



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Approve Consultant Services Agreement by and between the City of Sausalito and MuniServices, LLC

RECOMMENDED MOTION:

Adopt a Resolution of the City Council of the City of Sausalito Approving the Consultant Services Agreement by and between the City of Sausalito and MuniServices, LLC

SUMMARY

The City of Sausalito entered into a consultant services agreement with MuniServices LLC (formerly MBIA MuniServices) on October 20, 2004. The agreement was for a one-year term with an automatic three one-year extension. This contract expires on October 19, 2008. To continue the outsourcing of business license processing and discovery, the Finance Committee is recommending that the City Council approve the new contract with MuniServices LLC for the same term.

The proposed new agreement will call for the processing fee to be \$15 per license with an annual Consumer Price Index adjustment of not less than 2%, and not to exceed 4.5%. This new rate will be effective January 1, 2009. Currently the fee is \$12 per license. This adjustment is necessary due to increases in printing and mailing costs. In addition to the original notice, MuniServices also sends follow up invoices for non-responsive and delinquent accounts. The Finance Committee has further recommended that the City's Master Fee Schedule be adjusted annually to reflect the increases in the service cost.

The discovery fee will remain the same. MuniServices receives 25% of collected funds at the time of discovery, and 25% going forward for three years if the business continues to exist and revenue is collected.

BACKGROUND

Prior to October 2004, the City processed all business licenses had a challenging time in the administration, renewal and in-house discovery. By outsourcing the business license processing and discovery to MuniServices LLC, the City was able to provide timely renewal and mailing of business license certificates to taxpayers. The discovery through MuniServices generated over \$300,000 gross revenue to the City.

Item #: 4B1
Meeting Date: 10-7-08
Page #: 1

In addition to mailing annual renewal notices, processing customer payments, providing reports, handling customer inquiries, and educating taxpayers about City business license compliance requirements, MuniServices provides assistance to City staff on business license interpretation and best business practices.

As a professional organization, MuniServices provides great services for a very reasonable price. In FY 2008, the City paid \$22,285 to MuniServices for processing services including customer service support.

FISCAL IMPACT

With the increase from \$12 to \$15, staff is projecting the annual processing cost to be \$26,250. The FY2008-09 Administration Department budget for this service was estimated to be \$21,000. No additional appropriation is needed as the Administration Department will absorb the difference of \$5,250 through other savings.

STAFF RECOMMENDATIONS

Staff recommends that the City Council approve the Consultant Services Agreement by and between the City of Sausalito and MuniServices LLC.

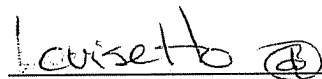
ATTACHMENTS

1. Resolution of the City Council of the City of Sausalito Approving the Consultant Services Agreement by and between the City of Sausalito and MuniServices LLC

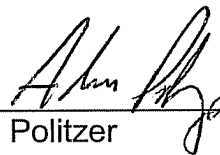
Exhibit A – Consultant Services Agreement

SUBMITTED BY:

APPROVED BY:



Louise Ho
Admin. Services Director/Treasurer



Adam Politzer
City Manager

REVIEWED BY:



Mary Wagner, City Attorney
As to form

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO
APPROVING THE CONSULTANT SERVICES AGREEMENT BY AND
BETWEEN THE CITY OF SAUSALITO AND MUNISERVICES LLC**

WHEREAS, the City desires to hire an independent contractor to manage the day to day operation of the City's business license tax; and

WHEREAS, the City and MuniServices LLC ("MuniServices") desire to enter into the Consultant Services Agreement attached hereto as Exhibit A and incorporated herein by reference pursuant to which MuniServices will manage the City's business license tax collection all as set forth in the Agreement.

NOW THEREFORE, the City Council of the City of Sausalito does hereby resolve as follows:

Section 1. Approval of Agreement. The Consultant Services Agreement by and between the City and MuniServices attached hereto as Exhibit A is hereby approved and the Mayor is authorized to execute the Agreement on behalf of the City.

Section 2. Administration of Agreement. Upon execution of the Agreement by the Mayor, the City Manager (or his/her designee), is authorized, on behalf of the City, to approve and/or sign all documents necessary and appropriate to carry out and implement the Agreement.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on the day of , by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

MAYOR OF THE CITY SAUSALITO

ATTEST:

DEPUTY CITY CLERK

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (hereinafter "Agreement") is made as of _____, between MuniServices, LLC, a Delaware limited liability company with an office at 7335 N. Palm Bluffs Ave, Fresno, CA 93711 and its affiliates (hereinafter "MuniServices"), and the City of Sausalito, a municipal corporation of the State of California (hereinafter "City").

