

**TOWN OF FAIRFAX
STAFF REPORT**

To: Mayor, Members of the Town Council

From: Michael Rock, Town Manager 
Laurie Ireland-Ashley, Finance Director

Date: September 1, 2010

Subject: Authorization for the Town Manager to sign an agreement with Muni Services to process business licenses

RECOMMENDATION

Authorize the Town Manager to sign an agreement with Muni Services to process business licenses.

DISCUSSION

Staff recommended at the August 4th Council meeting that the Town outsource the Business License process to insure a greater consistent revenue recovery, and improved efficiency at a cost savings to the Town. Attached please find the Muni Service Contract for your approval.

The Town currently absorbs most of the FBHR rate for processing the business licenses and recovers very little of it through the business license revenue. Muni Services because of their experience and software, results in a much smaller admin fee of up to \$25 per license which staff proposes to include as admin processing fee for obtaining a business license. This will save both the Town and the citizen's money as the FBHR rate of processing a business license is quite prohibitive (\$110 minimum). It will also improve the timeliness of the process.

Contracting with Muni to handle the Business License results in increased funding capacity by removing town-related expenditures, increases compliance with the Business License Fees, and provides town staff assignment flexibility to be more effectively utilized. Muni would provide business registry with new, renewal, and short term licenses as well as provide analytical reports to the Town and Council for any future revenue compliance issues.

Muni can facilitate educating the business community with any questions, cares, or concerns. The main components the Town can avail itself of are:

- Business Tax applications and collections Taxpayer Communication
- Reporting, and client communication Discovery Service and Audit Service

FISCAL IMPACT

There will be an expected increase of Business License revenue. Staff will report actual revenues as part of the adoption of the FY 2011/12 Town Budget.

ATTACHMENTS

1. Muni Contract
2. Exhibit A: Scope of Work
3. Exhibit B: Fee Schedule
4. Exhibit C: Distribution Confirmation

AGENDA ITEM # 1

**PERSONAL SERVICES AGREEMENT
TOWN OF FAIRFAX**

THIS AGREEMENT is made and entered into this 1st day of September, 2010, by and between the Town of Fairfax, (hereinafter referred to as "Town") and Muni Services, LLC (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, Town desires to offer outsourcing of the Business Licenses for the citizens of Fairfax, and the Consultant was recommended as a result of the Sales Tax review; and;

WHEREAS, Consultant represents to Town that Consultant is qualified, competent and experienced to perform the aforementioned work,

Therefore, in consideration of the mutual covenants below, the parties agree as follows:

I. Term of Agreement: This agreement shall be from the start date on the attached agreement September 1, 2010 and continues until terminated by either party.

II. Scope of work: Consultant shall provide the Town with the services described in Exhibit A which is attached hereto and incorporated herein by this reference as though set forth in full in accordance with a schedule to be established in the reasonable discretion of the Town. The duties and services required of Consultant under this agreement and pursuant to this section II are referred to throughout the remainder of this agreement as "the Work".

- a. **Responsible Individual:** Consultant represents and warrants that the execution of this agreement has been approved by Consultant and that person executing this agreement on behalf of Consultant has the full authority to do so.
- b. **Work Schedule:** Consultant shall be available to complete each task in a timely manner as specified. Consultant shall not be held responsible for delays caused beyond its reasonable control.
- c. **Compensation:** In consideration of the performance of Work described in this Section II, Consultant shall be compensated at the rates set forth in Exhibit B which is attached hereto and incorporated herein as though set forth in full. Consultant shall not charge Town for any administrative expenses or overhead without limitation, facsimile, mileage and /or any other expenses incurred by Consultant in connection with the Consultant's provision of the Work. Consultant acknowledges and agrees that the compensation to be paid under this section II c represents the full amount due and owing in connection with the performance of the Work.
- d. **Amendments:** In the event Town desires to retain Consultant for the performance of additional services, or wishes to delete any services in connection with this agreement, specification of such changes and adjustments to compensation due Consultant therefore shall be made only by written and signed amendment to this Agreement.

