

**PROFESSIONAL SERVICES AGREEMENT
UTILITY USER TAX SERVICES
MUNISERVICES, LLC**

THIS AGREEMENT is entered into this ____ day of _____ 2018, between the CITY OF STOCKTON, a municipal corporation ("City"), and **MuniServices, LLC** whose address is **7625 N. Palm Ave., Ste 108, Fresno, CA, 93711** and telephone number is **559-288-8943** ("Consultant").

RECITALS

A. Consultant is qualified to and experienced in facilitating collaboration, teamwork and strategic planning efforts for the purposes specified in this Agreement.

B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide **Utility User Tax services** to City described in **Exhibit A**. Consultant shall provide said services at that time, place and in the manner specified in **Exhibit A**.

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in **Exhibit A**, Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in Exhibit A. according to the terms and conditions set forth in **Exhibit A**.

3. **Term.** This Agreement shall commence on the date written above and shall expire on **June 30, 2023**, unless terminated sooner, as provided in this Agreement.

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit A and Exhibit B**. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice, in accordance with the fee schedule attached as **Exhibit B**, Total compensation for fixed fee services, contingency fees, and reimbursement for costs shall not exceed **\$1,000,000 for the term of this Agreement**.

a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City reference number. Payment shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

5. **Sufficiency of Consultant's Work.** All reports, and work product of Consultant shall be adequate and sufficient to meet the purposes for which they are prepared.

6. **Ownership of Work.** All reports, work product, and all other documents completed or partially completed by Consultant in the performance of this Agreement shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

12. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit C** and shall otherwise comply with the other provisions of **Exhibit C**.

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

Consultant:	<u>MuniServices, LLC</u>	City:	City Manager
	Doug Jensen, SVP Client Services		City of Stockton
	7625 N. Palm Avenue, Ste. 108		425 N. El Dorado Street
	Fresno, CA, 93711		Stockton, CA 95202

14. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. **Confidentiality.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. **Conflicts of Interest.** Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Consultant's services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver.** In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

21. **No Personal Liability.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

Kurt Wilson, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:
John Luebberke, City Attorney

Deputy City Attorney

MUNISERVICES, LLC

By: _____

Signature

Doug Jensen

Print name

Title: _____
Senior Vice President

*[If Consultant is a corporation
signature(s) must comply with
Corporations Code §313.]*

EXHIBIT A SCOPE OF WORK

A. STATEMENT OF WORK

The Consultant shall provide, at a minimum, the following Utility User Tax services and applicable reporting:

1. COMPLIANCE

1.1 Tax Application Review

Consultant shall conduct a “focused” compliance review of the major service providers to assure that the provider’s “tax application” matrix is correct.

1.2 UUT Payment Review

Consultant shall review the City’s tax payment receipt records for accuracy and verify that UUT is correctly applied. Consultant shall identify possible gaps in payments, irregularities, calculation mistakes (e.g., wrong tax rate), and other payment errors. Consultant shall assist the City with the appropriate compliance correspondence and enforcement actions.

1.3 Comparative Analysis of UUT Payments:

Consultant shall periodically perform a comparative analysis of a service provider’s UUT payments to the City as compared to payment to other neighboring client cities and present findings to the City upon completion of the analysis. Consultant shall perform a comparative analysis of UUT payments for gas and electricity.

1.4 Detection

1.4.1 Consultant shall annually update its proprietary database of “new telecom service providers”. Consultant shall draft and distribute PUC 799 notification letter to such new providers on City’s behalf following applicable ordinance and code change. The current list exceeds 1,500 providers.

1.4.2 Consultant shall annually update its proprietary database of new “video service providers” and send out a notice letter to the new providers on the City’s behalf.

1.4.3 Consultant shall 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 ensure that the UUT is being applied to “commodity” purchases.

- 1.4.4 Consultant shall perform Utility User Tax (UUT) audits to identify and correct deficiencies. Consultant shall take inventory and provide/conduct analysis of utility service providers/users subject to the City’s ordinance.
- 1.4.5 Consultant shall confirm any errors/omissions and document each with the correction date, account identification number, service provider, and utility user tax due to the City for prior period (plus applicable interest and penalties).
- 1.4.6 Consultant shall forward the proposed corrections along with all supporting documentation to City representative for revenue recovery. Consultant shall assist the City with the appropriate compliance correspondence and corrective actions.

1.5 Exemption Review

Consultant shall periodically review the exemption lists of the major service providers regarding non-residential customers

1.6 Optional City Specific Compliance Reviews:

At City’s request, Consultant shall provide “city specific” reviews on a performance fee or other negotiated basis, if the above activities or other factors (e.g., non-response by utility provider) indicate a need for it.

2. ADMINISTRATIVE

2.1 UUT Payment History

Consultant shall provide 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 Consultant).

2.2 UUT Website

Consultant shall prepare and maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the www.uutinfo.org website, including a link to the City's web page (if desired). Model forms for exemptions and remittances, administrative rulings, and other tax compliance documents shall be maintained by Consultant on the www.uutinfo.org website.