1. SERVICES

Subject to the terms and conditions set forth herein, MuniServices shall provide to City those services set forth in Addenda attached hereto in exchange for the fees set forth in the Addenda. Upon mutual agreement, MuniServices and City may add services to be performed by MuniServices for City under this Agreement by executing additional Addenda. Such additional Addenda shall contain, at a minimum, a description of the services to be performed, the anticipated compensation for such services, and any additional terms required to give effect to the request for services (collectively "Services"). Such additional Addenda shall be signed by representatives of City and MuniServices having authority to so bind the parties. MuniServices shall provide the Services in the manner specified in each applicable Addendum. MuniServices shall not be required to perform, nor City be required to pay for, services not contained in an applicable Addendum.

2. INDEPENDENT CONTRACTOR STATUS

MuniServices is an independent contractor, and not an employee of City, who will be engaged in providing consulting services for City. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between City and MuniServices or between City and any employee or agent of MuniServices. Both parties acknowledge that MuniServices is not an employee for state or federal tax purposes. MuniServices shall retain the right to perform services for others during the term of this Agreement. Nothing in this Agreement shall be construed as creating a partnership, joint venture, or designating MuniServices as an agent of City. MuniServices shall have no authority to bind, contract, or obligate City, financially or otherwise. Except as set forth in Section 8.1 of this Agreement, City shall not have any right to control the means by which MuniServices performs the Services including the facilities used, the employees, contractors, or agents assigned by MuniServices. MuniServices shall be responsible for any subcontracts entered into in the course of performance of the Services for City and MuniServices shall be solely responsible for payment to the subcontractors.

3. COMPENSATION

- 3.1 In consideration for the Services to be performed by MuniServices, City agrees to pay MuniServices the rates set forth in each applicable Addendum.
- 3.2 MuniServices shall submit timely invoices for all Services rendered in accordance with each applicable Addendum. Payment of undisputed amounts will be made to MuniServices within thirty-days (30) of receipt of MuniServices' invoice therefore. Any undisputed amounts which remain unpaid after thirty-days (30) shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.
- 3.3 MuniServices shall be responsible for all costs and expenses incident to the performance of Services for City, including but not limited to, all costs of equipment provided by MuniServices, all fees, fines, licenses, bonds or taxes required of or imposed against MuniServices and all other of MuniServices' costs of doing business. City shall not be responsible for expenses incurred by MuniServices in performing Services for City, except as noted in an applicable Addendum, or such expenses that receive prior written approval from City.

4. CONFIDENTIALITY

- 4.1 During the term of this Agreement, each party may have access to certain confidential information of the other including such party's products, services, technical data, trade secrets, inventions, processes, and constituent information. All such information shall be deemed "Confidential Information" whether or not identified as such. Each party shall use the Confidential Information of the other solely for performance of this Agreement, and all Confidential Information shall remain the sole property of the respective parties. With regard to Confidential Information, each party shall use the same care as it uses to maintain the confidentiality of its own confidential information, which shall be no less than reasonable care, and shall not make disclosure of the Confidential Information to any third party without the written consent of the Disclosing Party, except to employees, consultants or agents to whom disclosure is necessary to the performance of this Agreement and who are bound by a duty of confidentiality. Information shall not be deemed confidential if it (a) is rightfully known to the receiving party prior to receipt from the disclosing party as reasonably evidenced by such party; (b) becomes known to the receiving party from a source other than one who is under an obligation of confidentiality to the disclosing party; (c) becomes publicly known or otherwise ceases to be confidential other than by an unauthorized act, or (d) is subject to disclosure by City under the Public Records Act, California Government Code Section 6250, *et seq.* or other applicable local, state or federal law. At all times, in accordance with Graham-Leach Bliley and other applicable State and Federal regulations, taxpayer information containing Personally Identifiable Information, as defined in applicable regulations, shall be held in the strictest confidence by MuniServices.
- 4.2 If a subpoena or other legal process in any way concerning Confidential Information is served upon a party to which Confidential Information has been disclosed ("Recipient"), the Recipient shall promptly notify the Disclosing Party and shall cooperate with the Disclosing Party, at the latter's expense, in any lawful effort to contest the validity of such subpoena or other legal process.
- 4.3 The parties agree that a breach of the terms of Section 4.1 or 4.2 would result in irreparable injury to the non-breaching party for which a remedy in damages would be inadequate. The parties agree that in the event of such breach or threatened breach, the non-breaching party shall be entitled to, in addition to any other remedies available at law or in equity, seek an injunction to prevent the breach or threatened breach.
- 4.4 The obligation of confidentiality as set forth in Section 4.1 shall continue for a period of three-years (3) from the date of disclosure of the information, provided, however, that for any information which constitutes a Trade Secret (as defined by applicable law), the obligation of confidentiality shall continue during the entire term of this Agreement and shall survive the termination of this Agreement indefinitely. This obligation of confidentiality shall not extend to any information required to be disclosed pursuant to the California Public Records Act, the United States Freedom of Information Act, or other public disclosure acts of the United States or a state or territory thereof. In no event shall City be liable to MuniServices in connection with the disclosure of any information which the City in its sole and absolute discretion determines is required to be disclosed in accordance with the California Public Records Act or other application state or federal laws.

