

**MuniServices, LLC**  
**Consultant Services Agreement**

This Consultant Services Agreement (the "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 ("Effective Date") by and between MuniServices, LLC, a Delaware limited liability company ("CONSULTANT") and The City of Killeen, a municipal corporation of the State of Texas ("CITY"). In consideration of the mutual promises herein contained and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

**A. Services**

1. CONSULTANT will provide CITY with the services described in EXHIBIT A which is attached hereto and incorporated by reference. CONSULTANT shall provide said services at the time, place, and in the manner specified in EXHIBIT A.
2. CONSULTANT shall furnish at its own expense all labor, materials, equipment and other items necessary to carry out the terms of this Agreement.

**B. Compensation**

1. Upon execution of this Agreement, CITY will pay CONSULTANT as outlined in EXHIBIT B, incorporated and included herein.

**C. General Provisions**

1. Term of the Agreement: The initial term of this Agreement shall be for a period of one (1) year following the Effective Date. Thereafter the CITY will have the option to renew for two (2) subsequent one year terms if neither party has cancelled (the "Term"). Either party shall have the right to terminate this Agreement in the event of a material breach by the other party. Any such termination may be made only by providing sixty (60) days written notice to the other party, specifically identifying the breach or breaches on which termination is based. Following receipt of such notice, the party in breach shall have thirty (30) days to cure such breach or breaches. In the event that such cure is not made, this Agreement shall terminate in accordance with the initial sixty (60) days' notice. Notwithstanding the foregoing, either party may terminate the Agreement at any time and for any reason by providing thirty-days (30) written notice to the other party; provided however, that if CONSULTANT has not breached the Agreement and has commenced services identified in EXHIBIT A prior to the date of termination, CONSULTANT shall be entitled to payment as described in EXHIBIT B.
2. Effect of Termination: Notwithstanding non-renewal or termination of this Agreement, CITY shall be obligated to pay CONSULTANT for services performed through the effective date of termination for which CONSULTANT has not been previously paid. In addition, because the services performed by CONSULTANT prior to termination or non-renewal of this Agreement may result in the CITY's receipt of revenue after termination which are subject to CONSULTANT's fee, the CITY shall remain obligated after termination or non-renewal to provide to CONSULTANT such information as is necessary for CONSULTANT to calculate compensation due as a result of the receipt of revenue by the CITY.
3. Independent Contractor: It is understood that CONSULTANT and its subcontractors, if any, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the CITY. CITY understands that CONSULTANT may perform similar services for others during the term of this Agreement and agrees that CONSULTANT representation of other government sector

clients is not a conflict of interest. CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

4. **Subcontractors:** CONSULTANT shall have the right to hire subcontractors to provide the services described herein. CONSULTANT, in rendering performance under this Agreement shall be deemed an independent contractor and nothing contained herein shall constitute this arrangement to be employment, a joint venture, or a partnership. CONSULTANT shall be solely responsible for and shall hold CITY harmless from any and all claims for any employee related fees and costs including without limitation employee insurance, employment taxes, workman's compensation, withholding taxes or income taxes.
5. **Notice:** Any notice required to be given under this Agreement shall be in writing and either served personally, sent prepaid first class mail, or by express mail courier (i.e. FedEx, UPS, etc.). Any such notice shall be addressed to the other party at the address set forth below. All notices, including notices of address changes, provided under this Agreement are deemed received on the third day after mailing if sent by regular mail, or the next day if sent overnight delivery.

**If to CITY:**

City of Killeen  
Attn: Jonathan Locke, Ex. Director of Finance  
POB 1329  
Killeen, TX 76450-1329  
Phone: 254.501.7730  
Facsimile: 254.501.7639  
Email: [jlocke@killeentexas.gov](mailto:jlocke@killeentexas.gov)

**If to CONSULTANT:**

MuniServices, LLC  
Attn: Contracts Department  
7625 N. Palm Ave., Ste. 108  
Fresno, CA 93711  
Phone: 559.271.6852  
Facsimile: 559.312.2852  
Email: [contracts@muniservices.com](mailto:contracts@muniservices.com)

6. **Representative or designees:** CONSULTANT Primary Representative/Project Manager shall be:

Ted Kamel, Client Services Manager  
12301Kurland Drive, Suite 150, Houston, TX 77034  
Phone: 903.597.3352/Email: [Ted.Kamel@MuniServices.com](mailto:Ted.Kamel@MuniServices.com)

For the convenience of the CITY, a short list of helpful contacts is attached and incorporated herein as EXHIBIT C.

