

## **RESOLUTION NO. 24-137**

**Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Three-Year Contract With An Option For Two One-Year Extensions With MuniServices, LLC For Sales And Use Tax Audit (SUTA) And Utilities User Tax (UUT) Franchise Administration And Compliance Consultant Services For A Total Amount Not To Exceed \$160,000 For Five Years Effective January 1, 2025**

**WHEREAS**, on January 12, 1990, the City of Emeryville entered into a contract with MuniServices, LLC to perform Sales and Use Tax report and audit services with an annual fixed fee for Sales and Use Tax report services of \$2,500; and

**WHEREAS**, the contract did not provide a total not to exceed amount for the Sales and Use Tax audit services, and had no termination or expiration date; and

**WHEREAS**, on January 22, 1996, the City entered into a First Amendment with Municipal Resource Consultants which has enacted business under the names of MuniServices, LLC, and the contract amendment added business license, revenue enhancement audit, and geo-based revenue information services; and

**WHEREAS**, on April 16, 2020, the City entered into a Second Amendment with MuniServices, LLC and added the revenue from a one-quarter-cent sales tax increase from Measure F to the contract; and

**WHEREAS**, on December 19, 2023, the City entered into a Third Amendment to the Contract with MuniServices, LLC to add a termination date of December 31, 2024, increase the Annual Fixed Fee with a total not to exceed amount of \$2,625 for Sales and Use Tax report services, and add a total not to exceed amount of \$20,000 for Sales and Use Tax audit services as the fees for the SUTA services had not changed since 1990, and staff intended to issue a Request for Proposal (RFP) for these services; and

**WHEREAS**, on October 24, 2001, the City of Emeryville entered into a contract with MuniServices, LLC to perform UUT Franchise Compliance Services with the Total Annual Fixed Fee set at either greater of \$10,000 or 0.5% of the total UUT revenues received from the prior fiscal year, and a not to exceed amount of \$50,000 for a 5-year term, but no termination or expiration date; and

**WHEREAS**, on October 20, 2015, the City entered into a First Amendment to the UUT Franchise Compliance Services Contract and added additional authorizations to the Contractor to examine certain Board of Equalization documents relating to the collection of the City's UUT on prepaid wireless services; and

**WHEREAS**, UUT revenues have gradually increased over the past 23 years from \$2 million in Fiscal Year (FY) 2001 to \$4 million in FY 2023, and the fee structure of the UUT Franchise Compliance Services Contract has not changed since 2001, and the Contractor has requested to increase the contract amount by \$28,000 from \$50,000 to an amount not to exceed \$78,000 which will be offset by increased UUT revenues; and

Resolution No. 24-137  
MuniServices, LLC Contract for UUT Admin Services  
City Council Meeting | November 19, 2024  
Page 2 of 3

**WHEREAS**, on April 3, 2013, the City entered into a contract with MuniServices, LLC for UUT Administration Services to manage UUT filings, payments, and collection activities with a monthly administration fee based on \$2.95 per UUT filing transaction without a total not to exceed amount or termination date; and

**WHEREAS**, on December 19, 2023, the City entered into a First Amendment to the Contract with MuniServices, LLC to add a termination date of December 31, 2024 and increase the total compensation amount from the current rate of \$2.95 per transaction to \$3.10 per transaction with a total not to exceed amount of \$9,500 for UUT Administration Services, and staff intended to issue a Request for Proposal (RFP) for these services; and

**WHEREAS**, since both SUTA and UUT Franchise Administration and Compliance consultant services contracts have a termination date of December 31, 2024, the City issued a Request for Proposal (RFP) on September 3, 2024, and two companies responded to the RFP and made presentations on October 17, 2024 for their services and costs; and

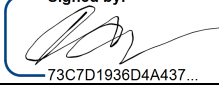
**WHEREAS**, a team of three City staff evaluated the services and costs and determined that MuniServices, LLC was more suitable to provide these services;

**RESOLVED**, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a three-year contract with MuniServices, LLC for both SUTA and UUT Franchise Administration and Compliance consultant services with an option for two one-year extensions for a total amount not to exceed \$160,000 effective January 1, 2025.


Resolution No. 24-137  
MuniServices, LLC Contract for UUT Admin Services  
City Council Meeting | November 19, 2024  
Page 3 of 3

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, November 19, 2024, by the following vote:

|          |          |   |
|----------|----------|---|
| AYES:    | <u>5</u> | Mayor Welch, Vice Mayor Mourra and Council Members Bauters, Kaur and Priforce |
| NOES:    | <u>0</u> |   |
| ABSTAIN: | <u>0</u> |   |
| ABSENT:  | <u>0</u> |   |

Signed by:  
  
73C7D1936D4A437...  
MAYOR

ATTEST:  
  
DocuSigned by:  
  
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CITY CLERK

APPROVED AS TO FORM:  
  
DocuSigned by:  
  
2C934D02DB55467...  
CITY ATTORNEY

**ATTACHMENTS**

- Exhibit A – MuniServices, LLC Professional Services Contract



PROFESSIONAL SERVICES CONTRACT

**THIS PROFESSIONAL SERVICES CONTRACT** (“Contract”) is effective as of \_\_\_\_\_ (the “Effective Date”), by and between **THE CITY OF EMERYVILLE**, a municipal corporation, (“City”) and **MUNISERVICES, LLC** (“Contractor”), individually referred to as a “Party” and collectively as the “Parties”.

WITNESSETH THAT

**WHEREAS**, the City desires to engage Contractor for Sales and Use Tax Audit (SUTA) and Utilities User Tax (UUT) Franchise Administration and Compliance Consultant Services; and

**WHEREAS**, the City finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Contract; and

**WHEREAS**, the City has determined that the Contractor is qualified by training and experience to render such services; and

**WHEREAS**, the Contractor desires to provide such services; and,

**WHEREAS**, the public interest will be served by this Contract; and

**NOW, THEREFORE**, the Parties hereto do mutually agree as follows:

1. SCOPE OF SERVICES AND TERMINATION DATE

1.1 Project Description

A complete project description is set forth in the Scope of Work, attached hereto as **Exhibit A** and incorporated herein by this reference.

1.2 Services

The services to be completed under this Contract (“Services”) are described in the Scope of Work set forth in **Exhibit A**. The Services shall be performed in accordance with terms, conditions, and specifications set forth herein. To the extent there is a conflict between the Scope of Work, and the terms, conditions, and specifications set forth herein, the terms, conditions, and specifications set forth herein shall govern.

| FOR CITY USE ONLY |  |             |  |
|-------------------|--|-------------|--|
| Contract No.      |  | CIP No.     |  |
| Resolution No.    |  | Project No. |  |

### **1.3 Schedule and Completion Date**

The Services to be provided by Contractor under this Contract shall commence on the Effective Date and terminate on **DECEMBER 31, 2027**. The Parties may, by mutual, written consent, extend the term of this Contract.

## **2. WORK CHANGES**

### **2.1 City Rights to Change**

The City reserves the right to order changes in the Services to be performed under this Contract by altering, adding to or deducting from the Scope of Work. All such changes shall be incorporated in amendments executed by the Contractor and the City. Such amendments shall specify the changes ordered and any necessary adjustment of compensation and completion time.

### **2.2 Additional Work Changes**

Any work added to the Scope of Work by an amendment shall be executed under all the applicable conditions of this Contract. No claim for additional compensation or extension of time shall be recognized unless contained in an amendment duly executed on behalf of the City and the Contractor.

### **2.3 City Manager Execution**

The City Manager has authority to execute without further action of the Emeryville City Council, any number of amendments so long as their total effect does not materially alter the terms of this Contract or increase the total amount to be paid under this Contract, as set forth in Section 3.2 below.

## **3. COMPENSATION AND METHOD OF PAYMENT**

### **3.1 Compensation for Services Performed**

City agrees to pay the Contractor for the Services performed and costs incurred by Contractor upon certification by the City that the Services were actually performed and costs actually incurred in accordance with the Contract. Compensation for Services performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the City of invoices setting forth in detail the Services performed and costs incurred. The City shall pay the Contractor within forty-five (45) days after approval of the invoice by City staff.

### **3.2 Total Compensation Amount**

The total amount paid under this Contract as compensation for Services performed and reimbursement for costs incurred shall not, in any case, exceed **NINETY FIVE THOUSAND FIVE HUNDRED SEVENTY-FIVE DOLLARS AND NO CENTS (\$95,575.00)**, plus contingency fees of 15% for SUTA audit services; 25% for UUT audit services; \$3.10 per transaction fees for UUT tax administration not to exceed \$9,500 annually set forth in Exhibit C, except as outlined in Section 2.3 above. The

compensation for Services performed shall be as set forth in **Exhibit A**.

Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

#### **4. COVENANTS OF CONTRACTOR**

##### **4.1 *Assignment of Contract***

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Contract, without the prior express written consent of the City. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them and the City shall have no obligation to them.

##### **4.2 *Responsibility of Contractor and Indemnification of City***

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless City and City's members, officers, agents, employees and volunteers, from and against any and all claims, losses, liabilities of every kind, nature and description, damages, injury (including without limitation injury to or death of an employee of Contractor or subcontractors as well as any claim by any employee, agent, Contractor or independent contractor hired or employed by Contractor that such persons or individuals are entitled to any benefit otherwise provided to employees of the City, including coverage under the California Public Employee Retirement System), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, reasonable attorneys' fees, litigation expenses, and fees of expert contractors or expert witnesses incurred in connection therewith and the costs of investigation, arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Contractor, any subcontractor, anyone directly or indirectly employed by them or anyone that they control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Contract.

If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

### **4.3 Independent Contractor**

The Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Services as an independent contractor and not as the agent or employee of the City. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the Services; hiring of contractors, agents or employees to complete the Services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates and employees during the term of this Contract.

### **4.4 Insurance**

Contractor shall not commence Services under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under **Exhibit B**, attached hereto and incorporated herein by this reference. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under **Exhibit B**. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

### **4.5 Records, Reports and Audits**

#### **4.5.1 Records**

- A. Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the City with respect to all matters covered by this Contract. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Contract. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
- B. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible.