5. TERM AND TERMINATION

- 5.1 Term. This Agreement shall be effective as of the date of the last signature hereto and shall continue in full force and effect for a period of one year (the "Initial Term"). Thereafter, this

Agreement shall automatically renew for three (3) successive periods of one (1) year each (each an "Extension Term").

5.2 Termination of Agreement. Unless terminated as per section 5.4 below, this Agreement may only be terminated upon the expiration of the Initial term or the expiration of an Extension term. If either party desires to terminate this Agreement upon the expiration of a one-year term, the terminating party shall provide notice to the other party of its intent not to renew no less than sixty-days (60) prior to the renewal date.

5.3 Intentionally omitted.

5.4 Event of Default. Any of the following shall constitute an event of default ("Event of Default") under this Agreement or any applicable Addendum: (a) City fails to pay any undisputed amount when due hereunder (after fourteen working days prior written notice of such failure to pay), or (b) a material breach by either party of this Agreement or applicable Addendum. If an Event of Default occurs, the non-breaching party shall notify the breaching party of the Event of Default and provide the breaching party thirty-days (30) to cure (except in the case of non-payment for which the cure period shall be fourteen (14) working days) or such amount of time as is reasonable given the circumstances. If the breaching party fails to effect cure within the time allowed, then the non-breaching party may, at its option, terminate this Agreement or applicable Addendum effective immediately upon notice.

5.5 Effect of Termination. Notwithstanding non-renewal or termination of this Agreement or any attached Addendum pursuant to Sections 5.1, 5.2, or 5.4 above, City shall be obligated to pay MuniServices for services performed through the effective date of termination for which MuniServices has not been previously paid. In addition, because the services performed by MuniServices prior to termination or non-renewal of this Agreement or attached Addendum may result in City's receipt of revenue after termination which are subject to MuniServices' fee in accordance with each applicable Addendum, City shall remain obligated after termination or non-renewal to provide to MuniServices such information as is necessary for MuniServices to calculate the compensation due as a result of this receipt of revenue by City and City shall remain obligated to pay MuniServices' invoices therefore in accordance with the terms of this Agreement.

6. EQUAL EMPLOYMENT OPPORTUNITY

During performance of this Agreement, MuniServices, for itself, its assignees and successors in interest, agrees as follows:

6.1 Compliance With Regulations: MuniServices shall comply with Executive Order 11246, "Equal Employment Opportunity" and labor regulations (41 C.F.R. Part 60), and any and all other applicable federal and/or state regulations regarding equal opportunity, hereinafter referred to as the "Regulations."

6.2 Nondiscrimination: MuniServices, with regard to any work performed pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, or veteran status in the selection and retention of employees, subcontractors, the procurements of materials or leases of equipment.

6.3 Solicitation for Subcontractor, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by MuniServices for work to be performed under any subcontract, including procurements of materials or equipment, such potential subcontractor or supplier shall be notified by MuniServices of MuniServices' obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, or veteran status.

6.4 Information and Reports: MuniServices shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of MuniServices is in the exclusive possession of another who fails or refuses to furnish this information, MuniServices shall so certify to City and shall set forth what efforts it has made to obtain the information.

6.5 Incorporation of Provisions: MuniServices shall include the provisions of paragraphs 6.1 through 6.4 in every subcontract issued pursuant to this Agreement. MuniServices shall take such action with respect to any Regulations, order or instructions issued pursuant thereto. MuniServices shall take such action with respect to any subcontract or procurement as City may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event MuniServices becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, MuniServices may request City to enter such litigation to protect the interests of City.

7. WARRANTIES, REPRESENTATIONS AND INDEMNIFICATION

7.1 By MuniServices. MuniServices represents that all Services shall be performed by persons with the skills and abilities necessary and consistent with the standards of professionalism prevalent in the industry. The Services and deliverables shall be provided free and clear of the proprietary claims of third parties. All Services shall be provided in accordance with applicable state and federal regulations, including, without limitation, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and applicable state regulations.

**SUBSECTION 7.1 IS THE FULL AND COMPLETE WARRANTY STATEMENT
OF MUNISERVICES UNDER THIS AGREEMENT.**

7.2 By CITY. City represents that to the best of City's actual knowledge with no duty of investigation required, the information provided to MuniServices in the performance of Services by MuniServices hereunder shall be provided free and clear of the claims of third parties. City represents that to the best of City's actual knowledge with no duty of investigation required, City has the right to provide said information to MuniServices and that said information shall not be obscene, defamatory, or otherwise expose MuniServices to liability to third parties.

