



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** December 5, 2022

FROM: Matthew Bronson, City Manager

PREPARED BY: Deanne Purcell, Administrative Services Director

SUBJECT: Resolution to Amend MuniServices Agreement to Examine Sales and Use Tax Records from the California Department of Tax and Fee Administration (CDTFA) and Authorize Staff to Work with CDTFA

RECOMMENDATION

Adopt the Resolution authorizing Amendment No. 2 to the MuniServices Agreement for the examination of Sales and Use Tax data with the California Department of Tax and Fee Administration (CDTFA) and authorizing staff to work with the CDTFA.

BACKGROUND

The State of California Revenue and Taxation Code Section 7056 authorizes the examination of confidential sales and use tax data to officers or employees of local jurisdictions who are designated by resolution of the legislative body of the jurisdiction. The review of confidential information is governed by State Law and sets certain requirements and conditions for the disclosure of sales and use tax records. State Law also establishes criminal penalties for the unlawful disclosure of sales and use tax information.

After a Request for Proposals process, the Council approved a contract with MuniServices& Analytics on January 24, 2022 to perform a sales tax audit, analysis, and projections. Although Avenu is the official name of the company, it still operates under MuniServices, LLC for sales tax examination purposes. As part of this contract approval, the Council adopted Resolution 22-03 authorizing MuniServices, LLC to perform a sales tax audit, analysis, and projections for the City. The Resolution now before the Council adds the following language in reference to Measure F-20 to include "***on or about April 1, 2021 known as the Measure F-20***" per direction from CDTFA. This Resolution further formalizes the Administrative Services Director's and the Finance Manager's ability to work with the CDTFA and authorizes the City Manager to designate in writing to the State Board any other officer or employee of the City that may need to examine sales and use tax records.

FISCAL IMPACT

There is no fiscal impact from this item.

ALTERNATIVES

The Council has the following alternatives to consider:

1. Adopt the Resolution authorizing the approval of Amendment 2 to the MuniServices contract for the examination of sale and use tax data with the

California Department of Tax and Fee Administration (CDTFA) and authorizing staff to work with CDTFA; or

2. Do not adopt the Resolution; or
3. Provide alternative direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

Attachments

1. Resolution No. 22-
2. Contract Amendment 2

RESOLUTION NO. 22-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH, CALIFORNIA, AUTHORIZING THE EXAMINATION OF SALES OR TRANSACTIONS AND USE TAX RECORDS

WHEREAS, The City of Grover Beach, CA entered into a contract with the California Department of Tax and Fee Administration, ("CDTFA") (formerly State Board of Equalization) to perform all functions incident to the administration and collection of the Transactions and Use Tax Ordinances and the local sales and use taxes; and

WHEREAS, City deems it necessary for authorized representatives of City to examine confidential sales and transactions and use tax records of the CDTFA pertaining to sales and transactions and use taxes collected for City by the CDTFA; and

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

WHEREAS, Section 7056 of the California Revenue and Taxation Code requires that any person designated by City shall have an existing contract to examine City's sales and transactions and use tax records.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GROVER BEACH, CALIFORNIA, DOES DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That the Administrative Services Director, or other officer or employee of City designated in writing by the Administrative Services Director to the CDTFA is hereby appointed to represent City with authority to examine all of the sales and transactions and use tax records of the CDTFA pertaining to sales and transactions and use taxes collected for City by the CDTFA pursuant to the contract between City and the CDTFA. The information obtained by examination of CDTFA records shall be used for purposes related to the collection of City's sales and transactions and use taxes by the CDTFA pursuant to the contract.

Section 2. That the Administrative Services Director, or other officer or employee of City designated in writing by the City Manager to the CDTFA, is also hereby appointed to represent City with the authority to examine those sales and transactions and use tax records of the CDTFA for purposes related to the following governmental functions of City:

- a) tracking and economic development
- b) forecasting and budget related functions
- c) detection of misallocations and deficiencies

The information obtained by examination of CDTFA records shall be used only for those governmental functions of City listed above

Section 3. That **MuniServices, LLC ("Consultant")** is hereby designated and authorized to examine all of the sales and transactions and use tax records of the CDTFA pertaining to all sales and use taxes collected for City and any transaction and use taxes collected for City under the following Transactions and Use Tax Ordinances and any future Transactions and Use Tax Ordinances that may be enacted in the City:

City of Grover Beach, CA, Measure F-20 1% District Tax

The person or entity designated by this section meets all of the following conditions:

- a) has an existing contract with City to examine sales and transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from those sales and transactions and use tax records only to an officer or employee authorized under Section 1 (or Section 2) 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 and transactions and use tax records after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of CDTFA records shall be used only for purposes related to the collection of City's sales and transactions and use taxes by the CDTFA pursuant to the contracts between City and the California Department of Tax and Fee Administration and for purposes relating to the governmental functions of City listed in Section 2 of this resolution.

