



## CITY COUNCIL STAFF REPORT

DATE: FEBRUARY 19, 2014 CONSENT CALENDAR

SUBJECT: APPROVAL OF AN AMENDMENT TO AGREEMENT NO. 6205 WITH MUNISERVICES, LLC FOR LOCAL BUSINESS LICENSE TAX COMPLIANCE AND AUDITING SERVICES

FROM: David H. Ready, City Manager

BY: Finance Department

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### SUMMARY

The City Council will consider an Amendment to the Agreement with MuniServices, LLC for City Business License Tax Compliance Services, to extend the Agreement for an additional three years, under the existing compensation schedule of 40% of additional revenue collected.

### RECOMMENDATION:

1. Approve Amendment No. 1 to Agreement No. A6205 with MuniServices, LLC to provide the City Business License Tax Discovery and Assessment Services for an additional three (3) years plus a one-year optional extension at the mutual consent of the parties for a maximum contract term ending June 30, 2017.
2. Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

Business License Tax generates approximately \$875,000 per year to the City's General Fund revenue, is collected from over 6,300 entities conducting business within the City of Palm Springs, and must be renewed, reported and paid on an annual basis.

The City routinely uses outside qualified local government tax specialists and auditors to ensure compliance with the City's rules and regulations for the proper compliance and remittance of City taxes.

The City Manager entered into agreement with MuniServices for business license tax compliance services to search for businesses that are non-compliant or under-compliant with the City's municipal code for the payment of business license taxes.

The current agreement has been very successful and has resulted in the payment of \$57,780 to the City of Palm Springs for under-reported business licenses taxes, and

another \$19,672 has been invoiced but is yet to be received for a total of \$77,452 in new revenue.

City staff recommends the City Council approve an amendment to the agreement to extend the term of the original agreement for an additional three years plus a one-year optional extension. All other terms remain the same as in the original agreement.

MuniServices provides a comprehensive audit of all entities which includes but is not limited to: the State Board of Equalization records, cross-referenced with City records, to ensure that businesses are in full compliance with the Code requirements for payment of business license taxes.


Section 7.04.030 of the Municipal Code provides that the City Council may authorize the acquisition of supplies, equipment or services without competition when it is determined that an unusual or unique situations exists, in that due to experience and expertise demonstrated in prior contracts with the city a particular contractor is uniquely qualified for a particular task, that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Pursuant to the requirements of Section 7.04.030, the Procurement Manager and the Director of Finance have determined that prior exemplary contract performance and special expertise of MuniServices LLC for similar tax auditing services (sales tax and utility users tax) for the City is acceptable and will adequately protect the public interest in that the total cost of the services to be provided will likely be equal to or less than what could be obtained through an independent City competitive process at this time.

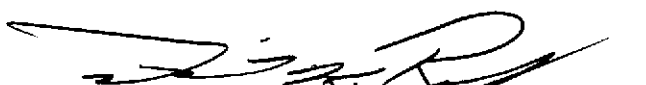
FISCAL IMPACT:

The fee to MuniServices is 40% of the revenue recovered, and the total amount of fees paid under the contract is completely dependent on the amount of business license taxes recovered and collected.

The City may terminate the agreement for any reason by providing 30-days written notice to MuniServices.

  
\_\_\_\_\_  
Geoffrey S. Kiehl, Finance Director

  
\_\_\_\_\_  
James Thompson,  
Chief of Staff / City Clerk

  
\_\_\_\_\_  
David H. Ready, City Manager

Attachments:

- Amendment No. 1 to Consulting Services Agreement
- Agreement No. A6205 Scope of Services

**AMENDMENT NO. 1  
TO  
CONSULTING SERVICES AGREEMENT  
FOR BUSINESS LICENSE DISCOVERY AND ASSESSMENT SERVICES  
(Agreement No. A6205)**

THIS FIRST AMENDMENT to the Consulting Services Agreement No. A6205 for Business License Discovery and Assessment Services is made and entered into to be effective on the date that the City Manager executes this Amendment by and between the City of Palm Springs, a California charter city and municipal corporation (hereinafter referred to as the City), and MuniServices LLC (hereinafter referred to as the Consultant) (collectively, the "Parties").

