to assure tax compliance.*

MUNISERVICES, in conjunction with City's legal counsel, will monitor all telecom technological changes and will identify those changes that comply with the City's UUT ordinance. MUNISERVICES, in conjunction with City's legal counsel, will assist the City in developing compliance correspondence and enforcement procedures.

3. *Develop and maintain a proprietary address range database to assure accurate address range information regarding the city's boundaries. Such databases will reflect the latest available Orange County Local Agency Formation Commission (OC LAFCO) information regarding city boundary changes resulting from annexations or other municipal reorganizations. Upon request, this service will be made available to any utility service provider that serves customers within the city.*

MUNISERVICES, in conjunction with City's legal counsel, will develop and maintain a proprietary address range database to assure accurate address range information regarding the city's boundaries. Such databases will reflect the latest available OC LAFCO information regarding boundary changes due to annexations or other municipal reorganizations. Upon request, this service will be made available to any utility service provider that serves customers within the City.

4. *Review for accuracy all the gas, electric, and water exemption lists and telecommunication exemption certificates for non-residential customers, as provided by the City, and identify possible errors to City staff.*

EXHIBIT "A"

MUNISERVICES, in conjunction with City's legal counsel, will assist the City's staff in obtaining SB 278 lists, tax compliance information, exemption lists of utility service providers and in determining the exempt status of utility customers pursuant to the exemption provisions of the City's UUT ordinance or federal excise tax law relating to telecommunications.

5. Perform periodic compliance reviews of major utility providers and utilize other methods to verify whether such companies are doing business within the City. Identify such possible non-complying companies to the City Treasurer, City Attorney, and Finance Department for enforcement actions. Consultant will assist the City in developing compliance correspondence and enforcement procedures.

MUNISERVICES, in conjunction with City's legal counsel, will perform periodic compliance reviews of major utility providers and utilize other detection tools to verify whether such companies are doing business within the City, and then identify such possible non-complying companies to the City's staff for enforcement actions. MUNISERVICES, in conjunction with City's legal counsel, will assist the city in developing compliance correspondence and enforcement procedures.

6. Based on review of regular and accurate UUT payment history, identify to City Treasurer, City Attorney, and Finance Department possible gaps in payments and inaccuracies. Consultant will assist the City in developing compliance correspondence and enforcement procedures.

MUNISERVICES, in conjunction with City's legal counsel, will identify to the City's staff possible gaps in payments, calculation mistakes, and other payment errors. MUNISERVICES will assist the city in developing compliance correspondence and enforcement procedures. On request, MUNISERVICES will provide the City, on a semi-annual basis, with a spreadsheet reflecting the city's UUT payments.

7. Provide periodic training presentations, seminars, newsletters, special communications, and legislative bulletins to staff as necessary to keep them abreast of the latest information on the impact of industry changes, legislation and new technologies affecting utilities subject to UUT.

MUNISERVICES, in conjunction with City's legal counsel, will provide the City with periodic newsletters, special communications, and legislative bulletins. MUNISERVICES may also provide instruction to the city's staff through workshops and seminars on such subjects as industry deregulation, new technologies, complying with new utility-related legislation, and other timely subjects.

8. Provide technical support to City staff on UUT related issues and questions regarding proposed legislation, deregulation, introduction of new technology and its potential impact on UUT revenues.

MUNISERVICES, in conjunction with City's legal counsel, will monitor proposed State and Federal legislation to identify issues affecting the City's UUT or utility franchise revenues, and

EXHIBIT "A"

make appropriate recommendations to the City, the League of California Cities, the National League of Cities and other lobbyists of California public agencies.

9. *Work in conjunction with the City's legal counsel to provide the following revenue protection services designed to protect the City's existing and future UUT and Utility Franchise Revenues:*

- a) *Maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the consultant website and assist the City in complying with Public Utilities Code Section 495.6.*

MUNISERVICES, in conjunction with City's legal counsel, will maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the uutinfo.org website, and otherwise assist the City in complying with Public Utilities Code Section 495.6.

