



## Finance Committee

**Tuesday, May 11, 2021**

**8:30 a.m.**

Brea Civic & Cultural Center  
1 Civic Center Circle, Brea, California

**MEMBERS:** Council Member Christine Marick and Council Member Marty Simonoff  
**ALTERNATE:** Mayor Pro Tem Cecilia Hupp

This meeting is being conducted consistent with Governor Newsom's Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic. The Finance Committee meeting will be held on May 11, 2021 at 8:30 a.m. and the public is welcome to participate. To provide comments in person, the Executive Conference Room will be open to a limited number of members from the public in observance of social distancing guidelines; masks and temperature checks are required. To provide comments by teleconference (Zoom), members of the public must contact City Staff at (714) 990-7676 or [arlenem@cityofbrea.net](mailto:arlenem@cityofbrea.net) no later than 12:00 p.m. on Monday, May 10, 2021 to obtain the Zoom meeting ID number and password. Participants will be muted until recognized at the appropriate time by the Committee. Written comments may be sent to the Administrative Services Department at [arlenem@cityofbrea.net](mailto:arlenem@cityofbrea.net) no later than 12:00 p.m. on Monday, May 10, 2021. Any comments received via email will be summarized aloud into record at the meeting.

The Finance Committee agenda packet can be viewed on the City of Brea website at: <https://www.ci.brea.ca.us/509/Meeting-Agendas-Minutes>. Hard copies of the agenda packet are available via USPS with proper notice by calling (714) 990-7676. Materials related to an item on the agenda submitted to the Finance Committee after distribution of the agenda packet are available for public inspection in Finance Division of the Administrative Services Department of the Civic & Cultural Center at 1 Civic Center Circle, Brea, CA 92821, during normal business hours. Such documents may also be available on the City's website subject to staff's ability to post documents before the meeting.

### CALL TO ORDER / ROLL CALL

1. **Matters from the Audience**

### CONSENT

2. **April 27, 2021 Finance Committee Regular Meeting Minutes - Approve.**

### DISCUSSION

3. **Amendment and Novation Agreement and Authorization to Examine Sales and Use Tax Records from the California Department of Tax and Fee Administration - Approve the amendment and novation agreement with Avenu Insights and MuniServices, LLC and adopt the resolution authorizing the examination of sales and use tax records from the California Department of Tax and Fee Administration (CDTFA) to MuniServices, as well as authorize City staff.**

4. **Fiscal Year 2021-22 Refuse Rates** - Informational

5. **Schedule Next Meeting:** Tuesday, May 25, 2021

**cc:** Mayor Steven Vargas and Council Member Glenn Parker

**Special Accommodations**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (714) 990-7757. Notification 48 hours prior to the meeting will enable City staff to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**TO:** Finance Committee Members  
**FROM:** Bill Gallardo  
**DATE:** 05/11/2021  
**SUBJECT:** April 27, 2021 Finance Committee Regular Meeting Minutes

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**RECOMMENDATION**

Approve.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager  
Prepared by: Alicia Brenner, Senior Fiscal Analyst  
Concurrence: Cindy Russell, Administrative Services Director

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**Attachments**

04-27-2021 Draft Minutes

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# DRAFT FINANCE COMMITTEE MINUTES

**Tuesday, April 27, 2021**

**8:30 AM**

Via Zoom Meeting

Brea Civic & Cultural Center, 1 Civic Center Circle, Brea, California

## CALL TO ORDER / ROLL CALL

ATTENDEES: Council Member Christine Marick, Council Member Marty Simonoff, Chris Emeterio, Tony Olmos, Cindy Russell, Michael Ho, Faith Madrazo, Sean Matlock and Alicia Brenner

1. **Matters from the Audience** – *None.*

## CONSENT

2. **April 13, 2021 Finance Committee Regular Meeting Minutes** – *Approve.*

## DISCUSSION

3. **Authorize Additional Contingency Amounts for Contract with Stephen Doreck Equipment Rentals, Inc. for the Moorpark Drive Water Improvements Project** – *Recommended for City Council approval.*
4. **Schedule Next Meeting:** Tuesday, May 11, 2021

Meeting adjourned: 8:31 AM

**City of Brea**

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**FINANCE COMMITTEE COMMUNICATION**

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**TO:** Finance Committee Members

**FROM:** Bill Gallardo

**DATE:** 05/11/2021

**SUBJECT:** Amendment and Novation Agreement and Authorization to Examine Sales and Use Tax Records from the California Department of Tax and Fee Administration

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**RECOMMENDATION**

Approve the amendment and novation agreement with Avenu Insights and MuniServices, LLC and adopt the resolution authorizing the examination of sales and use tax records from the California Department of Tax and Fee Administration (CDTFA) to MuniServices, as well as authorize City staff.

**BACKGROUND/DISCUSSION**

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.

In 1987, the City Council authorized Municipal Resource Consultants, as a representative of the City, to examine confidential sales and use tax records. In 2002, the City Council adopted Resolution 02-102. This Resolution designated MBIA Muniservices Company (now operating under the branding name of Avenu Insights and Analytics (Avenu)). The 2002 Resolution also designated the Financial Services Director and the Financial Services Manager - Revenue as City representatives to review sales tax information. However, since then, titles for these positions have changed and additional staff involvement is needed. Currently, the Administrative Services Director, Revenue & Budget Manager, Senior Fiscal Analyst and the sales tax consultant, Avenu, examine and monitor Brea's sales tax records to ensure the tax is appropriately allocated to Brea.

On August 21, 2019 and after a successful Request for Proposal (RFP) process, the City contracted with Avenu Insights to perform sales tax audit, analysis and projections. Although, Avenu is the official branding name of the company, it still operates under MuniServices, LLC for sales tax examination purposes for many agencies. With the attached Amendment and Novation Agreement, the Assuming Party (MuniServices, LLC) becomes entitled to all rights, title, and interest of the Assigning Party (Avenu Insights & Analytics, LLC). This document will be forwarded to the CDTFA to be placed on record.

This adopting resolution further formalizes the Administrative Services Director, the Financial

Services Manager, the Revenue & Budget Manager, and the Senior Fiscal Analyst's ability to work with the CDTFA. The resolution also 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.

**SUMMARY/FISCAL IMPACT**

The Amendment and novation agreement updates the records of the California Department of Tax and Fee Administration, and updates the authorized designated list of City employees by title that will be allowed to examine sales and use tax records of the California Department of Tax and Fee Administration. There is no impact to the City's General Fund as a result of this action.

**RESPECTFULLY SUBMITTED**

William Gallardo, City Manager

Prepared by: Faith Madrazo, Revenue & Budget Manager

Concurrence: Cindy Russell, Administrative Services Director

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**Attachments**

Amendment & Novation Agreement  
Resolution

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AMENDMENT AND NOVATION AGREEMENT BETWEEN

AVENU INSIGHTS & ANALYTICS, LLC.

AND

MUNISERVICES, LLC

THIS AMENDMENT AND NOVATION AGREEMENT (the "Novation") is between Avenu Insights & Analytics, LLC (the "Assigning Party"), and MuniServices, LLC, (the "Assuming Party") both Delaware limited liability companies, with offices located at 5680 Trinity Parkway, Suite 120, Centreville VA 20120, and the City of Brea, an instrumentality of the State of California, 1 Civic Center Circle, Brea, CA 92821 ("Remaining Party"), (together, the "Parties") is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2021 (the "Novation Effective Date").

