

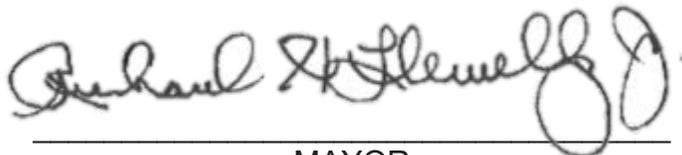
0150-11270-0002

**T R A N S M I T T A L**

TO The City Council	DATE 07/26/21	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT All	

**Second Amendment to Professional Services Agreement C-132599 with Ernst & Young LLP to provide Tax Reporting and Employer Shared Responsibility services in accordance with the Affordable Care Act**

Transmitted for your consideration. See the City Administrative Officer report attached. The Council has 60 days from the date of receipt to act, otherwise the contract will be deemed approved pursuant to Administrative Code Section 10.5(a).



MAYOR

(Rich Llewellyn for)

MWS:RR:11220003t

**Report From**  
**OFFICE OF THE CITY ADMINISTRATIVE OFFICER**  
**Analysis of Proposed Contract**  
(\$25,000 or Greater and Longer than Three Months)

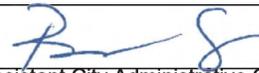
To: The Mayor	Date: 07-09-21	C.D. No. All	CAO File No.: 0150-11270-0002
Contracting Department/Bureau: Personnel Department		Contact: Steve Montagna (213) 978-1621 Sherry Cox (213) 473-9122	
Reference: Personnel Department transmittal dated April 27, 2021; referred by the Mayor's Office for report on May 13, 2021.			
Purpose of Contract: To provide professional services related to Tax Reporting and Employer Shared Responsibility services under the Affordable Care Act.			
Type of Contract: ( ) New contract (X) Amendment, C-132599		Contract Term Dates: Current Agreement: September 1, 2018 – August 31, 2021 Second Amendment: September 1, 2018 – August 31, 2022	
Contract/Amendment Amount: \$891,040			
Proposed amount \$225,040 + Prior award(s) \$666,000 = \$891,040			
Source of funds: General Funds budgeted within the Human Resources Benefits Fund			
Name of Contractor: Ernst & Young LLP			
Address: 725 S Figueroa Street, Los Angeles, CA 90017			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 1.35 percent			
8. Business Inclusion Program	X		
9. Equal Benefits & First Source Hiring Ordinances	X		
10. Contractor Responsibility Ordinance	X		
11. Slavery & Border Wall Disclosure Ordinances	X		
12. Bidder Certification CEC Form 50	X		
13. Prohibited Contributors (Bidders) CEC Form 55	X		
14. CA Iran Contracting Act of 2010*			X

**RECOMMENDATION**

That the City Council approve, and authorize the General Manager of the Personnel Department to execute, the Second Amendment to Professional Services Agreement C-132599 with Ernst & Young LLP to extend the term one additional year providing a four-year term effective September 1, 2018 through August 31, 2022, and to increase the expenditure authority from \$666,000 to a total not to exceed \$891,040, subject to City Attorney approval as to form.

**SUMMARY**

The Personnel Department (Department) requests approval to execute the proposed Second Amendment to Professional Services Agreement C-132599 (Agreement) with Ernst & Young LLP (Contractor) to provide Tax Reporting and Employer Shared Responsibility (ESR) services (Services) to the City in accordance with the Affordable Care Act (ACA). Approval of the proposed Agreement will (i) extend the term one additional year providing a four-year term effective September 1, 2018 through August 31, 2022, and (ii) increase the total expenditure authority from \$666,000 to a total not to exceed \$891,040, an increase of \$225,040. As of July 2021, actual contract expenditures total \$589,000. The proposed Agreement includes a ratification clause to allow the Contractor to continue providing services prior to execution of the proposed Agreement.

Robert Roth			
RR	Analyst	11220003	Assistant City Administrative Officer

The scope of work includes:

- Continuing ACA Tax Reporting services including preparation and distribution of Internal Revenue Service Form 1095-B and Form 1095-C, or successor forms; and,
- Continuing ACA ESR eligibility and compliance reporting services, which requires tracking the work hours of all active City employees to measure applicable ACA eligibility data and providing employer compliance reporting such as monthly ACA eligibility projections and affordability calculations.

The original Agreement was awarded to the Contractor in 2018 to provide the City with services limited to ACA Tax Reporting. However, as part of the request for proposals (RFP) process in which the Contractor was selected, the City reserved the ability to amend the contract to expand the scope of services to include ESR services under the ACA. On August 31, 2019, the First Amendment to the Agreement was executed which expanded the scope of services to include ESR eligibility and compliance reporting services.