- b) *Prepare model forms for exemption applications, UUT remittances and other tax compliance documents.*

** All reports and information requested should follow the City of Huntington Beach fiscal year, which covers October 1st through September 30th.*

MUNISERVICES, in conjunction with City's legal counsel, will provide model forms for exemption applications, UUT remittances and other tax compliance documents.

- c) *With prior approval of the City Attorney, assist City staff in obtaining SB278 lists, tax compliance information, exemption lists of utility services providers, and in determining the exempt status of utility pursuant to the exemption provisions of the City's UUT ordinance or Federal Excise Tax law relating to telecommunications.*

MUNISERVICES, in conjunction with City's legal counsel, will assist the City staff in obtaining SB278 lists, tax compliance information, exemption lists of utility services providers, and with prior approval of the City Attorney, determine the exempt status of utility pursuant to the exemption provisions of the City's UUT ordinance or Federal Excise Tax law relating to telecommunications.

- d) *In conjunction with City's legal counsel and with prior approval of the City Attorney, offer recommendations on issues that may arise from deregulation, litigation, changes in laws or regulations, unbundling of traditional utility services, or the introduction of new technologies related to utility services.*

MUNISERVICES, in conjunction with City's legal counsel, will provide a comprehensive review of the City's existing UUT ordinance. Thereafter, provide periodic reviews and recommended updates to the UUT ordinance, administrative rulings and standard utility franchise agreements, to address new issues that may arise because of deregulation, litigation, changes in laws or regulations, the unbundling of traditional utility services, or the introduction of new technologies to provide utility services. Such

EXHIBIT "A"

recommendations will clarify or add procedural protections to the existing ordinance, and should not require a Proposition 218 election approval.

- e) *Monitor proposed State and Federal legislation to identify issues affecting the City's UUT or utility franchise revenues and make appropriate recommendations. Monitor various regulatory proceedings that affect the deregulation of utilities subject to the UUT.*

MUNISERVICES, in conjunction with City's legal counsel, will monitor proposed State and Federal legislation to identify issues affecting the City's UUT or utility franchise revenues and contact the City Attorney to discuss any such modifications.

- f) *Monitor various regulatory proceedings that affect the deregulation of utilities subject to the UUT.*

MUNISERVICES, in conjunction with City's legal counsel, will monitor various regulatory proceedings that affect the deregulation of utilities subject to the UUT and contact the City Attorney to discuss any such modifications.

City-Specific Services – Optional

1. *For additional fee, conduct City-specific audits of a utility franchise or a UUT payment nature, at the City's option.*

With the prior mutual consent of the city and MUNISERVICES, MUNISERVICES proposes to perform a city-specific audit of a utility franchise or UUT payments from a specific utility, when the audit intends to focus on city-specific issues.

2. *For additional fee, perform City-specific compliance activities (i.e., Cable Television (CATV) UUT or franchise review, payment deviation from specific utility review, etc.) at the City's option.*

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

For city-specific activities, MUNISERVICES will receive prior authorization from the City's staff to obtain and examine utility and customer records (hard copy and data format) necessary to assure compliance with the city's UUT ordinance through the use of administrative subpoenas, nondisclosure agreements, and other procedures required by the utility service provider as a condition of providing access to confidential customer information.

In performing the compliance review services described in this subsection, MUNISERVICES agrees to abide by the provisions of the City's UUT ordinance, any administrative rules the city may adopt relating to such ordinance, and the confidentiality requirements of state law (Revenue and Taxation Code Section 7284.6-.7). Throughout the above process, MUNISERVICES shall

EXHIBIT "A"

be available to meet with the city, utility service providers, or their customers to review any MUNISERVICES findings or recommendations arising out of its compliance review activities for the city.

