



CITY COUNCIL STAFF REPORT

DATE: DECEMBER 17, 2008 CONSENT CALENDAR

SUBJECT: CONTRACT WITH MUNISERVICES, LLC FOR AUDITING AND ASSOCIATED CONSULTING SERVICES FOR THE CITY'S UTILITY USER TAX / FRANCHISE COMPLIANCE PROGRAM

FROM: David H. Ready, City Manager

BY: Finance Department

SUMMARY

Utility User Tax (UUT) represents the City's fourth largest source of General Fund revenue. UUT is collected by 150 utility providers from users of their services and is passed on to the City to pay for operations that directly and indirectly help support those utility services. With the advent of new technologies and growth in the number of service providers, the complexity of the utility industry has increased significantly, leading to potential leakage in the appropriate collection of this tax. This requires staff to take a more sophisticated approach to ensure that the City is collecting the correct amount of taxes due per our ordinance. MuniServices has designed a comprehensive compliance program that would help the Finance staff address the City's needs in this area.

RECOMMENDATION:

1. Approve a contract services agreement with MuniServices, LLC and its agents to provide the City compliance and other services for a period of three years with three-year extension options at the City's discretion, subject to final review and approval by the City Attorney (included in the contract is a 30-day 'termination for convenience' clause). Fees will be based upon 6/10th of 1% of the prior fiscal year's UUT revenues.
2. Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING THE BUDGET FOR FISCAL YEAR 2008-2009".
3. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The proposed contract with MuniServices includes compliance services that focus on the tax collection responsibilities of our numerous utility service providers, and employs a variety of enforcement tools to assure the proper and full collection of the City's UUT.

Item No. **2.N.**

Other services provided under the contract include recommendations of ordinance updates and administrative rulings that reflect or anticipate changes in technology, marketing, legislation and case law. MuniServices also provide procedural protections and enforcement tools to facilitate the collection of our UUT. In addition, staff will be kept abreast of important changes and events affecting our UUT and franchise fees through regular client only conference calls and other web-based communications. Collectively these integrated services will help maximize and protect our City's UUT and utility franchise revenues.

Section 7.04.030 of the Municipal Code provides that the City Council may authorize the acquisition of supplies, equipment or services without competition when it is determined that an unusual or unique situations exists, in that due to experience and expertise demonstrated in prior contracts with the city a particular contractor is uniquely qualified for a particular task, that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Pursuant to the requirements of Section 7.04.030, the Procurement Manager and the Director of Finance have determined that prior exemplary contract performance and special expertise of MuniServices LLC for similar tax auditing services (sales tax and property tax) for the City is acceptable and will adequately protect the public interest in that the total cost of the services to be provided will likely be equal to or less than what could be obtained through an independent City competitive process at this time.

FISCAL IMPACT:

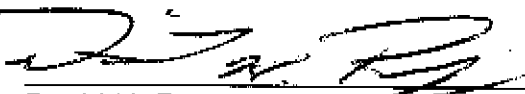
Based upon UUT collected in the 2007-2008 fiscal year, the first year's annual fees will be \$40,677 with half of that amount or \$20,339 payable in the current fiscal year. The Director of Finance will report out the results of collection efforts associated with this contract as appropriate.



Geoffrey S. Kiehl, Finance Director



Thomas Wilson, Assistant City Manager



David H. Ready, City Manager

- Attachment:
Draft contract
Budget Amendment

CONSULTING SERVICES AGREEMENT
(MUNISERVICES, LLC FOR AUDITING, GEOCODING, AND ASSOCIATED CONSULTING SERVICES FOR UTILITY USER TAX / FRANCHISE COMPLIANCE AND REVENUE PROTECTION PROGRAM)

THIS AGREEMENT FOR CONSULTING SERVICES (the "Agreement") is made and entered into this ___ day of _____, 200___, by and between the City of Palm Springs, a California charter city and municipal corporation ("City"), and MuniServices, LLC, a Delaware limited liability company, with an office at 7335 N. Palm Bluffs Avenue, Fresno, CA 93711, and its affiliates (hereinafter "Consultant").