#### **4.5.2 Reports and Information**

Upon request, the Contractor shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Contract in the form requested by the City.

#### **4.5.3      Audits and Inspections**

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Contract. The Contractor will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Contract.

#### **4.6      *Conflicts of Interest***

The Contractor covenants and declares that, other than this Contract, it has no holdings or interests within the City of Emeryville, nor business holdings, contracts or agreements with any official, employee or other representative of the City. For the duration of this Contract, in the event the Contractor or its principals, agents or employees acquire such a holding, interest, contract, or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Contractor will immediately notify the City of such holding, interest, contract, or agreement in writing.

#### **4.7      *Confidentiality***

The Contractor agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of the City. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether deemed confidential or not.

#### **4.8      *Discrimination Prohibited***

The Contractor covenants and agrees that in performing the Services required under this Contract, the Contractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity, marital status, national origin or ancestry, age or disability, except as provided in section 12940 of the Government Code.

#### **4.9      *Licenses, Certifications and Permits***

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Contractor by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Services contracted for under this Contract. All work performed by Contractor under this Contract shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### **4.10    *Key Personnel***

The Project Manager is necessary for the successful prosecution of the Services due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team without the City's



approval. Contractor recognizes that the composition of this team was instrumental in the City's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the City's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Contract and shall be grounds for termination.

#### **4.11 Authority to Contract**

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Contractor to the terms of this Contract, if applicable.

#### **4.12 Ownership of Work**

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Services to be performed by the Contractor ("Materials") shall be and are the property of the City and the City shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the City, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

#### **4.13 City Labor Requirements**

##### **4.13.1 Compliance**

At the Effective Date, compliance with the City's living wage ordinance is ☐ **required** / ☒ **not required** for this Contract. If this Contract provides for compensation to Contractor of \$25,000 or more within a single fiscal year for providing Services to the City, then Contractor shall comply with the requirements of the City's Living Wage Ordinance set forth in [Chapter 31 of Title 5 of the Emeryville Municipal Code](#), unless (i) Contractor is a governmental entity, (ii) this Contract is subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) this Contract is subject to federal or state laws or regulations that would preclude the application of the City's laws.

##### **4.13.2 Applicability**

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Contract for all employees of Contractor who perform at least twenty-five percent (25%) of the work arising from this Contract, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to

[Section 5-31.08 of the Emeryville Municipal Code](#). Contractor shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

#### 4.13.3 Non-Compliance

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Contractor for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Contract and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

#### 4.13.4 Living Wage

Contractor shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this Contract. "Living Wage" means no less than **\$18.54 PER HOUR** (which is [subject to increase annually on July 1st](#) to reflect the twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

#### 4.13.5 Minimum Wage and Paid Sick Leave

In addition to the Living Wage Ordinance, the Contractor may be required to comply with the [City's Minimum Wage, Paid Sick Leave, and Other Employment Standards Ordinance](#), as set forth in [Chapter 37 of Title 5 of the Emeryville Municipal Code](#), to the extent it is applicable.

### **4.14 California Labor Requirements**

#### 4.14.1 Prevailing Wage Requirements

Contractor is aware of the requirements of [California Labor Code](#) Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775),

**City of Emeryville** | Professional Services Contract  
REV10/2024

employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

#### 4.14.2 Registration

If the Services are being performed as part of an applicable “public works” or “maintenance” project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Contractor and all subcontractors performing such Services must be registered with the Department of Industrial Relations. Contractor shall maintain registration for the duration of the Contract and require the same of any subcontractors, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

#### 4.14.3 Labor Compliance Oversight

This Contract may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Contractor’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Services, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

#### 4.14.4 Workers’ Compensation

Pursuant to the requirements of section 1860 of the [California Labor Code](#), Contractor will be required to secure the payment of workers’ compensation to his employees in accordance with the provisions of section 3700 of the Labor Code. By signing this Contract, Contractor certifies the following:

“I am aware of the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

#### 4.14.5 Event of Default

Failure by Contractor to comply with any provision of this Section shall constitute a default of this Contract and shall be grounds for termination as provided in this Contract.

### **5. TERMINATION**

- A. The City shall have the right to terminate this Contract for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.
- B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.
- C. Upon termination, City shall provide for payment to the Contractor for Services rendered and expenses incurred prior to the termination date.
- D. Upon receipt of a termination notice the Contractor shall: (1) promptly discontinue all Services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Contract, whether completed or in process, in the form specified by the City.
- E. Notwithstanding anything to the contrary, this Contract is subject to immediate termination in the event the City Council does not appropriate sufficient funds for this Contract.
- F. The rights and remedies of the City and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Contract or at law or in equity.

### **6. NO PERSONAL LIABILITY**

No member, official or employee of the City shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Contract.

### **7. ENTIRE AGREEMENT**

This Contract constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Contract not contained in this Contract shall be valid or binding. This Contract may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

## 8. SUCCESSORS AND ASSIGNS

Subject to the provisions of this Contract regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

## 9. APPLICABLE LAW AND ATTORNEY'S FEES; VENUE

If any action at law or in equity is brought to enforce or interpret the provisions of this Contract, the rules, regulations, statutes and laws of the State of California will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled. The exclusive venue for any legal action taken pursuant to this Contract shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

## 10. SEVERABILITY

The caption or headnote on articles or sections of this Contract are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Contract nor in any way affect this Contract. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Contract shall remain in full force and effect to the extent possible.

## 11. BUSINESS TAX CERTIFICATE

Prior to commencement of the Services to be provided hereunder, Contractor shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business tax and maintain said business tax certificate during the term of this Contract, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

## 12. NOTICES

### 12.1 *Communications Relating to Daily Activities*

All communications relating to the day-to-day activities of the work and invoices shall be exchanged between **Peggy Xu** for the City and **Thomas Adams** for the Contractor:

| CITY  | CONTRACTOR   |
|---|--|
| Peggy Xu<br>Phone No: 510-596-4326<br>E-Mail : pxu@emeryville.org | Thomas Adams<br>Phone No: 916-926-9019<br>E-Mail :<br>Thomas.Adams@avenuinsights.com |

12.2 Official Notices

All other notices, writings or correspondence as required by this Contract shall be directed to the City and the Contractor, respectively, as follows:

| CITY  | CONTRACTOR  |
|---|---|
| Adam W. Politzer, Interim City Manager<br>1333 Park Avenue<br>Emeryville, California 94608<br>Phone No: 510-596-4371<br>E-Mail : <a href="mailto:adam.politzer@emeryville.org">adam.politzer@emeryville.org</a><br><br><i>with a copy to:</i><br>City Clerk's Office<br>1333 Park Avenue<br>Emeryville, California 94608<br>Phone No: 510-596-4300<br>E-Mail : <a href="mailto:city_clerk@emeryville.org">city_clerk@emeryville.org</a> | Paul Colangelo, Chief Executive Officer<br>5860 Trinity Parkway, Suite 120<br>Centreville, VA 20120<br>Phone No: 703-966-3411<br>E-Mail :<br><a href="mailto:paul.colangelo@avenuinsights.com">paul.colangelo@avenuinsights.com</a> |

13. COUNTERPARTS

This Contract may be signed in counterparts, each of which shall constitute an original. It is expressly agreed that each Party to this Contract shall be bound by its own telecopied, scanned, electronic or digital signature and shall accept the telecopied, scanned, electronic or digital signature of the other Party to this Contract.

14. NO THIRD-PARTY BENEFICIARIES

Except to the extent expressly provided for herein, there are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

15. NON-EXCLUSIVITY

City reserves right to employ other contractors in connection with the Services covered under this Contract.

16. ASSIGNMENT OR TRANSFER

Contractor shall not assign, hypothecate or transfer, either directly or by operation of law, this Contract or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

**City of Emeryville** | Professional Services Contract  
REV10/2024

**17. WAIVER**

The City's failure to enforce any provision of this Contract or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

**18. OTHER REQUIREMENTS**

Compliance with terms and conditions set forth in **Exhibit C** is ☒ **required** / ☐ **not required** for this Contract. Contractor shall also fully and adequately comply with the provisions included in **Exhibit C** ("Other Requirements") when attached hereto and incorporated herein by reference ("Other Requirements"). With respect to any conflict between such Other Requirements and the terms of this Contract and/or the provisions of state law, **Exhibit C** shall control.

*SIGNATURES ON FOLLOWING PAGE*

19. SIGNATURE PAGE TO PROFESSIONAL SERVICES CONTRACT

IN WITNESS WHEREOF the City and the Contractor have executed this Contract, which shall become effective as of the date first written above.

Approved As To Form:

DocuSigned by:  
*John Kennedy*  
2C034D003DB55487...  
\_\_\_\_\_  
City Attorney

Dated: CITY OF EMERYVILLE

\_\_\_\_\_  
Adam W. Politzer, Interim City Manager

Dated: MUNISERVICES, LLC

11/08/2024  
\_\_\_\_\_  
DocuSigned by:  
*Paul Colangelo*  
3AC89EE841BB498  
Paul Colangelo, Chief Executive Officer (Signature)

|                     |   |
|---------------------|---|
| Attach:<br>W-9 Form | Attach:<br>Business License Certificate |
|                     |   |



# MUNISERVICES

/ AN AVENU INSIGHTS & ANALYTICS COMPANY /

## CITY OF EMERYVILLE, CA

PROPOSAL FOR

**SALES AND USE TAX AUDIT (SUTA) &  
UTILITIES USER TAX (UUT) FRANCHISE ADMINISTRATION  
AND COMPLIANCE CONSULTANT SERVICES**

September 27, 2024

Submitted By:

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1 **TABLE OF CONTENTS**

1 **TABLE OF CONTENTS** ..... 1

2 **COVER LETTER** ..... 2

3 **FIRM QUALIFICATIONS** ..... 4

4 **EXPERIENCE AND REFERENCES** ..... 5

    4.1 **EXPERIENCE** ..... 5

    4.2 **REFERENCES** ..... 6

5 **QUALIFICATIONS OF TEAM** ..... 7

    5.1 **LEADERSHIP TEAM** ..... 7

    5.2 **SALES AND USE TAX AUDIT TEAM** ..... 8

    5.3 **SALES AND USE TAX REPORTING AND ANALYTICS TEAM** ..... 9

    5.4 **UTILITY USERS TAX TEAM** ..... 9

    5.5 **SUBCONTRACTORS** ..... 10

6 **PROJECT UNDERSTANDING** ..... 11

7 **PROJECT PLAN** ..... 13

    7.1 **SALES AND USE TAX AUDITING** ..... 13

        7.1.1 *SALES TAX AUDITING SERVICES* ..... 13

        7.1.2 *SALES, USE & TAX REPORTING* ..... 17

    7.2 **UTILITY USER TAX PROJECT PLAN** ..... 19

        7.2.1 *UUT COMPLIANCE* ..... 20

        7.2.2 *UUT ADMINISTRATION* ..... 20

        7.2.3 *ADDITIONAL INFORMATION* ..... 21

8 **COST PROPOSAL** ..... 22

    8.1 **SALES AND USE TAX SERVICES** ..... 22

        8.1.1 *SALES TAX REPORTING AND ANALYTICS (CLEARVIEW)* ..... 22

    8.2 **UTILITY USER TAX SERVICE** ..... 22

        8.2.1 *UTILITY USER TAX ADMINISTRATION* ..... 22

9 **ATTACHMENTS** ..... 23

## 2 COVER LETTER

September 27, 2024

City of Emeryville  
Attn: Peggy Xu  
1333 Park Avenue  
Emeryville, CA 94608

**RE: Proposal for Sales and Use Tax Audit and Utility User Tax Franchise Administration and Compliance Consultant Services**

Dear Peggy Xu:

MuniServices, LLC, an Avenu Insights & Analytics company, (henceforth referred to as “Avenu/MuniServices” or “MuniServices”) is a recognized expert with a deep and unparalleled understanding in Sales and Use Tax Auditing (SUTA) and Utility User Tax (UUT) services. MuniServices has partnered with the City for over 30 years, and MuniServices has over 40 years of direct experience in tax consulting, auditing, and administration services and we lead in assisting local governments in implementing, administering, and managing multiple tax types – we service more than 1,000 government partners throughout the Country, including over 350 jurisdictions just in California.

We offer the City the following:

- ▶ **Four Decades of Experience.** Since 1978, MuniServices has been the leading provider of tax revenue consulting services.
- ▶ **We Know Emeryville.** MuniServices has partnered with Emeryville since 1990, and we have recovered over \$10M in sales and use tax revenue for the City.
- ▶ **Tax Administration and Auditing Expertise.** MuniServices administers and recovers over **\$2.8 billion per year** in general fund revenue for our clients throughout the country.
- ▶ **National Footprint and Capability.** With over 700 employees and 10 offices across the Country, MuniServices has all the resources, personnel, and capabilities to ensure that the City is fully supported through this contract.
- ▶ **Firmly Established throughout California.** We were founded in California and we currently provide revenue consulting services to over 350 California public agencies. MuniServices has over three (3) decades of experience in Orange County and the surrounding areas. Additionally, we have strategic office locations throughout California, including Sacramento, Fresno, El Dorado Hills, and Westlake Village.
- ▶ **Dedicated Government Relations Team.** We have a dedicated in-house Government Relations team located in Sacramento, who are experts in tracking and researching legislation that has the potential to affect region-specific tax revenues.

MuniServices will perform the services and adhere to the specified requirements as outlined in the City's RFP, including standard contract terms. MuniServices did not note any addenda to this RFP on the City's procurement website.

MuniServices is dedicated to providing the City with concierge-level support and will provide the City with a dedicated Client Success Manager, Tanmin Rima, who will act as a liaison to the City and will ensure that all of the City's expectations are met. Tanmin can be contacted by phone at 669.204.9539 or by E-Mail [Tanmin.Rima@avenuinsights.com](mailto:Tanmin.Rima@avenuinsights.com)

On behalf of MuniServices, I welcome the opportunity to continue our partnership with the City. I represent that the information contained in this proposal is true and correct. As Chief Executive Officer, I am authorized to commit MuniServices to a contract and represent the firm in all oral presentations and negotiations.

Sincerely,



Paul Colangelo  
Chief Executive Officer  
MuniServices, LLC  
E-mail: [proposals@avenuinsights.com](mailto:proposals@avenuinsights.com)

### 3 FIRM QUALIFICATIONS

Founded in California in 1978, MuniServices is a privately-owned consulting services company that specializes in helping public agencies across the nation to preserve, enhance, and manage their tax revenue base. In 2017, MuniServices joined forces with Avenu Insights & Analytics, LLC, and as one team “Avenu/MuniServices” supports clients across the nation with our revenue enhancement and consulting services.

In the course of our 40-year history, we have grown to a national footprint of over 700 employees supporting clients in all 50 states. We have a dedicated team of revenue consulting and tax audit experts which provide concierge-level services to over 350 public agencies in California and over 900 jurisdictions throughout the nation. Additionally, MuniServices has an in-house Government Relations team that focuses tax legislation that can potentially impact our customers.

MuniServices generates over \$2.8 billion in new general fund revenue for our clients each year. As a reflection of our dedication to state and local governments, we are listed on the GovTech 100 list for the last five (5) years in a row.

MuniServices has 10 office locations strategically dispersed across the United States, including four (4) offices in California.

#### MuniServices Qualification Highlights

- Over 40 years of experience in all services requested
- Provider of services to City for 30+ years
- Recovered over \$10M in SUTA revenues for City
- Administer and Recover over \$2.8B in general fund revenue each year
- Team of expert Certified Public Accountants (CPAs) and Certified Revenue Examiners (CREs)
- Nationally recognized for supporting state and local governments

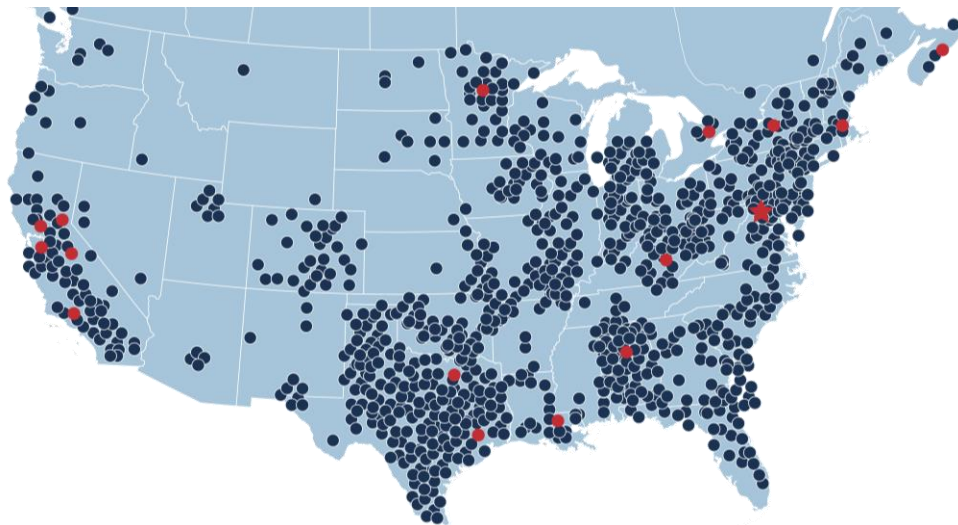


Figure 1 - Map illustrating MuniServices national footprint with Red representing MuniServices' offices and Blue representing clients

We offer our local government clients a full range of revenue enhancement and administrative solutions, providing administration, audit, and technology services to state and local governments nationwide. We have the expertise and resources to provide all necessary services detailed in this RFP. Our company is financially stable, and we will provide all services according to prices quoted within this proposal and deliver them in a timely manner.

## 4 EXPERIENCE AND REFERENCES

### 4.1 EXPERIENCE

Avenu/MuniServices is a recognized expert, for more than 40 years, in both Sales and Use Tax and Utility User Tax services, where we recover and administer over \$2.8B each year across multiple tax types. As mentioned previously, MuniServices has recovered over \$10,000,000 in SUTA revenues for the City since we began supporting the City in 1990. Please see Section 6 – Project Understanding for a full breakdown of our breadth of experience in Sales and Use Tax Auditing.

Our UUT experience is substantial. Avenu/MuniServices conducts audits to verify the proper fees are collected from electric, natural gas, cable, and waste hauler companies. We began offering utility tax audit services in 1990, and we currently provide these specific UUT services to over 70 local government clients, which represents more than 70 percent of UUT revenues in California. To date, this service has recovered more than **\$300 million** in additional UUT revenue for cities as well as increased future revenue due to improved compliance.

Avenu/MuniServices UUT service monitors gas, electricity, and telecommunications, (wired, wireless and Prepaid Wireless) utilities.

Another example is our Utility User Tax auditing work for the City of Sacramento, where we have recovered over \$70M in UUT revenues. We have performed hundreds of UUT audits for cities large and small in states including California, Delaware, Georgia, Indiana, Louisiana, Nevada, Oklahoma, Oregon, Pennsylvania, Texas, and Washington. As part of these audits, Avenu/MuniServices has reviewed records of numerous utilities ranging from national companies such as Comcast and Waste Management to regional providers like Atlanta Gas and Light and Southern California Edison.

Avenu/Muniservices is recognized statewide and throughout the country as “the” entity that consistently remains on the cutting edge of technological advancements and both federal and state governing laws related thereto. Avenu/MuniServices retains professionals with industry-leading expertise in this respect, who routinely draft articles which are published in national governmental periodicals and forums and regularly lecture at California and nationwide tax forums on updates within the utility industry. Avenu/MuniServices’ experience and the revolutionary aspects related to the national implementation of 5G wireless networks, the Permanent Internet Tax Freedom Act, evolving technological industries, which are constantly spawning, through creative usage of faster internet protocol, emerging technologies, and Avenu/MuniServices vast experience in exercising enforcement upon these issues to maximize revenue by expanding the City’s tax base are unparalleled.