7.3 Indemnification. MuniServices hereto agree to defend, indemnify (with counsel reasonably acceptable to City), and hold harmless the City, its elected and appointed officials, officers, employees, agents, volunteers, successors and assigns, from any and all claims, suits, demands, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively "Losses") arising from or related to a claim of injury to person or property or death arising from or caused by the negligent acts or omissions of employees, agents, or representatives of MuniServices which acts or omissions arise from the MuniServices's performance (or non-

CS/ 7.4 Limitation of Liability. To the maximum extent permitted by law, in no event shall MuniServices, its employees, contractors or agents be liable for any indirect, incidental, special, punitive or consequential damages, lost data or cost of procurement of substitute goods or services arising from or related to the services whether for, among other things, breach of warranty or any obligation arising therefrom, and whether liability is asserted in contract or tort (including but not limited to negligence and strict product liability) whether or not MuniServices has been advised of the possibility of any such loss or damage. MuniServices' liability hereunder shall in no event exceed an amount equal to the fees paid by city for the affected service to which the claim pertains. The foregoing sets forth city's exclusive remedy for claims arising from or out of this agreement. The provisions of this section allocate the risks between MuniServices and city and MuniServices' pricing reflects the allocation of risk and limitation of liability specified herein.

performance) under this Agreement. City shall defend, indemnify, and hold MuniServices harmless from any Losses arising from or related to a claim that information provided by City to MuniServices contains any false, misleading, or defamatory information regarding a third party. MuniServices shall defend, indemnify, and hold City harmless from any claim that MuniServices negligently or intentionally falsified any information provided to City pursuant to this Agreement.

8. GENERAL PROVISIONS

8.1 Personnel. At any time, City may request removal or replacement of personnel assigned by MuniServices and MuniServices shall promptly replace such personnel. The time for any deliverables required or any increase in costs shall be adjusted to reflect any adverse impact resulting from the change in personnel.

8.2 Gratuities, Gifts, Conflict of Interest. MuniServices shall, at all times, comply with any City policies regarding gifts, gratuities, or conflicts of interest. At no time shall MuniServices, an employee, agent, director, or contractor offer or accept any gift or gratuity from a third party who may be subject to findings resulting from Services, to or from any City official, employee, contractor, or agent, or from any other party where such gift or gratuity could be construed as a conflict of interest. MuniServices, its officers, directors, employees, agents, and contractors shall avoid all conflicts of interest, financial or otherwise, or the appearance thereof, in the performance of this Agreement or the applicable Services.

8.3 Dispute Resolution. If any dispute relating to this Agreement arises between the parties, the parties shall make a good faith effort to resolve the dispute informally through negotiation prior to filing a lawsuit. If the good faith effort to resolve the dispute does not resolve the dispute, the parties may seek judicial determination of the dispute.

8.4 Ownership of Work Product. MuniServices shall retain all right, title, and interest in and to the processes, procedures, models, inventions, software, ideas, know-how, and any and all other patentable or copyrightable material used, developed, or reduced to practice in the performance of this Agreement. Upon payment therefore, City shall be granted all right, title, and interest in and to the reports, charts, graphs, and other deliverables produced by MuniServices in the performance of this Agreement. Upon the termination of this Agreement MuniServices agrees that it shall provide CITY, at no additional cost, a data base of all information provided to the CITY in either MS Excel or Access format or such other format as reasonably requested by the CITY, provided, however, that costs for conversion to formats other than MS Excel or Access may be subject to reasonable reimbursement as mutually agreed in writing by CITY and MuniServices.

8.5 Assignment. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment without such prior written consent shall be void. Notwithstanding the foregoing, the Parties hereto may assign all or part of this Agreement immediately, without the prior written consent of the non-assigning Party if necessary to satisfy the rules, regulations and/or orders of any federal or state governmental agency or body.

Notwithstanding the foregoing, MuniServices may assign monies due under this agreement (whether characterized as an account receivable or otherwise). Any violation of the provisions of this Section shall render this Agreement voidable at the option of the non-assigning Party.

8.6 Insurance.

a. Public Liability. During the term of this Agreement, MuniServices shall maintain in full force and effect a policy of public liability insurance with limits of no less than One Million

Dollars (\$1,000,000) per occurrence. If a form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit. MuniServices shall cause City, its officials and employees to be named on all liability policies described above as insured as respects activities undertaken pursuant to the parties' respective obligations pursuant to this Agreement.