**RECITALS**

- A. City and Consultant entered into a Consulting Services Agreement ("Agreement") for Business License Discovery and Assessment Services to assist the City with identifying entities subject to taxation, which are not properly registered, or otherwise not reporting taxes to the City ; or are registered but are not properly reporting the full amount of tax which they are subject to under the City's ordinances, made and entered into on March 13, 2012 in an amount not to exceed \$25,000.
- B. City and Consultant desire to extend the term of the agreement for 3 additional years plus a 1 year optional extension at the mutual consent of the parties for a maximum contract term ending June 30, 2017.
- C. Consultant shall be compensated and reimbursed for the services rendered under this Agreement in accordance with the Schedule of Fees as set forth in Exhibit "A".

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

**AGREEMENT**

- 1. Section 4.4, "Term", of the Agreement is hereby amended to read as follows: "Unless earlier terminated in accordance with Section 4.5 of this Agreement, this Agreement shall continue in full force and effect from the date executed by the City and ending on June 30, 2016. Thereafter the Parties will have the option to extend the Agreement for one (1) additional year to June 30, 2017.
- 2. Section 3.1, "Compensation of Consultant", of the Agreement is hereby amended to read as follows: "Consultant shall be compensated and reimbursed for the services rendered under this Agreement in accordance with the Schedule of Fees set forth in Exhibit "A".

**IN WITNESS WHEREOF**, the Parties have executed and entered into this Amendment as of the date first written above.

**“CITY”**

**CITY OF PALM SPRINGS,**

a California charter city and municipal corporation

ATTEST:

By: \_\_\_\_\_

James Thompson, City Clerk

By: \_\_\_\_\_

David H. Ready, City Manager

Date \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Douglas H. Holland, City Attorney

**SIGNATURES CONTINUED ON NEXT PAGE]**

**"CONSULTANT"**

**MUNISERVICES, LLC**

a California corporation

**CONSULTANT:** Check one:  Individual  Partnership  Corporation

Corporations require two notarized signatures: One from each of the following: A. Chairman of Board, President, or any Vice President: AND B. Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial Officer).

By: \_\_\_\_\_  
Signature (notarized)

By: \_\_\_\_\_  
Signature (notarized)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_ }

State of \_\_\_\_\_ }

County of \_\_\_\_\_ }ss

County of \_\_\_\_\_ }ss

On \_\_\_\_\_ before me,

On \_\_\_\_\_ before me,

personally \_\_\_\_\_ appeared personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

personally \_\_\_\_\_ appeared personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary  
Signature: \_\_\_\_\_

Notary  
Signature: \_\_\_\_\_

Notary Seal:

Notary Seal:

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**EXHIBIT "A"**

**CONSULTANT'S  
SCOPE OF SERVICES/WORK**

**Including,**

**Schedule of Fees**

**And**

**Schedule of Performance**

**ATTACHMENT 1**  
**Local Tax Compliance Services**  
**(Discovery and Assessment)**

**Article 1-Objectives and Methods**

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MuniServices's Local Tax Compliance service ("LTC") is designed to assist the City in locating tax revenue that the City may not be receiving from its local tax registry. MuniServices provides 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 the operations and procedures currently in place.

The LTC service also aims to reduce future errors by informing the businesses that are identified as having errors or omissions about the proper methods of compliance. Informing business owners of the requirements of the ordinance helps to prevent future mistakes by businesses making future enforcement efforts by the City less burdensome for the City.

**Article 2-Scope of Work**

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**1.1. Initial Meeting.** MuniServices meets with the City staff to review the procedures and objectives of the LTC service, business entity relations and logistical matters, including establishing an appropriate liaison with City management and staff and logical checkpoints for measuring progress (the "Initial Meeting"). MuniServices and City shall schedule the meeting within 10 days after MuniServices receives the fully-signed copy of this addendum from the City.