RECITALS

- A. City requires the services of a municipal auditing firm for UUT auditing ("Project").
- B. Consultant has submitted to City a proposal to provide auditing, geocoding, and associated services to City pursuant to the terms of this Agreement.
- C. Based on its experience, education, training, and reputation, Consultant is qualified to provide the necessary services to City for the Project and desires to provide such services.
- D. City desires to retain the services of Consultant for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to retain and does hereby retain Consultant and Consultant agrees to provide services to the City as follows:

AGREEMENT

1. CONSULTANT SERVICES

1.1 Scope of Services. In compliance with all terms and conditions of this Agreement, Consultant shall provide auditing, geocoding, and associated consulting services to City as described in the Scope of Services/Work attached to this Agreement as Exhibit "A" and incorporated herein by reference (the "services" or "work"), which includes the agreed upon schedule of performance and the schedule of fees. Consultant warrants that all services and work shall be performed in a competent, professional, and satisfactory manner in accordance with the prevalent standards in the industry. In the event of any inconsistency between the terms contained in the Scope of Services/Work and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law. All services rendered under this Agreement shall be provided by Consultant in accordance with all applicable federal, state, and local laws, statutes and ordinances and all lawful orders, rules, and regulations promulgated thereunder.

1.3 Licenses and Permits. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement.

1.4 Familiarity with Work. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

2. TIME FOR COMPLETION.

The time for completion of the services to be performed by Consultant is an essential condition of this Agreement. Consultant shall prosecute regularly and diligently the work of this Agreement according to the agreed upon schedule of performance set forth in Exhibit "A." Consultant shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Consultant. Delays shall not entitle Consultant to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONSULTANT

3.1 Compensation of Consultant. For the services rendered pursuant to this Agreement, Consultant shall be compensated and reimbursed, in accordance with the schedule of fees set forth in Exhibit "A".

3.2 Method of Payment. Consultant shall submit invoices as per Exhibit A. Payments shall be as set forth in Exhibit "A" for authorized services performed. City shall pay Consultant for all expenses stated thereon, which are approved by the Contract Officer consistent with this Agreement, within thirty (30) days of receipt of Consultant's invoice.

3.3 Changes. In the event any change or changes in the Scope of Services/Work is requested by the Contract Officer and agreed to by Consultant, the parties hereto shall execute a written amendment to this Agreement, setting forth with particularity all terms of such amendment, including, but not limited to, any additional fees. An amendment may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product, or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Consultant's profession.

3.4 Appropriations. This Agreement is subject to and contingent upon funds being appropriated therefore by the City Council of City for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to City but Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence. Time is of the essence in the performance of this Agreement but Consultant need only perform within a reasonable time agreed to by the Contract Officer.

4.2 Schedule of Performance. All services rendered pursuant to this Agreement shall be performed pursuant to the agreed upon schedule of performance set forth in Exhibit "A." The extension of any time period must be approved in writing by the Contract Officer.

4.3 Force Majeure. The time for performance of services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including, but not limited to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if Consultant shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term. Unless earlier terminated in accordance with Section 9.5 of this Agreement, this Agreement is effective as of the date in the introductory paragraph and remains in full force and effect for a period of three years. Thereafter, this Agreement shall automatically renew for successive three-year periods.

5. COORDINATION OF WORK

5.1 Representative of Consultant. The following principal of Consultant is hereby designated as being the principal and representative of Consultant authorized to act in its behalf with respect to the services and work specified herein and make all decisions in connection therewith: Steve Gibson, Manager—UUT/Franchise Fce. It is expressly understood that the experience, knowledge, education, capability, and reputation of the foregoing principal is a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. The foregoing principal may not be changed by Consultant without prior written approval of the Contract Officer.

5.2 Contract Officer. The Contract Officer shall be the City Manager, or his/her designee. It shall be the Consultant's responsibility to keep the Contract Officer, or his/her designee, fully informed of the progress of the performance of the services and Consultant shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment. The experience, knowledge, education, capability, and reputation of Consultant, its principals and employees, were a substantial inducement for City to enter into this Agreement. Therefore, Consultant shall

not contract with any other individual or entity to perform in whole or in part the services required hereunder without the express written approval of City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City.