- b. Workers' Compensation. During the term of this Agreement, MuniServices shall fully comply with the terms of the law of California concerning workers' compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability MuniServices may have for workers' compensation.
 - c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, elected and appointed officials, employees, agents and volunteers; or MuniServices shall provide a evidence satisfactory to City of MuniServices' ability to pay deductible or self-insured retention.
 - d. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:
 - i. City, its officers, elected and appointed officials, employees, agents and volunteers are to be covered as additional insureds.
 - ii. MuniServices's insurance coverage shall be primary insurance as respects City, its officers, elected and appointed officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, elected and appointed officials, employees, agents or volunteers shall be excess of City's insurance and shall not contribute with it.
 - iii. Upon receiving written notice of cancellation from its insurers, MuniServices shall give the City twenty-five days prior written notice of the cancellation.
 - e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
 - f. Verification of Coverage. MuniServices shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Section 8.6. The endorsements should be on forms provided by City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before the commencement of the Term. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.
- 8.7 Severability. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed as nearly as possible to reflect the original intent of the parties and the remainder of the provisions shall remain in full force and effect.
- 8.8 Waiver. Either Party's failure to insist upon strict performance of any provision of this Agreement shall not be construed as a waiver of that or any other of its rights hereunder at any later date or time.

- 8.9 Force Majeure. Neither party shall be liable for failing to perform its obligations hereunder (other than payment obligations) where delayed or hindered by war, riots, embargoes, strikes or acts of its vendors or suppliers, accidents, acts of God, or any other event beyond its reasonable control.
- 8.10 Notices. All notices, including notices of address changes, provided hereunder shall be deemed received on the third day after mailing if sent by mail, or immediately if sent by facsimile. Notices shall be sent to the following:

If to MuniServices:
MuniServices, LLC
7335 N. Palm Bluffs Ave.
Fresno, CA 93711
Attn: Legal Department
Email: legal@muniservices.com

If to City:
City of Sausalito
420 Litho Street
Sausalito, CA 94965
Attn: City Manager
Email: apolitzer@ci.sausalito.ca.us

With a copy to:
City Attorney

- 8.11 Copies. This Agreement May Be Executed In Separate Counterparts Including Facsimile Copies, Each Of Which Shall Be Deemed An Original, And All Of Which Shall Be Deemed One And The Same Instrument And Legally Binding Upon The Parties.
- 8.12 Entire Agreement. This Agreement, including the Addenda attached hereto and made part hereof, constitutes the entire Agreement between MuniServices and City with respect to the Services provided. This Agreement supersedes and replaces any and all prior agreements, of whatever kind or nature, with respect to the Services provided hereunder and with respect to any Addendum to be added hereto at a later date. Any prior agreements, discussions, or representations not expressly set forth herein are of no force or effect.
- 8.13 No Oral Modification. No modification of this Agreement shall be effective unless set forth in writing and executed with the same formality as this Agreement. With respect to MuniServices, no waiver of the requirements of this Section shall be effective unless in writing and signed by the President of MuniServices.
- 8.14 Construction. This Agreement shall be construed in accordance with the laws of the State of California without regard to its conflict of laws principals.
- 8.15 Headings. The section headings herein are for convenience and reference purposes only and shall not serve as a basis for construction or interpretation.
- 8.16 Order of Precedence. In the event of any conflict between the terms of this Agreement and the terms of any Addenda, the terms of this Agreement shall prevail. No additional terms, PO Terms and Conditions, or oral or written representations of any kind shall be of any force and effect unless in writing and executed with the same formality as this Agreement.
- 8.17 Partial Payment. No receipt by MuniServices of an amount less than City's full amount due will be deemed to be other than payment "on account", nor will any endorsement or statement on any check or any accompanying letter effect or evidence an accord and satisfaction. MuniServices may accept such check or partial payment without prejudice to MuniServices' right to recover the balance or pursue any right of MuniServices.
- 8.18 Venue. In the event that suit shall be brought by either Party to this Agreement, the Parties agree that venue shall be exclusively vested in the State courts of the County of Marin or where appropriate, in the United States District Court, Northern District of California.

8.19 Attorneys' Fees. If any action at law or in equity is brought for or on account of any breach of, or to enforce or interpret any of, the covenants, terms, or conditions of this Agreement, the prevailing Party shall be entitled to recover from the other Party as part of the prevailing Party's costs reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

The Parties are signing this Agreement as stated in the introductory clause.