7. **Indemnity:** CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) to extent occurring or resulting from CONSULTANT's negligent or unlawful performance of its obligations under or breach of the terms of this Agreement, unless such claims, liabilities, or losses arise out of, or are caused at least in part by the sole negligence or willful misconduct of the CITY. "CONSULTANT's performance" includes CONSULTANT's action or inaction and the action or inaction of CONSULTANT's officers, employees, agents and subcontractors.
8. **Limitation of Liability:** In no event shall CONSULTANT, its employees, contractors, directors, affiliates and/or agents be liable for any special, incidental, or consequential damages, such as, but not limited to, delay, lost data, disruption, and loss of anticipated profits or revenue arising from or related to the services, whether liability is asserted in contract or tort, and whether or not CONSULTANT has been advised of the possibility of any such loss or damage. In addition, CONSULTANT's total liability hereunder, including reasonable attorneys' fees and costs, shall in no event exceed an amount equal to the fees described in EXHIBIT B. The foregoing sets forth the CITY'S exclusive remedy for claims arising from or out of this Agreement. The provisions of this section allocate the risks

between CONSULTANT and the CITY and CONSULTANT's pricing reflects the allocation of risk and limitation of liability specified herein.

9. Insurance: CONSULTANT shall keep in full force and effect insurance coverage during the term of this Agreement, including without limitation statutory workers' compensation insurance; employer's liability and commercial general liability insurance; comprehensive automobile liability insurance; professional liability and fidelity insurance. The insurance certificate shall name the CITY, its agents, officers, servants and employees as additional insureds under the CGL and Automobile policies with respect to the operations and work performed by the named insured as required by written contract. The General Liability policy is Primary & Non-Contributory. Waiver of Subrogation applies under the General Liability and Workers' Compensation policies. The CGL insurance minimum coverage shall be at least \$1,000,000 per incident, claim or occurrence and \$2,000,000 aggregate. The Automobile Liability insurance minimum coverage shall be at least \$1,000,000 covering all owned, non-owned, and hired vehicles. The certificate shall provide that there will be no cancellation, termination, or non-renewal of the insurance coverage without a minimum 30-day written notice to the CITY, except in the case of cancellation for non-payment of premium which shall be at least 10-days written notice.
10. Equal Opportunity to Draft: The parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.
11. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties, their successors, representatives and assigns. CONSULTANT shall not assign this Agreement, or delegate its duties or obligations under this Agreement, without the prior written consent of CITY, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, CONSULTANT may assign this Agreement, in whole or in part, without the consent of CITY to any corporation or entity into which or with which CONSULTANT has merged or consolidated; any parent, subsidiary, successor or affiliated corporation of CONSULTANT; or any corporation or entity which acquires all or substantially all of the assets of CONSULTANT. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns.
12. Ownership of Documents: Except for CONSULTANT preexisting proprietary information and processes, any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by CONSULTANT pursuant to this agreement shall be the property of the CITY at the moment of their completed preparation.
13. Intellectual Property Rights: The entire right, title and interest in and to CONSULTANT's database and all copyrights, patents, trade secrets, trademarks, trade names, and all other intellectual property rights associated with any and all ideas, concepts, techniques, inventions, processes, or works of authorship including, but not limited to, all materials in written or other tangible form developed or created in the course of this Agreement (collectively, the "Work Product") shall vest exclusively in CONSULTANT or its subcontractors. The foregoing notwithstanding, in no event shall any CITY-owned data provided to CONSULTANT be deemed included within the Work Product.
14. Public Release and Statements: Neither party or its representatives or agents shall disseminate any oral or written advertisement, endorsement or other marketing material relating to each other's activities under this Agreement without the prior written approval of the other party. Neither party shall make any public release or statement concerning the subject matter of this Agreement without the express written consent and approval of the other party. No party or its agent will use the name, mark or logo of the other party in any advertisement or printed solicitation without first having prior written approval of the other party. The parties shall take reasonable efforts to ensure that its subcontractors shall not disseminate any oral or written advertisement, endorsement or other marketing materials referencing or relating to the other party without that party's prior written approval. In