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

The parties intend that this Amendment to that certain Agreement between Avenu Insights & Analytics, LLC. and The City of Brea, of the state of California, entered into on August 21, 2019 (the "Agreement") (attached hereto as Exhibit A) for Sales, Transactions and Use Tax Audit Services to be a novation and that the Assuming Party be substituted for the Assigning Party. The Remaining Party recognizes Assuming Party as Assigning Party's successor-in-interest in and to the Agreement. By this Agreement, the Assuming Party becomes entitled to all rights, title, and interest of the Assigning Party, in and to the Assigned Agreement in as much as Assuming Party is the substituted party to the Assigned Agreement as of and after the Effective Date. Remaining Party and Assuming Party shall be bound by the terms of the Assigned Agreement in every way as if Assuming Party is named in the novated Assigned Agreement in place of Assigning Party as a party thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

**ASSUMING PARTY**

MUNISERVICES, LLC

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

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**ASSIGNING PARTY**

AVENU INSIGHTS & ANALYTICS, LLC

By\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

**REMAINING PARTY**

CITY OF BREA

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

Name:\_\_\_\_\_

Title:\_\_\_\_\_

## EXHIBIT A

**PROFESSIONAL SERVICES  
AGREEMENT**

THIS AGREEMENT ("Agreement") is effective on the date on which this Agreement is executed by the City of Brea, ("Effective Date"), and is between Avenu Insights & Analytics, LLC (AKA MuniServices, LLC), a Delaware limited liability company ("CONSULTANT") and the CITY OF BREA, a California municipal corporation ("CITY"). CONSULTANT and CITY are sometimes referred to herein collectively as the "Parties" and singularly as "Party". The Parties agree as follows:

**I. Agreement**

- A. This Agreement, together with the following exhibits are incorporated herein by reference, and supersedes all prior agreements and understandings:

Exhibit A – Scope of Services/Specifications

Exhibit B – Compensation

Exhibit C – General Provisions

Exhibit D – Indemnity and Insurance Requirements

- B. This Agreement may be modified by written amendment executed by all parties.

**II. Scope of Services Summary**

CONSULTANT shall, during the Term of the Agreement, provide ***sales, transaction and use tax audit (SUTA) and information services and property tax auditing and information services*** as further set forth in Exhibit A, all to CITY's reasonable satisfaction (collectively, the "Services").

**III. Term of the Agreement**

- A. CONSULTANT shall commence performance of Services on the Effective Date of ***September 1, 2019***.
- B. AGREEMENT shall remain in full force and effect ***for a period of three years (3) following the Effective Date***, unless sooner terminated as set forth in the Termination subsection of Exhibit C ("Term").
- C. AGREEMENT may be extended for ***two (2) successive one (1) year terms*** (each a "Renewal Term"), commencing upon the expiration of the preceding Term.

**IV. Compensation Summary**

- A. CITY shall pay CONSULTANT for satisfactorily and completely rendered Services according to the fees set forth in Exhibit B. CITY shall pay CONSULTANT within thirty (30) days of receipt of CONSULTANT's invoice.
- B. CONSULTANT shall not render any services in excess of the Services described in Exhibit A ("Additional Services") without CITY's prior written approval. Any work performed without CITY's prior written approval shall be deemed to have been performed as part of the Services and included within the not-to-exceed Contract Amount.

**V. Insurance Requirements Summary**

- A. All insurance shall comply with the specific requirements set forth in Exhibit D.

B. Exhibit D shall govern in the event of any conflict with the following coverages.

1. **Commercial General Liability (CGL)**  
Limits shall be no less than \$2,000,000 per occurrence.
2. **Automobile Liability Insurance (ALI) (any auto)**  
Limits shall be no less than \$2,000,000 per occurrence.
3. **Workers' Compensation**  
State of California statutory limits  
Employer's Liability Insurance  
Limits shall be no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability Insurance (PL)**  
Limits shall be no less than \$2,000,000 per claim.

**VI. Notices and Designated Representatives**

All notices made pursuant to this Agreement shall be in writing and deemed effectively given: (i) upon receipt, when delivered personally; (ii) one business day after deposit with an overnight courier service; or (iii) two business days after having been sent by registered or certified mail, whether or not a signed receipt is received, provided a proof of delivery is obtained. All communications shall be sent to:

CITY – Project Manager:  
Cindy Russell  
Administrative Services Director  
1 Civic Center Circle  
Brea, CA 92821  
(714) 990-2258 phone  
[CindyR@CityofBrea.net](mailto:CindyR@CityofBrea.net)

CITY – City Clerk (if over \$25,000):  
Lillian Harris-Neal, MMC  
City Clerk  
1 Civic Center Circle  
Brea, CA 92821  
(714) 990-7757 phone  
[LillianHN@CityofBrea.net](mailto:LillianHN@CityofBrea.net)

**CONSULTANT:**

Avenu Insights & Analytics/ MuniServices  
Attn: Contracts  
1264 Hawkes Flight Court, Suite 270  
El Dorado Hills, CA 95762  
[contracts@avenuinsights.com](mailto:contracts@avenuinsights.com)

**CONSULTANT – Project Manager:**

Tracy Vesely  
Director of Client Services  
7625 N. Palm Avenue, Ste. 108  
Fresno, CA 93711  
(925) 330-2958  
[tracy.vesely@avenuinsights.com](mailto:tracy.vesely@avenuinsights.com)


(SIGNATURES ON FOLLOWING PAGE)

**City of Brea**  
**Avenu Insights & Analytics, LLC**


**Contract #** \_\_\_\_\_

IN WITNESS WHEREOF, The parties hereto have executed this Agreement as of the day and year first set forth above. The undersigned Parties represent and warrant that they are authorized to bind their principles to the terms of this agreement.

**CONSULTANT**

Business Name: Avenu Insights & Analytics/ MuniServices, LLC  
Federal ID# 81-4932885  
Business Type ☒ Limited Liability Company  
Printed Name: Paul Colangelo  
Title: Chief Executive Officer  
Signature:   
Date: 7-23-19

**CITY OF BREA**

City of Brea  
a California municipal corporation  
Printed Name: Bill Gallardo  
Title: City Manager  
Signature:   
Date: 8-21-19

**ATTEST** (if over \$25,000.00)

Printed Name: Lillian Harris-Neal  
Title: City Clerk  
Signature:   
Date: 8/21/19



**EXHIBIT A**  
**SCOPE OF SERVICES**

**SALES, TRANSACTIONS AND USE TAX AUDIT SERVICES (SUTA) SERVICES**

In performing the sales, transactions and use tax audit program CONSULTANT shall:

1. Identify and correct the sales/transactions/use tax reporting errors of businesses that, based on the nexus of their activities, are not properly registered with the CITY.
2. Identify and correct the reporting of businesses that are improperly reporting tax to state and county pools (i.e. classifying sales tax as use tax) and thereby depriving the CITY of sales tax revenue.
3. Detect, document and correct sales/transactions/use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for the CITY.
4. Ensure through comprehensive audit measures that the revenue information used for ongoing economic analysis includes all sales/transactions/use tax generators.
5. Assist the CITY with strategies to preserve and even enhance sales and use tax revenue generated by existing businesses within the CITY.

CONSULTANT's proposed sales/transactions/use tax allocation audit services for the CITY includes five distinct types of audits:

- Taxable Nexus Field audits
- Permitization audits
- Deficiency assessment audits
- Accounts payable audits
- Quarterly Distribution Report audits

**Taxable Nexus Field Audits**

CONSULTANT's initial and periodic taxable nexus field audits include a physical canvassing and evaluation of sales/transactions/use tax generating businesses located in the CITY. In the absence of this undertaking, significant misallocations will remain undetected. CONSULTANT's field audits focus on those businesses located in the CITY from which the CITY has not been receiving sales/transactions/use tax revenue.