MuniServices, LLC

City of Sausalito
a municipal corporation

By: _____
Marc Herman
Title: President

By: _____
Title: _____

ATTEST:

By: _____
Kevin Cerutti
Title: Vice President Finance

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Eric Myers, General Counsel

City Attorney

4B1
12

EXHIBIT A

**City of Sausalito
Business License Tax Management and Administration Privatization
Discovery & Audit
Scope of Services**

I. BUSINESS LICENSE MANAGEMENT AND ADMINISTRATIVE SERVICES

Upon full contract execution, MuniServices shall continue to perform the following services:

A. Process Business Tax Applications

- i. Process new applicants and review and verify applications and application data, data input and licensee correspondence;
- ii. Process annual renewal applications, mail renewal applications, and process completed renewal applications;
- iii. Process special short term licenses (Street fairs, Art festivals, Film Permits, etc.);
- iv. Add to the application, renewal, and delinquents a line item for the fire inspection fee;
- v. For taxpayers who do not return their annual renewal application, MuniServices will send two additional notices and make one follow up phone call. To the extent these efforts do not result in taxpayer compliance, the account will be handled under MuniServices' Compliance and Discovery services and will be subject to those services' respective fees.

B. Collections

- i. Collection of Business License taxes and fees for both new licenses, renewals, and special short term licenses MuniServices will remit to the City or as directed by City deposit into a City bank account established for MuniServices to make direct deposits on behalf of City all Business License taxes and fees and fire inspection fees within seven (7) calendar days of receipt by MuniServices;
- ii. Monthly detail reporting of payments received, including monthly reconciliation of payments received to payments remitted to, or deposited on behalf of, the City;
- iii. Credit Card payment processing will be accepted pursuant to City policy. MuniServices and City will work together to determine the best method for processing credit card payments;
- iv. For taxpayers who do not remit payment (except those that do not remit payment for the fire inspection fees) with their application or whose check is not honored by the bank (NSF check), MuniServices will send two additional notices and make one follow up phone call. To the extent these efforts do not result in taxpayer compliance, the account will be handled under MuniServices' Compliance and Discovery services and will be subject to those services' with the respective fees.

C. Taxpayer Communications

- i. MuniServices will handle all taxpayer communications including general questions, account inquiries, business license application questions and issue resolution.
- ii. MuniServices' National Call Center will be available through a toll free telephone line Monday through Friday, 8:00AM to 5:00PM Pacific Time;
- iii. MuniServices will respond to taxpayer correspondence via return phone call or written correspondence. All standard correspondence templates will be subject to City's prior written approval;
- iv. MuniServices will maintain logs identifying the date of the inquiry, the name and address of the person or entity making the inquiry and the advice or other information provided by MuniServices, such logs will be provided to City within seven (7) calendar days upon City's written request;

- v. MuniServices shall within seven (7) calendar days of City's written request visit the City to address specific taxpayer concerns up to six visits per year;

D. Reporting to include

Standard reports are available from MuniServices;

- i. Up to five initial Ad-Hoc reports to be created based upon City request as developed with the City / MuniServices guidelines;
- ii. Up to five annual Ad-Hoc reports to be created based upon City request;
- iii. Reports to be provided to the City as established in the guidelines and/or as requested by the City;

E. Client Communications

- i. MuniServices will maintain regular and close communications with City staff to communicate project activity and any issues. MuniServices will provide prompt responses to City staff regarding any questions or issues. Unless otherwise agreed between MuniServices and City, the Manager of MuniServices' Local Tax Compliance Division shall be the City's primary contact person;

F. Computerized Business License Database and Program Management

- i. MuniServices shall implement its BizLINK system for use in administering Sausalito's Business License Tax within six (6) months following execution of this Agreement. In addition, MuniServices is developing online application submission and online payment processing for the BizLINK system. When developed, the online application processing and online payment processing will be made available to the City pursuant to this Agreement. Any fees for online payment processing services and/or bank clearing fees (setup, implementation, annual or regular fees, and per transaction fees) shall be the responsibility of the City. The BizLINK system will provide the City with the following report generation capabilities:

- Business Inventory Report
- SIC / NAIC
- Financial Reports (Daily, Weekly, Monthly, Quarterly and Annually)

In addition to standard reports, BizLINK will provide detailed Ad-Hoc query capability including:

- Integrated Custom Report Designer allowing complete control of Ad-Hoc Report Generation
- Automatic Report Generation
- Easy to use selection criteria for field selection
- Full control of tabular field selection, sorting and display
- Ability to send selected data to Tabular Data export for Excel, Delimited (Tab/Comma), or XML file formats

MuniServices shall provide City staff all appropriate and necessary training to enable staff to use the inquiry and reporting functions of the BizLINK system.

The above reporting functionality shall be provided to the City on a read only basis subject to MuniServices' data security procedures.

- ii. Online Access and Data Security: Internet connectivity utilizes a standard Internet connection. Employees of City who need access to the system will have access through the same connection as they currently access the Internet and their local LAN. By using City's existing internet connection, no additional expense will be required including the Virtual Private Network (VPN)

software, of which up to five (5) licenses will be provided by MuniServices at no additional charge to the City.