- e. **Consultant's Responsibility:** It is understood and agreed that Consultant has the professional skills necessary to perform the Work, and that Town relies upon the professional manner in accordance with the standards of the profession. Consultant thus agrees to so perform the Work. Acceptance by the Town of the Work, or any of it, does not operate as a release of the Consultant from such professional responsibility. It is further understood and agreed that Consultant has reviewed in detail the scope of the work to be performed under this Agreement and agrees that in his professional judgment the Work can and shall be completed for a fee the amounts set forth in Section II.c of this Agreement.
- f. **Insurance:** Consultant shall provide proof of insurance coverage during the life of the Contract: (a) Comprehensive General Liability and Automobile Liability Insurance in an amount not less than \$1,000,000 combined single limit applying to bodily injury, personal injury and property damage; (b) professional liability insurance in the amount of \$1,000,000 per claim. The Town of Fairfax shall be named an additional insured by separate endorsement on the liability coverage. Consultant shall provide notice to the Town of any change in or limitation of coverage or cancellation no less than 30 days prior to the effective date. Proof of worker's compensation coverage pursuant to statutory requirement shall also be provided.
- g. **Confidentiality; Ownership of Documents:** Consultant shall not disclose to any third party any data it receives in conjunction with its performance of the Work hereunder except in accordance with the order of a court. Consultant agrees that all documents produced in the performance of this Agreement shall be the property of the Town, and Consultant shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the Town.

III. **Termination:** This agreement may be canceled by either party upon 60 days written notice to the other party. In the event of such termination, Consultant shall return all data collected by Consultant and tender all documents prepared by Consultant to the Town in a commercially reasonable format prior to the end of such 60-day period.

IV. **Indemnification:**

- A. Consultant is an independent contractor and hereunder responsible for its own taxes. Any assistants or employees are not in any way, sub-agents, agents or representatives of the Town. The Town is not responsible for the performance of any service or services required herein to be performed by Consultant, or any act or omission on the part of the Consultant, assistants or employees of the Consultant.
- B. Consultant shall indemnify, defend, and hold harmless Town, its officers, agents, employees, and volunteers from all costs, expenses, claims, suits, or actions of every name, kind, and description, brought forth on account of injuries to or death of any person or damage to property arising or resulting from or connected with the willful misconduct, negligent acts, errors or omissions by Consultant, or any person directly or indirectly employed by or acting as agent for Consultant, in

Consultant's performance of this Agreement, Consultant's operation of the Project or Consultant's use of the Town facilities, except to the extent arising from willful misconduct or negligence of the Town, its officers, agents, employees, or volunteers. It is understood that the duty of Consultant to indemnify and hold Town harmless includes the duty to defend as set forth in Section 2778 of the California Civic Code and that this indemnification by Consultant shall include all costs and expenditures including attorney's fees incurred by Town or its employees, officers or agents with respect to such claim or suit and Consultant will, if requested by Town, defend any litigation arising out of such claims at the sole cost and expense of Consultant. This indemnification and hold harmless clause shall apply whether or not Consultant's insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

V. General

1) No party to this Agreement may assign any right or obligation pursuant to this Agreement without prior written approval. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

2) Time is of the essence in the performance of all terms and conditions in this Agreement.

3) This agreement shall be governed by the law of the state of California.

4) Notices under this agreement shall be delivered to the Town of Fairfax, in care of the Town Manager, 142 Bolinas Road, Fairfax, CA 94930, and to the Consultant in the care of MuniServices, LLC, Attn: Legal Department, 7335 North Palm Bluffs Ave. Fresno, Ca 97311

5) In the event of litigation related to this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

6) This agreement may be executed in counterparts.

Marc Herman, President
Muni Services

Michael Rock, Town Manager
Town of Fairfax

Date: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

MuniServices Business License Tax Management Services include the following three components:

A. Discovery Services. The discovery service portion of the LTC service is designed to identify entities subject to the Town's local business tax that are not properly registered with Town or otherwise not reporting business taxes to Town. In performing the Discovery Services, MuniServices shall:

1. Establish a comprehensive inventory of the entities subject to the Town's local business tax and determine the database elements needed to facilitate a comparative analysis with Town's records of those entities that are properly registered;
2. Compare MuniServices records with Town records to identify potential non-reporting and non-registered entities subject to the Town's business tax;
3. Assist each confirmed unregistered or non-reporting entity, as necessary, to complete Town's applicable registration form(s) and determine the amount of tax due for current and prior periods (plus applicable interest and penalties, where appropriate);
4. Invoice entity (including supporting documentation) on behalf of Town for the amount of identified deficiencies, with payment to be remitted to Town or to MuniServices;
5. Establish a call center open during normal business hours to assist entities regarding questions concerning application of Town's taxes and entity's reporting and remittance requirements; and
6. Educate entity regarding Town's reporting requirements to prevent recurring deficiencies in future years.