Avenu/MuniServices UUT experts will, without question, assist and supplement the City’s resources with strategic and innovative to both preserve and enhance UUT revenues generated by existing service providers operating within the City along with newly developed and emerging providers which are or will be operating within the City in the future. Every tomorrow is a new technological era, and the methodologies by which legacy utilities have provided services and the ever-growing expansion of aggregators has substantially changed the landscape and knowledge is essential in these arenas.

#### Avenu/MuniServices Qualification Highlights

- Over 35 years of experience
- Monitors and Reviews over 70% of CA UUT revenues.
- 30+ Years direct experience with the City
- Currently provides these services to the City
- Recovered \$300M UUT revenues
- Team of expert Certified Public Accountants (CPAs) and Certified Revenue Examiners (CREs)



## 4.2 REFERENCES

| Client: City of Santa Barbara, CA     |  |
|---------------------------------------|--|
| <b>Project Name:</b>                  | Revenue Enhancement, Tax and Fee, and Administration Services  |
| <b>Description of Work Performed:</b> | Since 1992, Avenu/MuniServices has provided the City of Santa Barbara with a full suite of tax and fee consulting services. This includes Tax Administration, Sales and Use Tax auditing and analytics, Utility / Telecommunication Users Tax Auditing, Cannabis Tax Auditing, Business Tax Auditing, and Business License Administration. To date, Muniservices has recovered over <b>\$20,000,000</b> for the City |
| <b>Period Work was Completed:</b>     | Ongoing  |
| <b>Client Contact Information</b>     | <b>Name:</b> Keith DeMartini<br><b>Title:</b> Finance Director<br><b>E-Mail:</b> KDemartini@SantaBarbaraCA.gov<br><b>Phone:</b> (805) 564-5336   |

| Client: City of Sacramento, CA        |  |
|---------------------------------------|--|
| <b>Project Name:</b>                  | Revenue Enhancement and Compliance Auditing Services   |
| <b>Description of Work Performed:</b> | Since 1992, Avenu/MuniServices has supported the City of Sacramento with our full suite of Revenue Enhancement and Consulting Services. This includes Sales and Use Tax Audit and Revenue Forecasting, Franchise Fee / Utility User Tax Audit and Consulting, Transient Occupancy Tax Audits, Cannabis Tax Audits, and other consulting services. To date, MuniServices has recovered over <b>\$136,000,000</b> as a result of our revenue enhancement services, with specific focus on our recovery of over <b>\$73,000,000</b> from our services in Franchise Fee / Utility User tax auditing. Specific to Transient Occupancy Tax auditing, MuniServices has recovered over <b>\$440,000</b> with audits still ongoing. |
| <b>Period Work was Completed:</b>     | Ongoing  |
| <b>Client Contact Information</b>     | <b>Name:</b> Jason Bader<br><b>Title:</b> Principal Budget Analyst<br><b>E-Mail:</b> JBader@cityofsacramento.org<br><b>Phone:</b> (916) 808-5817   |

| Client: City of San Jose, CA          |  |
|---------------------------------------|--|
| <b>Project Name:</b>                  | Revenue Enhancement and Recovery Services  |
| <b>Description of Work Performed:</b> | Since 1990, Avenu/MuniServices has provided the City of San Jose with Business License, Transient Occupancy Tax, and Utility Users / Franchise Fee audit services, and Sales and Use tax services. To date, MuniServices has recovered over <b>\$142,000,000</b> for the City, with specific successes in Transient Occupancy Tax auditing where we have recovered over <b>\$902,000</b> . |
| <b>Period Work was Completed:</b>     | Ongoing  |
| <b>Client Contact Information</b>     | <b>Name:</b> John Kachmanian<br><b>Title:</b> Director<br><b>E-Mail:</b> john.kachmanian@sanjoseca.gov<br><b>Phone:</b> (408) 535-7034   |

## 5 QUALIFICATIONS OF TEAM

As the current provider of these services to the City with a relationship that goes back over 30 years, MuniServices offers the City of Emeryville with a team of professionals that have first-hand experience supporting the City in these services. These professionals have a demonstrated ability to execute on this project, which is reflected in the MuniServices recovery of over \$10,000,000 in sales and use tax since we began these services.

MuniServices is pleased to provide the City with the following summary resumes:

### 5.1 LEADERSHIP TEAM

#### PAUL COLANGELO, CHIEF EXECUTIVE OFFICER

Paul has over 20 years of executive leadership and a track record as a trusted advisor at the state and local levels. Paul not only leads the operations, strategy, and growth of MuniServices, he is directly involved in the day-to-day operations of our Sales and Use Tax teams. Paul previously served as President and COO at Library Systems & Services, as well as President of Appriss — where his strategic vision led to the portfolio revenue growth and diversification. Before Appriss, Paul was Vice President of Convergys Global Business Unit, managing client services programs in government, automotive, and transportation markets. Paul earned his bachelor's degree from Seton Hall University and his MBA from Strayer University. And as part of his ongoing commitment to serving state and local communities nationwide, he serves as an active member on the National Center for Missing & Exploited Children Law Enforcement Advisory Board, and Blessings in a Backpack National Board.

#### MIKE PORTIS, VICE PRESIDENT OF AUDIT AND PROJECT MANAGER

As MuniServices' Vice President of Audit and Project Manager for this contract, Michael leads MuniServices' Revenue Recovery and Enhancement Group, which consists of a full suite of compliance auditing across several tax types. Michael is a Certified Public Accountant in both Texas and North Carolina and is a U.S. Army Veteran. Mr. Portis is a Certified Fraud Examiner (CFE) and is directly responsible for the overall performance of this contract and supervising MuniServices' Sales Tax team. Michael has 25 years of direct experience in tax auditing and has served in several key positions for some of the largest tax firms in the United States. Prior to joining MuniServices, Michael served as a Director of Tax and Unclaimed Property and Tax Manager for Apexanaltix. Additionally, Michael served as Senior Tax Manager for EY, Revenue Field Auditor II for the North Carolina Department of Revenue, State Tax Consultant for Enron, and Supervising Senior Tax Consultant for KPMG. Education: Doctor of Law from University of Houston Law Center and Bachelor of BA in Accounting from University of Texas at San Antonio.

#### ALEX LAKE, CPA, ASSOCIATE VICE PRESIDENT OF TAX OPERATIONS

As MuniServices' Associate Vice President of Tax Operations, Alex will have direct oversight of the TOT auditing team and its execution on this project. Alex has been with MuniServices since 2000 and has over 20 years of direct experience in tax auditing. Alex is both a Certified Public Accountant (CPA) and Certified Tax Examiner (CTE). Alex has first-hand experience working with California auditing clients and a deep expertise having conducted tax compliance work for 14 different states. Her focus is managing the auditing and analyst teams to ensure all audits and reviews are done in the most efficient and effective way possible. Alex received a Bachelor of Science in Accounting from the University of Houston, Clear Lake.

#### JANIS VARNEY, SENIOR SALES AND USE TAX ADVISOR

Janis is our foremost expert in Sales and Use Tax auditing services. Janis oversees the sales and use tax operations to ensure that all audit services are successfully provided to the City. Janis has been with MuniServices since 1989 and her unmatched expertise is directly responsible for the billions of



dollars in sales and use tax revenue recovered for our customers. Janis has over 34 years of experience with the intricacies of California sales and use tax law, California Transit Agency operations, CDTFA administrative procedures, and taxpayer reporting procedures. She currently oversees the day-to-day operations of the sales and use tax audit service including the detection of reporting errors, preparation of the comprehensive documentation required to establish “date of knowledge”, and facilitation of the correction of the local tax allocation.

## 5.2 SALES AND USE TAX AUDIT TEAM

### ANGEL RIVERA, SR. SALES AND USE TAX ANALYST/AUDIT SUPERVISOR

Angel has over 25 years with MuniServices and currently supervises the Sales and Use Tax Audit team. In addition, she serves as a Senior Analyst, directly interacting with businesses to determine possible allocation reporting errors and developing substantiating documentation to establish a date of knowledge with the CDTFA. Angel’s work for MuniServices involves an extensive amount of time interfacing with high level personnel at ‘Fortune 500’ companies throughout the U.S. on behalf of MuniServices clients. Angel has a working knowledge of sales/use tax law, CDTFA administrative procedures and tax preparer reporting procedures.

### NANCY ROGERS, SR. SALES AND USE TAX CORRECTIONS ADMINISTRATOR

Nancy began her career with MuniServices in 2017 as a member of the Sales and Use Tax corrections department. This department is responsible for correcting misallocations detected by MuniServices. In this capacity, she is responsible for the administration and correction of all detected and documented local and sales tax misallocations, working with the CDTFA’s Local Allocation Group. She works to facilitate the correction of misallocations submitted to the CDTFA on behalf of MuniServices client jurisdictions. Nancy and the corrections team are also responsible for recovering eligible amounts misallocated in prior quarters and preserving original dates of knowledge by responding to the CDTFA’s findings with timely reconfirmation documentation. Additionally, Nancy works closely with the billing department to ensure accounts are eligible for billing. Nancy has knowledge of sales/use tax law, CDTFA administrative procedures and tax preparer reporting procedures. Nancy analyzes reports generated by various CDTFA departments and provides process and follow up on all data generated. Nancy is also a liaison between the correction department and the Audit Team. Prior to joining MuniServices, Nancy spent 25 years working for various companies in the fields of Law, Real Estate, Pharmaceuticals and Technology. Education: Nancy studied Journalism and Public Relations at California State Universities Chico and Northridge.

### CHERYL SHOLL, SALES AND USE TAX CORRECTIONS SUPERVISOR

Cheryl has been with MuniServices for over 22 years, and she is currently the Sales and Use Tax Corrections Supervisor. Cheryl supervises the corrections department which is responsible for facilitating the corrections of sales and use tax misallocations. She works directly with the corporate tax departments in addition to working with the CDTFA. Prior to her current role as supervisor, Cheryl was MuniServices’ Audit Process Administrator, where she managed all aspects of MuniServices’ sales and use tax misallocation petitions from the point of data entry to final submission to CDTFA/SBE. Prior to joining MuniServices, Cheryl had over 16 years of experience as a business owner and a controller.

