



Office of the City Manager

CONSENT CALENDAR
September 14, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Henry Oyekanmi, Director, Finance Department
Subject: Adopt a Resolution Authorizing MuniServices, LLC to Examine the Local Sales or Transactions and Use Tax Records on Behalf of the City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing MuniServices, LLC to perform examination of the local sales or transactions and use tax records. MuniServices provides City of Berkeley sales tax audit services which includes examination of the Local Sales or Transactions and Use Tax records pertaining to the Bradley-Burns Local Sales and Use Tax Law which is part of the Revenue and Taxation Code in California.

FISCAL IMPACTS OF RECOMMENDATION

The resolution will ensure the continuity of MuniServices revenue enhancement activities on behalf of the City. The cost of the services is recovered by any new revenue produced from sales and use tax services provided by MuniServices.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley has designated Municipal Resource Consultants to examine sales and use tax records on behalf of the City of Berkeley since July 1, 2001. California Department of Tax and Fee Administration (CDTFA) requires that the City reference the same company name of MuniServices LLC, to properly comply with Revenue and Taxation Code Section 7056, Section, Subdivision (b).

BACKGROUND

The City of Berkeley has designated Municipal Resource Consultants to examine sales and use tax records on behalf of the City of Berkeley since July 1, 2001. Throughout the years, Municipal Resource Consultants has enacted business under the name MuniServices LLC, both Delaware limited liability companies, with offices in Centreville, Virginia. Therefore, per the requirement of the California Department of Tax and Fee Administration (CDTFA), the City is required to reference the same company name of MuniServices LLC, to property comply with Revenue and Taxation Code Section 7056, Section, Subdivision (b).

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Through acquisition, the company name has varied at times, however, MuniServices LLC is and always has been the registered legal entity. For that reason, the CDTFA issued a ruling that any contracts and/or resolutions that do not reference the company name of MuniServices LLC must be corrected. CDTFA Legal has agreed that this can be done with a contract novation agreement referencing MuniServices LLC's existing contract, which they have approved.

Therefore, staff is requesting that the novation agreement and resolution be approved to comply with the CDTFA guidelines and prevent any interruption in MuniServices LLC receiving the City's sales tax data, allowing them to continue to provide the City with audit and information services.

The Resolution attached hereto updates the legal entity name referenced in the City's original agreement dated June 12, 1990 with Municipal Resource Consultants to MuniServices LLC and authorizes the City Manager, and any other City personnel designated in writing by the City Manager, as well as MuniServices LLC to examine the records.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental and climate impacts or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Comply with the CDTFA (California Department of Tax and Fee Administration) guidelines and prevent any interruption in MuniServices LLC services.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING MUNISERVICES, LLC TO EXAMINE THE LOCAL SALES OR TRANSACTIONS AND USE TAX RECORDS ON BEHALF OF THE CITY OF BERKELEY

WHEREAS, pursuant to Ordinance Number 55,402-N.S. the City of Berkeley (City) entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of sales and use taxes; and

WHEREAS, pursuant to Revenue and Taxation Code Section 7270, the City entered into a contract with the California Department of Tax and Fee Administration (Department) to perform all functions incident to the administration and collection of transactions and use taxes; and

WHEREAS, the City Council of the City of Berkeley deems it desirable and necessary for authorized officers, employees and representatives of the City to examine confidential sales or transactions and use tax records of the Department pertaining to sales and use taxes collected by the Department for the City pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Department records, and Section 7056.5 of the California Revenue and Taxation Code establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales or transactions and use tax records of the Department.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BERKELEY:

Section 1. That the Director of Finance and Treasury Manager or other officer or employee of the City designated in writing by the City Manager to the California Department of Tax and Fee Administration is hereby appointed to represent the City with authority to examine sales or transactions and use tax records of the Department pertaining to sales and use taxes collected for the City by the Department pursuant to the contract between the City and the Department.

Section 2. The information obtained by examination of Department records shall be used only for purposes related to the collection of City sales and use taxes by the Department pursuant to that contract.

Section 3. That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to sales and use taxes collected for the City by the Department. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and MuniServices, LLC:

- a) has an existing contract with the City to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of Department records shall be used only for purposes related to the collection of City sales and use taxes by the Department pursuant to the contract between the City and the Department.

Section 4. That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to any petition or appeal for the reallocation/redistribution of sales or transactions and use taxes that was filed by MuniServices, LLC. on behalf of the City pursuant to the contract between the MuniServices, LLC. and City. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and the MuniServices, LLC.:

- a) has an existing contract with the City to examine those sales or transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from, those sales or transactions and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

Section 5. That this resolution supersedes all prior resolutions of the City Council of the City of Berkeley adopted pursuant to Subdivision (b) of Revenue and Taxation Code Section 7056.