Section 4. That MuniServices, LLC ("Consultant") is hereby designated to examine the sales or transactions and use tax records of the CDTFA pertaining to any petition or appeal for the reallocation/redistribution of sales or transactions and use taxes that was filed by MuniServices, LLC ("Consultant") on behalf of the City pursuant to the contract between the MuniServices, LLC ("Consultant") and the 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 MuniServices, LLC ("Consultant"):

- 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. This resolution supersedes all prior sales and transactions and use tax resolutions of City adopted pursuant to subdivision (b) of Revenue and Taxation Code Section 7056.

On motion by Council Member _____, seconded by Council Member _____, and on the following roll-call vote, to wit:

AYES: Council Members –
NOES: Council Members –
ABSENT: Council Members –
ABSTAIN: Council Members –
RECUSED: Council Members –

the foregoing Resolution was **PASSED, APPROVED, and ADOPTED** at a regular meeting of the City Council of the City of Grover Beach, California this 5th day of December 2022.

****DRAFT****

JEFF LEE, MAYOR

Attest:

WENDI B. SIMS, CITY CLERK

**AMENDMENT 2 TO CONTRACT BETWEEN
CITY OF GROVER BEACH AND MUNISERVICES, LLC**

THIS CONTRACT AMENDMENT No. 2 (“Amendment No. 2”) is entered into between City of Grover Beach (“City”) and MuniServices, LLC (“MuniServices”), (collectively the “Parties”).

The City and MuniServices agree as follows:

WHEREAS, the City and MuniServices, entered into a Consulting Services Agreement on or about October 1, 1993, (hereinafter “Agreement”) to perform, among other things, Sales and Use Tax Audit Services;

WHEREAS, on or about November 2020, the **Measure F-20 Community Transaction and Use Tax (GRCU) (Code 925)** was passed by the City of Grover Beach, which became effective on or about April 1, 2021 (“District Tax”);

WHEREAS, the California Department of Tax and Fee Administration (collectively, or in the alternative, the “Agency” formerly known as, the State Board of Equalization) has taken the position that general references to “sales and use tax” in an agreement that authorizes access to tax records held by the Authority are insufficient to allow access to information relating the collection of the District Tax by the Agency;

WHEREAS, the City and MuniServices, without conceding the correctness of the Agency’s interpretation, deem it prudent to comply with the interpretation by amending the Agreement to specifically refer to the District Tax; and

WHEREAS, section 7056 of the California Revenue and Taxation Code imposes conditions on the access to information related to the collection of sales, transaction, and use tax by the Agency.

NOW THEREFORE, in order to satisfy the requirements of section 7056, the parties hereby amend the Agreement as follows:

1. Section 7 CERTIFICATION OF CONFIDENTIALITY of the Agreement is hereby amended to comply with state California Department of Tax and Fee Administration requirements to include the following:

Access to Transactions Tax, Sales Tax, and Use Tax Records

*“MuniServices qualifies under Section 7056 of the Revenue and Taxation Code to review (Bradley-Burns) confidential taxpayer information and documentation before the State Board of Equalization (“BOE”) or its successor agency, the Department of Tax and Fee Administration (collectively, or in the alternative, the “Agency”). MuniServices is hereby authorized by this Agreement to examine transactions tax, sales tax and use tax records of the Agency, including but not limited to the transactions and use tax that becomes effective on or about April 1, 2021 known as the **Measure F-20 Community Transaction and Use Tax (GRCU)** pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the City.*

MuniServices is required to disclose information contained in, or derived from, those transactions, sales and use tax records only to an officer or employee of the City who is authorized by resolution or designated by the City Manager to examine the information.

MuniServices is prohibited from performing consulting services for a retailer during the term of this Agreement.

MuniServices is prohibited from retaining the information contained in, or derived from, those transactions, sales and use tax records, after this Agreement has expired.”

The City and MuniServices agree that although the scope of work generically refers to “sales and use tax” those references are meant to include “sales, transactions, and use tax” as part of the scope of work, including but not limited to any transactions and use taxes adopted after the effective date of the Agreement.

The Parties agree that the Agreement is applicable to all Sales, Transactions and Use Tax Ordinances currently enacted in the City and which may become enacted while the Agreement is in effect.

2. Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.
3. In case of a conflict between the terms of this Amendment No. 2 and the terms of the Contract, the terms of this Amendment shall strictly prevail.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 2 to be executed by their duly authorized representatives as of the date set forth below.

DATED: _____, 2022

CITY OF GROVER BEACH

MUNISERVICES, LLC

By: _____

By: _____

Name: _____

Name: Carl Kumpf

Title: _____

Title: CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM

Office of the City Attorney