MuniServices utilizes the CISCO Systems VPN to create a 1 to 1 relationship between a client PC and the host software. The VPN software establishes a secure link between the host software and the client PC. This secure link means that the PC and the host establish an encrypted connection that protects data transmitted via the internet. This ensures that information is protected by encryption as it is transferred to and from the secured machines, and represents the highest level of security of City confidential data available. In essence, the transmissions on this secure link are unreadable by third party users of the Internet. Once the VPN software has been installed on City's system, City will be required to adhere to all licensing and confidentiality provisions included with the VPN software subject to all federal and state laws including without limitation, the California Public Records Act. MuniServices will provide the software to City once MuniServices implements its BizLINK™ system, and City agrees to the following:

ID Codes and Passwords.

1. Customer shall provide MuniServices with the names of Customer's Users ("Users"). MuniServices shall issue Users an RSA-FOB SecureID Tool ("SecureID") and a Customer ID code and password to permit access to the Services. The SecureID will be assigned in connection with the VPN software to each user. This tool generates a random and unique security code every minute. The code combines with a password to provide a unique password (the "Passcode") every minute to ensure security.
2. During the initial login, Users will be given a unique, random four-digit code that will be known only to the User ("UserID"). User login names, unique four digit code, and the SecureID will allow only the Users to access the Services
3. Customer has the ability to manage and control which Customer employees are designated as Users. It is the Customer's responsibility to ensure that Customer ID code, the UserID codes and SecureID are known to, and used only by, persons who have been properly authorized to use them. All access of the Service will be deemed to be uses authorized by the Customer and will so bind the Customer.
4. Failure to protect UserID codes and the SecureID may allow an unauthorized party to (1) use the systems, (2) correct, change, verify or send data through the system, or (3) send information and communications to, or receive information and communications from MuniServices.
5. Customer assumes the entire risk for the fraudulent and or unauthorized use of all UserID codes and Passcodes. Customer shall develop internal procedures to limit such risk, which procedures will include, at minimum, (a) notify MuniServices immediately when a new person becomes a Customer User or when any existing Customer User no longer is a Customer User, and (b) not keeping, in any form or in any place, lists of ID codes or passwords.
6. Customer agrees to notify MuniServices immediately when it becomes aware of any loss or theft of, or any unauthorized use of, any USERID codes or passwords, or any unauthorized entry into BizLINK
7. In accessing the Services Customer will be receiving data through the Internet. Customer acknowledges that when the Internet, or any other electronic communications facilities are used to transmit or receive data, the data may be accessed by unauthorized third parties. To reduce the likelihood of such third party access, Customer agrees to transmit and receive data through BizLINK using only software including, but not limited to, Microsoft Internet Explorer 6.0 browser software, the VPN software and the SecureID. Additionally, Customer agrees to follow the MuniServices log on procedures that support such protocols.

II. BUSINESS LICENSE DISCOVERY AND AUDIT SERVICES

MuniServices' Business License ("BLT") auditing service will help the City of Sausalito ("City") to realize revenue to which they may be entitled but may not be receiving from their business license tax registry. MuniServices provides the detection, documentation and correction of errors and omissions causing deficiencies thereby producing new revenue that would not otherwise have been realized by the City. Moreover, our team works in full and collaborative partnership with City revenue staff to supplement and bolster the operation and procedures currently in place.

The audit program works to inform local businesses of accurate compliance with the BLT ordinance in a way that minimizes for the City the burden of follow up. The business owner is educated on the requirements of the ordinance to prevent future misapplication.

Services in a full BLT audit program include:

A. Discovery Service

The discovery service portion of the BLT service is designed to identify entities subject to the City's local business tax that are not properly registered with City or otherwise not reporting business taxes to City. In performing the discovery service, MuniServices shall:

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

B. Audit Service

The audit service portion of the BLT service is designed to identify entities subject to the City's business tax that are underreporting their business taxes and to review the entities' records to ensure compliance with City's taxes. In performing the Audit Services, MuniServices shall:

- i. Establish a comprehensive inventory of the registered entities subject to the City's business tax and the database elements needed to analyze each entity's current and prior years tax remittance records;
- ii. Compare MuniServices records with City records to identify potential under-reporting entities subject to taxation;
- iii. Meet with designated City staff to review and discuss potential audit candidates and mutually agree which entities will be subject to review;

- iv. For potential under-reporting entities identified, obtain authorization from City to conduct a review of the entities' records and determine the amount of tax due for current and prior periods (plus applicable interest and penalties, where appropriate);
- v. Submit audit summaries (also referred to as a "Deficiency Notice") to City to permit City to determine the amount of a deficiency owed, if any;
- vi. Invoice entity (including supporting documentation) on behalf of City for the amount of identified deficiencies, with payment to be remitted to City or to MuniServices; and
- vii. Educate entity regarding City's reporting requirements to prevent recurring deficiencies in future years.

