

**PROFESSIONAL SERVICES AGREEMENT
FRANCHISE FEE COMPLIANCE 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 **Franchise Fee Compliance 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**; provided, however the parties may agree to change either the commencement or expiration date.

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit A.** The payments shall be made on a monthly basis, in accordance with the fee schedule attached as **Exhibit B,** and upon receipt and approval of Consultant's invoice. 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, Consultant 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: MuniServices LLC
7625 N. Palm Ave., Ste 108
Fresno, CA 93711

City: City Manager
City of Stockton
425 N. El Dorado Street
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:

Bret Hunter, City Clerk

APPROVED AS TO FORM:
John M. 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

Consultant shall provide Franchise Fee services and applicable reporting services as follows:

1. FRANCHISE FEE SERVICE

- 1.1 Consultant shall perform ongoing franchise fee audits to identify and correct deficiencies thereby generating previously unrealized franchise fee revenue for the City. The audit shall include auditing franchise activities within the City to verify the proper fees are collected from City customers and proper amounts are submitted to City.
- 1.2 Consultant shall review the franchisee billing customer statements for completeness and accuracy and verify that all monies collected are submitted to the City. Consultant shall include the following in their review of the customer statements:
 - 1.2.2 Compare the franchisee's payments, exclusions, and other computations related to the franchise agreement, or relevant California state law. Verify franchise fees are correctly and completely applied under both California State and local franchise agreements. Compare the actual payments made to the City for timeliness and accuracy.
 - 1.2.3 Document each confirmed error/omission to include the correction date, account identification number, service provider, and franchise fee due to the City for prior period (plus applicable interest and penalties).
 - 1.2.4 Review findings with providers and obtain the franchisee's position on the findings.
 - 1.2.5 Prepare a written audit report that describe the results of the review, potential additional monies due to the City, and any applicable penalties and interest. Submit the audit report and all supporting documentation to City for verification and revenue recovery of underpaid franchise fees. Consultant shall schedule a final presentation of these findings with the City.

- 1.2.6 Provide ongoing consultation services regarding the interpretation of data revenue estimation (up to a five-year revenue forecast), and special revenue impact analysis reports as requested by City staff about Franchise Fees.
- 1.2.7 Provide updates on state and federal legislation affecting Franchise Fee procedures and collections including analysis of economic impact.
- 1.2.8 Provide risk analysis of current Franchise Fee revenues due to evolving technology.
- 1.2.9 Make recommendations on ordinance and code changes as appropriate to protect and enhance current Franchise Fee revenue sources.

2. REPORTS AND DELIVERABLES

- 2.1 Consultant shall produce monthly, or periodic, reports to the City documenting their efforts to date. The reports shall include the following:
 - 2.1.1. Accomplishments to date.
 - 2.1.2. Next-step options and timeline for completion.
 - 2.1.3. Open items needing attention, with identification of the responsible party.
 - 2.1.4. Updates on issues requiring City attention.
 - 2.1.5. Review of findings with Franchisee and their positions. Findings shall include electronic format data of all exceptions in formats required by utilities.
 - 2.1.6. Prepare written reports that describe the results of Consultant's review identifying residents and businesses that are not paying the appropriate level of taxes or fees, potential additional monies due to the City based upon erroneous interpretations of governing regulations, and any applicable penalties and interest.
 - 2.1.7. A final presentation of these findings to the City.

3. CITY ASSISTANCE

- 3.1 City will provide letters of authorization to Consultant clearly establishing Consultant's authority to conduct examinations on the City's behalf.
- 3.2 City shall also provide copies of:
 - 3.2.1 All franchise agreements, including any amendments or subsequent agreements relating to franchise fee collection.
 - 3.2.2 Any prior reports prepared by the internal or external auditors which concern the computation or methodologies for computing franchise fees.
 - 3.2.3 A five-year history of franchise payments made by the franchisee.

4. CITY SPECIFIC FRANCHISE FEE COMPLIANCE REVIEW {OPTIONAL}

If, while performing franchise fee compliance activities, Consultant discovers discrepancies or other evidence of possible significant non-compliance by a specific franchisee, Consultant shall request permission from the City to conduct a City-specific compliance review. The focus of the City-specific audit is the compliance of said franchise fee agreement. The City and Consultant shall discuss the parameters of the proposed City-specific audit and prior to commencement, both parties shall agree upon the parameters of the audit.

**EXHIBIT B
FEE SCHEDULE**

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

1. Consultant shall provide the Franchise Fees Compliance services on a combined fixed-fee and contingency fee basis. The contingency fee is based on additional revenue paid to the City as a direct result of the Franchise Fee Compliance Services audit. The contingency fee shall apply to the current tax year, all eligible prior period revenues, and include any applicable penalties, interest, late charges and any other associated fees.
2. The following is the franchise fee structure:
 - A fixed fee in the amount of \$10,000 per audit, plus a contingency fee. The contingency fee may be reduced if the City contracts for multiple audits.
 - A contingency fee of 25% on the first \$300,000 paid to the City as additional revenue as a result of the audit.
 - A contingency fee of 10% on any additional revenue above \$300,000 paid to the City as a result of the audit.
3. **The fixed fee and contingency fees shall not-to-exceed \$200,000 per year - \$1,000,000 for the term of the agreement.** These fees include actually incurred and reasonable out-of-pocket expenses related to performing the auditing service or travel-related expenses.
4. Consultant shall invoice the City the fixed fee upon issuance of the final audit report to the City.
5. For deficiencies otherwise deemed lawfully collectable but for which the City elects not to collect, the City shall notify Consultant of its elections not to pursue ("waive") collection of said deficiencies. In such instances, Consultant fee shall be converted from a contingent fee to an hourly rate of \$150 per hour spent on the project to date or one-half (1/2) of the fee Consultant would have been entitled to but for the waived portion of the deficiency, whichever is greater, plus additional out-of-pocket expenses incurred in the audit.

6. Invoice

Consultant shall remit invoices to the following:

City of Stockton
Attn: Revenue
425 North El Dorado Street
Stockton, CA 95202

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.