**Tax Area Code (TAC)/Permitization Audits**

This audit review focuses on the identification and correction of improperly registered permits for companies having point-of-sale or use operations within Santa Barbara County in addition to businesses that have been assigned an incorrect tax area code due to jurisdictional/boundary confusion. Wholesalers, contractors, processors, manufacturers and other non-retail businesses will frequently not have a sales tax permit properly registered to the CITY in which they are located because their business operations do not include a point-of-sale qualifying activity. However, these companies will often generate local sales/transactions/use tax from the California Department of Tax and Fee Administration (formerly State Board of Equalization) (CDTFA) audit deficiency assessments, occasional sales (i.e., mergers and acquisitions), and self-accrual of use tax on purchases. CONSULTANT's field audits facilitate the identification and correction of improperly registered permits for companies having point-of-sale operations in the CITY.

Deficiency Assessment Audits

When the California CDTFA audits taxpayers for sales/transactions/use tax compliance, it is not uncommon for the taxpayer to receive a substantial deficiency assessment due to underpayments and/or under-collections. In many cases, the local allocation portion of the deficiency assessment is distributed in error to the State pool, county pools, or other jurisdictions. Accordingly, CONSULTANT has developed proprietary criteria and techniques to detect and correct CDTFA deficiency assessment misallocations and thus expand the benefits produced by CONSULTANT's allocation audit service.

Accounts Payable Audits

When California taxpayers purchase tangible personal property for which title passes out-of-state, the transactions are subject to use tax (rather than sales tax) which is collected by the vendor who in turn remits it to the CDTFA, with the local allocation typically distributed statewide or countywide through the pools.

Under certain conditions, the seller may allocate the local tax by situs or the CITY may elect to self-accrue the use tax and remit it directly to the CDTFA, in which case the local portion will come back to the CITY in the same manner as sales tax.

CONSULTANT's accounts payable audit will include a review of the CITY's purchases to identify opportunities for the CITY to capture the 1% local allocation on purchases subject to use tax and the local district tax where applicable. In this regard, CONSULTANT will prepare the documentation to facilitate the election, including assistance in preparing and filing the tax returns.

Quarterly Distribution Report Audits

Every three months, the CITY and CONSULTANT receive a Quarterly Distribution Report (QDR) from the CDTFA with the local allocation amount reflected by permit number.

CONSULTANT's QDR audits detect and correct taxpayer-reporting errors and thereby generate new, previously unrealized sales/transactions/use tax revenue for the CITY. CONSULTANT's QDR audits focus on those accounts where CONSULTANT observes a substantial decline in the sales/ transactions/use tax revenue allocation for a particular business entity in a given quarter. In most cases, accounts showing zero balances have either relocated or simply reported late, in which case the payments will not be reflected until the next quarter's QDR. Therefore, six months must lapse before the QDRs indicate whether a zero-balance account can be attributed to a late payment or a misallocation.

Cities and counties may only recover misallocated Bradley-Burns sales tax revenue for three quarters prior to the CDTFA being notified of the reporting error and misallocated District tax revenues for between three quarters and three years. Therefore, QDR audits must be conducted in a timely manner in order to preserve the opportunity for the CITY to recover misallocated revenue. CONSULTANT shall conduct the QDR audit each and every quarter to minimize the potential of lost revenue to the CITY.

Confidentiality Provisions

CONSULTANT qualifies under Section 7056 (b), (1) of the Revenue and Taxation Code to review (Bradley-Burns) confidential taxpayer information and documentation before the CDTFA. CONSULTANT is hereby authorized by this Agreement to examine transaction tax, sales tax, and use tax records of the CDTFA pertaining to the ascertainment of those sales or transactions and use taxes to be collected for the CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law and California Revenue & Taxation Code applicable to transactions and use taxes. If the CITY adopts a new transaction tax or taxes after the effective date of this Agreement the parties intend for the work under this agreement to include that tax or taxes.

- CONSULTANT is required to disclose information contained in, or derived from, those sales, transaction, and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information.
- CONSULTANT is prohibited from performing consulting services for a retailer during the term of this Agreement.
- CONSULTANT is prohibited from retaining the information contained in, or derived from, those sales, transaction, and use tax records, after this Agreement has expired.
- Information obtained by examination of California Department of Tax and Fee Administration records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the CITY as set forth by resolution adopted pursuant to Section 7056 (b) of the Revenue and Taxation Code.

This Agreement, and CONSULTANTs and CITY's obligations with respect to confidentiality of taxpayer data pursuant to the Bradley Burns Revenue and Taxation Code, shall continue until final payment for all services rendered hereunder.

**Deliverables**

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SUTA Detection and Documentation

CONSULTANT shall represent the CITY for purposes of examining CDTFA records pertaining to sales and use tax to identify errors and omissions. CONSULTANT's procedures for detecting and documenting misallocations are as follows:

1. Review applicable provisions of the CITY's municipal code and ordinance adopted by the CITY to determine applicability.
2. Procure a computer tape of sales/transactions/use tax permit records from the CDTFA.
3. Analyze sales tax distribution reports provided by the CDTFA for five or more of the most recent consecutive quarters.
4. Clean-up, standardize and computerize data from CITY's quarterly sales tax distribution reports provided by CDTFA for previous quarters, current quarter and each future quarter service is provided.
5. Prepare an aggregated list of business entities on electronic media; this list is derived from multiple private and public sources (hard copy and electronic), including specialized business listings and directories, the CITY's sales and use tax payment files, and an electronic copy of the CITY's Business License Tax registry, updated no less than twice per year.

6. Clean, standardize and integrate, in address-order, each entity's business name, address and payment file information, to eliminate redundancies, using CONSULTANT's proprietary software.
7. Physically canvas commercial/industrial area within the CITY's borders.
8. Develop a target list of potential point of sale/use reporting errors/omissions based on:
  - a. An electronic comparison of CONSULTANT's comprehensive inventory against the CDTFA's quarterly distributions for the CITY, and
  - b. An analysis of each potentially misallocated account based on proprietary guidelines established by CONSULTANT.
9. Meet with designated CITY official(s) to review service objectives and scope, CONSULTANT workplan schedule, public relations and logistical matters.
10. Contact personnel in sales, operations and/or tax accounting at each target business to determine whether a point-of-sale/use reporting error exists. (Note: this is accomplished with the highest regard to discretion and professional conduct. CONSULTANT's allocation audits are predicated on a non-controversial, constructive public relations approach which emphasizes the importance of each business to the CITY and the mutual benefits of correcting reporting errors.)
11. Provide to the CITY and CDTFA reports addressing each taxpayer reporting error individually, including the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure and, if available, estimated sales/transactions/use tax revenue which should be forthcoming to the CITY.
12. CONSULTANT may also provide suggested language for letters to be sent to the taxpayers and/or CDTFA from the CITY (or from CONSULTANT on behalf of the CITY) urging cooperation in promptly correcting the distribution error.
13. Respond to negative findings by CDTFA with timely reconfirmation documentation in order to preserve the CITY's original dates of knowledge.
14. Receive and process registration control record information monthly.
15. Receive and process sales tax distribution reports quarterly.
16. Coordinate with the taxpayer and CDTFA to make the necessary corrections and collect eligible back quarter's amounts.
17. Monitor and analyze the quarterly distribution reports with an audit focus on the following:
  - a. Accounts with previously reported point-of-sale/use distribution errors to ensure that the corrections are made for current quarters and all eligible back quarters.
  - b. Major accounts comprising 90% or more of the CITY's total sales tax revenue to identify any irregularities or unusual deviations from the normal pattern (e.g. negative fund transfers, significant decreases, unusual increases, etc.) and ensure that the CITY is not receiving less revenue than it is entitled to.
  - c. Those accounts receiving deficiency assessments to ensure that the CITY receives its local allocation
18. Identify opportunities for the CITY to recover local allocation on purchase transactions subject to use tax. Prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

**SUTA Detection Timing Considerations**

For each misallocated account detected, CONSULTANT will coordinate with the business and CDTFA to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/transactions/use tax improperly distributed in prior quarters. CONSULTANT coordinates and communicates between typically four parties; sales/operations personnel at the taxpayer's local operation, tax personnel at the company's corporate headquarters, and CDTFA personnel and the in-state/out-of-state district offices. Correction of the account is considered to have been

made once the payments on identified taxpayer accounts are being properly allocated by the taxpayer to the CITY in the period in which the payment was made.