C. Corollary Consulting

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

III. COMPENSATION

A. Business License Tax Administration & Privatization Services

MuniServices' fee for providing the Business License Tax Administration Services shall be an annual fee of fifteen dollars (\$15) per license issued, including special short term licenses. Between the effective date of this contract and 11:59 p.m. December 31, 2008, MuniServices will continue to charge the previous fee of \$12 per license issued.

The annual fee for subsequent years shall be estimated during January of each year based upon the total number of licenses issued for the prior year (defined as the year for which the license is issued, not when the license is issued) times the rate of fifteen dollars (\$15) per license times ninety percent (90%) ("Estimated Annual Fee"). Quarterly, MuniServices shall invoice the City one-quarter (1/4) of the Estimated Annual Fee for that year. After the end of each calendar year during which services are provided, MuniServices shall calculate the annual fee for the prior calendar year based on the actual number of licenses issued for that year times the rate of fifteen dollars (\$15) per license ("Actual Annual Fee"). The difference between the Estimated Annual Fee and the Actual Annual Fee shall be reflected on the first invoice for the current year. All invoices for services shall be due and payable within thirty (30) days of the date of the invoice.

The Annual Fee is adjusted upward 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 on January 1, 2010. The adjustments thereafter will be based on the CPI-WU from December of the prior calendar year. Each Annual Fee adjustment will not be less than two percent (2%) or greater than four and one-half percent (4.5%).

B. Discovery Services

MuniServices' Compensation for providing Discovery Services shall be a contingency fee of 25% of the additional revenue realized by City from the services. The 25% shall apply to the current tax year, all eligible prior period revenues, and any applicable penalties, interest, and late charges. The 25% fee shall also apply to revenues received from the subject businesses for the first three (3) years following the current tax year. The contingency fee only applies to revenue actually received by City. The term "current tax year" shall mean the most recent tax year for which business license taxes are due and payable to City, as of the date the taxpayer remits payment to MuniServices in compliance with City

4B1
17

requirements. Notwithstanding the foregoing, in the event that the City discovers through independent means a non-compliant taxpayer, the City shall notify MuniServices within thirty (30) days of City's contact with the taxpayer. Together with such notification, the City shall either: 1) authorize MuniServices to pursue compliance with regards to said taxpayer; or 2) Notify MuniServices that the City intends to pursue compliance on its own behalf. In the event that the City refers the account to MuniServices, MuniServices shall be entitled to one-half (½) of the contingency fee MuniServices would otherwise have earned with regards to the non-compliant taxpayer. For accounts which the City elects to pursue on its own behalf, MuniServices shall not be entitled to a fee for the discovery and compliance activities. For accounts where MuniServices was not notified within the thirty (30) day period, accounts where MuniServices has completed taxpayer compliance prior to receiving notification from the City, and accounts where MuniServices can show by competent documentation that MuniServices has been in contact with the non-compliant for more than thirty (30) days, MuniServices shall be entitled to work the account to completion and receive its full fee thereon.

C. Audit Services

MuniServices will execute its Business License Audit Program for City for an hourly fee of one hundred twenty five dollars (\$125) per hour, not to exceed five hundred dollars (\$500) per business entity audited. MuniServices shall invoice the City monthly following completion of the audit of any particular entity.

D. Corollary Consulting

City may request that MuniServices provide additional consulting services at any time during term of the Agreement to which this Addendum is attached. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, MuniServices' standard hourly rates range from \$75 per hour to \$300 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

IV. CITY OBLIGATIONS

MuniServices shall have and maintain City's business license registry file and payment history from which MuniServices shall compute its billing to City for the Discovery and Audit services which will be invoiced no less than quarterly during the term of the Agreement. If at any time City begins maintaining the Business License Registry and payment files, City agrees to provide an electronic copy to MuniServices quarterly for so long as MuniServices' right to invoice for services rendered continues. MuniServices shall invoice City for the contingency fee on no less frequently than a quarterly basis, based on revenue actually received by City from deficiencies identified by MuniServices. Because MuniServices' BLT Service may result in collection of deficiencies after termination of the Agreement, City's obligation to collect fees and notify MuniServices, and MuniServices' right to continue to receive contingency fees, shall survive termination of this Addendum or the Agreement for any reason.

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

The Parties are signing this Agreement as stated in the introductory clause.

MuniServices, LLC

City of Sausalito
a municipal corporation

By: _____
Marc Herman
Title: President

By: _____
Title: _____

ATTEST:

By: _____
Kevin Cerutti
Title: Vice President Finance

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Eric Myers, General Counsel

City Attorney