**1.2. Workplan.** Based on the Initial Meeting, MuniServices develops a workplan that incorporates the logistical matters agreed to in the Initial Meeting and describes in detail how the objectives of the LTC service shall be met (the "Workplan").

**1.3. Commencement of services.** After the Workplan is developed, MuniServices shall begin providing the services described in paragraphs 1.4 thru 1.5 below. MuniServices' obligation to provide services is contingent on the City providing the necessary information and cooperation.

**1.4. Discovery Services.** Discovery Services are designed to provide a full service solution to the City's business license enforcement procedures. It does not replace current functions, but provides a focused and fulltime solution to the identification of entities subject to taxation by the City, which are not properly registered, or otherwise not reporting taxes to the City. In performing the Discovery Services, MuniServices shall:

- a. Establish a comprehensive inventory of the entities subject to taxation by the City and the database elements needed to facilitate a comprehensive comparative analysis with the City's records of those entities that are properly registered;
- b. Compare MuniServices' database of business records with the City's records to identify potential non-reporting and non-registered entities subject to taxation;
- c. For each unregistered or non-reporting entities identified and confirmed, assist the entities, as necessary, to complete the 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);
- d. Invoice entities (including supporting documentation) on behalf of the City for the amount of identified deficiencies, with payment to be remitted to MuniServices;
- e. Ensure that all submitted registration forms are completed correctly and in their entirety;
- f. Forward all completed registration forms and associated payments to the City in batches at the frequency directed by the City. Applications will be forwarded with copies of the payments and payments deposited into an account designated by the City;
- g. Collect the amount of identified deficiencies, together with supporting documentation, and remit payment received to the City in weekly batches. (MuniServices shall follow the City's business rules in collecting partial payments or the tax in full at the City's direction.);
- h. Establish a call center open during normal business hours to assist entities with questions concerning application of the City's taxes, and reporting and remittance requirements;
- i. Educate entities regarding the City's reporting requirements to prevent recurring deficiencies in future years;
- j. Contact personnel in sales, operations and/or tax accounting at each target business to determine whether a business license fee is due, when necessary and appropriate. This is accomplished with the highest regard to discretion and professional conduct. MuniServices' LTC assessments are predicated on a non-controversial,

constructive public relations approach that emphasizes the importance of each business to the City and the mutual benefits of correcting non-reporting errors;

- k. Provide reports addressing each taxpayer not reporting, including the business name, address, and telephone number to the City; and
- l. Monitor and analyze the business license registration files of the City each quarter in order to determine non-reporting businesses.

**1.5. Deficiency Assessment Services.** Deficiency Assessment Services are designed to identify entities subject to taxation by the City that are not properly reporting the full amount of tax which they are subject to under the City's ordinances. Deficiency Assessment Services also identifies entities that are potentially underreporting, or not reporting all applicable taxes. MuniServices reviews entities records to ensure compliance with the City's taxes. In performing the Deficiency Assessment Services, MuniServices shall:

- a. Establish a comprehensive inventory of the registered entities subject to taxation by the City and the database elements needed to facilitate an analysis of records of those entity's current and prior year's tax remittance;
- b. Compare MuniServices' records with the City's records to identify potential under-reporting entities subject to taxation;
- c. Meet with designated City staff to review and discuss potential assessment candidates and mutually agree which entities will be subject to review. Only entities mutually agreed by MuniServices and the City to be reviewed shall be subject to MuniServices' assessment services.
- d. For potential under-reporting entities identified, MuniServices shall obtain authorization from the 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).
- e. Submit assessment summaries (also referred to as "Deficiency Notice") to the City to permit the City to determine the amount of a deficiency owed, if any.

### **Article 3-Deliverables**

MuniServices shall provide the City with assessment progress reports to include the following:

- 1. Status of work in progress, including copies of reports provided to taxpayers/intermediaries addressing each reporting error/omission individually, including where applicable the business name, address, telephone number, account identification number, individuals contacted, date(s) of contact, nature of business, reason(s) for error/omission and recommended corrective procedure;
- 2. Actual revenue produced for the City by MuniServices' service on a quarterly and cumulative basis;
- 3. Projected revenue forthcoming to the City as a result of MuniServices' assessment service, specified according to source, timing, and one-time versus ongoing; and
- 4. Alphabetical listing of all errors/omissions detected for the City by MuniServices, including the account number, correction status, payment amount received by the City, period to which payment is related and payment type (e.g., reallocation, deficiency assessment) for each one.

