

- MuniServices will not consult nor conduct business on behalf of a prepaid wireless “seller.”
- MuniServices will not contain any records or information related to the collection of the prepaid wireless surcharge after the contract has expired.
- All services performed by MuniServices relating to prepaid mobile telephony services surcharge and local charges under the Contract, other than a “city specific audit”, shall be included as part of the fixed fee compensation as provided in the Contract, and nothing shall be construed therein as permitting a contingent fee arrangement as payment for such services.

MuniServices original fee schedule and the original scope of work with the City is not altered by this resolution. MuniServices will continue to adhere to all City vendor and purchasing requirements and related ordinances/resolutions for the life of the contract.

RECOMMENDATION:

Staff recommends that the City Council Approve and Adopt the Resolution amending the existing UUT audit contract that the City has with MuniServices, LLC to authorize the company to analyze and audit prepaid wireless.

Attachment:

MuniServices Contract
Resolution for Examining BOE Records

**AMENDMENT TO SERVICES CONTRACT BETWEEN
MUNISERVICES, LLC AND CITY OF SEBASTOPOL**

THIS CONTRACT AMENDMENT No. 1 (the "Amendment") is entered into between City of Sebastopol ("City") and MuniServices, LLC ("MuniServices").

The City and MuniServices agree as follows:

WHEREAS, the City and MuniServices entered into an agreement, dated June 4, 2014 (hereinafter "Contract") to perform, among other things, certain compliance and protective services in connection with the City's utility users tax (hereinafter "UUT"), including a telecommunications UUT;

WHEREAS, AB 1717 (Ch. 885, Stat. 2014), the Prepaid Mobile Telephony Services Surcharge Collection Act ("AB 1717") was enacted with an effective date of January 1, 2015, and a collection date commencing January 1, 2016, and establishes a statewide method of collecting the City's UUT on prepaid wireless services;

WHEREAS, AB 1717 imposes certain restrictions on third party consultants of the City who are designated and authorized by the City to examine certain State Board of Equalization (hereinafter "BOE") documents relating to the collection of the City's utility users tax on prepaid wireless services, as covered by AB 1717;

NOW THEREFORE, in order to satisfy the requirements of AB 1717, the parties agree to amend the Contract by adding the following authorizations and restrictions to the services described in the Contract:

1. MuniServices is authorized to examine the prepaid mobile telephony services surcharge and local charge records of the Board pertaining to the prepaid mobile telephone services surcharge and local charges to be collected for the City of Sebastopol by the Board (collectively, the "Records") and to use such information only for purposes related to such collection;

2. MuniServices shall disclose information contained in or derived from, the Records only to an officer or employee of the City authorized by resolution to examine the information;

3. MuniServices shall not perform any consulting services for a "seller" (as defined in AB 1717) during the term of the Contract;

4. MuniServices shall not retain information contained in, or derived from, the Records after the Contract has expired;

5. MuniServices shall, to the same extent as the BOE, be subject to Revenue and Tax Code Section 55381, relating to unlawful disclosures;

6. All services performed by MuniServices relating to prepaid mobile telephony services surcharge and local charges under the Contract, other than a "city specific audit", shall be included as part of the fixed fee compensation as provided in the Contract, and nothing shall be construed therein as permitting a contingent fee arrangement as payment for such services. Upon request of the City, MuniServices may perform a city specific audit of a "seller" of prepaid mobile telephony services

surcharge and local charge remitting to the BOE, and such work shall only be performed via separate contract.

7. Furthermore, MuniServices address has changed. In accordance with the requirements of Section 9.16 of the Contract, all notices shall now be directed to MuniServices as follows:

MuniServices, LLC
Attn: Legal Department
7625 N. Palm Ave., Ste. 108
Fresno, CA 93711

8. In case of a conflict between the terms of this Amendment and the terms of the Contract, the terms of this Amendment shall strictly prevail.

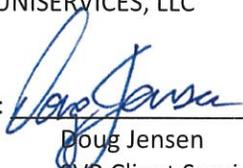
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives as of the date set forth below.