### SANDRA HEUER, SUPERVISOR OF SALES AND USE TAX

Sandra has more than 27 years of experience with MuniServices and currently supervises our Sales & Use Tax audits, in addition to her role as a Senior Sales & Use Tax Analyst, Sandra developed many of the proprietary sales and use tax audit methods and leads the team in the identification and correction of use tax errors. Sandra is responsible for contacting targeted businesses to determine whether allocation reporting errors exist and, for each error detected, developing the substantiating

documentation to support the necessary established DOK with the CDTFA. Sandra's work for MuniServices involves interfacing with CDTFA personnel in addition to spending an extensive amount of time interfacing with high level personnel at Fortune 500 companies throughout the U.S.

### 5.3 SALES AND USE TAX REPORTING AND ANALYTICS TEAM

#### IRENE REYNOLDS, DIRECTOR, CLIENT RELATIONS

With over 22 years with MuniServices, Irene manages the Client Relations unit. Her team provides critical and complex analytics, forecasting and reporting support to MuniServices' sales tax and use clients. She and her team clean and standardize raw sales tax data, create and maintain Geo areas, as well as provide custom reports, charts, tables or ad hoc reports on demand. Before joining the Client Relations Team, she served as a Team Leader in the Data Intelligence Department where she assisted in directing the data processing for all of MuniServices' clients.

#### MARK BRYSON, SENIOR ECONOMIC BUSINESS ANALYST

Mark has over 21 years with MuniServices. Mark's primary role includes building and updating our proprietary sales tax forecasts and developing special analytical reports for MuniServices' sales and use tax clients. Mark has over 25 years of experience as an accountant for small to medium sized businesses, nonprofit corporations, and government agencies. This includes extensive hands-on experience preparing budgets, financial statements, audit schedules and Income, sales and payroll tax returns.

### 5.4 UTILITY USERS TAX TEAM

#### CHRISTOPHER W. WILLS, CRE, AUDIT MANAGER.

Chris oversees audit operations and has specifically worked on UUT/Franchise Fee audits for the City of Houston. Additionally, Chris works for national Franchise Fee and Utility Tax clients in addition to a team of tax examiners that specialize in all other tax types. Chris has been with our Birmingham office since 2008 and is an auditing professional with extensive knowledge of Franchise Fees, sales tax, consumer's use tax, utility license taxes, testing methodology, and evaluation of company internal controls. Chris has built a wide array of resources and knowledge specific to each industry, which has been pivotal in developing audit issues for our clients. Some of Chris's franchise fee audit clients include: Las Vegas NV, Palm Springs CA, Arlington TX, Tulsa, OK, Oklahoma City OK, Ft. Lauderdale FL, Atlanta, GA, Sandy Springs GA, and Houston, TX. Chris received his BS degree in Accounting from Jacksonville State University and is a Certified Revenue Examiner.

#### ALEXANDRA LAKE, CPA, DIRECTOR OF AUDIT

Alexandra Lake manages and directs a team of tax examiner staff and handles all client billings. Including Houston. Alexandra has been with the company since 2000. Alexandra has 17 years of audit compliance experience and is a CTE (Certified Tax Examiner) as well as a licensed Texas CPA (Certified Public Accountant). She oversees the audit program and is responsible for reviewing audits as well as managing Tax Examiners during the course of their audits. Alexandra is also a member of LATA (Louisiana Association of Tax Administrators). As a member, Alexandra has served on several committees in the organization and has been a guest presenter at several LATA conferences educating clients and industry representatives. Alex received her BS in Accounting from the University of Houston-Clear Lake.

#### CODY BURNETT, UUT AUDITOR

Cody oversees operations for the User Utility Tax Audit division. He is responsible for the implementation and completion of all UUT audits as well as overseeing the auditors within the UUT

division. Cody started with Avenu in 2016 and is an auditing professional with knowledge spanning a multitude of tax types beyond UUT including business license, hotel/motel, tax by the drink, and franchise fee. Prior to his start at Avenu, Cody worked in logistics as a fleet manager for several years at US Xpress. Cody has clear and demonstrated expertise performing UUT audits for California clients. **Education:** Cody received his BS in Finance along with his MBA with an emphasis in Accounting from Auburn University.

## 5.5 SUBCONTRACTORS

MuniServices will not utilizing any subcontractors for this project.

## 6 PROJECT UNDERSTANDING

As a provider of these specific services for over 40 years, MuniServices has an unparalleled understanding of these projects. This understanding is reflected in the tremendous results we offer our customers. MuniServices has yielded significant recoveries over the course of our services, below are sales and use tax recovery amounts for our California clients:

| Client   | Services Provided                      | Recoveries    |
|--|--|---------------|
| City of San Diego, CA                                    | Sales and Use Tax Auditing Services    | \$190,000,000 |
| City of San Jose, CA                                     | Sales and Use Tax Auditing Services    | \$142,000,000 |
| City of Santa Clara, CA                                  | Sales and Use Tax Auditing Services    | \$115,000,000 |
| City of Hayward, CA                                      | Sales and Use Tax Auditing Services    | \$65,000,000  |
| City of Sacramento, CA                                   | Sales and Use Tax Auditing Services    | \$63,000,000  |
| City of Santa Rosa, CA                                   | Sales and Use Tax Auditing Services    | \$53,000,000  |
| City of Santa Ana, CA                                    | Sales and Use Tax Auditing Services    | \$40,000,000  |
| City of Long Beach, CA                                   | Sales and Use Tax Auditing Services    | \$34,000,000  |
| City of Carlsbad, CA                                     | Sales and Use Tax Auditing Services    | \$31,000,000  |
| Orange County Transportation Authority                   | Sales and Use Tax Auditing Services    | \$22,000,000  |
| City of Santa Barbara, CA                                | Sales and Use Tax Auditing Services    | \$20,000,000  |
| Los Angeles County Metropolitan Transportation Authority | Sales and Use/Transaction Tax Services | \$16,000,000  |
| Riverside County Transportation Commission               | Sales and Use Tax Auditing Services    | \$15,700,000  |
| City of Brea, CA   | Sales and Use Tax Auditing Services    | \$12,000,000  |
| City of Emeryville, CA                                   | Sales and Use Tax Auditing Services    | \$10,000,000  |
| City of El Cajon, CA                                     | Sales and Use Tax Auditing Services    | \$9,000,000   |
| City of Anaheim, CA                                      | Sales and Use Tax Auditing Services    | \$6,000,000   |

Below is a quote from our long-time client, City of San Jose, CA.

**“We have added more than \$130 million to our general fund from recovered sales tax revenue. On top of that, Avenu’s data insights help me deliver more accurate budget forecasts.”**

DAT VU, ADMINISTRATIVE OFFICER  
CITY OF SAN JOSE, CA

Below, we offer a further demonstration of our expertise in Utility User Taxes and Franchise Fees:

### CITY OF SACRAMENTO, CA

Avenu/MuniServices has provided several services to the City of Sacramento, and we have recovered over **\$70,000,000** in UUT revenues for the City since the start of our services.

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**CITY OF RENO, NV**

Avenu/MuniServices has provided the City of Reno, NV with Utility User Tax / Franchise Fee auditing of Video, Electric, Natural Gas, Telecom providers from 2019 to 2023, and recovered over **\$4,500,000** in revenue for the City.

**CITY OF LAS VEGAS, NV**

Avenu/MuniServices has provided the City of Las Vegas, NV with Franchise Fee auditing since 2014. Avenu audits Video, Electric, Natural Gas, Telecom providers for Las Vegas, and recovered **\$18,390,257** in Franchise Fee revenue for the City.

**CITY OF WILMINGTON, DE**

Avenu/MuniServices has provided the City of Wilmington, DE with Franchise Fee auditing since 2011. Avenu audits primarily Video franchises and in 8 audits Avenu/MuniServices has recovered **over \$420,000** in Franchise Fee revenue for the City.

**CITY OF INDIANAPOLIS, IN**

From December 2016 to October 2020, Avenu/MuniServices provided the City of Indianapolis, Indiana with Franchise fee Auditing Services. In this contract, Avenu/MuniServices performed audits on Video and Parking lot concessions Providers. In this contract Avenu performed 3 audits and it yielded **\$799,419** in Franchise Fee recoveries.

## 7 PROJECT PLAN

In this section, MuniServices has provided our overall project plan and approach to the City's requested services.

### 7.1 SALES AND USE TAX AUDITING

Avenu/MuniServices describes below our sales and use tax auditing (SUTA) service:

#### 7.1.1 SALES TAX AUDITING SERVICES

Avenu/MuniServices understands the importance of the City's Sales and Use Tax revenue and the role it plays in the City's critical services. We understand it allows for the hiring of police officers, fire truck operations, and other fundamental city services. Avenu/MuniServices' approach is a result of over four decades of refined processes and is built upon our decades-long relationship with the California cities. Our personnel are experts in detecting and correcting Sales and Use Tax misallocations, and many of them have first-hand experience with the City. We capture the obvious sales, use & tax errors, as well as the more complicated ones that involve different interpretations of tax liability.

The objective of Avenu/MuniServices' Sales, Use & Tax Audit (SUTA) and Recovery service is to maximize the City's income – and minimize the cost of lost revenue. **Avenu/MuniServices submits over 5,000 corrections to the CDTFA per year** and we are successful at this through the timely detection and correction of sales, use and taxes misallocated to 1) another jurisdiction, 2) another city-wide and City-wide pool or the statewide pool, and 3) misreported sales taxes that should be allocated to the City. We fully pursue correction of all misallocations allowable within the statute of limitations on recoverability.

“The objective of MuniServices' Sales, Use & Tax Audit (SUTA) and Recovery service is to maximize the City's income and minimize the cost of lost revenue”

Over half of Avenu/MuniServices' overall revenue recoveries are from more complicated use tax errors that other firms rarely detect. Avenu/MuniServices offers a more comprehensive and nuanced audit approach than our competition – we not only capture the 'quick fix' sales tax errors that our competitors find, but we go beyond to identify and correct more complicated errors involving the misinterpretation of or confusion of sales tax versus use tax reporting procedures. *The secondary effort makes the difference.* As an example of our performance, the City of San Diego found that Avenu/MuniServices generated three times as much in sales tax recoveries annually than the next closest competitor. What makes San Diego significant is its size – the results from a large jurisdiction such as San Diego are much more representative of a firm's true audit results. Comparing results for such a large economy over multiple years overcomes bias from one-time anomalies.

