

ORIGINAL

CONSULTANT SERVICES AGREEMENT

BETWEEN THE

CITY OF SAN DIEGO



AND

MuniServices, LLC.

**FOR SALES TRANSACTIONS & USE TAX AUDIT AND
INFORMATION SERVICES CONSULTING**

DOCUMENT NO. RR-313431
FILED FEB 09 2021
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and MuniServices, LLC. (Consultant).

RECITALS

City wishes to retain Consultant to provide Sales Transactions & Use Tax Audits and Information services for the City (Services).

Consultant has the expertise, experience, and personnel necessary to provide the Services.

City and Consultant (collectively, the Parties) wish to enter into an agreement whereby City will retain Consultant to provide the Services.

The City issued a Request for Proposals RFP No. 10089727-21-G on September 28, 2020.

For good and valuable consideration, the sufficiency of which is acknowledged, City and Consultant agree as follows:

ARTICLE I CONSULTANT SERVICES

1.1 Scope of Services. Consultant shall provide the Services to City as described in Exhibit B, Scope of Work at the rates agreed upon and awarded, in accordance with the City's General Terms and Provisions attached hereto as Exhibit D.

1.2 Contract Administrator. The Finance Department is the Contract Administrator for this Agreement. Consultant shall provide the Services under the direction of a designated representative of the Department as follows:

Nicole Chalfant
Financial Operations Manager
Dept of Finance
(619) 533-4031
NChalfant@sandiego.gov

1.3 Written Authorization. City shall issue a written authorization to proceed before Consultant is authorized to perform Services.

1.4 Duty to Inform City of Changes in Scope of Services. Consultant shall immediately advise the City in writing of any anticipated change in the Scope of Services and Compensation and Fee Schedule and shall obtain the City's written consent to the change prior to making any changes. In no event shall the City's consent be construed to relieve Consultant from its duty to render all Services in accordance with applicable law and industry standards.

1.5 Competitive Bidding. If applicable, Consultant shall ensure that any plans, specifications, studies, or reports prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall prepare such plans,

specifications, studies, or reports so that procurement of services, labor or materials are not available from only one source, and shall not prepare plans, specifications, studies, or reports around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by City. Consultant shall submit this written justification to City prior to beginning work on such plans, specifications, studies, or reports. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Services.

ARTICLE II DURATION OF AGREEMENT

2.1 Term. This Contract shall be for a period of 5 years beginning on the July 1, 2020. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Agreement shall be effective July 1, 2020 and executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Consultant for performance of all Services rendered in accordance with this Agreement in an amount not to exceed \$5,000,000.00.

3.2 Additional Services. City may require Consultant to perform additional Services beyond those described in the Scope of Services (Additional Services). Before Consultant commences such work, the Parties must agree in writing upon a fee for the Additional Services, including reasonably related expenses, in accordance with Section 3.3.

3.3 Manner of Payment. City shall pay Consultant in accordance with the cost/price proposal submitted in Tab C (referenced in Exhibit A). Consultant is not entitled to fees, including fees for expenses, that exceed the amounts specified in the Compensation and Fee Schedule. Consultant shall submit one invoice per calendar month in a form acceptable to City in accordance with the Compensation and Fee Schedule. Consultant shall include with each invoice a description of completed Services, reasonably related expenses, if any, and all other information, including but not limited to the progress percentage of the Scope of Services and/or deliverables completed prior to the invoice date, as required by the City. City will pay undisputed portions of invoices within thirty calendar days of receipt.

3.4 Additional Costs. Additional Costs are costs that can be reasonably determined to be related to Consultant's errors or omissions, and may include Consultant, City, or Subcontractor overhead, construction, materials, demolition, and related costs. Consultant shall not be paid for the Services required due to the Consultant's errors or omissions, and Consultant shall be responsible for any Additional Costs associated with such errors or omissions. These Additional Costs may be deducted from monies due, or that become due, to Consultant. Whether or not there are any monies due, or becoming due, Consultant shall reimburse City for Additional Costs due to Consultant's errors or omissions.

3.5 Eighty Percent Notification. Consultant shall promptly notify City in writing of any potential cost overruns. Cost overruns include, but are not limited to the following: (1) where anticipated costs to be incurred in the next sixty calendar days, when added to all costs previously incurred, will exceed 80 percent of the maximum compensation for this Agreement; or (2) where the total cost for performance of the Scope of Services appears that it may be greater than the maximum compensation for this Agreement.

ARTICLE IV CONSULTANT'S OBLIGATIONS

4.1 Right to Audit. City retains the right to review and audit, and the reasonable right of access to Consultant's and any Subcontractor's premises, to review and audit Consultant's or Subcontractor's compliance with the provisions of this Agreement (City's Right). City's Right includes the right to inspect, photocopy, and retain copies of any and all books, records, documents and any other information (Records) relating to this Agreement outside of Consultant's premises if deemed necessary by City in its sole discretion. City shall keep these Records confidential to the extent permitted by law.

4.1.1 Audit. City's Right includes the right to examine Records of procedures and practices that City determines are necessary to discover and verify that Consultant or Subcontractor is in compliance with all requirements under this Agreement.

4.1.2 Cost Audit. If there is a claim for additional compensation or for Additional Services, the City's Right includes the right to Records that the City determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

4.1.3 Accounting Records. Consultant and all subcontractors shall maintain complete and accurate Records in accordance with generally accepted accounting practices. Consultant and Subcontractors shall make available to City for review and audit all Records relating to the Services. Upon City's request, Consultant and Subcontractors shall submit exact duplicates of originals of all requested records to City.

4.1.4 City's Right Binding on Subcontractors. Consultant shall include City's Right as described in this Section 5.1 in any and all of their subcontracts, and shall ensure that these sections are binding upon all Subcontractors.