5.4 Independent Contractor. Neither City nor any of its employees shall have any control over the manner, mode, or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent contractor of City and shall not be an employee of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role; however, City shall have the right to review Consultant's work product, result, and advice. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

5.5 Personnel. Consultant agrees to assign the following individuals to perform the services set forth herein. Consultant shall not alter the assignment of the following personnel without the prior written approval of the Contract Officer, which approval shall not unreasonably be withheld. Acting through the City Manager, the City shall have the right to order the removal of any personnel assigned by Consultant for any lawful reason by providing written notice to Consultant.

<u>Name:</u>	<u>Title:</u>
Randy Dryden	VP of Operation
Ridwan Sasmita	Director of Operations
Steve Gibson	Manager UUT / Franchise
Tim Olson	Sr. Auditor
Gennaro DiMassi	Sr. Auditor
Michele Chai	Sr. Auditor
Robin Steward	Data Analyst
Tami Nguyen	Auditor
Carolyn Abe-Ishii	Administrative Assistant

(Other may be assigned as needed to support the individuals listed above in providing the contracted services to the City)

6. INSURANCE

Consultant shall procure and maintain, at its sole cost and expense, policies of insurance as set forth in Exhibit "B," which is attached hereto and is incorporated herein by reference.

7. INDEMNIFICATION.

To the fullest extent permitted by law, Consultant shall defend (at Consultant's sole cost and expense), indemnify, protect, and hold harmless City, its elected officials, officers, employees, agents, and volunteers (collectively the "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards,

settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of persons (Consultant's employees included), for damage to property, including property owned by City, from any violation of any federal, state, or local law or ordinance, and from errors and omissions committed by Consultant, its officers, employees, representatives, and agents, which Claims arise out of or are related to Consultant's negligent performance or willful misconduct under this Agreement, but excluding such Claims arising from the negligence or willful misconduct of the City, its elected officials, officers, employees, agents, and volunteers. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder.

8. RECORDS AND REPORTS

8.1 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require.

8.2 Records. Consultant shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records.

8.3 Ownership of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant solely for performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights or ownership of the documents and materials hereunder. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein.

8.4 Release of Documents. All drawings, specifications, reports, records, documents, and other materials prepared by Consultant in the performance of services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

8.5 Cost Records. [Deleted by agreement of the parties.]

9. ENFORCEMENT OF AGREEMENT

9.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

9.2 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of City shall be deemed to waive or render unnecessary City's consent to or approval of any subsequent act of Consultant. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

9.3 Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

9.4 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

9.5 Termination Prior to Expiration of Term. City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Consultant, except that where termination is due to the fault of Consultant and constitutes an immediate danger to health, safety, and general welfare, the period of notice shall be such shorter time as may be determined by the Contract Officer. Upon receipt of the notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Consultant shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter and to other compensation as stated in section 6 of Exhibit A. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

10. CITY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

10.1 Non-Liability of City Officers and Employees. No officer or employee of City shall be personally liable to the Consultant, or any successor-in-interest, in the event of any default or breach by City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

10.2 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement

regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.

11. MISCELLANEOUS PROVISIONS

11.1 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Palm Springs
Attention: City Manager & City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262

To Consultant: MuniServices, LLC
Attention: Legal Department
7335 North Palm Bluffs Ave.
Fresno, CA 93711

11.2 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

11.3 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

11.4 Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

11.5 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

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[SIGNATURE PAGE SEPARATELY ATTACHED]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.


"CITY"
City of Palm Springs

Date: _____

By: _____
David H. Ready
City Manager

APPROVED AS TO FORM:

ATTEST

By: 

Douglas C. Holland,
City Attorney

By: _____
James Thompson,
City Clerk

"CONSULTANT"
MuniServices, LLC

Date: _____

By : _____
Marc Herman
President

Date: _____

Kevin Cerruti
Vice President, Finance

APPROVED AS TO FORM:

Date: _____

Eric Myers, General Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

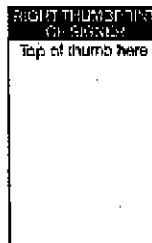
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

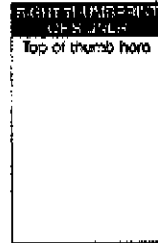
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT "A"

**CONSULTANT'S
SCOPE OF SERVICES/WORK**

Including,

Schedule of Fees

And

Schedule of Performance

EXHIBIT A

AUDITING, GEOCODING, AND ASSOCIATED CONSULTING SERVICES FOR UTILITY USERS TAX/FRANCHISE COMPLIANCE AND REVENUE PROTECTION PROGRAM

This Agreement (hereinafter "Agreement") is made as of _____, between MuniServices, LLC, a Delaware limited liability company, with an office at 7335 N. Palm Bluffs Avenue, Fresno, CA 93711, and its affiliates (hereinafter "MuniServices") and the City of Palm Springs, a municipal corporation of the State of California (hereinafter "City").