addition, the parties agree that their contracts with all subcontractors will include appropriate provisions to ensure compliance with the restrictions of this Section.

15. Force Majeure: CONSULTANT shall not be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its control, including but not limited to acts of God, government, weather, fire, power or telecommunications failures, inability to obtain supplies, breakdown of equipment or interruption in vendor services or communications.
16. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter contained herein. Said Agreement shall not be amended, altered, or changed, except by a written amendment signed by both parties.
17. Counterparts: This Agreement may be signed in separate counterparts including facsimile copies. Each counterpart (including facsimile copies) is deemed an original and all counterparts are deemed on and the same instrument and legally binding on the parties.
18. Invalidity: If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
19. Implementation: Implementation should begin as soon as possible from the signing of this Agreement (the "Effective Date") for the performance of services under the terms of this Agreement.

***[SIGNATURES ON FOLLOWING PAGE]***

IN WITNESS HEREOF, the parties have caused this Agreement to be executed on the date first written above.

**"CITY"**

**City of Killeen**  
a Municipal Corporation

By: \_\_\_\_\_

Name: Ronald L. Olson

Title: City Manager

ATTEST:

\_\_\_\_\_

Name: Dianna Barker

Title: City Secretary

APPROVED AS TO FORM:

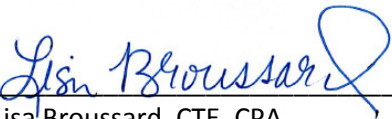
\_\_\_\_\_

Name: Kathy Davis

Title: City Attorney

**"CONSULTANT"**

**MuniServices, LLC**  
a Delaware limited liability company

By: 

Lisa Broussard, CTE, CPA  
Senior Vice President Central Operations

## **EXHIBIT A – SCOPE OF WORK SALES TAX COMPLIANCE REVIEW**

### **Objectives and Methods**

CONSULTANT's Sales Tax Compliance Review service is designed to assist CITY with economic forecasting and in preserving and enhancing its sales and use tax revenues by detecting, documenting, and correcting sales tax misallocations thereby producing previously unrealized revenue for CITY while giving the CITY a more accurate sales tax base upon which to forecast its revenue.

### **Scope of Work**

In providing the Sales Tax Compliance Review, CONSULTANT shall:

- Meet with CITY's designated staff to review service objectives, scope, procedures, coordination of effort, work plan schedule, public relations, and logistical matters.
- Establish an appropriate liaison with the CITY's coordinator and define logical checkpoints for reviewing progress.
- Perform a review of the CITY's businesses' sales/use tax remittances in an effort to ensure proper application of local sales/use tax law and achieve past and/or prospective compliance, as applicable.
- On behalf of the CITY, CONSULTANT will assist the businesses, as necessary, in the preparation and filing of amended returns and/or reallocation requests with the Comptroller's office in order to gain compliance. CONSULTANT and/or the CITY may also provide additional documentation to the Comptroller's office to request its assistance in gaining compliance from taxpayers as needed.

### **Deliverables/Progress Reports**

CONSULTANT will provide periodic progress reports to CITY in the form of status updates. These progress reports will also indicate areas in which CITY staff may further assist and improve the sales tax compliance review activities provided hereunder. CONSULTANT's progress reports will identify errors/omissions detected, documented and corrected and report on other services of benefit to CITY for the time period covered.