#### **Timing and Reporting**

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

### **Article 4-Compensation**

#### **What the City shall pay MuniServices**

##### **Discovery Services**

MuniServices' compensation for providing Discovery Services shall be a contingency fee of 40% of the additional revenue received by the City from the services. The 40% shall apply to the current tax year, all eligible prior period revenues, and any applicable penalties, interest, and late charges. The contingency fee only applies to revenue actually received by the City. The term "current tax year" shall mean the most recent tax year for which local taxes are due and payable to the City, and in which MuniServices has identified deficiencies.

##### **Not-to-Exceed**

The Discovery Services are not-to-exceed ("NTE") \$25,000 without the prior written approval of the City. If the billing for the Discovery Services come close to the NTE MuniServices will notify the City and the City will encumber additional funds. The

MAY  
[Signature]



Parties will then amend the Agreement to increase the NTE. If the City does not encumber additional funds then MuniServices may stop working until additional funds are encumbered.

#### **Assessment Services**

MuniServices' compensation for the Assessment Service shall be a contingency fee of 40%. The 40% contingency fee shall apply to revenue received by the City as a result of deficiencies identified in the review and shall include any eligible prior period revenues together with all applicable penalties, interest and late charges. The City agrees to use reasonable and diligent efforts to collect deficiencies identified by MuniServices.

#### **Taxpayers' payments and MuniServices' Invoice Process**

The following section describes how MuniServices handles the taxpayers' payments and invoices the City for its fees.

- a. Taxpayers' payments received by MuniServices shall be deposited into a general escrow account maintained by MuniServices. The taxpayers' payments deposited into the escrow account shall be remitted to the City on a monthly basis net of MuniServices fees.
- b. MuniServices shall send to the City a remittance package no less frequently than once per month that shall contain the taxpayer business license application, copy of the taxpayer payment, other supporting documents received from the taxpayer, a MuniServices generated report identifying each taxpayer payment received and the amount of MuniServices fees attributed to the taxpayer payment, a check made payable to the City for the amount of fees collected less MuniServices' fees, and an invoice showing our contingency fee.
- c. The interest earned on the escrow account shall be used by MuniServices to offset the costs of the program.
- d. Should there be any disputed payments; MuniServices shall work with City to mutually resolve these issues. If the resolution results in City's favor, MuniServices shall refund the applicable portion of the fee to City within 10 days of resolution.

#### **Additional Consulting**

City may request that MuniServices provide additional consulting services at any time during the 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 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 shall be invoiced at least monthly based on actual time and expenses incurred. All reimbursable expenses shall receive prior approval from the City and shall be reimbursed at cost to MuniServices.