As needed, CONSULTANT will represent the CITY before state officials, boards, commissions and committees for the purpose of correcting sales tax distribution errors that have deprived the CITY of revenue to which it is entitled.

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**SALES/USE TAX ANALYTICS & REPORTING - 'CLEARVIEW'**

In conjunction with the CONSULTANT's comprehensive SUTA service, the CONSULTANT will provide a state-of-the-art Sales, Transactions and Use Tax Reporting online software titled '*CLEARVIEW*' (formerly known as STARS), as well as Quarterly Sales Tax Review Meetings and Consulting. *CLEARVIEW* software includes the following key features:

**Consolidated Economic Reports**

1. Key trends at the category, segment, and retailer levels.
2. High-level view of key retailer performance.
3. Cash forecast by fiscal year.
4. Search function for retailers and recent payment history (within jurisdiction).
5. Review and export the rankings of the sales tax producers in your jurisdiction for recent periods.
6. Locate potential one-time payments.
7. Export the Excel data behind the reports for further analysis or inclusion in internal reports.

**Geo Area Reports (Cash and Economic)**

1. Review trends/growth/declines within specified geo-areas.
2. Export a 10-year history of each geo-area directly to excel.

**Cash Trends and Distribution Summaries**

1. Review the fiscal year-to-date totals for cash.
2. See which parts of your economy changed and the key retailers driving those cash changes.
3. Compare cash performance to other jurisdictions as a quick way of benchmarking performance.
4. Review cash distributions from the State (including pool amounts, where applicable).

**GIS Maps**

1. Visualize your geo-areas and summarize by category and segment.
2. Dynamically view the revenue changes in your geo-areas over time.
3. Compare the performance of one geo-area to another.

**CITY Assistance**

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1. **Confidentiality.** The information provided to the CITY in the *CLEARVIEW* Reports is confidential. It is not open to public inspection. A CITY may use the information only for lawfully permitted purposes. CITY shall not distribute the *CLEARVIEW* Reports to any person unless that person is legally entitled to access the information in the *CLEARVIEW* Reports, or except as may otherwise be required by law or court order.

CONSULTANT is authorized by this Agreement to examine transaction tax, sales tax, and use tax records of the California Department of Tax and Fee Administration (formerly State Board of Equalization) (CDTFA) including, but not limited to any transaction and use tax that becomes effective after the date of this Agreement to be collected for CITY. CONSULTANT is required to disclose information contained in, or derived from, those transaction, sales, and use tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information. CONSULTANT is prohibited from performing consulting services for a retailer during the term of this Agreement. CONSULTANT is prohibited from retaining the information contained in, or derived from, those transaction, sales, and use tax records, after this Agreement has expired.

2. **Data.** In order for CONSULTANT to provide the *CLEARVIEW* Reports, the CITY will need to deliver to CONSULTANT the signed documents/authorizations required to access the proper data from the applicable governmental authorities as may be required by law.
3. **Additional Terms.**
  - a. **License.** CONSULTANT grants to CITY a license for each of CITY's designated users to access the *CLEARVIEW* reports service for so long as this Agreement is in effect. Each of CITY's designated users must be submitted in writing to CONSULTANT. CONSULTANT will provide the user with the necessary log-in information. Any passwords issued for this service may only be used by the person to whom the password is issued; sharing of passwords is **STRICTLY PROHIBITED**. CITY has the obligation to protect those passwords.
  - b. **Limitations of Liability.** CONSULTANT is not responsible for any breach of data resulting from CITY's failure to protect passwords or systems used to access the Service. CONSULTANT does not warrant that the service is error free. CONSULTANT **DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.** Some jurisdictions do not allow the exclusion of implied warranties or limitations of how long an implied warranty may last, or the exclusion of limitation of incidental damages, so the above limitations or exclusions may not apply to CITY. In no event shall CONSULTANT or its licensors, suppliers, or licensees be liable to CITY for any consequential, special, incidental, or indirect damages of any kind arising out of the performance or use of the service, even if CONSULTANT has been advised of the possibility of such damages.
  - c. **Non-disclosure.** CITY's use of the *CLEARVIEW* services is conditioned on CITY's agreement not to make the service or any of output of the system available to CONSULTANT's anyone other than authorized CITY staff. Nothing in this provision prohibits the CITY from exporting data and formatting it for its own use or from making documents marked as 'public' known to the public.

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**PROPERTY TAX AUDITING & INFORMATION SERVICES**

**Property Tax Audit Services**

CONSULTANT's Property Tax audit service is designed to identify misallocated property tax revenue. Administrative errors and omissions combined with general compliance problems are inevitable given the non-standard, complex nature of state and local property taxes. Error rates rise with respect to property tax applicability, rates, exceptions, exemptions, quirks and other inconsistencies. Avenu/MuniServices' wealth of expertise in the recovery of property taxes allow for a quick correction of misallocations and revenue recovery process.

Avenu/MuniServices understands that the City requires assistance in monitoring and evaluating its property tax revenue and seeks an experienced consulting firm to perform property tax consulting, audit and analysis services.

In conducting the audit, Avenu/MuniServices will:

- **Inventory parcels in the City to facilitate comparison analysis.** Establish a comprehensive inventory of every parcel located within the City including the database elements needed to facilitate a comparison analysis with City secured and unsecured taxable values.
- **Examine records on behalf of the City.** Represent the City for purposes of examining records pertaining to property tax to identify and confirm any errors/omissions that are resulting in deficient payment of tax revenues to the City.
- **Document process.** For each error/omission identified and confirmed, prepare documentation to substantiate and facilitate recovery of revenue due from prior periods plus applicable interest and penalties (collectively "Misallocations").

We will provide further steps on behalf of the City to recover property tax allocation errors and omissions as follows:

- **Review findings and recommendations with City.** Meet with designated City official(s) as necessary to review our findings and recommendations. Avenu/MuniServices will also provide additional assistance as necessary to support the City in recovering and preventing tax allocation errors/omissions.
- **Develop requests for corrective action and establish Date of Knowledge.** Prepare and forward to the appropriate parties' requests for corrective action and revenue recovery for misallocations. The date appropriate parties receive and acknowledge these requests are the Date of Knowledge (DOK).
- **County Assessor reviews misallocations identified by Avenu/MuniServices for reallocation.** From the DOK, the County Assessor's office will review the identified misallocations, and for those misallocations for which a correction is required, an Assessor's Roll Correction (ARC) will be processed by the County correcting those Misallocations, typically triggering a reallocation. The Roll Year in which the assessments first appear corrected is the Date of Correction. Corrected assessments result in proper allocations in subsequent Roll Years ("Corrected Allocations").
- **County Auditor/Controller reallocation.** Once the Assessor's office confirms errors and makes corrections, the information is forwarded to the Auditor/Controller for redistribution of revenues. The reallocation process is monitored through to receipt of revenue by the City.