MuniServices agrees to provide the City with certain professional services in furtherance of a comprehensive utility users tax/franchise compliance and revenue protection program (hereinafter "Program"), with broad participation by California public agencies, that is designed to preserve, protect, and enhance its utility users tax (UUT) and utility franchise revenues.

1. PROGRAM OBJECTIVES

MuniServices auditing, geocoding, information, and associated services and skills, in conjunction with the legal and "protective" services Donald H. Maynor, A Professional Law Corporation (Maynor), will be used to establish and implement a Program that will allow participating California public agencies to preserve, protect and enhance their UUT and utility franchise revenues through a combination of auditing, geocoding, tax application compliance, business detection, ordinance update, legislative monitoring, technology update, and other essential compliance and protective services. An effective compliance Program will assist the City, and other participating public agencies, in identifying and correcting errors/omissions causing revenue deficiencies, and thereby produce new or previously unrealized revenue for such participants. The Program's tax preservation services will protect the City's existing UUT revenues from erosion due to new legislation, new technologies, outdated ordinance language and inaccurate information. By offering these essential services through a comprehensive Program, with widespread participation, there are the additional benefits of: i) achieving lower individual costs for such joint activities; and, ii) developing consensus-based decisions regarding ordinance interpretations and tax implementation that utility industries require of California public agencies.

2. FIXED FEE SERVICES

A. Compliance Review Services

At any time during the term of this Agreement, with the prior consent of the City where specifically indicated, MuniServices may perform compliance review activity on behalf of the City in any of the following areas:

1. UUT Tax Application and Franchise Fee Review: MuniServices will perform compliance reviews of major utility providers, with a focus on common client issues, to assure that the UUT is being properly applied to taxable services and charges, and that the franchise fee formula is being properly applied to the revenue base (as provided in standard franchise agreements). MuniServices will use the legal expertise of Maynor on matters requiring legal analysis or an

interpretation of ordinances, standard utility franchises, laws, and IRS letter rulings, which will be coordinated with the City Attorney.

2. **Geocode Information and Review:** MuniServices will develop and maintain a proprietary address range database to assure accurate address range information regarding the City's boundaries. Such databases will reflect the latest available LAFCO information regarding City boundary changes due to annexations or other municipal reorganizations. Upon request, this service will be made available to any utility service provider that serves customers within the City.
3. **UUT Business Detection:** MuniServices will perform periodic compliance reviews of major utility providers and utilize other detection tools to verify whether such companies are doing business within the City, and then identify such possible non-complying companies to the City's staff for enforcement actions. MuniServices will assist the City in developing compliance correspondence and enforcement procedures.
4. **UUT Payment Calculations and Deviations:** If the City provides MuniServices with regular and accurate UUT payment history (i.e., copies of all UUT remittances), MuniServices will identify to the City's staff possible gaps in payments, calculation mistakes, and other payment errors. MuniServices will assist the City in developing compliance correspondence and enforcement procedures. On request, MuniServices will provide the City, on a semi-annual basis, with a spreadsheet reflecting the City's UUT payments (based on remittance data provided by the City to MuniServices).

B. Revenue Protection Services

MuniServices will work cooperatively with Maynor in providing the following revenue protection services designed to protect the City's existing and future UUT and utility franchise revenues:

1. **Ordinance Update and Legislative/Regulatory Review Services**
 - a. deleted by agreement of the parties.
 - b. **State and Federal Legislation.** Monitor proposed state and federal legislation to identify issues affecting the City's UUT or utility franchise revenues, and, if justified, make recommendations to the City and lobbyists of California public agencies.
 - c. **Regulatory Agencies.** Monitor proceedings at the various regulatory proceedings (e.g., California Public Utilities Commission, California Energy Commission, Federal Commerce Commission, Federal Energy Regulatory Commission) that affect the deregulation of the various utilities and make appropriate recommendations to the City.
 - d. **Information Services.** Provide the City with periodic newsletters, special communications, and legislative bulletins. Maynor may also

provide instruction to the City's staff through workshops and seminars on such subjects as industry deregulation, new technologies, complying with new utility-related legislation, and other timely subjects.

