

**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 Fairfax business licenses



RECOMMENDATION

Authorization for the Town Manager to sign an agreement with Muni Services to process Fairfax 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

Efficient use of resources is a vital part of a sustainable budget. Expected increase of Business License revenue.

ATTACHMENTS

1. Muni Contract (Personal Services Agreement)
2. Scope of Work and Costs
3. Letter from Board of Realtors

**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. Carrier 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. **Ownership of Documents:** 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. **Project:** Consultant will audit the General Purpose Financial Statements of the Town of Fairfax.

IV. **Terms:** This agreement may be canceled by either party upon 60 days written notice to the other party.

V. **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 the gross negligence or willful misconduct of the Town, its office, 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. 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 Muni Services, LLC 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 attorneys 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: _____



July 27, 2010

Mr. Michael Rock, Town Manager
Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930

Dear Mr. Rock:

It recently came to our attention that the Town of Fairfax has had on its books since the 1980s a law that imposes a business license fee on real estate brokers *or* real estate agents. The law, which apparently has not been enforced for quite some time, applies to those “conducting, carrying on or managing business consisting of the buying or selling of real estate within the town...”

I am writing to let you know that the Marin Association of REALTORS® is against business license taxes being imposed on real estate sales people (see our reasons below), and would like to work with you and your colleagues to have this ordinance modified immediately so that it does not apply to real estate agents. As you may know, in 2003 we successfully lobbied to prevent San Rafael from implementing a similar tax. Copies of news coverage about our lobbying efforts are enclosed for your information.

On a related matter, we understand that the town council is considering outsourcing the collection of business license taxes to a private company. Given the concerns listed above, if the current law is still on the books when Fairfax retains the services of the company, we respectfully ask that you instruct them not to seek to collect the tax from real estate agents, only from the broker/owner of an office whose agents conduct business in Fairfax.

Our Position

For purposes of paying local business license fees, the Marin Association of REALTORS® opposes efforts to impose a business license tax on real estate sales people who conduct business in Fairfax, or to classify real estate salespeople as being anything other than employees of the brokers for whom they work.

Supporting Arguments

There is a strong body of evidence -- including provisions of the California Business and Professions Code (Sections 10132, 10137, 10160, 10177, and 16300) -- that supports our point of view:

- Courts have concluded that an agent is the broker's employee
- State law prohibits the imposition of a business license tax on income for services earned in an employment relationship
- Real estate salespeople are unable to list or sell property unless they work for a broker
- Current statutes prohibit business license taxes on commissions earned by salespersons

In addition, implementation of a business license tax may violate Proposition 218, which prohibits the imposition of a new “general” tax without majority voter approval.

We look forward to working with you to modify Fairfax’s business license tax ordinance so that it does not apply to real estate agents.

Sincerely,



Edward Segal
Chief Executive Officer/Governmental Affairs Director

Enclosures

cc: The Honorable Lew Tremaine, Mayor