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**Property Tax Information Service (PropertyLINK™)**

The CONSULTANT will provide PropertyLINK™ data management software that provides secured and unsecured property tax data. Additionally, the system provides essential reports for the City and RDA successor agency. The customizable ad-hoc query tool, pre-defined reports and export capabilities turns the property tax data into a policymaking and economic development management tool. Reports to be produced by CONSULTANT and/or available within the PropertyLINK™ databases include:

1. Top (1 - 100) Property Owners
2. Top (1 - 100) Property Tax Payers
3. Top (1 - 100) Property Tax Detail
4. Property Transfers since prior period
5. Pre-Prop 13 Property Listing
6. Top (1 - 100) Taxable Value Changes
7. New Construction Activity (requires City building permit data)
8. Multiple Owned Parcel
9. Absentee Owner Parcel Listing
10. Taxable Value Summary Tax Rate Area, Land Use and Tax Type
11. Estimated City Share Revenue TRA
12. Tax Revenue Summary TRA
13. Taxable Value by Land Use
14. Taxable Value Change Summary by TRA
15. Tax Increment Revenue Summary

In addition to pre-defined reports, the CONSULTANT can provide the City with a variety of additional reports that can be customized for the City. The Ad-Hoc query capability enhanced by Avenu/MuniServices' report building tools to allow for:

1. Complete control of ad hoc report generation facilitated by the Integrated Custom Report Designer
2. Automatic report generation
3. Easy to use selection criteria for field selection
4. Full control of tabular field selection, sorting and display
5. Ability to export selected data to Excel, Delimited (Tab/Comma), or XML file formats

**Information and Data**

CONSULTANT will secure all primary sources of information and load them into PropertyLINK™. CONSULTANT will also purchase data as needed from other external sources. City will provide any authorizations needed to obtain the secured and unsecured property rolls.

**Forecast**

The property tax revenue forecast includes a preliminary estimate and a mid-year update. Mid-year forecast updates utilizing recent sales activities, current annual inflationary factors, and pending appeals potential impacts result in highly accurate annual growth estimates.

**Assessment Appeals**

The Assessment Appeal Reports analyze historical success rates; pending appeals and the potential impact they may have on the City and each RDA project area and are prepared quarterly. Assessment Appeals Reports will contain the following information:

1. Top 20 Property Tax Generators – Listing of top property tax generators combined by owner
2. Current Pending Appeals for Top 20 Property Tax Assessors – Lists appeals filed and pending by top property tax generators
3. Assessment Appeal History and Success Rate – Lists historical disposition of appeals with success rates and financial impact
4. Pending Appeals Total Impact Projections – Calculates potential impact of pending appeals based on historical rates
5. Pending Appeals Annual Impact Projections

**Statistical Reporting Package for the City's Comprehensive Annual Financial Report (CAFR)**

The CAFR basic package reports assist the city in preparing the statistical section of the cities CAFR reporting requirements and will be provided on an annual basis in the cities format and in compliance with GASB No. 44. The reports include:

1. Assessed and Estimated Market Value (city-wide, city-only and/or RDA)
2. Property Tax Land Use Distribution
3. Direct & Overlapping Property Tax Rates
4. Principal (Top 25) Property Tax Payers
5. Principal (Top 25) Sales Tax Producers

The Additional CAFR reports that are available include:

1. Direct and Overlapping Debt
2. Principal Employers
3. Demographics and Economic Statistics

**End of Exhibit A**

**EXHIBIT B**  
**COMPENSATION**

**SALES, TRANSACTIONS AND USE TAX AUDIT SERVICES (SUTA) SERVICES**

**What the CITY will pay CONSULTANT**

CONSULTANT's compensation for the Sales, Transactions and Use Tax Audit Service is as follows:

- 14% contingency fee (up to \$2 million)
- 10% contingency fee (between \$2 million to \$3 million)
- 5% contingency fee (over \$3 million)

This fee structure applies to revenue received for six quarters beginning with the quarter in which the Date of Correction falls and all eligible prior quarters back to and including the three quarters prior to the Date of Knowledge quarter for Bradley-Burns sales tax revenues and all eligible prior quarters back to and including all corrected quarters prior to the Date of Knowledge quarter for district tax revenues. As used herein, the Date of Knowledge is the quarter during which CONSULTANT notifies the CDTFA of the existence of a misallocation. As used herein, the Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the CDTFA distributes the local tax properly to CITY based on the taxpayer's reporting. For QDR Misallocations detected and corrected, CONSULTANT's compensation shall only include the quarters for which the misallocation actually occurred.

For clarification and to encourage communication and collaboration between CONSULTANT and the CITY, CONSULTANT shall be entitled to full payment of all compensation as provided herein even if any one or more of CITY, its personnel, agents, or representatives, or any third party or parties provide(s) information to CONSULTANT that assists or is used by CONSULTANT in the identification, detection, and correction of point-of-sale distribution errors or the reporting and/or misallocation of revenue.

Should the CITY identify, document, and notify the CDTFA in writing of a point-of-sale distribution error, reporting error or misallocation as those terms are used herein, the CITY agrees to notify CONSULTANT of the CITY's discovery no later than ten (10) days after the Date of Knowledge as defined in Title 18 of the California Code of Regulations, Regulation 1807 ("Date of Knowledge"). If the CITY fails to so notify CONSULTANT as provided above and CONSULTANT later detects, documents, and reports the misallocation or reporting error to the CDTFA, or if CONSULTANT has established a Date of Knowledge with the CDTFA prior to notification to the Board by the CITY, then CONSULTANT is entitled to full compensation for the affected account as provided herein.

**Invoicing/Billing**

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

**Additional Consulting**

CITY may request that CONSULTANT provide additional consulting services at any time during the term of the 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, CONSULTANT's standard hourly rates range from \$75 per hour to \$325 per hour.

These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. All reimbursable expenses shall receive prior approval from the CITY and shall be reimbursed at cost to CONSULTANT.

### **Completion of Services**

Notwithstanding any other provision of this Agreement, because CONSULTANT's services performed hereunder result in corrections of misallocations and other revenue after cessation of services by CONSULTANT for CITY, CITY agrees that with regards to misallocations identified to the CDTFA whose Date of Knowledge occurred during CONSULTANT's performance of services for CITY or for other revenue resulting from CONSULTANT's actions taken during the term of this Agreement, that CITY's obligation to pay CONSULTANT in accordance with the compensation language of this Agreement shall survive expiration or termination of this Agreement for any reason. Additionally, notwithstanding any other provision of this Agreement, if this Agreement is terminated or expires, CONSULTANT shall continue to pursue corrections of accounts identified during the term of this Agreement that have not been corrected by the CDTFA as of the effective date of termination or expiration. The period after termination during which CONSULTANT is pursuing correction of accounts identified before termination is referred to as the "completion period." CITY shall compensate CONSULTANT in accordance with the compensation language of this Agreement for corrected misallocations that result from CONSULTANT's efforts during the completion period. CITY will also take all necessary steps to allow CONSULTANT to continue to receive the required information from the CDTFA during this completion period.

### **SALES/USE TAX ANALYTICS & REPORTING - 'CLEARVIEW'**

1. **Base Package Annual fee.** CITY shall pay CONSULTANT an annual fee of \$3,200 ("annual fee") payable in four equal quarterly payments of \$800. CONSULTANT will invoice the CITY on a quarterly. Invoices are due and payable within thirty (30) days of receipt. If this Agreement is terminated for any reason, the CITY remains obligated to pay CONSULTANT the quarterly payments of the annual fee for the quarters before the effective date of termination.
2. **Adjustments.** CONSULTANT will adjust the Base Package Annual Fee and any of the optional fees at the beginning of each calendar year by the percentage change in the Consumer Price Index that pertains to CITY's particular geographic area as reported by the Bureau of Labor Statistics. Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%). Any adjustments shall not be revised during the term of the agreement (including any extension periods) without prior approval by CITY's City Council.