4.2 Subcontractors. Consultant's hiring or retaining of any third parties (Subcontractors) to perform Services (Subcontractor Services) is subject to City's prior written approval. Consultant shall list all Subcontractors known to Consultant on the Subcontractor List at the time this Agreement is entered. Consultant shall give written notice to the City of the need at least 45 days before entering into a contract for such Subcontractor Services. Consultant's notice shall include a justification, a description of the Scope of Services, and an estimate of all costs for Subcontractor Services. Consultant may request that City reduce the 45-day notice period. City agrees to consider such requests in good faith.

4.2.1 Subcontractor Contract. Consultant shall require Subcontractor to obtain and maintain insurance policies as required by City for the duration of this Agreement. Consultant shall determine Subcontractor policy limits and required endorsements proportionate to the services performed by Subcontractor.

4.2.1.1 Consultant is obligated to pay Subcontractor, for Consultant and City-approved invoice amounts, out of amounts paid by City to Consultant not later than fourteen working days from Consultant's receipt of payment from City. Nothing in this paragraph shall be construed to impair the right of Consultant and any Subcontractor to negotiate fair and reasonable pricing and payment provisions among themselves.

4.2.1.2 If Subcontractor's performance is deficient, Consultant shall notify City in writing of any withholding of payment to Subcontractor, specifying: (a) the amount withheld; (b) the specific cause under the terms of the subcontract for withholding payment; (c) the connection between the cause for withholding payment and the amount withheld; and (d) the remedial action Subcontractor must take in order to receive the amount withheld. Once Subcontractor corrects the deficiency, Consultant shall pay Subcontractor the amount withheld within fourteen working days of the Consultant's receipt of City's next payment.

4.2.1.3 City shall not be made a party to any judicial or administrative proceeding to resolve any dispute between Consultant and Subcontractor. Consultant agrees to defend and indemnify the City as described in the City's General Terms and Provisions, attached hereto as Exhibit D, and incorporated by reference, in any dispute between Consultant and Subcontractor should City be made a party to any judicial or administrative proceeding to resolve the dispute in violation of this position.

4.2.1.4 Subcontractor must comply with the City's Equal Opportunity Contracting Program requirements.

4.2.1.5 City is an intended beneficiary of any work performed by Subcontractor for purposes of establishing a duty of care between Subcontractor and City.

4.3 Consultant Award Tracking Form. Consultant shall submit statistical information to City as requested in City's Consultant Award Tracking Form. The statistical information shall include the amount of subcontracting provided by firms during the period covered by the Consultant Award Tracking Form. With the Consultant Award Tracking Form, Consultant shall provide an invoice from each Subcontractor listed in the report. Consultant agrees to issue payment to each firm listed in the Form within fourteen working days of receiving payment from the City for Subcontractor Services.

4.4 Consultant and Subcontractor Principals for Consultant Services. This Agreement is for unique Services. City has retained Consultant based on Consultant's particular professional expertise as exhibited by the following members of the Consultant's organization: Paul Colangelo, Chief Executive Officer, Kennon Walthall, Senior Vice President Revenue Enhancement, Laura Burnett, Client Success Manager, Janis Varney, Vice President, Sales and Use Tax Audit, Angel Rivera, Sr. Sales and Use Tax Analyst/Audit Supervisor, Linda Latta, Sales and Use Tax Corrections Supervisor, Sandra Heuer, Supervisor of Transactions and Use Tax, Irene Reynolds, Client Relations Manager, Mark Bryson, Senior Economic Business Analyst, Francesco D. Mancia, MBA, VP Government Relations & Business Development and Amy O'Gorman Jenkins, Lobbyist (the Project Team). Consultant may not delegate the performance of Services to other members of Consultant's organization or to Subcontractors without City's prior written consent. It is mutually agreed that the members of the Project Team are the principal persons responsible for delivery of all Services and may not be removed from the Project without the City's prior written approval. City may consider Consultant in default of this

Agreement if any member of the Project Team is prevented from providing Services without City's prior written approval. Consultant must consult City as to any replacement if any member of the Project Team becomes unavailable. City may terminate this Agreement if City does not approve of a proposed replacement. Further, City reserves the right, after consultation with Consultant, to require any of Consultant's employees or agents to be removed from providing Services under this Agreement.

4.5 Consultant Evaluation. City will evaluate Consultant's performance using the Consultant Evaluation Form.

ARTICLE V CONTRACT DOCUMENTS

5.1 Contract Documents. This Agreement and its exhibits constitute the Contract Documents. The Contract Documents completely describes the Services to be provided. The exhibits are as follows:

- Exhibit A - Proposal Submission and Requirements
- Exhibit B - Scope of Work
- Exhibit C - Consultant Agreement and City's Written acceptance of exceptions or clarifications to the RFP, if any
- Exhibit D - City's General Terms and Provisions

5.2 Submittals Required with the Agreement. Consultant is required to submit the following forms and information before the Agreement is executed:

- Contractor Standards Pledge of Compliance
- Work Force Report
- Consultant Award Tracking Form

5.3 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

IN WITNESS WHEREOF, this Agreement is executed by City and Consultant acting by and through their authorized officers.

CONSULTANT

BY:


Mike Melka
Chief Financial Officer

02/03/2021

DATE SIGNED

CITY OF SAN DIEGO
A Municipal Corporation

BY:


Claudia Abarca
Interim Director
Purchasing & Contracting Department


February 25, 2021

DATE SIGNED

Approved as to form this 1st day of
March, 2021.

MARA W. ELLIOTT, City Attorney

BY:


Deputy City Attorney

R- 313431