



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: APPROVAL OF AGREEMENTS FOR REVENUE ENHANCEMENT SERVICES **DATE:** November 23, 2020

| | | | |
|----------|---|------|---------|
| Approved |  | Date | 12/4/20 |
|----------|---|------|---------|

RECOMMENDATION

- a) Adopt a resolution authorizing the Director of Finance to negotiate and execute the following agreements with MuniServices LLC, dba Avenu MuniServices LLC, a Delaware Limited Liability Company (“MuniServices”) to provide:
 - (1) Sales and Use Tax revenue enhancement services and data analysis for the term of January 1, 2021 through June 30, 2023 at a maximum annual compensation not to exceed \$200,000 in year 1 (for the prorated 6 month period through June 30, 2021), \$400,000 in year 2, and \$500,000 in year 3, with three (3) two-year options to extend through June 30, 2029, at a maximum annual compensation not to exceed \$500,000 for each additional optional year subject to the City Council’s annual appropriation of funds;
 - (2) Telephone Line Tax, Utility Users Tax, and Franchise Fee compliance services for the term of January 1, 2021 through June 30, 2023 at a maximum annual compensation not to exceed \$87,500 in year 1 (for the prorated six (6) month period through June 30, 2021) and \$175,000 for each additional contract year thereafter, with three (3) two-year options to extend through June 30, 2029, at the same rate of compensation for each additional optional year, subject to the City Council’s annual appropriation of funds; and
 - (3) Lodging Taxes and Fees compliance services for the term of January 1, 2021 through June 30, 2023 at a maximum annual compensation not to exceed \$38,500 in year 1 (for the prorated six (6) month period through June 30, 2021) and \$77,000 for each additional contract year thereafter, with three (3) two-year options to extend through June 30, 2029, at the same rate of compensation for each additional optional year subject to the City Council’s annual appropriation of funds.

- b) Adopt a resolution authorizing MuniServices to examine all Sales and Use Tax records of the California Department of Tax and Fee Administration (including Transaction and Use Tax records) for tax collection purposes and other governmental functions of the City of San José (“City”).

OUTCOME

Approval of the recommendations will allow MuniServices to assist staff with Sales and Use Tax revenue enhancement services and data analysis; Telephone Line Tax, Utility Users Tax and Franchise Fee compliance services; and Lodging Taxes and Fee compliance services to recover monies due to the City.

BACKGROUND

In September 2015, the City and MuniServices entered into separate agreements for revenue enhancement services related to Sales and Use Tax; Telephone Line Tax, Utility Users Tax, and Franchise Fees; and Lodging Taxes and Fees. Each of the agreements commenced on October 1, 2015 with an initial term through June 30, 2018, and two (2) one-year options to extend. In June 2020, the City and MuniServices entered into agreements to extend the revenue enhancement services for an additional six (6) months. Accordingly, the existing terms of the agreements are set to expire on December 31, 2020.

Since October 1, 2015, MuniServices has provided audit services that resulted in City collections of approximately \$14.8 million in tax and fee revenues. Collectively, the City has received approximately \$9.8 million from Sales and Use Tax revenue enhancement services; \$3.0 million from Telephone Line Tax, Utility Users Tax and Franchise Fees revenue enhancement services; and \$2.0 million from Lodging Taxes and Fees revenue enhancement services. Given the dollar amounts associated with these revenue programs and the volume of remitters, it is critical that the City performs regular audits and compliance reviews to maximize revenue collection.

To facilitate continued compliance, the Finance Department issued a Request for Proposal (“RFP”) to solicit proposals for three (3) specific areas of revenue enhancement and compliance services: (1) Sales and Use Tax; (2) Telephone Line Tax, Utility Users Tax, and Franchise Fees; and (3) Lodging Taxes and Fees.

ANALYSIS

On February 7, 2020, the Finance Department posted the RFP on the City’s e-procurement system, Biddingo. Two firms, MuniServices and HdL Companies (“HdL”), submitted proposals. The two proposing firms submitted proposals for all three consulting service areas. The evaluation team included staff from the Finance Department, the City Manager’s Budget Office, and the City Manager’s Office of Economic Development. Proposals for each service request were evaluated separately using the following criteria and weighting:

| Description | Weight |
|---------------------------------------|---------------|
| Proposal Responsiveness | Pass/Fail |
| Experience of Proposer | 50% |
| Customer Satisfaction/Firm Reputation | 20% |
| Fee Structure (Cost) | 20% |
| Local Business Enterprise | 5% |
| Small Business Enterprise | 5% |
| Total | 100% |

The Finance Department is recommending entering into three separate agreements to more effectively manage the services provided under each agreement.