2. Statutory Compliance and Consulting Services

- a. **Publication of Ordinance Requirements.** Prepare and maintain an accurate copy of the City's UUT ordinance and its administrative rules and interpretations on the uutinfo.org website, and otherwise assist the City in complying with Public Utilities Code § 495.6.
- b. **Web-Based Data Links.** Prepare and maintain on the uutinfo.org website (and provide a link to the City's web page, if desired) the City's UUT ordinance and administrative rules and rulings, frequently asked questions, e-mail inquiry feature, and model forms for exemption applications, UUT remittances, information requests, and other tax compliance documents.
- c. **Access to Client-Only Webpage.** Provide the City's staff (with UUT responsibilities) access to the client-only features of the uutlaw.com webpage and periodic newsletters, including legislative tracking, legal memos, breaking news, special utility issue features (e.g., new technologies), and practice hints.
- d. **Access to Information.** Assist the City's staff in obtaining SB 278 lists, tax compliance information, exemption lists of utility service providers, and in determining the exempt status of utility customers pursuant to the exemption provisions of the City's UUT ordinance or federal excise tax law relating to telecommunications.
- e. **Revenue Forecasts.** Provide staff with revenue forecasts based on industry trends, historical trends, and other relevant factors.

3. Assistance to City's Internal UUT Staff

- a. **Timely Response to Tax Application Inquiries.** Provide technical assistance to existing City staff and the City Attorney's office, and provide timely analysis and draft responses to tax application inquiries from taxpayers or tax-collecting entities (e.g., utility providers, hotels, businesses) using Web-based interactive technology.
- b. **Enforcement Assistance.** Provide the City's staff and the City Attorney's office with: i) legal advice on specific issues that arise in the enforcement of the tax ordinance (e.g., nexus issues and questions from taxpayers or tax collectors); and, ii) compliance correspondence and legal notices as required by ordinance and due process.
- c. **Audit Assistance.** Assist the City's staff and the City Attorney's office in, i) gaining access to audit-related information under existing

legal authorities; ii) addressing legal issues that arise in the course of an audit; iii) providing exemption analysis; and, iv) reviewing and developing legal measures to improve existing or proposed tax compliance programs, including tax amnesty programs.

- d. **UUT Exemption Review.** Review for accuracy the gas and electric exemption lists and telecommunication exemption certificates for non-residential customers, as provided by the City, and identify possible errors to the City's staff.

C. MuniServices Does Not Provide Legal Services.

It is agreed and understood MuniServices will provide no legal services that may be required under any of the PROGRAM activities described in this Agreement, but rather Maynor will provide such services only to the extent requested by the City Attorney. It is also acknowledged that in providing such requested legal services, Maynor's client will be the City, and not MuniServices.

3. CITY-SPECIFIC AUDITS

A. Scope of City-Specific Audits

At any time during the term of this Agreement, with the prior mutual consent of the City and MuniServices, MuniServices may perform a City-specific audit of a utility franchise or UUT payments from a specific utility, when the audit intends to focus on City-specific issues. See Section 5(B) below regarding compensation for City-specific audits.

B. MuniServices Responsibilities for City-Specific Activities

1. Work Plan Approval for City-Specific Activities. MuniServices will submit to the City's staff a proposed Work Plan for review and approval that will serve as the basis for City-specific compliance activities (e.g., CATV UUT or franchise review, gas or electric franchise review, or payment deviation from a specific utility).
2. City Approval of Discovery Actions. For City-specific activities, MuniServices will receive prior authorization from the City's staff to obtain and examine utility and customer records (hard copy and data format) necessary to assure compliance with the City's UUT ordinance through the use of administrative subpoenas, nondisclosure agreements, and other procedures required by the utility service provider as a condition of providing access to confidential customer information.
3. MuniServices to Comply with Local Laws. In performing the compliance review services described in this subsection, MuniServices agrees to abide by the provisions of the City's UUT ordinance, any administrative rules the City may adopt relating to such ordinance, and the confidentiality requirements of state law (Revenue and Taxation Code Section 7284.6-.7). Throughout the above process, MuniServices shall be available to meet with the City, utility

service providers, or their customers to review any MuniServices findings or recommendations arising out of its compliance review activities for the City.