The Personnel Department report mentioned a pending ruling by the United States Supreme Court (USSC) on a case regarding the constitutionality of the ACA, which could have potentially impacted the need for the Contractor's services. Since the Department's report was issued, the USSC dismissed the case, leaving the ACA intact and requiring the City to continue adherence to the ESR and tax reporting requirements facilitated through this Agreement.

The Contractor has complied with all applicable City contracting requirements. In accordance with Charter Section 1022, the Personnel Department found that no City employees have the expertise to perform the work proposed in this Agreement. In accordance with Los Angeles Administrative Code Section 10.5(a), City Council approval of the Agreement is required because the contract term exceeds three years. Pursuant to Executive Directive No. 3 (Villaraigosa Series), the approval of the Mayor is required because the total compensation exceeds \$25,000.

## **FISCAL IMPACT STATEMENT**

Funding is provided in the 2021-22 Adopted Budget in the Human Resources Benefits Contractual Services Account.

## **FINANCIAL POLICIES STATEMENT**

As budgeted funds are available to support the proposed Agreement and expenditures in the current year, and future year expenditures are limited to the appropriation of funds, the recommendation of this report complies with the City's Financial Policies.

**BOARD OF CIVIL SERVICE  
COMMISSIONERS**

Room 360, PERSONNEL BUILDING

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CALIFORNIA



ERIC GARCETTI  
MAYOR

**PERSONNEL DEPARTMENT**

PERSONNEL BUILDING  
700 EAST TEMPLE STREET  
LOS ANGELES, CA 90012

—  
Wendy G. Macy  
GENERAL MANAGER

April 27, 2021

Honorable Eric Garcetti  
Mayor, City of Los Angeles  
Room 303, City Hall  
Los Angeles, CA 90012

Attention: Heleen Ramirez, Legislative Coordinator

Subject: **REQUEST FOR REVIEW OF PROPOSED SECOND AMENDMENT TO  
THE PROFESSIONAL SERVICES AGREEMENT (CONTRACT NO. C-  
132599) WITH ERNST & YOUNG LLP**

In accordance with Executive Directive No. 3, attached for your review and approval is a draft Second Amendment to the Professional Services Agreement (Contract No. C-132599) with Ernst & Young LLP (E&Y) to provide professional services related to the City of Los Angeles (City) employer shared responsibility and tax reporting requirements under the Affordable Care Act (ACA).

**Background**

With the enactment of the ACA in 2010, the City began filing ACA tax reporting forms starting with tax year 2015 and has been filing annually thereafter. On an annual basis, the Personnel Department, Employee Benefits Division, coordinates the City's Employer Shared Responsibility (ESR) eligibility and tax reporting obligations under the ACA. The City's tax reporting obligations under the ACA include the filings of IRS Forms 1095-B and 1095-C. Form 1095-C provides information about health insurance coverage offered by the City. A copy is provided to both employees and the IRS. The City also files Form 1095-B on behalf of the Los Angeles Fireman's Relief Association (LAFRA), as it is deemed to provide health insurance to its members. The City has been filing Form 1095-B on behalf of LAFRA beginning with tax year 2015 and has continued to do so for each successive tax year. It will do so again with respect to tax year 2021.

Forms 1095-B and 1095-C are required to be issued to City employees, with copies filed with the IRS, not later than January 31st for ACA health coverage information related to

the preceding tax year. For example, Forms 1095-B and 1095-C for the 2021 tax year will need to be issued to City employees on or before January 31, 2022.

### **Sole Source Determination and Basis for Second Amendment to the Professional Services Agreement**

In February 2018, the City issued a Request for Proposals to select a new vendor to provide ACA tax reporting services. After a competitive bidding process, in June 2018, the City selected E&Y to provide ACA tax reporting services for the 2018 tax year. The City executed an agreement with E&Y for such ACA tax reporting services on December 27, 2018. On August 30, 2019, the City extended the term of its agreement with E&Y to provide ACA tax reporting services for the tax year 2019 and 2020 (First Amendment). The agreement expires on August 31, 2021.

With the pending expiration of the E&Y contract, the City desires to extend its agreement with E&Y for a second time. In spite of the uncertain future of the ACA<sup>1</sup>, the City has a continuing need for ACA tax reporting services for the 2021 tax year.