Sales and Use Tax

| Rank | Firm | Experience | Customer Satisfaction | Fee Structure | Local Business | Small Business | Total |
|------|--------------|------------|-----------------------|---------------|----------------|----------------|-------|
| 1 | MuniServices | 46.40 | 17.91 | 20.00 | 0.00 | 0.00 | 84.31 |
| 2 | HdL | 44.80 | 18.25 | 15.09 | 0.00 | 0.00 | 78.14 |

The table above summarizes the scoring results for the Sales and Use Tax revenue enhancement services portion of the RFP. Out of 100 points, MuniServices received the highest point total of 84.31. Based on the results of the evaluation process, staff recommends MuniServices to provide Sales and Use Tax revenue enhancement services and data analysis for the City.

MuniServices will be paid on a contingency basis for reallocation of Sales and Use Tax to the City at a maximum annual compensation not to exceed \$200,000 in year 1 (pro-rated for six months), \$400,000 in year 2, and \$500,000 in contract years thereafter for Sales and Use Tax audits. The agreement will be for three years with three (3) two-year options to extend. The term of the agreement may be extended by the Director of Finance upon written notice to MuniServices. MuniServices' fees are based on a percentage of new Sales and Use Tax revenues received by the City resulting from MuniServices' reallocation efforts of Sales and Use Tax to the City and, therefore, are contingent upon MuniServices' performance under the terms and conditions of the agreement.

The total maximum compensation for the initial term of the agreement from January 1, 2021 through June 30, 2023 shall not exceed \$1,100,000. In addition, the City has three (3) two-year options to extend the MuniServices contract at a maximum annual compensation not to exceed \$500,000 for a total maximum option period compensation of \$3,000,000. The total maximum compensation for the initial term and the option periods is \$4,100,000. MuniServices will provide the following services and deliverables:

- Sales and Use Tax audits;
- Correction of tax filings with the California Department of Tax and Fee Administration (“CDTFA”);
- Technical and analytical support pertaining to Sales and Use Tax related legislation and administrative rulings;
- Sales and Use Tax quarterly trend reports, budget analysis, and citywide economic and business reports; and
- Access to MuniServices Sales Tax database and quarterly updates of sales tax permit records and distribution reports.

The agreement is divided into two phases – the primary services phase and completion services phase. The primary services phase is the first three years of the agreement and any option years exercised by the Director of Finance. The completion services phase begins at the expiration or termination of the primary services phase, whichever is sooner. It is during the completion services phase of the agreement that MuniServices resolves any unresolved claims with the CDTFA identified during the primary services phase. For each option year, there is a three-year completion phase as described above. In this agreement, the completion phase will extend no later than June 30, 2032, and each year of the completion phase is subject to the maximum compensation for the specified contract year in which documentation to reallocate Sales and Use Tax to the City were submitted.

In addition to providing services related to the collection of local Sales and Use Taxes, MuniServices will also provide the City with advisory services related to budgeting and financial projections. These revenue compliance and data analysis services individually and collectively add value to the Finance Department and the City Manager’s Office and are essential for additional protection of the City’s Sales and Use Tax revenues. Accordingly, to ensure that MuniServices has access to the Sales and Use Tax records of the CDTFA, MuniServices is authorized, by resolution of the City Council, to examine all Sales and Use Tax records of the CDTFA, consistent with Section 7056 of the California Revenue and Taxation Code.

Telephone Line Tax, Utility Users Tax and Franchise Fees

| Rank | Firm | Experience | Customer Satisfaction | Fee Structure | Local Business | Small Business | Total |
|------|--------------|------------|-----------------------|---------------|----------------|----------------|-------|
| 1 | MuniServices | 44.00 | 19.00 | 20.00 | 0.00 | 0.00 | 83.00 |
| 2 | HdL | 32.00 | 14.50 | 9.43 | 0.00 | 0.00 | 55.93 |

The table above summarizes the scoring results for Telephone Line Tax, Utility Users Tax and Franchise Fee revenue compliance services portion of the RFP. Out of 100 points, MuniServices received the highest point total of 83.00. Based on the results of the evaluation process, staff recommends MuniServices to provide Telephone Line Tax, Utility Users Tax and Franchise Fee revenue enhancement services for the City. MuniServices will be paid on a fixed rate basis at a maximum annual compensation of \$175,000 for the Telephone Line Tax, Utility Users Tax and Franchise Fee audits. The agreement will be for three years with three (3) two-year options to

extend. The term of the agreement may be extended by the Director of Finance upon written notice to MuniServices.

The total maximum compensation for the initial term of the agreement from January 1, 2021 through June 30, 2023 shall not exceed \$437,500. In addition, the City has three (3) two-year options to extend the MuniServices contract at a maximum annual compensation of \$175,000 for a total maximum option period compensation of \$1,050,000. The total maximum compensation for the initial term and the option periods is \$1,487,500. MuniServices will provide the following services and deliverables:

- Telephone Line Tax audits;
- Energy transporters Utility Users Tax audits;
- Electric and Gas Franchise Fee audits;
- Water Franchise Fee audits;
- Cable Franchise Fee audits;
- Telecommunication Users Tax audits;
- Analysis of state and federal legislation that may threaten utility tax revenues and fees;
- Revenue trend reports and revenue budget analysis to the City; and
- Utility Users Tax training seminars for City staff.