### **PROPERTY TAX INFORMATION SERVICE (PropertyLINK™)**

Property Tax Audit Services: Property Tax Audit service for a one-time fee of \$5,000 in the year an audit is completed. PropertyLINK™ and the Basic CAFR Reports are an annual fee of \$7,000 to be paid in quarterly installments of \$1,750.

Information services also includes the property tax forecast, semi-annual assessment appeals reports and the CAFR basic package reports.

### **Additional CAFR Reports**

Direct and Overlapping Debt (\$500)

Principal Employers (\$1,000)

Demographics and Economic Statistics (\$200)

**ADDITIONAL CONSULTING**

The City may request that Consultant provide additional consulting services at any time during term of the Agreement. If Consultant and the City agree on the scope of the additional consulting services requested, then Consultant shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, Consultant's standard hourly rates range from \$75 per hour to \$325 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. The following are sample hourly rates based on the job classification (these rates are subject to change):

**Consultant's Hourly Rate Schedule**

<b>Position</b>	<b>Hourly Rate</b>
Legal	\$325
Principal	\$200
Project Manager/Director	\$175
Client Services Executive	\$150
Senior Analyst	\$125
Information Technology	\$175
Analyst	\$100
Administrative	\$75

**End of Exhibit B**

**EXHIBIT C**  
**GENERAL PROVISIONS**

**I. Standard Requirements**

- A. Assignment and Subcontracting.** To assignment of this Agreement or of any part or obligation of performance hereunder shall be made, nor shall any required performance be subcontracted, either in whole or in part, by CONSULTANT without the prior written consent of CITY.
- B. Compliance with Law.** CONSULTANT shall forthwith undertake and complete the Services in accordance with Exhibit "A" attached to this Agreement and all in accordance with Federal, State and CITY statutes, regulations, ordinances and guidelines all to the reasonable satisfaction of CITY.
- C. Confidentiality.** Any and all information and data provided to CONSULTANT pursuant to this Agreement shall be forever maintained as confidential by CONSULTANT, to the maximum extent permitted by law.
- D. Standard of Care.** CONSULTANT shall provide exceptional Standard of Care while fulfilling the terms of this Agreement, is performing as a representative of CITY. Any negative contact with staff, residents/citizens, businesses, visitors or other CONSULTANTs shall be reported by CONSULTANT Immediately to CITY. CONSULTANT's management and supervisory personnel shall intercede to resolve or mitigate the negative contact in conjunction with CITY staff. CITY and CONSULTANT may agree in advance to a single person contact, a representative of either the CITY or CONSULTANT, for the investigation and response to complaints.
- E. Hires.** CONSULTANT shall, at CONSULTANT's sole cost and expense, secure and hire such other persons as may, in the opinion of CONSULTANT, be necessary to comply with the terms of this Agreement. In the event any such other persons are retained by CONSULTANT, CONSULTANT hereby warrants that such persons shall be fully qualified to perform services required hereunder. CONSULTANT further agrees that no subCONSULTANT shall be retained by CONSULTANT except upon the prior written approval of CITY.
- F. Independent CONSULTANT.** CONSULTANT is retained by CITY only to the extent set forth in this Agreement, and the CONSULTANT's relationship to the CITY is that of an independent CONSULTANT. CONSULTANT shall be free to dispose of all portions of CONSULTANT's time and activities which CONSULTANT is not obligated to devote to the CITY in such a manner and to such persons, firms, or corporations as the CONSULTANT sees fit except as expressly provided in this Agreement. Neither the CITY nor any of its agents shall have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as set forth in this Agreement. CONSULTANT shall not have the status of an employee under this Agreement, or be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided for CITY's officers or employees. CONSULTANT shall have no power to incur any debt, obligation, or liability on behalf of CITY or otherwise act on behalf of the CITY as an agent. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY. CONSULTANT agrees to pay all required taxes on amounts paid to CONSULTANT under this Agreement, and to

indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interest asserted against CITY by reason of the independent CONSULTANT relationship created by this Agreement. CONSULTANT shall fully comply with the workers' compensation law regarding CONSULTANT and CONSULTANT's employees. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with applicable workers' compensation laws. CITY shall have the right to offset against the amount of any fees due to CONSULTANT under this Agreement any amount due to CITY from CONSULTANT as a result of CONSULTANT's failure to promptly pay to CITY any reimbursement or indemnification arising under this Section.

- G. **Information and Assistance.** CITY will provide information and assistance as set forth in Exhibit "A" hereto; photographically reproducible copies of maps and other information, if available, which CONSULTANT considers necessary in order to complete the Project. Such information as is generally available from CITY files applicable to the Project. Assistance, if necessary, in obtaining information from other governmental agencies and/or private parties. However, it shall be CONSULTANT's responsibility to make all initial contact with respect to the gathering of such information.
- H. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Orange, California.
- I. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party which is not embodied herein nor any other agreement, statement, or promise not contained in this Agreement shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing signed by all parties.
- J. **Precedence of Documents.** In the event of any inconsistency or conflict between the Agreement and any of the Exhibits or any other attachments, the Agreement, then this Exhibit C, then the remaining Exhibits and attachments shall govern.
- K. **Termination.** This Agreement may be terminated by CITY for any or no reason upon the giving of a written notice of termination to CONSULTANT at least fifteen (15) days prior to the date of termination specified in said notice. In the event this Agreement is so terminated, 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. In no event, however, shall CONSULTANT receive more than the compensation outlined in Exhibit B. CONSULTANT shall provide to CITY any and all Work Product including all documents, data, studies, surveys, drawings, maps, models, photographs and reports, whether in draft or

final form, prepared by CONSULTANT as of the date of termination.  
CONSULTANT may not terminate this Agreement except for cause.

**End of Exhibit C**

**EXHIBIT D**  
**INDEMNITY AND INSURANCE REQUIREMENTS**

**I. Indemnity Requirements**

**A. Indemnity for Professional Services.**

To the fullest extent permitted by law, the CONSULTANT shall, at its sole cost and expense, protect, defend, hold harmless and indemnify City, its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those CITY agents serving as independent CONSULTANTS in the role of CITY officials (collectively "Indemnitees" in this Section), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys and other professionals, and all costs associated therewith (collectively "Claims"), whether actual, alleged or threatened, arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of CONSULTANT, and/or its officers, agents, servants, employees, subCONSULTANTS, CONSULTANTS or their officers, agents, servants or employees (or any entity or individual for that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this Agreement. CONSULTANT shall defend the Indemnitees in any action or actions filed in connection with any Claims with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONSULTANT shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

**B. Other Indemnities.**

Other than in the performance of professional services, and to the fullest extent permitted by law, CONSULTANT shall, at its sole cost and expense, protect, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens and losses of any nature whatsoever, including fees of accountants, attorneys and other professionals, and all costs associated therewith, and the payment of all consequential damages (collectively "Damages"), in law or equity, whether actual, alleged or threatened, which arise out of, pertain to, or relate to the acts or omissions of CONSULTANT, its officers, agents, servants, employees, subCONSULTANTS, materialmen, suppliers, or CONSULTANTS, or their officers, agents, servants or employees (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Damages arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties. CONSULTANT shall defend the Indemnitees in any action or actions filed in connection with any Damages with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. CONSULTANT shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

- C. These Indemnification provisions are independent of and shall not in any way be limited by the Insurance Requirements of this Agreement. City approval of the Insurance required by this Agreement does not in any way relieve the CONSULTANT from liability under this Section.