ESR eligibility and reporting requires the City to track employee working hours and measure all active City employees' ACA eligibility and applicable ACA offers of medical coverage (ACA-eligibility data). This information is then translated into specific codes required to populate IRS ACA tax forms. To generate the City's ACA tax forms, two things must also be accomplished each year: (1) an **interface** needs to be built between its ACA-eligibility data and the tax reporting structure; and (2) the data must be **translated** from its recordkeeping form into a complex array of coding so that the IRS ACA tax form can be generated. In order to sufficiently provide adequate ACA services, a vendor must start work no later than September. With this time frame, the City lacks the requisite time to execute a comprehensive Request for Proposal for ACA tax reporting services for the 2022 tax year and beyond.

An extension of the E&Y contract for the 2021 tax year would provide the City the ability to competently meet its ACA tax reporting obligations for the 2021 tax year and prepare for a comprehensive ACA Request for Proposal for the 2022 tax year and beyond, provided the ACA remains legally intact.<sup>1</sup>

### **Scope of Services**

Under the terms of the proposed amendment, E&Y will continue to provide ACA tax reporting and ESR eligibility and compliance reporting services for the 2021 tax year.

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<sup>1</sup> On March 2, 2020, the United States Supreme Court (USSC) agreed to hear yet one more challenge to the ACA and its constitutionality. Oral arguments were heard on November 10, 2020, but a ruling has not been made. A ruling is expected in June or July 2021. The ruling of the USSC could potentially have a significant impact on the ACA and the City's tax reporting requirements.

## **Compensation**

Compensation for the services outlined in the contract is as follows:

- Maximum fee not to exceed \$225,040 for the provision of ACA tax reporting and ESR eligibility and compliance reporting services for the 2021 tax year.
- Total compensation for the four-year term of the agreement shall not exceed \$891,040.

## **Contract Term**

The term of the initial contract with E&Y was one year from September 1, 2018 to August 31, 2019. The First Amendment to the Professional Services Agreement (Contract No. C-132599) extended the term of the contract by two years through August 31, 2021. The Second Amendment to the Professional Services Agreement (Contract No. C-132599) will extend the term of the contract by one year through August 31, 2022.

## **Contract Compliance**

E&Y's (Contractor) compliance documentation status is as follows:

- The Contractor's Equal Benefits/First Source Hiring Ordinance and Disclosure Ordinance affidavits are current.
- Per Charter Section 1022, the Personnel Department, Classifications Division determined that the City does not have classifications that possess the knowledge and expertise to perform the work proposed to be contracted.
- The Contractor's insurance certificate is current.
- The Contractor's headquarter address is as follows: 725 S. Figueroa Street  
Los Angeles, CA 90017
- Representative of Contractor: Craig Winchester, Principal, Indirect Tax
- The contract has been reviewed by the City Attorney as to form and language.

## **Fiscal Impact**

Funding is available in the Human Resources Benefits Budget, Fund No. 100, Contractual Services Account No. 003040, with no additional impact on the General Fund.

## **Recommendation**

That the General Manager of the Personnel Department, or designee, be authorized to negotiate and execute a Second Amendment to the Professional Services Agreement

(Contract No. C-132599) with E&Y to provide ACA tax reporting and ESR eligibility and compliance reporting services for the 2021 tax year, to establish the maximum compensation for these services not to exceed \$841,040 over the four-year term of the Agreement, and to extend the term of the Agreement by one additional year for a revised term effective September 1, 2018 to August 31, 2022, subject to the review and approval of the City Attorney.

Please contact Sherry Cox at (213) 473-9122 with any additional questions.

Respectfully submitted,



Wendy G. Macy  
General Manager

Attachment

cc: Robert Roth, CAO

**SECOND AMENDMENT TO THE  
PROFESSIONAL SERVICES AGREEMENT (CONTRACT NO. C-132599)  
BETWEEN  
THE CITY OF LOS ANGELES AND  
ERNST & YOUNG LLP**

This SECOND AMENDMENT to the Professional Services Agreement (Contract No. C-132599) is made and entered into by and between the City of Los Angeles, a municipal corporation, acting by and through the Personnel Department (“**City**”) and Ernst & Young LLP, a Delaware limited liability partnership (“**Contractor**”), with reference to the following:

**RECITALS**

1. On December 27, 2018, the City and Contractor entered into that certain Professional Services Agreement (Contract No. C-132599) (“**Agreement**”) for the performance of tax information reporting services related to the Affordable Care Act (“**ACA Tax Reporting Services**”) for the term commencing September 1, 2018 through August 31, 2019; and
2. On August 31, 2019, the City and Contractor executed a First Amendment to the Agreement which added Employer Shared Responsibility (“**ESR**”) eligibility and compliance reporting services to the Agreement; and
3. The First Amendment extended the term of the Agreement through August 31, 2021; and
4. The City has a continuing need for ACA Tax Reporting Services and ESR eligibility and compliance reporting services for the 2021 tax year, both of which are required under federal tax law; and
5. The City and Contractor have agreed to enter into this Second Amendment to the Agreement, as amended by the First Amendment.