4. CITY'S RESPONSIBILITIES

To facilitate and maximize the effectiveness of the above compliance review activities, the City shall diligently assist MuniServices by performing the following:

A. Necessary Information.

The City will provide MuniServices, on a timely basis, with information necessary to conduct its compliance review activities including but not limited to: monthly UUT payment histories, exemption lists, and SB 278 gas and electric lists (including names of customers refusing to pay surcharges), and certified copies of the UUT ordinance and any subsequent amendments.

B. Letter of Authorization.

The City will provide a letter of authorization identifying MuniServices as an authorized agent of the City to perform utility user's tax compliance audits, to receive and examine appropriate utility and customer records (hard copy and data format) necessary to assure UUT tax compliance, and to execute necessary nondisclosure agreements approved by the City.

C. Legal Interpretations of Ordinance.

Upon request, the City will provide MuniServices with appropriate legal and administrative interpretations of its UUT ordinance. It is agreed and understood that the City will retain the exclusive authority and responsibility to administer, interpret, and enforce its UUT ordinance, recognizing that the role of MuniServices and Maynor is limited to employing their unique expertise and proprietary tools for: i) detecting and identifying errors/omissions by utility service providers or utility users in the application, calculation, collection, and/or remittal of UUT; and, ii) providing the City with technical assistance, without assuming or being delegated the authority or responsibility of the City to administer, interpret, and enforce its UUT ordinance and standard utility franchise agreements.

5. COMPENSATION/TERM

A. Annual Fixed Fee

1. Total Annual Fixed Fee. The City's total annual fixed fee for participating in the Program shall be the greater of: i) six-tenths of a percent (0.6%) of the total UUT revenues received by the City (excluding UUT revenues derived from sewer, water, trash or CATV) based on the prior fiscal year, or ii) fifteen thousand dollars (\$15,000) ("Minimum Fee"). In no case shall the City's annual fixed fee exceed ninety-five thousand dollars (\$95,000) ("Maximum Fee"). The Minimum Fee and Maximum Fee shall be increased at the rate of two percent (2%) each year. City will pay MuniServices its allocated fee of one-sixth of one percent (0.6%) of the total annual UUT fee, and MuniServices will allocate to Maynor 35% of such fee. At any time, Maynor and MuniServices may, by mutual agreement, adjust their proportional share of said total annual fixed fee, provided that such parties shall receive prior approval of such adjustment from the City.

2. deleted by agreement of the parties.
3. Quarterly Payments of Fixed Fee. Said annual fixed fee shall be paid in four equal quarterly payments with due dates of: March 31, June 30, September 30, and December 31. Invoices for services rendered shall be in arrears (invoiced for the immediately preceding quarter). If the effective date of this Agreement is other than on an invoice date, the City shall be invoiced /for the first quarterly payment on the immediately following invoice date as set forth herein. City shall be invoiced and responsible for a prorated portion of the preceding quarter based on the effective date of this Agreement. Payment will be made to MuniServices within thirty (30) days of receipt of MuniServices invoice therefore. Any amounts which remain unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law. These quarterly payments are nonrefundable. For purposes of this Section 5(A), the effective date of this Agreement shall be deemed to be the last date signed below, unless otherwise agreed to by the parties.

B. Compensation for City-Specific Audit Services

1. With respect to a City-specific audit, including a CATV UUT/franchise audit referred to in Section 3(A) above, MuniServices shall be entitled compensation on rates and terms to be agreed upon following the City's request for the City-specific audit service.
2. In the event that any legal services from Maynor are required in connection with a City-specific audit, the cost of such services to the City shall be paid by MuniServices, and MuniServices shall disclose to the City the financial arrangement between MuniServices and Maynor regarding the payment of such costs.