**II. Insurance Requirements**

**A. General**

1. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the existing policies do not meet the Insurance Requirements set forth herein, CONSULTANT agrees to amend, supplement or endorse the policies to do so.
2. Without limiting the CONSULTANT's indemnity obligations hereunder, CONSULTANT shall procure and maintain in full force and effect for the Term of this Agreement, the following policies of insurance.
3. For all insurance required by this Agreement, if a general aggregate limit applies, either the general aggregate limit shall apply separately to the Services or the general aggregate limit shall be twice the required occurrence limit.
4. If the CONSULTANT maintains broader coverage and/or higher limits than the minimums required herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONSULTANT.

**B. Coverages**

**1. Commercial General Liability (CGL)**

- a) CGL affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury.
- b) Limits shall be no less than \$2,000,000 per occurrence

**2. Products-Completed Operations (PCO)**

CONSULTANT shall procure and submit to City evidence of insurance for a period of at least ten (10) years from the time that all work under this Contract is completed.

**3. Automobile Liability Insurance (ALI)**

- a) ALI with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) for each accident for bodily injury and property damage with limit no less than \$1,000,000 per occurrence.
- b) If CONSULTANT does not own any vehicles, CONSULTANT may satisfy this requirement by providing the following:
  - (1) A personal automobile liability policy for the CONSULTANT's own vehicle, if CONSULTANT is a one-person operation; and
  - (2) A non-owned & hired auto liability endorsement to the commercial general liability policy if the CONSULTANT may lease, hire, rent, borrow, or use vehicles of others (e.g., employee-owned vehicles).

**4. Workers' Compensation (WC)**

- a) Workers' Compensation as required by the State of California with statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease.
- b) Self-Employment Affidavit or Declaration, signed under the penalty of perjury, if CONSULTANT does not have any employees who will be performing work on behalf of City, CONSULTANT must provide the following:
  - (1) A signed Self-Employment Affidavit Letter or a signed Declaration that CONSULTANT is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that CONSULTANT will comply with such provisions before commencing the performance of the work of this contract; and

- (2) A certification that CONSULTANT does not employ any individual(s) in the course and scope of business operations.

**5. Professional Liability Insurance (PL)**

- a) Covered Professional Services shall specifically include all work to be performed under this contract and delete any exclusion that may potentially affect the work to be performed.
- b) Limits shall be no less than \$1,000,000 per claim; \$2,000,000 aggregate

**C. Endorsements**

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to City for approval. The insurance policies shall contain or be endorsed to contain, the following provisions:

**1. Commercial General Liability & CONSULTANTs Pollution Liability**

**a) Additional Insured**

- (1) City, its elected officials, officers, employees, volunteers, boards, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the CONSULTANT including materials, parts or equipment furnished in connection with such work or operations.
- (2) Additional Insured Endorsements shall not:
  - (a) Be limited to "Ongoing Operations"
  - (b) Exclude "Contractual Liability"
  - (c) Restrict coverage to the "Sole" liability of CONSULTANT
  - (d) Exclude "Third-Party-Over Actions"
  - (e) Contain any other exclusion contrary to the Contract
- (3) Additional Insured Endorsements shall be at least as broad as ISO Form(s) CG 20 10 11 85; or CG 2010 and CG 20 37.

**b) Primary Insurance**

This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

**2. Auto Liability**

**a) Additional Insured**

City, its elected officials, officers, employees, volunteers, boards, agents and representatives) shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the CONSULTANT.

**b) Primary Insurance**

This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

**3. Workers' Compensation**

A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

**D. Insurance Obligations of CONSULTANT**

The Insurance obligations under this Agreement shall be: (1) all the Insurance coverage and/or limits carried by or available to CONSULTANT; or (2) the minimum Insurance coverage requirements and/or limits shown in this agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to City. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the CONSULTANT under this agreement.

**E. Notice of Cancellation**

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon City except ten (10) days shall be allowed for non-payment of premium.

**F. Waiver of Subrogation**

Required insurance coverages (except professional liability) shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss. CONSULTANT shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether City has received a waiver of subrogation endorsement from the insurer.

**G. Evidence of Insurance**

All policies, endorsements, certificates, and/or binders shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by City. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be

filed with City. If such coverage is cancelled or reduced, CONSULTANT shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

**H. Deductible or Self-Insured Retention**

Any deductible or self-insured retention must be approved in writing by City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. City may require the CONSULTANT to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention.

**I. Contractual Liability**

The coverage provided shall apply to the obligations assumed by the CONSULTANT under the indemnity provisions of this Contract.

**J. Failure to Maintain Coverage**

CONSULTANT agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to City. City shall have the right to withhold any payment due until CONSULTANT has fully complied with the insurance provisions of this Contract.

In the event that the CONSULTANT's operations are suspended for failure to maintain required insurance coverage, the CONSULTANT shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

**K. Acceptability of Insurers**

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by City.

**L. Claims Made Policies**

If coverage, including coverage for Construction Defect claims, is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial CONSULTANT's Agreement with City and an extended reporting period shall be provided for a period of at least ☐ 2 years ☒ 3 years ☐ 5 years ☐ 10 years from termination or expiration of this Contract.

**M. Insurance for SubCONSULTANTS**

CONSULTANT shall be responsible for causing SubCONSULTANTS to purchase the same types and limits of insurance in compliance with the terms of this Contract/Agreement, including adding City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the

SubCONSULTANT's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as broad as CG 20 38 04 13.

**End of Exhibit D**

## RESOLUTION NO. \_\_\_\_\_

### A Resolution of the City Council of the City of Brea Authorizing Examination of Sales and Use Tax Records

**WHEREAS**, pursuant to Ordinance Number [02-108](#) the City of Brea (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 Brea 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, THE CITY COUNCIL OF THE CITY OF BREA HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** That the [Administrative Services Director, Financial Services Manager, Revenue & Budget Manager, Senior Fiscal Analyst](#), 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.

- that contract;

**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/redistribtuion 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.:

**Section 5.** That this resolution supercedes all prior resolutions of the City Council of the City of Brea adopted pursuant to subdivision (b) of Revenue and Taxation Code section 7056.

Introduced, approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

ATTEST: (s) \_\_\_\_\_ (s) \_\_\_\_\_  
City Clerk Mayor

I, \_\_\_\_\_, City Clerk of the City of \_\_\_\_\_, California, DO  
HEREBY CERTIFY that the foregoing resolution was duly introduced, approved and adopted by the  
City Council of the City of \_\_\_\_\_, at a regular meeting of said Council held on  
the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following roll call vote:

Ayes: (Names of Councilmembers)

Noes: (Names of Councilmembers)

Absent: (Names of Councilmembers)

(s) \_\_\_\_\_  
City Clerk

City of Brea

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**FINANCE COMMITTEE COMMUNICATION**

**FROM:** Bill Gallardo

**DATE:** 05/11/2021

**SUBJECT:** Fiscal Year 2021-22 Refuse Rates - Informational

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**Attachments**

Refuse Rates Memo

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## CITY OF BREA

### ADMINISTRATIVE SERVICES DEPARTMENT PUBLIC WORKS DEPARTMENT

#### Memorandum

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Date: May 11, 2021

To: Finance Committee

From: Cindy Russell, Administrative Services Director  
Tony Olmos, Public Works Director

By: Faith Madrazo, Revenue & Budget Manager  
Gillian Lobo, Senior Management Analyst

Subject: **Refuse Rates for Fiscal Year 2021-22 – Informational**

The contractual relationship with Republic Services a.k.a. Brea Disposal (BDI) requires the Public Works Director to review and administratively modify the refuse rates effective July 1 each year. The refuse rate adjustments have traditionally been shared with the Finance Committee.