**NOW, THEREFORE**, the City and Contractor, in consideration of the promises and of the recitals, agreements, covenants, and representations set forth herein, hereby covenant, represent, and agree as follows:

1. Section A of Article II of the amended Agreement, entitled “Time of Performance,” is hereby deleted in its entirety and replaced with the following:

“The Term of this Agreement will commence on September 1, 2018, and will end on August 31, 2022, subject to termination provisions herein (“Term”).”

2. Subsection 5 of Section A of Article IV of the amended Agreement, entitled “Compensation,” is hereby deleted in its entirety and replaced with the following new subsection 5:

“5. For ACA Tax Reporting Services and ESR eligibility and compliance reporting services for the 2021 tax year, the City shall pay Contractor a fee of \$148,040, plus \$1.75 per ACA-tax form produced and mailed or \$0.95 per ACA-tax form

for employees choosing e-statement for the first unique 44,000 forms produced, including amendments. Any forms produced over the 44,000 limit shall be paid for by Contractor. The total maximum fee for the provision of ACA Tax Reporting Services and ESR eligibility and compliance reporting services for the 2021 tax year shall not exceed \$225,040. Notwithstanding the foregoing, any amendments or corrections to the ACA tax form produced under this First Amendment shall not be charged to the City provided the reason for the amendment and/or correction is the result of Contractor's error."

3. Section A of Article IV of the amended Agreement, entitled "Compensation," is hereby amended to add a new subsection 6:

"6. City's total obligation for services performed under the terms of this Agreement shall not exceed the amount of \$891,040, including the cost of any corrections and/or amendments to the ACA forms produced."

4. In the event of any inconsistency between the provisions of this Second Amendment and the attachments and exhibits attached thereto, said inconsistency shall be resolved by giving precedence to the documents in the following order, except as required by applicable ordinances and law:

1. The terms of this Second Amendment;
2. The terms of the First Amendment;
3. The terms of the Agreement;
4. Standard Provisions for City Contracts (Rev. 10/17);
5. The other attachments/exhibits to the Agreement.

5. This Second Amendment shall be deemed executed upon the occurrence of all of the following events:

1. This Second Amendment has been signed on behalf of Contractor by the person or persons authorized to bind Contractor hereto;
2. This Second Amendment has been approved by the General Manager of the Personnel Department;
3. The Office of the City Attorney has indicated in writing its approval of this Second Amendment as to form; and
4. This Second Amendment has been signed on behalf of the City by the person designated to so sign by the City's Council or by the board, officer, or employee authorized to enter into this Second Amendment.

6. Due to the need for Contractor's services to be provided on an ongoing basis, Contractor may have provided the contemplated services prior to the execution of this Second Amendment. To the extent that said services were performed in accordance with the terms and conditions of the Second Amendment, those services are hereby accepted by the City and shall be treated as services performed under the terms and conditions herein.
7. All capitalized terms shall have the meaning ascribed to them under the Agreement, except as otherwise provided herein.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS)**

**IN WITNESS THEREOF**, the parties, have caused this Second Amendment to be executed by their respective duly authorized representatives.

**THE CITY OF LOS ANGELES**

By: \_\_\_\_\_  
WENDY G. MACY  
General Manager  
Personnel Department

Date: \_\_\_\_\_

**ERNST & YOUNG LLP**

By: \_\_\_\_\_  
GUSTAVO PEREZ  
Managing Director, EY Indirect Tax Services

Date: \_\_\_\_\_

By: \_\_\_\_\_  
DEBI HEISKALA  
Partner, EY Exempt Organization Tax Services

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**ATTESTED:**

MICHAEL N. FEUER, City Attorney

HOLLY L. WOLCOTT, City Clerk

By: \_\_\_\_\_  
CHARLES HONG  
Deputy City Attorney

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\*Approved Signature Methods:

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 2) One signature of a Corporate designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

City Business License Number: \_\_\_\_\_

Internal Revenue Service Taxpayer Identification Number: \_\_\_\_\_

Agreement Number: C-132599