C. City's Obligations

Regarding the City-specific compliance review activities of MuniServices in Sections 3 and 5(B) above, the City agrees to:

1. Invoice the responsible party for tax deficiencies (plus interest and penalties if applicable) identified and confirmed by MuniServices within thirty (30) days following receipt of MuniServices detection report or correspondence;
2. Provide MuniServices with a copy of any settlement agreement with a taxpayer/tax collector within ten (10) days of entering into such agreement; and,
3. Notify MuniServices within ten (10) days following receipt by the City of payments (cash, installment, or other compensation directly benefiting the City) of such tax deficiencies, whether invoiced or not. Upon receipt of such notice, MuniServices will promptly invoice the City. MuniServices compensation is due and payable within thirty (30) days of the City's receipt of MuniServices invoice. Any amounts which remain unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.

D. MuniServices Expenses

MuniServices shall absorb all expenses incurred by MuniServices in providing its services as described herein. These expenses include items such as employee salaries and benefits, insurance, airfare, auto rentals, meals, lodging, Federal Express, mail, telephone, copying, directories, on-line resources, and other overhead and miscellaneous expenses.

6. TERMINATION OF AGREEMENT

- A. Either the City or MuniServices may terminate this Agreement, by thirty (30) days prior written notice as provided in this Section.
- B. If the City terminates this Agreement at any time within twelve (12) months following the effective date of this Agreement, and Maynor has prepared an ordinance update for the City (whether or not the City adopts the recommended update), the City shall nevertheless pay MuniServices four (4) quarterly payments from the commencement of the Agreement to compensate MuniServices for services rendered. MuniServices shall also be entitled to additional compensation as described in Section 6(C).
- C. Upon termination by either party of the Agreement as provided herein, MuniServices shall be entitled to retain any fees it may have received from the City pursuant to Sections 5(A) and 6(B) of this Agreement. In addition, MuniServices shall be entitled to payment according to the terms of Section 5(B) for all additional revenues, including interest and penalties, resulting from MuniServices compliance review activities. Within thirty (30) days following termination, MuniServices shall provide the City with a list of detections of non-compliance resulting from the compliance

review activities of MuniServices. The City shall, in good faith, diligently seek to: i) correct such detections of non-compliance made by MuniServices prior to the date of termination; and, ii) collect the additional revenues that are due the City and MuniServices for past periods and for the twelve quarters going forward following the correction, even though the date of actual correction may occur after the termination date. MuniServices shall assist the City in this correction/collection effort, if so requested by the City. MuniServices right to compensation for City-Specific Audit Activities under Section 5(B) shall survive termination of this Agreement for any reason.

EXHIBIT “B”

INSURANCE PROVISIONS

Including

Verification of Coverage,

Sufficiency of Insurers,

Errors and Omissions Coverage,

Minimum Scope of Insurance,

Deductibles and Self-Insured Retentions, and

Severability of Interests (Separation of Insureds)

Insurance

Consultant shall procure and maintain, at its sole cost and expense, and submit concurrently with its execution of this Agreement, in a form and content satisfactory to the City, public liability and property damage insurance against all claims for injuries against persons or damages to property resulting from Consultant's performance under this Agreement. Consultant shall also carry workers' compensation insurance in accordance with California workers' compensation laws. Such insurance shall be kept in full force and effect during the term of this Agreement, including any extension thereof. Consultant shall provide City with 30-days advance notice of cancellation of such insurance. Failure to provide such notice shall be deemed a material breach of the Agreement. Certificates of insurance evidencing the foregoing and designating the City, its elected officials, officers, employees, agents, and volunteers as additional named insureds by original endorsement shall be delivered to and approved by City prior to commencement of services. The procuring of such insurance and the delivery of policies, certificates, and endorsements evidencing the same shall not be construed as a limitation of Consultant's obligation to indemnify City, its elected officials, officers, agents, employees, and volunteers.

A. **Minimum Scope of Insurance.** The minimum amount of insurance required hereunder shall be as follows:

1. Comprehensive general liability and personal injury with limits of at least one million dollars (\$1,000,000.00) combined single limit coverage per occurrence and two million dollars (\$2,000,000) general aggregate;
2. Automobile liability insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence;
3. Professional liability (errors and omissions) insurance with limits of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000) annual aggregate (THIS COVERAGE IS REQUIRED BY THE CITY OF SAN FRANCISCO); and,
4. Workers' Compensation insurance in the statutory amount as required by the State of California and Employer's Liability Insurance with limits of at least one million dollars \$1 million per occurrence. If Consultant has no employees, Consultant shall complete the City's Request for Waiver of Workers' Compensation Insurance Requirement form.