#### **Overall Residential Rate Increase**

The total amount of the rate increase effective July 1, 2021 is \$1.25 per month or 5.4% from the current rate of \$23.13 to \$24.38. The rate increase is more when compared to last year primarily due to the increase in the Fuel Pricing Index, the increase in Processing Yard Waste, the Transfer Fee (CVT), the Public Works/Utility Billing rate and the decrease in the recycling revenue credit. The overall rate increase last year was (\$0.53 per month or 2.35%).

The agreement calls for a commitment to pass on 90% of the December Consumer Price Index (CPI). The December 2019 CPI index for the Los Angeles-Riverside-Orange County was 1.45% resulting in an application of a 1.31% increase to various components of the refuse rates.

The components of the refuse rate subject to the CPI increase of 1.31% are:

- Refuse Collection (also includes bulky item)
- Recycling Collection & Yard Waste Collection (exclusive of green waste)

The components of the refuse rate subject to adjustment based on actual tonnage disposed as well as the CPI and/or other adjustments are:

- Gate Fees (per ton) paid to the County landfill. This component is adjusted by the gate fee as determined by the County of Orange.
- Transfer Cost (per ton) of disposed waste to landfill. This component is adjusted based on the CPI.
- Yard Waste Processing & Transfer cost of refuse from Republic Services to landfill. This component is adjusted based on the CPI.

The actual tonnage in 2020 was 11,938.56 tons as compared to 11,215.28 tons in 2019, an increase of 6.45% year over year.

Other components of the refuse rate are:

- Fuel Pricing Index
- Recycling Revenue Credit & Franchise Fee
- City Public Works/Utility Billing Costs

### **Fuel Pricing Index**

The Fuel Pricing Index component to the refuse rate is adjusted annually based on the cost of fuel and related products. The adjustment is based on the year to year change in the December U.S. Bureau of Labor Statistics Producer Price Index – Commodities #2 Diesel Fuel & Liquified Natural Gas.

The cost of fuel from 2019 to 2020 increased. This results in a 12.82% increase or \$0.05 more per month in the residential rate.

### **Recycling Revenue Credit**

Overall, recycling revenue has significantly decreased over the past couple years as the resale value of aluminum, glass, paper and cardboard products has declined. The recycling credit to customers decreased to \$0.25 per month. This City adjusted credit is based upon a five-year average (2016-2020).

### **Yard Waste (Green Waste)**

Due to the passage of Assembly Bill 1594, the County of Orange began charging on January 1, 2020 for the disposal of green material at the landfill because the green material no longer constitutes diversion through recycling. On January 21, 2020, the City Council adopted the rate of \$0.63 per residential customer, per month. At that public hearing, the City Council directed that this rate was not to be subject to the annual CPI increase and the franchise fee was not to be applied to this rate as well.

## **Collection, Disposal, and Transfer Components**

The average black can refuse per week was 37.19 pounds last year which has significantly increased to 39.48 pounds per can a week representing an increase of 6.16%. The increase in black can refuse increases the processing and disposal costs which are passed to the customer and are reflected in the rate. This increase in tonnage is expected to be primarily due to the stay-at-home order from the COVID-19 Pandemic. During 2020, most residents were not reporting to work and/or school, traveling, going to extra-curricular events and were also eating in or picking up take-out food causing more trash to be deposited into the landfill. Furthermore, many residents also made home improvements during this time and cleaned out their homes or garages causing additional tonnage to be sent to the landfill.

Yard waste significantly increased from 17.91 to 20.74 pounds per can a week, an increase of 15.8%. This increase is also expected to be due to stay-at-home orders during this past year. This could be the result of residents improving landscape areas and possibly putting excess trash in their brown bins.

Finally, in rate tables provided to the City last year, the CVT rate was incorrect. The error was discovered by the trash hauler in August 2020 after the rate notifications were sent to the residents. This error resulted in a \$0.11 per month reduced rate to trash customers. The transfer rate should have been \$1.33 instead of \$1.22. Thus, the year-over-year increase for the transfer rate is unusually high.

## **Public Works/Utility Billing**

A component of the monthly trash rate is City staff time related to providing residential trash services. Public Works staff time provides for the operation and administration of trash services to residential customers. New to this fiscal year and to the calculation is the addition of Utility Billing staff. The City bills refuse for residential customers through the monthly utility bill. The utility bill for residential customers includes water, sewer, trash, street sweeping and urban run-off utility charges. However, Utility Billing staff time was never accounted for as a separate cost for each utility. As such, the trash rates cover this staff time. Previously, Utility Billing staff time was charged mostly to the Water Utility Fund and a small portion to the General Fund for non-utility related functions. Beginning with Fiscal Year 2021-22, Utility Billing staff time previously charged to the City's Water Utility Fund will be allocated to all five utility funds.

There have been several unfunded State mandates passed in recent years related to recycling and organics, requiring all jurisdictions in California to bring their commercial businesses and/or residents into compliance. The current focus for Brea and other cities is Senate Bill 1383, which has extensive requirements for residential and commercial trash customers. Staff and the City's contractor are working on various areas of compliance, which includes, but is not limited to, the following: residential and commercial organics collection services, edible food recovery, community outreach and education, procurement, food recovery capacity, and compliance monitoring/enforcement. Efforts will involve changes to, or creation of new, City policies and ordinances, program infrastructure changes negotiated with the City's solid waste hauler in order to collect and dispose of organic material, and the participation of various City Departments.

REFUSE RATE COMPONENTS						
REFUSE RATE CHANGES FOR FY 2021-22						
		JULY 1ST	JULY 1ST	INCREASE		%
		RATE	RATE	(DECREASE)		INCREASE
		FY 2020-21	FY 2021-22	ROUNDED		(DECREASE)
<b>Residential</b>						
Refuse Collection		\$ 5.82	\$ 5.90	\$ 0.08		1.37%
Recycling Collection		5.04	5.11	0.07		1.39%
Yard Waste Collection		2.64	2.67	0.03		1.14%
Landfill Disposal						
Fuel Price Index		0.39	0.44	0.05		12.82%
Yardwaste (Greenwaste)		0.63	0.63	-		0.00%
Net to Hauler		14.52	14.75	0.23		1.58%
Yard Waste						
Processing & Disposal		1.77	2.08	0.31		17.51%
Landfill Disposal						
Gate Fee		2.85	3.06	0.21		7.37%
Transfer		1.22	1.43	0.21		17.21%
Rate Stabilization		-	-	-		0.00%
Tonnage Fees		5.84	6.57	0.73		12.50%
Sub-total		20.36	21.32	0.96		4.72%
Less: Recycling Revenue Credit		(0.31)	(0.25)	0.06		-19.35%
Sub-Total		20.05	21.07	1.02		5.09%
Franchise Fee @ 10%		1.94	2.04	0.10		5.15%
Sub-Total		21.99	23.11	1.12		5.09%
Public Works/Utility Billing		1.14	1.27	0.13		11.40%
TOTAL		\$ 23.13	\$ 24.38	\$ 1.25		5.40%

### **Extra Black Can**

There are 555 customers that currently receive an extra black can. The cost for the additional black can will increase \$0.55 from \$11.19 to \$11.74 per month.

### **Commercial Rate Increase**

The commercial monthly rates effective July 1, 2021 for the average customer with a 3-yard bin with once a week pick-up is \$158.18 per month, an increase of \$2.08 per month or 1.33%. Overall commercial rate increases are adjusted based on changes in the consumer price index and similar components such as landfill gate fees and disposal costs.