Avenu/MuniServices prides itself in forming long term trust-based relationships, and therefore delivers its solutions in the context of concierge-level service. During every stage of the process, we realize we are working with people as well as data and processes, so we take great care in our communication. As representatives of the City, our staff emphasizes cooperation when contacting taxpayers and provides an educational approach as well as guidance related to California Department of Tax and Fee Administration (formerly State Board of Equalization) (CDTFA) rules that pertain to proper sales tax allocation. We treat taxpayers with respect.

Avenu/MuniServices regularly engages City staff, and we hold quarterly in-person meetings with City staff, during which we provide a comprehensive update on revenues and budget forecasts. The



meetings also are an opportunity for City staff to ask questions about specific businesses, economic trends, or legislative and regulatory activities. We also hold periodic training activities and collaborate closely with your staff.

#### 7.1.1.1 OBJECTIVES AND METHODOLOGY

Detecting and correcting Sales, Use & Tax misallocations is a foundational part of Avenu/MuniServices' value. We capture the obvious sales tax errors and the more complicated ones that involve different interpretations of tax liability.

- ▶ **Taxable Nexus Field Audit.** We target City-based businesses that do not pay sales, use & tax. We do this via physical canvassing of the City's borders in addition to the commercial and industrial areas. We evaluate taxes paid by businesses for their products, will-call operations and other references to sales-related activities. Without this labor-intensive undertaking, misallocations may remain undetected even when electronic data mining is applied.
- ▶ **Tax Area Code (TAC)/Permit Audits.** We identify and correct improperly registered permits of companies with point-of-sale or use operations. We also look for businesses with an incorrect tax area code due to jurisdictional/boundary confusion. Wholesalers, contractors, manufacturers and other non-retail businesses frequently do not hold a permit registered to the City because their operations do not include a point-of-sale qualifying activity. However, these companies often generate tax from the CDTFA audit deficiency assessments, new or changed operations, or the self-accrual of use tax on purchases through direct payment permits.
- ▶ **Deficiency Assessment Audit.** With a CDTFA audit, taxpayers often receive a substantial deficiency assessment due to underpayments and/or under collections. Our proprietary criteria and techniques detect and correct what are often misallocations to the state or City pool. Accordingly, we have developed proprietary criteria and techniques to detect and correct CDTFA deficiency assessment misallocations and thus expand the benefits produced by our allocation audit service.
- ▶ **Quarterly Distribution Report (QDR) Audit.** We conduct QDR audits when we see a substantial change in historical allocation because of declining or missing payments, negative fund transfers, and audit adjustments in the sales and use tax allocation. QDR audits have the same objective as the other audits: to detect, document and assist in correcting errors and thereby generate new, previously unrealized sales, use and tax revenue for the City. To make sure the City gets the highest possible amount of misallocated revenue, we include the current economic period based on the calendar quarter and the three prior tax return periods. Avenu/MuniServices reviews 100% of taxpayers reporting local tax to the City each quarter in addition to a comprehensive review of the Countywide pool to ensure all possible allocation errors and aberrations are identified and submitted for correction.
- ▶ **Accounts Payable Audit Reviews.** In order to identify opportunities for the City to recover the local allocation on purchase subject to tax, and facilitate the recovery of such funds, Avenu/MuniServices performs an accounts payable audit that enables us to prepare the documentation to facilitate the issuance of a direct payment permit (use tax) to the City. We also provide technical assistance in preparing and filing the required tax returns. Our accounts payable audits review purchases to identify opportunities for the City to capture the 1% local use tax. They also provide the foundation necessary for cities to get a direct payment permit (use tax) and recover funds. Cities also receive our technical assistance in preparing and filing the required tax returns, which is essential because the CDTFA has specific procedures and timing

for filing claims. It is important to prioritize and development a relationship with the vendor involved as they will be instrumental throughout the process.

### 7.1.1.2 SALES, USE & TAX AUDIT PROCESS

Avenu/MuniServices Sales, Use & Tax auditing follows the following process:



Figure 2 - Avenu/MuniServices Sales and Use Tax Process Flow Diagram

1. **Data Acquisition** – Data from Multiple sources is acquired and loaded into Avenu/MuniServices' data warehouse for analysis and mining.
2. **Data Review and Analysis** – Avenu/MuniServices thoroughly reviews payment and registration data for possible registration and/or local tax reporting errors.
3. **Taxpayer Investigation** – Avenu/MuniServices verifies taxpayer information including address verification and business activity. If a misallocation is confirmed, Avenu/MuniServices will gather application documentation which includes and any E-Mail Communication with taxpayer and copies of amended returns, questionnaires, contracts, and invoices
4. **Petition Preparation and Submission** – Avenu/MuniServices carefully documents verified misallocation errors into petitions and prepares for submission to CDTFA.
5. **Correction Case Review and Follow-Up** – Taxpayer confirmation and Thank You letters are delivered to facilitate corrective action. New incoming board responses are reviewed. Additionally, case backlog is reviewed to determine those requiring follow-ups with taxpayers and/or CDTFA.



6. **Client Audit Reports** – Avenu/MuniServices provides a Quarterly Audit Update Report, a report containing details on all now petitions filled with the CDTFA on their behalf. Large correction Letter is utilized to notify client of a case correction. Additionally, Avenu/MuniServices provides an Open Account Status Report, which is a report containing all cases that remain uncorrected which reflect status and estimated revenue.

#### 7.1.1.3 USE TAX AUDIT AND RECOVERY OPPORTUNITIES

Our Use Tax Audit Services are designed to not only capture use tax revenue through the review of past purchase activity by the businesses in the City, but also to assist in establishing new processes and procedures designed to prevent the pooling of these revenues and increase the direct allocation to the City. The use tax audits identify taxpayers purchasing tangible personal property directly from out-of-state retailers where the transactions are subject to use tax (rather than sales tax). The use tax is often collected by the vendor who in turn remits it to the CDTFA, with the local allocation typically distributed statewide or Countywide through the pools. These audits include proprietary techniques used to identify purchases made by businesses located in the City from out-of-state vendors that are in excess of \$500,000. Additional use tax audits can focus on the practice of “Use Tax Accrual” in certain conditions where the purchaser may elect to self-accrue the use tax and remit it directly to the CDTFA, in which case the local portion will come back to the City in the same manner as sales tax. This can involve both purchases made by the City itself or working directly with businesses and construction contractors to establish the practice of self-accrual and direct remittance of the use tax to the CDTFA.

#### 7.1.1.4 BUSINESS COOPERATION PROGRAM (BCP)

Avenu/MuniServices pioneered the BCP program, which can generate significant revenues. Our BCP consulting services encourage construction contractors and major vendors to obtain a direct pay permit or job site registration to encourage them to report the applicable local use tax so that the local use payments can be directly allocated to the City instead of the Citywide pool. There are many complexities associated with determining which contractors are eligible to register a job site, in addition to reviewing purchasing contracts for major fixtures, machinery and equipment from overseas manufacturers in order to provide proper instructions to the purchasers. We are actively working with multiple clients on major construction projects to maximize the use tax revenue associated with their purchases of materials, fixtures and machinery and equipment involving sports arenas to include the Sacramento Golden One Arena, hotels, airport expansions (Sacramento International Airport), energy/solar projects in addition to other major commercial and industrial projects (major online distribution warehouses). We are the only firm with experience and verifiable results working with local jurisdictions to maximize use tax revenues on major construction projects such as large commercial and industrial projects, sports arenas, airports, ports, solar arrays –tracking and managing these use tax issues from pre-construction through project completion.

#### 7.1.1.5 SALES, USE & TAX CORRECTIONS

**Correct Reporting Errors.** Avenu/MuniServices’ Sales/Use and Tax Audit team includes a correction/case manager responsible for correcting misallocation errors. The team gets involved after a petition has been filed with the CDTFA. The team informs the taxpayer and then performs a comprehensive review of all CDTFA responses to petitions. This ensures that all applicable tax reallocations get processed. We respond immediately to negative findings by the CDTFA to preserve the City’s Date of Knowledge (DOK). Avenu/MuniServices will keep the City informed quarterly through an Open Account Status Report that will provide an updated overview of inventory/status of petitions as

we work with the CDTFA and the taxpayers to ensure that corrections are processed quickly and the new revenue flows to the City.

**Documentation.** Efficient corrections require a thorough investigation of the business activity, and our process meets this threshold as evidenced by documentation such as completed questionnaires, fact timelines, website information, and email communications. We file comprehensive information petitions to the CDTFA following the guidelines set forth in Regulation 1807. As needed, we review taxpayer tax returns and obtain amended returns or any other applicable documentation.

**Corrections through the Appeals Process.** Avenu/MuniServices' extensive investigation prior to submitting the petition means most problems get resolved at the first level of review thereby mitigating any need to elevate cases for appeal as described in Regulation 1807. Over 98% of all cases submitted to the CDTFA by Avenu/MuniServices are resolved at the initial submission level with the remaining 2% resolved with additional follow-up to the Local Allocation Group without the need for an appeal.

**Documentation.** Each quarter the City will receive an Open Account Status Report providing a comprehensive report for all petitions/inquiries filed by MuniServices on their current status and an estimate of the revenue estimated that the City will receive once the correction has been processed by the CDTFA.

**Quality Control.** We carefully review all accounts for accuracy that we identify to submit to the CDTFA to ensure the required information and applicable documentation is obtained prior to forwarding to the CDTFA. Avenu/MuniServices strives to accurately represent the facts involved with the suspected misallocation and/or deficiency as verified through our audit process to facilitate the correction and funding of the revenue to the City. This includes an estimate of the amount of revenue at issue which is then reviewed against the fund transfers processed by the CDTFA for accuracy. Our quality submissions help ensure faster results with the CDTFA.