2.3 Reports

- 2.3.1 Consultant shall provide an annual report to City that outlines the year's activities in review, revenue forecasts, YTD 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.). In addition to the annual UUT report, Consultant shall provide a non-confidential quarterly "Industry Trends" report that highlights industry-wide trends and developments among all utility industries that may impact local UUT revenues.
- 2.3.2 Consultant shall conduct risk analysis report on the impact-evolving technology has on current UUT revenues.
- 2.3.3 Consultant shall consult with the City regarding the interpretation of data, revenue estimation (up to a five-year revenue forecast), and provide special revenue impact analysis reports upon request.
- 2.3.4 Consultant shall provide the City, on a monthly basis, with a spreadsheet reflecting the City's UUT payments by provider and utility category according to remittance data provided by the City.

2.4 Tax Application and Geocode Inquiries

Consultant shall provide technical assistance to City staff and provide timely analysis. Consultant shall draft responses to tax application inquiries from utility companies related to developments like the recent passage of the permanent Internet Tax Freedom Act upon request from the City. Consultant shall assist City in responding to citizens regarding their utility bills and the computation of the UUT. Consultant shall assist the City and the utility service providers in correcting geocoding errors in response to taxpayer complaints.

3. TECHNOLOGY, MARKETING AND ADMINISTRATIVE RULINGS

Consultant shall provide City on-going monitoring of changes in technology, marketing, and billing practices (e.g., bundling), and the introduction of new services into the marketplace. Consultant shall advise the City through timely updates and recommended tax application decisions or administrative rulings. Such changes may include the use of broadband telecommunications (including all forms of conferencing); the allocation of taxable and non-taxable values in connection with bundled services (especially affected by the permanent passage of the Internet Tax Freedom Act); taxation of solar and other distributed generation technologies; and the introduction of new services involving telecommunications. Consultant shall analyze and recommend to the City appropriate tax application decisions, including the use of administrative rulings per the City's UUT ordinance

4. LEGISLATIVE REVIEW AND IMPLEMENTATION STRATEGY

- 4.1 Consultant shall monitor proposed state and federal legislation to identify issues affecting the City's UUT or utility franchise revenues, and, if justified, make recommendations to the City and its lobbyists. Consultant shall utilize the expertise of Ben Fay, Esq., of Jarvis, Fay, Doporto & Gibson, LLP, on matters requiring legislative and legal analysis. Consultant's Government Relations team shall work in collaboration with Mr. Fay and other stakeholders including representatives from the League of California Cities, the California Society of Municipal Finance Officers, the California Municipal Revenue Tax Association, Special Districts Association, City advocates, utility providers, the Public Utilities Commission, CDTFA/BOE, and others.
- 4.2 Consultant shall monitor and provide updates on state and federal legislation affecting UUT procedures and collections including analysis of economic impact.
- 4.3 Consultant shall review City ordinance and code and recommend changes for compliance and to improve UUT revenue sources.

5. PREPAID WIRELESS (AB1717) MONITORING AND ANALYSIS

Consultant shall monitor the monthly prepaid wireless payments and provide to the City a comparative analysis with similar cities to determine accuracy and identify any potential discrepancies. Consultant shall identify online prepaid wireless sellers and send an annual notice letter to ensure compliance with AB1717. Consultant shall engage and follow-up with the *California Department of Tax and Fee Administration* on any issues, problems and discrepancies affecting the

City's prepaid wireless revenue collections by retail sellers, including online sellers, to the extent that Consultant has access to *CDTFA* documents through a City resolution authorizing such access.

**EXHIBIT B
FEE SCHEDULE**

A. Pursuant with Paragraph 4 of this Agreement, Consultant shall be compensated for the Work described in Exhibit A as follows:

1. The annual fee for the UUT Service shall be five-tenths of one percent (0.5%) of the total actual UUT taxes received by the City for the most recent fiscal year (excluding UUT revenues from sewer, water, and trash).
2. The total annual fee for the fixed fee service shall not exceed \$95,000 per year.
3. City-specific audits, performed upon request of the City, shall be performed for a contingency fee of 25%.
4. The City may request that Consultant provide additional consulting services at any time during term of the Agreement. If Consultant and the City agree on the scope of the additional consulting services requested, then Consultant shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, Consultant's standard hourly rates range from \$75 per hour to \$200 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. The following are sample hourly rates based on the job classification:

TITLE	BILLABLE HOURLY RATE
Principal:	\$200 per hour
Project Manager:	\$175 per hour
Client Services:	\$150 per hour
Information Technology (IT) support:	\$175 per hour
Operational Support: Director or Manager:	\$175 per hour
Senior Analyst:	\$125 per hour
Analyst:	\$100 per hour
Administrative:	\$ 75 per hour

5. The work performed specific to AB 1717 shall not be construed as permitting a contingency fee arrangement as payment for services rendered pertaining to prepaid local charges. Any fees paid by the City to Consultant for city-specific auditing of a "seller" of prepaid wireless UUT remitting to the BOE/CDTFA, shall only be performed on a fixed fee basis or on an hourly time and material basis and shall not involve any contingency fee arrangement. Consultant' fees for services performed on an hourly rate schedule shall depend on the personnel assigned to perform the work. The additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. Consulting

fees shall be based Consultant's job classifications required to do the work as described in the Additional Consulting Services section above.

EXHIBIT C

INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES

Consultant shall 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 hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. **(Not required if consultant provides written verification it has no employees)**
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

If the Consultant maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL

policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (**at least as broad as** ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.