### **Article 5 - City Obligations**

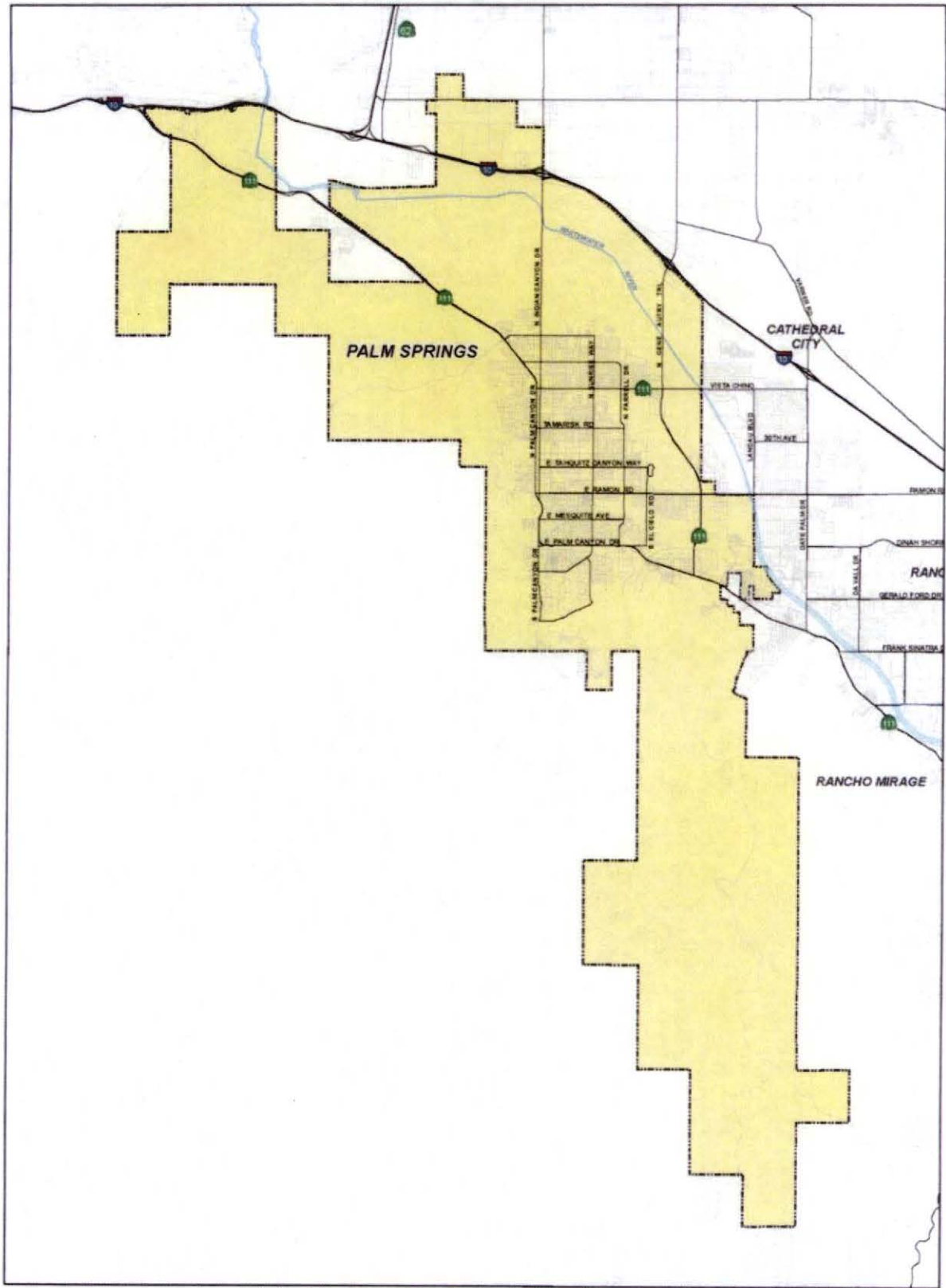
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The City agrees to:

- a. Provide an electronic copy of the City's License Registration File and License Payment History file to MuniServices, together with any other information necessary for MuniServices to compute MuniServices' billing for services, in electronic format, to MuniServices on no less than a quarterly basis during the term of the Agreement and thereafter for so long as MuniServices' right to invoice for services rendered continues;
- b. Use reasonable and diligent efforts to collect, or to assist MuniServices in the collection of, deficiencies identified by MuniServices pursuant to this Agreement; and
- c. Notify MuniServices within 10 days following receipt by the City of payments, if there is any, resulting from deficiencies identified by MuniServices.

Because MuniServices' LTC Service may result in collection of deficiencies after termination of the Agreement, the 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.

The City shall have the right, at the City's option, to elect not to proceed with recovery of any identified deficiencies. Deficiencies which are uncollectible due to insolvency or dissolution of the entity liable, or for deficiencies which are otherwise incapable of collection (e.g. statute of limitations expiration or other legal defense) shall not be considered an "election" by the City for the purposes of this Agreement. For deficiencies otherwise collectable but for which the City elects not to collect, the 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.



# City of Palm Springs

Riverside County Center for  
Demographic Research  
May 2007