Lodging Taxes and Fees

| Rank | Firm | Experience / Capability | Customer Satisfaction | Fee Structure | Local Business | Small Business | Total |
|------|--------------|-------------------------|-----------------------|---------------|----------------|----------------|-------|
| 1 | MuniServices | 44.40 | 18.00 | 12.12 | 0.00 | 0.00 | 74.52 |
| 2 | HdL | 33.40 | 16.50 | 20.00 | 0.00 | 0.00 | 69.90 |

The table above summarizes the scoring results for the Lodging Taxes and Fees revenue enhancement services portion of the RFP. Out of 100 points, MuniServices received the highest point total of 74.52. Based on the results of the evaluation process, staff recommends MuniServices to provide Lodging Taxes and Fees revenue enhancement services for the City. MuniServices will be paid on a fixed rate basis at a maximum annual compensation of \$77,000. The agreement will be for three years with three (3) two-year options to extend. The term of the agreement may be extended by the Director of Finance upon written notice to MuniServices.

The total maximum compensation for the initial term of the agreement from January 1, 2021 through June 30, 2023 shall not exceed \$192,500. In addition, the City has three (3) two-year options to extend MuniServices' contract at a maximum annual compensation of \$77,000 for a total maximum option period compensation of \$462,000. The total maximum compensation for the initial term and the option periods is \$654,500. MuniServices will provide the following services and deliverables:

- Transient Occupancy Tax (“TOT”) audits;
- Convention Center Facilities District (“CCFD”) Tax audits;
- Hotel Business Improvement District (“HBID”) Fee audits;
- Technical and analytical support to the City pertaining to legislation that threatens revenue sources;
- Revenue trend reports and revenue budget analysis to the City;
- Assist with the implementation of online lodging service (e.g. Airbnb, VRBO, Couchsurfing, HomeAway) taxation; and
- Lodging Taxes and Fees training seminars for City staff.

CONCLUSION

Approval of the recommendations will facilitate continued revenue enhancement services and allow MuniServices to assist staff with Sales and Use Tax revenue enhancement services and data analysis; Telephone Line Tax, Utility Users Tax, and Franchise Fee compliance services; and Lodging Taxes and Fee compliance services to recover monies due to the City.

EVALUATION AND FOLLOW-UP

Revenues collected through the revenue enhancement program will be reported quarterly through the Public Safety, Finance and Strategic Support Committee.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

The RFP was posted on the City’s e-procurement system on February 7, 2020 and was downloaded by twelve (12) parties interested in providing auditing and compliance services.

COORDINATION

This report has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

Sales and Use Tax

The agreement for Sales and Use Tax compliance services will be paid on a contingency basis for reallocation of Sales and Use Tax to the City at the maximum annual compensation of \$200,000 in year 1 (pro-rated for six (6) months), \$400,000 in year 2, and \$500,000 in every contract year thereafter. MuniServices will also provide the City with revenue analysis and projection services for purposes of budget development. The total maximum compensation for the initial term of the agreement from January 1, 2021 through June 30, 2023 shall not exceed \$1,100,000.

Telephone Line Tax, Utility Users Tax, and Franchise Fees

The agreement for Telephone Line Tax, Utility Users Tax and Franchise Fees revenue enhancement services is paid on a fixed rate basis at a maximum annual compensation of \$175,000. The total maximum compensation for the initial term of the agreement from January 1, 2021 through June 30, 2023 is \$437,500.

Lodging Taxes and Fees

The agreement for Lodging Taxes and Fees enhancement services is paid on a fixed rate basis at a maximum annual compensation of \$77,000. The total maximum compensation for the initial term of the agreement from January 1, 2021 through June 30, 2023 is \$192,500.

BUDGET REFERENCE

| Fund # | Appn # | Appn. Name | Total Appn | Amt. for Contract | 2020-2021 Adopted Budget Page | Last Budget Action (Date, Ord. No.) |
|--------|--------|---|------------|-------------------|-------------------------------|-------------------------------------|
| 001 | 2060 | Revenue Enhancement Consulting Services | \$455,000 | \$591,500* | IX – 32 | 6/23/2020, 30437 |

** The Sales and Use Tax portion of the contract is paid on a contingency basis. In the event that the actual contingent fees exceed the appropriation amount, a budgetary adjustment will be brought forward for City Council consideration through a future budget process or City Council memorandum.*

HONORABLE MAYOR AND CITY COUNCIL

November 23, 2020

Subject: Approval of Agreements for Revenue Enhancement Services

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JULIA H. COOPER

Director of Finance

For questions, please contact Rick Bruneau, Deputy Director of Finance, at (408) 535-8310 or rick.bruneau@sanjoseca.gov.