DATED: _____, 2016

CITY OF SEBASTOPOL

By: _____
Larry McLaughlin
City Manager/City Attorney

MUNISERVICES, LLC

By:  _____
Doug Jensen
SVP Client Services

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE EXAMINATION OF PREPAID MOBILE
TELEPHONY SERVICES SURCHARGE AND LOCAL CHARGE RECORDS

WHEREAS, pursuant to Utility Users Tax Ordinance No., 1072 of the City of Sebastopol and the Local Prepaid Mobile Telephony Services Collection Act, the City of Sebastopol, hereinafter called City, entered into a contract with the State Board of Equalization, hereafter referred to as the Board, to perform all functions incident to the administration and collection of the prepaid mobile telephony services surcharge and local charges (Rev. & Tax. Code, § 42101.5); and

WHEREAS, the City of Sebastopol deems it desirable and necessary for authorized representatives of the City of Sebastopol to examine confidential prepaid mobile telephony services surcharge and local charge records pertaining to the prepaid mobile telephony services surcharge and local charges collected by the Board for the City of Sebastopol pursuant to that contract; and

WHEREAS, the Board will make available to the City of Sebastopol any information that is reasonably available to the Board regarding the proper collection and remittance of a local charge of the City of Sebastopol by a seller, including a direct seller, subject to the confidentiality requirements of Sections 7284.6, 7284.7 and 19542 of the Revenue and Taxation Code; and

WHEREAS, Sections 42110 and 42103 of the Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board of Equalization records and establishes criminal penalties for the unlawful disclosure of information contained in or derived from the prepaid mobile telephony services surcharge and local charge records of the Board;

NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:

Section 1. That the City Manager or other officer or employee of the City of Sebastopol designated in writing by the City Manager to the Board is hereby appointed to represent the City of Sebastopol with authority to examine prepaid mobile telephony services surcharge and local charge records of the Board pertaining to prepaid mobile telephony services surcharge and local charges collected for the City of Sebastopol by the Board pursuant to the contract between the City of Sebastopol and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of the City of Sebastopol's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract.

Section 2. That the City Manager and the UUT Tax Administrator (Finance Director) or other officer or employee of the City of Sebastopol designated in writing by the City Manager to the Board is hereby appointed to represent the City of Sebastopol with authority to examine those prepaid mobile telephony services surcharge and local charge records of the Board for purposes related to the following governmental functions of the City of Sebastopol:

- a) Compliance and enforcement of the utility users tax (local charge)
- b) Administrative functions set out in City's utility users tax ordinance
- c) Legal interpretation and enforcement of utility users tax ordinance, including but not limited to refunds and defense of claims against ordinance

The information obtained by examination of Board records shall be used only for those

governmental functions of the City of Sebastopol listed above.

Section 3. That MuniServices, LLC is hereby designated to examine the prepaid mobile telephony services surcharge and local charges records of the Board of Equalization pertaining to prepaid mobile telephony services surcharge and local charges collected for the City of Sebastopol by the Board. The person or entity designated by this section meets all of the following conditions (Rev. & Tax. Code, § 42110, subd. (b)(2)):

- a) has an existing contract with the City of Sebastopol that authorizes the person to examine the prepaid mobile telephony services surcharge and local charge records;
- b) is required by that contract with the City of Sebastopol to disclose information contained in or derived from, those records only to an officer or employee of the City of Sebastopol authorized by the resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a seller during the term of that contract;
- d) is prohibited by that contract from retaining information contained in, or derived from, those prepaid mobile telephony services surcharge and local charge records, after that contract has expired.

The contract between the City of Sebastopol and MuniServices, LLC designated by the City of Sebastopol to request information from the Board shall be subject to the following limitations (Rev. & Tax. Code, § 42103, subd. (g)):

- a) MuniServices, LLC shall, to the same extent as the Board, be subject to Section 55381, relating to unlawful disclosures.
- b) The contract between the City of Sebastopol and MuniServices, LLC shall not provide, in whole or in part, in any manner a contingent fee arrangement as payment for services rendered.

BE IT FURTHER RESOLVED THAT the information obtained by examination of the Board records shall only be used for purposes related to the collection of the City of Sebastopol's prepaid mobile telephony services surcharge and local charges by the Board pursuant to the contract between the City of Sebastopol and Board, or for purposes related to other governmental functions of the City of Sebastopol, as identified above in section 2.

BE IT FURTHER RESOLVED that Resolution number 6053 is hereby rescinded

IN COUNCIL DULY PASSED this 6th day of December, 2016.

VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Mayor

ATTEST: _____
Mary Gourley, MMC, Assistant City Manager / City Clerk