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City and its respective elected officials, officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by City and its respective elected officials, officers, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it. For Workers' Compensation and Employer's Liability Insurance only, the insurer shall waive all rights of subrogation and contribution it may have against City, its elected officials, officers, employees, agents, and volunteers.

B. **Errors and Omissions Coverage.** If Consultant provides claims made professional liability insurance, Consultant shall also agree in writing either (1) to purchase tail

insurance in the amount required by this Agreement to cover claims made within three years of the completion of Consultant's services under this Agreement, or (2) to maintain professional liability insurance coverage with the same carrier, or equivalent coverage with another company, in the amount required by this Agreement for at least three years after completion of Consultant's services under this Agreement. Consultant shall also be required to provide evidence to City of the purchase of the required tail insurance or continuation of the professional liability policy. *THIS SECTION IS A REQUIREMENT OF ERRORS & OMISSIONS INSURANCE POLICY REQUIREMENT.*

C. Sufficiency of Insurers. Insurance required herein shall be provided by authorized insurers in good standing with the State of California. Coverage shall be provided by insurers admitted in the State of California with an A.M. Best's Key Rating of B++, Class VII, or better, unless otherwise acceptable to the City.

D. Verification of Coverage. Consultant shall furnish City with both certificates of insurance and endorsements, including additional insured endorsements, effecting all of the coverages required by this Agreement. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All proof of insurance is to be received and approved by the City before work commences. City reserves the right to require Consultant's insurers to provide complete, certified copies of all required insurance policies at any time. Additional insured endorsements are not required for Errors and Omissions and Workers' Compensation policies.

Verification of Insurance coverage may be provided by: (1) an approved General and/or Auto Liability Endorsement Form for the City of Palm Springs or (2) an acceptable Certificate of Liability Insurance Coverage with an approved Additional Insured Endorsement with the following endorsements stated on the certificate:

1. *"The City of Palm Springs, its officials, employees, and agents are named as an additional insured..." ("as respects City of Palm Springs Contract No. ___" or "for any and all work performed with the City" may be included in this statement).*

2. *"This insurance is primary and non-contributory over any insurance or self-insurance the City may have..." ("as respects City of Palm Springs Contract No. ___" or "for any and all work performed with the City" may be included in this statement).*

3. deleted by agreement of the parties.

4. Both the Workers' Compensation and Employers' Liability policies shall contain the insurer's waiver of subrogation in favor of City, its elected officials, officers, employees, agents, and volunteers.

In addition to the endorsements listed above, the City of Palm Springs shall be named the certificate holder on the policies.

All certificates of insurance and endorsements are to be received and approved by the City before work commences. All certificates of insurance must be authorized by a person with

authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter. Failure to obtain the required documents prior to the commencement of work shall not waive the Consultant's obligation to provide them.

E. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City prior to commencing any work or services under this Agreement. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected officials, officers, employees, agents, and volunteers; or, Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses. Certificates of Insurance must include evidence of the amount of any deductible or self-insured retention under the policy. Consultant guarantees payment of all deductibles and self-insured retentions.

F. Severability of Interests (Separation of Insureds). This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PALM SPRINGS, CALIFORNIA, AMENDING THE BUDGET
FOR THE 2008-09 FISCAL YEAR.

WHEREAS, Resolution No. 22265 approving the budget for the Fiscal Year 2008-09 was adopted on June 18, 2008; and

WHEREAS, the City Manager has recommended, and the City Council desires to approve, certain amendments to said budget.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE, that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and that Resolution No. 22265, adopting the Fiscal Year 2008-09 budget is hereby amended as follows:

SECTION 1. ADDITIONS

Fund	Activity	Account	Amount
001 General Fund	1300 Finance	43200 Contract Services	\$20,340.00

Purpose: Establish funding for contract service agreement with Muni Services to review UUT collections.

SECTION 2. SOURCE

Fund	Activity	Account	Amount
001 General Fund		29301 Fund Balance	\$20,340.00

ADOPTED THIS 17th DAY OF DECEMBER, 2008.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California