C. CITY'S DUTIES AND RESPONSIBILITIES:

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

1. The City will provide MUNISERVICES, on a timely basis, with information necessary to conduct its compliance review activities including but not limited to: monthly UUT payment histories, exemption lists, and SB 278 gas, electric and water lists (including names of customers refusing to pay surcharges), and certified copies of the UUT ordinance and any subsequent amendments.
2. The City will provide a letter of authorization identifying MUNISERVICES as an authorized agent of the City to perform utility user's tax compliance audits, to receive and examine appropriate utility and customer records (hard copy and data format) necessary to assure UUT tax compliance, and to execute necessary nondisclosure agreements approved by the City.
3. It is agreed and understood that the City will retain the exclusive authority and responsibility to administer, interpret, and enforce its UUT ordinance, recognizing that the role of MUNISERVICES and City's legal counsel is limited to employing their unique expertise and proprietary tools for: i) detecting and identifying errors/omissions by utility service providers or utility users in the application, calculation, collection, and/or remittal of UUT; and, ii) providing the City with technical assistance, without assuming or being delegated the authority or responsibility of the City to administer, interpret, and enforce its UUT ordinance and standard utility franchise agreements.
4. Based upon the written authorization of the Finance Director, the City will negotiate with Consultant to conduct City-specific audits and perform City-specific compliance activities.

D. WORK PROGRAM/PROJECT SCHEDULE:

To be determined.

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Payment Schedule

1. Charges for time during travel are normally not reimbursable and will only be paid if such time is actually used in performing services for CITY or as otherwise arranged with CITY.

2. CONSULTANT shall be entitled to progress payments toward the fixed fee set forth herein in accordance with the following progress and payment schedules.

- A. Total Annual Fixed Fee. The City's total annual fixed fee for the services CONSULTANT provides as specified in Exhibit A shall be the greater of: i) three-eighths of a percent (0.0375%) of the total UUT revenues received by the City (excluding UUT revenues derived from sewer, water, trash or CATV) based on the prior fiscal year, or ii) ten thousand dollars (\$10,000.00) ("Minimum Fee"). In no case shall the City's annual fixed fee for the services CONSULTANT provides as specified in Exhibit A exceed Sixty-Three Thousand Seven Hundred Fifty Dollars (\$63,750.00) ("Maximum Fee").
- B. Quarterly Payments of Fixed Fee. Said annual fixed fee shall be paid in four equal quarterly payments with due dates of: March 31, June 30, September 30, and December 31. Invoices for services rendered shall be in arrears (invoiced for the immediately preceding quarter). If the effective date of this AGREEMENT is other than on an invoice date, the City shall be invoiced for the first quarterly payment on the immediately following invoice date as set forth herein. City shall be invoiced and responsible for a prorated portion of the preceding quarter based on the effective date of this AGREEMENT. Payment shall be made to CONSULTANT within thirty days (30) days of receipt of CONSULTANT's invoice.
- C. Additional Fees: Based upon the written authorization of the Finance Director, additional fees will be negotiated with CONSULTANT for City-specific audits and/or City-specific compliance activities.

3. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT for or on behalf of CITY shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.

4. CONSULTANT shall submit to CITY an invoice for each progress payment due. Such invoice shall:

- A. Reference this Agreement;
- B. Describe the services performed;

- C. Show the total amount of the payment due;
- D. Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein. Most of the tasks that CONSULTANT performs are ongoing but the following tasks will be completed in the timeframes indicated (conditioned on the CITY providing the necessary data) and CITY may measure progress toward the completion of these tasks by the deadlines set forth below:

- Energy compliance review will be completed between July and December of each year;
- Telecommunications compliance review will be completed yearly in the April to June timeframe;
- Progress reports will be issued yearly between December and January;
- Revenue Management Report will be issued yearly between December and March;
- Non-compliant utility detection will be targeted biannually in July and January; and
- Workshops may be conducted biannually once in the fall (September thru November) and once in the spring (March thru May) if legislative or legal events make them necessary.

5. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

Utility Users Tax RFP – Entities Mailed Copies of the RFP

**John Risk, President
Communications Support Group
505 Scenic Ave.
Piedmont, CA 94611-3422**

**James Thompson, President
TCS
PO Box 4014
Thousand Oaks, CA 91359 Phone 805-443-4342**

**Marc Herman, President
MBIA MuniServices
7335 N. Palm Bluffs Dr.
Fresno, CA 93711**

**Hinderliter de Llamas & Associates
1340 Valley Vista Dr., Suite 200
Diamond Bar, CA 91765
Attn: Robert Hinderliter**



INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

RECEIVED

OCT 05 2007

City of Huntington Beach
City Attorney's Office

- Requested by: Valaya Chitchakkol
- Date: October 4, 2007
- Name of contractor/permittee: MuniServices, LLC.
- Description of work to be performed: Utility Users Tax Compliance Review, Revenue Recovery and Consulting Services
- Value and length of contract: \$255,000; 3 year
- Waiver/modification request: See attached list of waivers/modification requested
- Reason for request and why it should be granted: See attached list for reasons
- Identify the risks to the City in approving this waiver/modification: Low

[Signature] Department Head Signature 10/4/7 Date:

APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

| | | | |
|--------------------------------|--|--|-------------------------|
| 1. Risk Management | <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied | <u><i>[Signature]</i></u> Signature | <u>10/5/07</u> Date |
| 2. City Attorney's Office | <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied | <u><i>[Signature]</i></u> Signature | <u>10/19/07</u> Date |
| 3. City Administrator's Office | <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied | <u><i>[Signature]</i></u> Signature | <u>10-23-07</u> Date |

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services

100

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/30/2007

PRODUCER Phone: 559-432-1800 Fax: 559-436-2500
HRH of Central California Insurance Services
5 River Park Place West, Suite 303
Fresno CA 93720

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
MuniServices, LLC Phone: 559-271-6852
Attn: Patricia Dunn
7335 N. Palm Bluffs Ave.
Fresno CA 93711

| INSURERS AFFORDING COVERAGE | NAIC # |
|--|--------|
| INSURER A: Hartford Insurance Group | 19682 |
| INSURER B: Hartford Fire Insurance Compa | 19682 |
| INSURER C: Columbia Casualty Co | 31127 |
| INSURER D: | |
| INSURER E: | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR ADD'L LTR. INSRD | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YY) | POLICY EXPIRATION DATE (MM/DD/YY) | LIMITS | |
|-----------------------|--|---------------|----------------------------------|-----------------------------------|---|-------------------------------------|
| A | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC | 51UUNIZ2782 | 12/5/2006 | 12/5/2007 | EACH OCCURRENCE | \$ 1,000,000 |
| | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | \$300,000 |
| | | | | | MEDEXP (Any one person) | \$10,000 |
| | | | | | PERSONAL & ADV INJURY | \$1,000,000 |
| | | | | | GENERAL AGGREGATE | \$2,000,000 |
| | | | | | PRODUCTS - COMP/OP AGG | \$ |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS | 51UUNIZ2782 | 12/5/2006 | 12/5/2007 | COMBINED SINGLE LIMIT (Ea accident) | \$ 1,000,000 |
| | | | | | BODILY INJURY (Per person) | \$ |
| | | | | | BODILY INJURY (Per accident) | \$ |
| | | | | | PROPERTY DAMAGE (Per accident) | \$ |
| | GARAGE LIABILITY <input type="checkbox"/> ANY AUTO | | | | AUTO ONLY - EA ACCIDENT | \$ |
| | | | | | OTHER THAN AUTO ONLY: EAACC | \$ |
| | | | | | AGG | \$ |
| A | EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000 | 51RHUIZ1678 | 12/5/2006 | 12/5/2007 | EACH OCCURRENCE | \$ 10,000,000 |
| | | | | | AGGREGATE | \$ 10,000,000 |
| | | | | | | \$ |
| | | | | | | \$ |
| | | | | | | \$ |
| B | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below | 51WETN1710 | 12/5/2006 | 12/5/2007 | <input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER | |
| | | | | | E.L. EACH ACCIDENT | \$ 1,000,000 |
| | | | | | E.L. DISEASE - EA EMPLOYEE | \$ 1,000,000 |
| | | | | | E.L. DISEASE - POLICY LIMIT | \$ 1,000,000 |
| C | OTHER **Errors & Omissions | 287086489 | 12/5/2006 | 12/5/2007 | \$5,000,000 \$5,000,000 \$100,000 | Aggregate Per Claim Retention |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 **Umbrella Policy does not provide excess limits over the Errors & Omissions Limits of Liability. *30 Days Cancellation Notice for Non-Payment of Premium applies to all Hartford Insurance Company coverage policies only. Waiver of Subrogation applies for all scheduled policies except Worker's Compensation for States Texas and New Jersey. The City of Huntington Beach, its agents, officers, and employees are named as additional insureds with respect to the operations and work performed by the named insured as required by contract. Insurance is Primary/Non-contributory. Group Code: MBIAMSG