### **CITY Assistance**

CITY shall assist CONSULTANT by providing necessary information and assistance to include, without limitation, the following:

- Providing CONSULTANT, on a timely basis, information necessary to conduct its compliance review activities including but not limited to monthly tax payment histories.
- Providing two letters of authorization identifying CONSULTANT to local businesses and to the Texas Comptroller of Public Accounts and/or other state agencies as an authorized agent of CITY to perform sales and use tax reviews and to receive and examine taxpayer records (hard copy and electronic) necessary to assure sales and use tax compliance and revenue forecasts.
- Pursuing in good faith corrective action on errors and omissions detected by CONSULTANT.
- Issuing necessary documentation to the state to correct errors validated by CONSULTANT.

The parties agree that the CITY and/or the State Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the CITY's sales and use tax, recognizing that CONSULTANT's role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors/omissions by taxpayers in the application, calculation, collection, and/or remittance of sales and use taxes and, ii) providing CITY with technical assistance, without assuming or being delegated the authority or responsibility of CITY to administer, interpret, and enforce its sales and use taxes.

## **EXHIBIT B – COMPENSATION SALES TAX COMPLIANCE REVIEW**

Provided that the Effective Date is on or before July 18, 2017 in exchange for CONSULTANT performing the work indicated above, the CITY will pay CONSULTANT as follows:

The CITY shall pay CONSULTANT a 30% contingency fee. The fee applies to the sales and use tax revenue received by the CITY from correction of taxpayer reporting errors detected and documented by the Sales Tax Compliance Review. The Contingency Fee applies to both: (a) past compliance (as applicable) -- sales and use tax revenues received by the CITY from prior periods; and (b) prospective compliance (as applicable) -- incremental increase in sales and use tax revenues received for the first eight consecutive reporting quarters (24 months) following correction of the errors and confirmation of receipt of revenue by the CITY. An incremental increase is calculated as the current month's correct tax remittance less the monthly average of the prior 12 months immediately prior to the first month of correct tax remittance.

CONSULTANT will invoice CITY quarterly based on past and/or prospective compliance secured on behalf of CITY. Invoices are due and payable upon receipt.

All expenses incurred by CONSULTANT in providing the Sales Tax Compliance Review are the sole and exclusive responsibility of CONSULTANT, except those expenses that receive prior written approval by CITY.

### **Completion of Services**

Notwithstanding anything else in this Agreement to the contrary, the CITY will pay CONSULTANT per the terms of this Agreement for services begun before termination or expiration of the Agreement even if the monies are received after termination or expiration. CONSULTANT will provide CITY with a list of accounts submitted but not yet corrected as of the expiration or termination within a reasonable time after the expiration or termination ("completion list"). CONSULTANT is allowed to continue working those accounts on the completion list for a reasonable time to obtain a correction.

### **Additional Consulting**

CITY may request that CONSULTANT provide additional consulting services at any time during the term of this Agreement. If CONSULTANT and CITY agree on the scope of the additional consulting services requested, then CONSULTANT 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 \$200 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

**EXHIBIT C**  
**CONSULTANT's Helpful Contacts**

<b>Contact</b>	<b>Project Role</b>	<b>Phone</b>	<b>Email</b>
Ted Kamel, MBA	Client Services Manager	903.952.9794	<a href="mailto:ted.kamel@muniservices.com">ted.kamel@muniservices.com</a>
Lisa Broussard, CTE, CPA	SVP Client Services	713.459.5079	<a href="mailto:lisa.broussard@muniservices.com">lisa.broussard@muniservices.com</a>
Chris Yearly, CPA	VP, Sales & Use Tax Audit	972.447.4953	<a href="mailto:chris.yearly@muniservices.com">chris.yearly@muniservices.com</a>
Irene Reynolds	Client Relations Manager	559.271.6867	<a href="mailto:irene.reynolds.@muniservices.com">irene.reynolds.@muniservices.com</a>
Francesco Mancia, MBA	VP Government Relations	559.288.7296	<a href="mailto:fran.mancia@muniservices.com">fran.mancia@muniservices.com</a>
Patricia A. Dunn, MSHR	Contracts Manager	559.271.6852	<a href="mailto:patricia.dunn@muniservices.com">patricia.dunn@muniservices.com</a>

PROPRIETARY and CONFIDENTIAL