B. Audit Services. The audit services portion of the LTC service is designed to identify entities subject to the Town's business tax that are underreporting their business taxes and to review the entities' records to ensure compliance with Town's taxes. In performing the Audit Services, MuniServices shall:

1. Establish a comprehensive inventory of the registered entities subject to taxation by Town and the database elements needed to facilitate an analysis of each entity's current and prior year's tax remittance records;
2. Compare MuniServices records with Town records to identify potential under-reporting entities subject to taxation;
3. Meet with designated Town staff to review and discuss potential audit candidates and mutually agree which entities will be subject to review;

4. For potential under-reporting entities identified, obtain authorization from Town to conduct a review of the entities' records and determine the amount of tax due for current and prior periods (plus applicable interest and penalties, where appropriate);
5. Submit audit summaries (also referred to as "Deficiency Notice") to Town to permit Town to determine the amount of a deficiency owed, if any;
6. Invoice entity (including supporting documentation) on behalf of Town for the amount of identified deficiencies, with payment to be remitted to Town or to MuniServices; and
7. Educate entity regarding Town's reporting requirements to prevent recurring deficiencies in future years;

C. Tax Administration

1. **Services Performed:** MuniServices will perform remittance processing for the collection of Business Licenses.
2. **Taxpayer Notification and Remittance:** MuniServices will send individualized tax forms to all known taxpayers. Taxpayers will remit payments to Town of Fairfax addressed to a P.O. Box that will be setup by MuniServices. Upon reasonable notice to Town, MuniServices may change the P.O. Box for Town of Fairfax payments.
3. **Deposit Process:** Deposits are made to the extent that funds have been received, via Automated Clearing House of the amounts and to the designated recipients as instructed by the Town, as shown in more detail on **Exhibit C**. The Town will need to provide the banking information for distribution purposes as indicated in Exhibit C and return the completed Exhibit C to MuniServices with the executed contract. The amounts deposited will be the amounts received less MuniServices fees for the tax administration service.
4. **Posting Process:** Taxpayer accounts are posted with payment information captured in the MuniServices' revenue system. Additional information such as net sales, deductions, credit sales, measure of tax, name change and address change are captured and added to payment data and taxpayer master file (as determined necessary by MuniServices). Late payments (postmarked by U.S. Postal Service after due date) are invoiced at penalty amounts required by Town's ordinances. Under-payments are invoiced for remaining tax due plus any required penalties.
5. **Changes to Exhibit C:** Town shall notify MuniServices in writing immediately of all changes in amounts to be deposited into the accounts of designated recipients. An amended **Exhibit C** shall be prepared and executed by the Parties as soon as reasonably possible. In addition, MuniServices shall provide documentation confirming each change under the preceding sentence with the first monthly report reflecting the applicable change. If the changes reflected in the monthly report do not properly reflect the intended changes of the Town, then the Town shall immediately notify MuniServices and, thereafter, MuniServices shall take the steps necessary to insure that designated recipients receive the amounts intended by Town.

6. Notification, Reporting to Town: MuniServices will provide Town with monthly reports including, but not limited to, payment listings showing all monies received, a detail and summary reconciliation report that corresponds to Town's account numbers and all fees paid to MuniServices.
7. Taxpayer service: MuniServices will provide a taxpayer assistance number for taxpayer questions.

D. Commencement of services.

After the Workplan is developed, MuniServices will begin providing the three services described above. MuniServices' obligation to provide services is contingent on the Town providing the necessary information and cooperation.

TOWN OBLIGATIONS

The Town agrees to:

- Provide an electronic copy of the Town's License Registration File and License Payment History file to MuniServices, together with any other information necessary for MuniServices to compute MuniServices' billing for services, in electronic format, to MuniServices on no less than a quarterly basis during the term of the Agreement and thereafter for so long as MuniServices' right to invoice for services rendered continues. (If MuniServices performs the Tax Administration service for the Town, going forward, MuniServices will have the access to the Registration and Payment files);
- Use reasonable and diligent efforts to collect, or to assist MuniServices in the collection of, deficiencies identified by MuniServices pursuant to this Agreement; and
- Notify MuniServices within 10 days following receipt by the Town of payments, if there is any, resulting from deficiencies identified by MuniServices. Because MuniServices' Discovery and Audit Services may result in collection of deficiencies after termination of the Agreement, the Town's obligation to collect fees and notify MuniServices, and MuniServices' right to continue to receive contingency fees, shall survive termination of the Agreement for any reason.