CERTIFICATE HOLDER

City of Huntington Beach
Attn: Risk Management
2000 Main Street
Huntington Beach CA 92648

CANCELLATION *10 Days for Non-Payment of Premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
James Gibbs

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

E7.26

POLICY NUMBER: 51 UUN IZ2782

COMMERCIAL GENERAL
LIABILITY
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**MUNISERVICES HOLDINGS LLC; MUNISERVICES LLC; MUNI RESOURCES LLC;
MUNICIPAL RESOURCE CONSULTANTS, JV; JOHN AUSTIN, INC, ALLAN CHARKOW,
INC; MBIA MUNISERVICES**

SCHEDULE

| |
|--|
| <p>The City of Huntington Beach, it's agents, officers, and employees, are named as additional insured with respect to the operations and work performed by the named insured as required by contract. Insurance is Primary/Non-contributory. Waiver of Subrogation applies for all scheduled policies except Errors & Omissions and Worker's Compensation for States Texas and New Jersey.</p> |
|--|

| |
|---|
| <p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p> |
|---|

Section II – Who is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

CG 20 26 07 04

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MuniServices, LLC
Summary of Waiver Requests

Insurance Waivers:

Section 10: Certificate of Insurance

MuniServices has \$100,000 retention for Error and Omissions coverage.

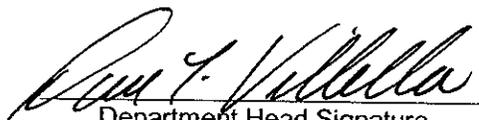
Reason: MuniServices believes that their insurance policy provides the best cost with a reasonable retention amount and a large policy value.
In their most recent 2006 financial statements, MuniServices maintained a current ratio of 1.74, with current assets exceeding current liabilities by \$2.9 million



CITY OF HUNTINGTON BEACH

Professional Service Contracts Purchasing Certification

1. Date: 10/17/2007
2. Department: Finance
3. Requested by: Valaya Chitchakkol
4. Name of consultant: MuniServices, LLC
5. Attach the written statement of the specification, conditions, and other requirements for the requested services provided to solicited consultants.
Please see attached contract.
6. Amount of the contract: \$191,250
7. Are sufficient funds available to fund this contract?¹ Yes No
8. Is this contract generally described on the list of professional service contracts approved by the City Council?¹ Yes No
9. Company number and object code where funds are budgeted: 10035205.69365
10. Is this contract less than \$50,000? Yes No
11. Does this contract fall within \$50,000 and \$100,000? Yes No
12. Is this contract over \$100,000? Yes No
(Note: Contracts requiring City Council Approval need to be signed by the Mayor and City Clerk. Make sure the appropriate signature page is attached to contract.)
13. Were formal written proposals requested from at least three available qualified consultants?
 Yes No
14. Attach list of consultants from whom proposals were requested (including a contact telephone number).
Please attached list. In addition to the mailing list, the RFP was posted on the City website.
15. Attach proposed scope of work.
Please see Exhibit A of the contract
16. Attach proposed payment schedule.
Please see Exhibit B of the contract


Department Head Signature
rn


RICHARD AMADRIL
Purchasing and Central Services Manager

1. If the answer to this question is "No," the contract will require approval from the City Council.