## 7.1.2 SALES, USE & TAX REPORTING

### Quarterly Reporting and Accuracy

Avenu/MuniServices provides a comprehensive set of reporting and analytics services to help you better understand all aspects of your sales tax base. Our services include sales tax revenue forecasts, local business performance, online reporting, specialized data analytics, and quarterly in-person consulting. Unlike our competitors, our reporting services include specialized consulting to meet the specific needs of each client.

At the heart of our reporting services are our quarterly sales tax meetings. At the quarterly review meeting we cover your sales tax performance results on both a cash and economic basis. We provide sales tax reports such as cash receipts analysis, regional comparisons, Top 25 quarterly gains and declines report, historical trend analysis, top 100 businesses, and other topics pertinent to the City. Additionally, we provide reports that demonstrate sales tax performance for specific geo-coded areas in the City, with a detailed listing of the businesses and amount of sales tax generated by each in these areas. Included with our reporting are comprehensive five-year sales and TUT tax forecasts with multiple scenarios. Our forecasts combine City-specific business level activity with regional economic indicators and national economic trends. Our proprietary forecasting model provides a customized highly accurate revenue forecast which typically provides a forecast within a 1% to 2% variance of actual revenues received.

### Online Reporting – Clearview Analytics

Avenu/MuniServices has developed state of the art technology products for our clients. Our new online Sales Tax Reporting software titled 'Clearview' is a powerful data analytics platform that allows City staff to research local business activity and export data for further analysis. Our Clearview software includes the following key features:

### Consolidated Economic Reports

- ▶ See key trends at the category, segment, and retailer levels.
- ▶ Access a quick view of how your key retailers are performing.
- ▶ View customized cash forecast by fiscal year.
- ▶ Search for any retailer in your jurisdiction and view their recent payment history.
- ▶ Review and Export the rankings of the sales tax producers in your jurisdiction for recent periods.
- ▶ Locate potential one-time payments.
- ▶ Export the Excel data behind the reports for further analysis or export the visualization to pdf for inclusion in your internal reports.

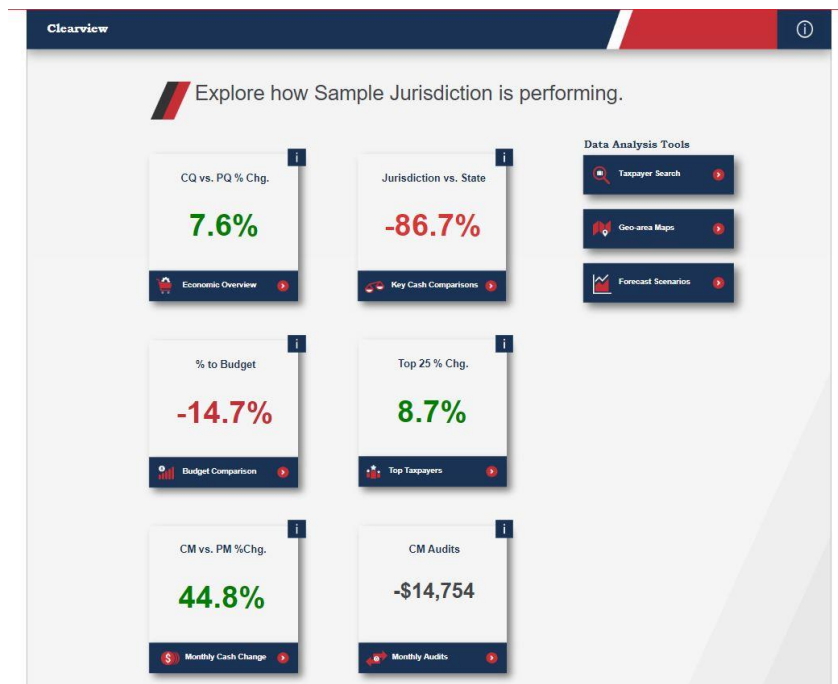


Figure 3 - Clearview Data Analytics Dashboard

### Geo Area Reports (Cash and Economic)

- ▶ Review trends and where the growth or declines within the geo-area are concentrated and uncover the key drivers of those changes.
- ▶ Export a 10-year history of each geo-area directly to excel for use in your internal reports.

### Cash Trends and Distribution Summaries

- ▶ Review the fiscal year-to-date totals for your cash.
- ▶ See which parts of your economy changed and the key retailers driving those cash changes.
- ▶ Compare your cash performance to other jurisdictions as a quick way of benchmarking performance.

### GIS Maps

- ▶ Visualize your geo-areas and summarize by category and segment.

- ▶ Dynamically view the revenue changes in your geo-areas over time.
- ▶ Compare the performance of one geo-area to another.

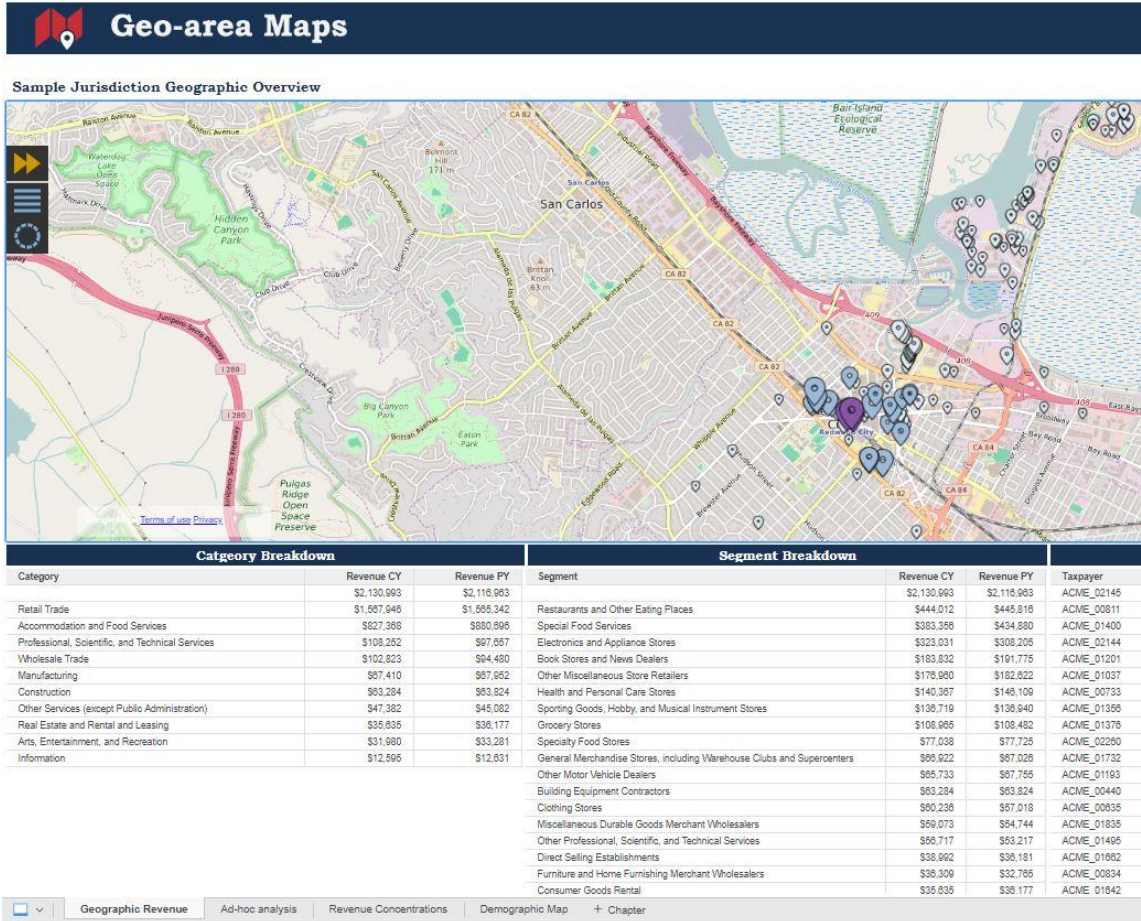


Figure 4 - Clearview Geo-area Maps

7.2 UTILITY USER TAX PROJECT PLAN

MuniServices’ Utility Users Tax (UUT) service monitors and reviews more than 70 percent of UUT revenues in California. To date, this service has recovered more than \$300 million in revenues for our California clients. We monitor the utilities of gas, electricity, and telecommunications, (wired, wireless and Prepaid Wireless).

We accomplish this through our team of analysts, auditors, attorneys, and project managers who analyze, manage, and protect UUT revenues. Our discovery methods and enforcement tools assure that utilities comply with tax regulations and remit the correct amounts, whether they are for natural gas, electricity, or telecommunications and video utilities. We further protect future revenue by remaining current on pending legislation, new technologies and recommending ordinance changes. Any statutory requirement for third-party review of UUT payments is met through MuniServices.



## 7.2.1 UUT COMPLIANCE

MuniServices will provide the following Compliance Activities:

1. **UUT Tax Application Review.** MuniServices will conduct a “focused” compliance review of the major service providers on behalf of one or more cities to assure that the provider’s “tax application” matrix reflecting all the provider’s current products and service, is being taxed properly, for the benefit of City and other client cities.
2. **UUT Payment Review.** Identification of possible gaps in payments, irregularities, calculation mistakes (e.g., wrong tax rate), and other payment errors to the City, provided that the City provides MuniServices with regular UUT payment history. MuniServices will assist the City with the appropriate compliance correspondence and enforcement actions.
3. **Comparative Analysis of UUT Payments.** MuniServices will periodically perform a comparative analysis of a service provider’s UUT payments to the City with other **neighboring** or comparable client cities, after adjusting for rate, population, and median household income. MuniServices will also perform a comparative analysis of the franchise and UUT payments for gas and electricity.
4. **Detection.**
  - ▶ MuniServices will annually update its proprietary database of “new telecom service providers” and send out a PUC 799 notice letter to such new providers on City’s behalf. The current list exceeds 1,500 providers.
  - ▶ MuniServices will annually update its proprietary database of new “video service providers” and send out a notice letter to such new providers on City’s behalf.
  - ▶ MuniServices will annually review the SB 278 lists of the major gas and electric companies to identify new non-core gas and direct access electric customers, as well as new third-party providers, and take appropriate steps to assure that the UUT is being applied to “commodity” purchases.
5. **Exemption Review.** MuniServices will periodically review the exemption lists of the major service providers regarding non-residential customers.