The Town shall have the right, at the Town's option, to elect not to proceed with recovery of any identified deficiencies. Deficiencies which are uncollectible due to insolvency or dissolution of the entity liable, or for deficiencies which are otherwise incapable of collection (e.g. statute of limitations expiration or other legal defense and relocation out of Monterey County jurisdiction) shall not be considered an "election" by the Town for the purposes of this Agreement. For deficiencies otherwise collectable but for which the Town elects not to collect, the Town shall notify MuniServices of its election not to pursue ("waive") collection of said deficiencies. MuniServices shall be entitled to one-half (½) of the fee MuniServices would have been entitled to for the waived portion of the deficiency except when cost of recovery exceeds the deficiency in the sole discretion of the Town.

EXHIBIT B
FEE SCHEDULE

Reference Article III. Compensation of the attached Exhibit A, Agreement between The Town of Fairfax and MuniServices, LLC for Business License Tax Management Services.

Discovery Services

MuniServices' compensation for providing Discovery Services shall be a contingency fee of 45% of the additional revenue received by the Town from the services. The 45% shall apply to the current tax year, all eligible prior period revenues, and any applicable penalties, interest, and late charges. The contingency fee only applies to revenue actually received by the Town. The term "current tax year" shall mean the most recent tax year for which local taxes are due and payable to the Town, and in which MuniServices has identified deficiencies.

Deficiency Audit Services

MuniServices' compensation for the Audit Service shall be a contingency fee of 45%. The 45% contingency fee will apply to revenue received by the Town as a result of deficiencies identified in the review and shall include any eligible prior period revenues together with all applicable penalties, interest and late charges. The Town agrees to use reasonable and diligent efforts to collect deficiencies identified by MuniServices except when the cost of recovery exceeds the deficiency in the sole discretion of the Town.

Taxpayers' payments and MuniServices' Invoice Process related to Discovery and Deficiency Audit Services

The following section describes how MuniServices handles the taxpayers' payments and invoices the Town for its fees related to the Discovery and Deficiency Audit Services:

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

Tax Administration Service

MuniServices' compensation for providing the Tax Administration Services shall be as follow:

- \$25 per license payment processed.

The per-license fee is adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The initial CPI-WU used for the first CPI adjustment will be the CPI-WU for the month in which the agreement is fully signed. The adjustments thereafter will be based on the CPI-WU from December of the prior calendar year. Each annual adjustment will not be less than two percent (2%) or greater than ten percent (10%).

Included in the above compensation for Tax Administration Services are:

- Printing and Mailing costs (for notifications, license issuance, etc.)
- Ongoing database management and back-up (taxpayer information)
- Forms processing and funds disbursement (secure lockbox operation)
- Development and support of an on-line business license filing and payment application.

Cost for sending the original license/application to the Town

MuniServices archives all original licenses/applications. If the Town wants a copy of the original license/application, MuniServices will charge the Town a fee equal to \$1.75 per business license/application for the mailing or faxing.

Additional Consulting

Town may request that MuniServices provide additional consulting services at any time during the term of the Agreement. If MuniServices and Town agree on the scope of the additional consulting services requested, then MuniServices shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from \$75 per hour to \$300 per hour.

These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. All reimbursable expenses shall receive prior approval from the Town and shall be reimbursed at cost to MuniServices.

**EXHIBIT C
DISTRIBUTION CONFIRMATION**

July 27, 2010

Town of Fairfax
Attn: Laurie Ireland-Ashley
Finance Director
142 Bolinas Road
Fairfax, CA 94930

Dear Ms. Ireland-Ashley:

Funds will be distributed in the following accounts pursuant to this agreement:

Agency	Routing #	Account #	Distribution %	Tax Type/Rate Code
			100%	Business License

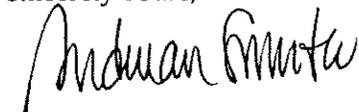
If at any time there are any discrepancies between the schedule set out above and your Municipality's records, please notify us in writing immediately.

IT IS YOUR RESPONSIBILITY TO PROVIDE NOTICE TO US OF ANY CHANGES IN THE DISTRIBUTION OF FUNDS. NOTICE MUST BE IN WRITING AND SENT, VIA CERTIFIED MAIL, TO:

MuniServices, LLC
7335 North Palm Bluffs Ave.
Fresno, CA 97311
Attn.: Traci Hall, Accounting Manager

Thank you for your assistance. If you have any questions, or if I may be of assistance, please let me know.

Sincerely Yours,



Ridwan Sasmita
Director of Operations - Fresno
MuniServices, LLC
(Phone): 559-271-6814
(Fax): 559-312-2814
(E-mail): Ridwan.sasmita@muniservices.com

I have reviewed the above distribution and verify that it is correct.

By:

Name: _____
Title: _____