**City-Specific Compliance Reviews.** At City’s option, MuniServices will offer “City-Specific” reviews of UUT and/or Franchise Fees on a performance fee basis, if the above activities or other factors (e.g., non-response by utility provider) would suggest that there is a reasonable need for a focused audit.

## 7.2.2 UUT ADMINISTRATION

MuniServices’ technology enabled administration services has been deployed and improved for municipalities across the United States incorporating our expertise in verifying taxpayer compliance. Our goal is to customize our process to meet our client’s needs, priorities, and preferences with a flexible transition plan, ensuring uninterrupted collection of current taxes.

**Administration Scope of Work.** With a disciplined and trained staff, e-filing and payment capabilities, a secure facility, and robust, secure information systems, MuniServices can implement a process that replicates and enhances the City’s existing processes and cycle for utility users tax, transient occupancy tax and other taxpayer registrations and renewals. This process consists of the following components:

- ▶ **New Client Set-up:** create forms and reports, set up secure web access, and download new and updated account information
- ▶ **Taxpayer Registration:** create and maintain taxpayer database from client database and other sources, while maintaining a seamless process between initial registration and subsequent renewals and filings.
- ▶ **Taxpayer Notification:** provide tax forms and instructions by mail and online, initiate phone calls to tax payers, and send reminders

- ▶ **Form/Payment Processing:** receive data and input into system, batch forms with payments, deposit checks, scan forms, post to taxpayer account, and timely disbursement of funds.
- ▶ **Reconcile Returns and Initiate Compliance Efforts:** reconcile filings and payments; verify accuracy of filing; apply late fees, penalties, or interest; identify underpayments and refer to compliance process
- ▶ **Taxpayer Services:** provide prompt and effective customer service, online forms, rates and instructions, toll- free support number and e-filing and payment options
- ▶ **Interactive Online Government Services portal:** detailed reporting available online, including detailed payment listing, daily/weekly/monthly reconciliation reports, delinquency reports and more.

### 7.2.3 ADDITIONAL INFORMATION

1. **UUT Payment History.** MuniServices will provide the City, on a monthly or otherwise mutually agreed upon basis, with a spreadsheet reflecting the City's UUT payments by provider and utility category (based on remittance data provided by City to MuniServices).
2. **Revenue Forecasts and Management Reports.** MuniServices will provide an annual report that outlines the year's activities in review, revenue forecasts, year-over-year (YOY) comparison charts and revenue generated from compliance activities. This report contains an analysis of UUT revenues, and a five-year revenue forecast on each of the utility business segments (electric, gas, CATV, wired telecom, wireless telecom, etc.).
3. **Tax Application and Geocode Inquiries.** MuniServices will provide technical assistance to City staff and provide timely analysis and draft responses to tax application inquiries from utility companies and will assist in responding to citizens regarding their utility bills and the computation of the UUT. MuniServices will assist City and the utility service providers in correcting geocoding errors in response to taxpayer complaints.

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## 8 COST PROPOSAL

MuniServices is pleased to offer the City our services as described for the following costs:

### 8.1 SALES AND USE TAX SERVICES

MuniServices offers our Sales and Use Tax Auditing Services (SUTA) for a contingency fee of 15% of revenues recovered.

#### 8.1.1 SALES TAX REPORTING AND ANALYTICS (CLEARVIEW)

For this service, MuniServices will be charging \$2,625 per year, paid in quarterly installments of \$656.25, which is subject to a 5% CPI yearly increase.

### 8.2 UTILITY USER TAX SERVICE

As a demonstration of our appreciation to the City, Avenu/MuniServices offers the City the same pricing that we have honored in our previous contract. UUT pricing will be \$4,900 per quarter (the annual four quarter fixed-fee cost for the UUT program is \$19,600) along with a 25% contingency rate for any utility specific audits (utilities targeted for audit will be mutually agreed upon by city and Avenu/MuniServices).

#### 8.2.1 UTILITY USER TAX ADMINISTRATION

For this service, Avenu/MuniServices will continue to honor our previously agreed upon pricing of \$3.10 per transaction, with a NTE of \$9,500.

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## 9 ATTACHMENTS

MuniServices has included sample reports for the City's review on the following pages:





# City of Emeryville

CALIFORNIA

## EXHIBIT B

### Contract Insurance Requirements

As used in this Exhibit B, Contractor refers to **MUNISERVICES, LLC**.

#### 1. MINIMUM REQUIREMENTS

Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work or Services required by the Contract hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage, as checked below:

##### 1.1 *Minimum Scope of Insurance*

Coverage shall be at least as broad as the latest version of the following:

- ☒ **General Liability**  
Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
- ☒ **Automobile Liability**  
Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto) or if Contractor owns no vehicles, this requirement may be met through a non-owned auto endorsement to the General Liability Policy.
- ☒ **Professional Liability / Errors and Omissions**  
Written on a policy form specifically designed to protect against acts, errors or omissions of the Contractor wherein "Covered Professional Services" as designated in the policy must specifically include Services performed under this Contract.
- ☒ **Workers' Compensation and Employer's Liability**  
Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.
- ☐ **Pollution Liability Insurance**  
Pollution Liability insurance for claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater. This shall

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)  
REV 08/2020

include on and off-site clean up and emergency response costs and claims arising from above ground and below ground storage tanks.

## **1.2 Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

☒ **General Liability**

☒ **All Contract Types**

**\$1,000,000.00** per occurrence and **\$2,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability.

**OR**

☐ **Construction Specific**

**\$2,000,000.00** per occurrence and **\$4,000,000.00** aggregate for bodily injury, personal injury and property damage, including without limitation, blanket contractual liability, and coverage for explosion, collapse and underground property damage hazards.

☒ **Automobile Liability**

**\$2,000,000.00** per accident for bodily injury and property damage.

☒ **Professional Liability / Errors and Omissions**

**\$2,000,000.00** per claim and aggregate.

☒ **Workers' Compensation and Employer's Liability**

Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** each accident, policy limit bodily injury or disease, and each employee bodily injury or disease.

☐ **Pollution Liability Insurance**

**\$2,000,000.00** per occurrence and **\$2,000,000.00** aggregate.

Except for the professional liability / errors and omissions policy, defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the Parties required to be named as additional insureds pursuant to this Contract.

## **2. INSURANCE ENDORSEMENTS**

The insurance policies shall contain the following provisions, if checked, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions, if checked, to the insurance policies:

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)  
REV 08/2020

☒ **General Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 or CG20 37, or endorsements providing the exact same coverage, with respect to the work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it; and (4) the insurance coverage shall contain standard separation of insureds provisions.

☒ **Automobile Liability**

(1) Such policy shall provide the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

☒ **Professional Liability Coverage**

Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three years after termination of the Contract.

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)  
REV 08/2020

☒ **Workers' Compensation and Employer's Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

☐ **Pollution Liability Coverage**

(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to claims arising from the discharge, dispersal release or escape or any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse or body of water, including groundwater; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

**ALL COVERAGES**

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

**3. NO SPECIAL LIMITATIONS**

The required insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

**4. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS**

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

**City of Emeryville** | Contract Insurance Requirements (Exhibit B)  
REV 08/2020

**5. ACCEPTABILITY OF INSURERS**

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

**6. VERIFICATION OF COVERAGE**

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**7. SUBCONTRACTORS**

All subcontractors shall meet the requirements of this Section before commencing any work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

**8. REPORTING OF CLAIMS**

Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the work performed under this Contract.

*Attach:*  
*Insurance Certificate and Endorsements*

**Exhibit - C****SUTA & UUT Services Fees - Effective 1/1/25****SUTA Fees (Years 1-3)**

|                            | Reporting & Analytics<br><u>Fixed + 5% CPI Yearly Increase</u> | Audit Services<br><u>Contingency</u> |
|----------------------------|--|--------------------------------------|
| 01/01/25                   | \$2,625  | 15%                                  |
| 01/01/26                   | \$2,756  | 15%                                  |
| 01/01/27                   | \$2,894  | 15%                                  |
| <b>Subtotal - 3 Years:</b> | <b>\$8,275</b>   |                                      |

**UUT Fees (Years 1-3)**

|                            | <u>Fixed Yearly Tax Service</u> | Audit Services<br><u>Contingency</u> | <u>Tax Administration</u> |
|----------------------------|---------------------------------|--------------------------------------|---------------------------|
| 01/01/25                   | \$19,600                        | 25%                                  | \$3.10 per transaction *  |
| 01/01/26                   | \$19,600                        | 25%                                  | \$3.10 per transaction *  |
| 01/01/27                   | \$19,600                        | 25%                                  | \$3.10 per transaction *  |
| <b>Subtotal - 3 Years:</b> | <b>\$58,800</b>                 |                                      | <b>&lt; \$28,500</b>      |

**Total - 3 Years:** **\$95,575**

\* Per transaction fees not to exceed \$9,500/year.

**SUTA Fees (Years 4 & 5)**

|                            | Reporting & Analytics<br><u>Fixed + 5% CPI Yearly Increase</u> | Audit Services<br><u>Contingency</u> |
|----------------------------|--|--------------------------------------|
| 01/01/28                   | \$3,039  | 15%                                  |
| 01/01/29                   | \$3,191  | 15%                                  |
| <b>Subtotal - 2 Years:</b> | <b>\$6,230</b>   |                                      |

**UUT Fees (Years 4 & 5)**

|                            | <u>Fixed Yearly Tax Service</u> | Audit Services<br><u>Contingency</u> | <u>Tax Administration</u> |
|----------------------------|---------------------------------|--------------------------------------|---------------------------|
| 01/01/28                   | \$19,600                        | 25%                                  | \$3.10 per transaction *  |
| 01/01/29                   | \$19,600                        | 25%                                  | \$3.10 per transaction *  |
| <b>Subtotal - 2 Years:</b> | <b>\$39,200</b>                 |                                      | <b>&lt; \$19,000</b>      |

**Total - 2 Years:** **\$64,430**

\* Per transaction fees not to exceed \$9,500.

**Total - 5 Years:** **\$160,005**