

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING
THE EXAMINATION OF SALES OR TRANSACTIONS AND USE TAX RECORDS**

WHEREAS, pursuant to Ordinance No. 55, the City of Milpitas entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local sales and use taxes; and

WHEREAS, pursuant to Resolution No. 153 and Section 7270 of the Revenue and Taxation Code, the City of Milpitas entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local transactions and use taxes; and

WHEREAS, the City Council of the City of Milpitas deems it necessary and desirable for authorized representatives of the City to examine confidential sales, transactions, and use tax records of the State Board of Equalization (hereinafter “the Board”) pertaining to sales, transactions, and use taxes collected by the Board for the City; and

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

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, including requiring the adoption of a resolution authorizing access to the sales, transactions, and use tax records.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

Section 1. That the Finance Director or other officer or employee of the City designated in writing by the Finance Director to the Board is hereby appointed to represent the City with authority to examine all of the sales, transactions, and use tax records of the Board pertaining to sales, transactions, and use taxes collected for the City by the Board pursuant to the contract between the City and the Board under the Bradley-Burns Uniform Local Sales and Use Tax Law or the Transactions and Use Tax Law. The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales, transactions, and use taxes by the Board pursuant to the contract or the purposes designated in Section 2.

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

- a) functions related to sales, transaction, and/or use tax collection or administration; and
- b) functions related to budgeting and forecasting of revenue; and
- c) functions related to the detection of misallocations and deficiencies.

Section 3. That MuniServices, LLC, is hereby designated to examine the sales, transactions, and use tax records of the Board pertaining to sales, transactions, and use taxes collected for the City by the Board under the City’s local sales and use tax ordinance or under any future Transactions and Use Tax Ordinances that may be enacted in the City.

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

- a) has an existing contract with the City to examine sales, transactions, and use tax records;
- b) is required by that contract to disclose information contained in, or derived from those sales, transactions, and use tax records only to an officer or employee authorized under Section 1 or Section 2 of this resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales, transactions, and use tax records after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of Board records shall be used only for purposes related to the collection of the City’s sales, transactions, and use taxes by the Board pursuant to the contracts between the City and the Board of Equalization or for purposes relating to the governmental functions designated in Section 2.

Section 4. That this Resolution supersedes all prior sales, transactions, and use tax resolutions of the City of Milpitas passed and adopted pursuant to subdivision (b) of Revenue and Taxation Section 7056.

PASSED AND ADOPTED this _____ day of _____ 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Gary M. Baum, Interim City Attorney

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
MUNISERVICES LLC**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and MuniServices LLC ("Consultant") as of July 1, 2015.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2018, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant the fees as set forth in Exhibit B, as applicable to each service described in Exhibit A. Consultant shall be responsible for all costs and expenses incident to the performance of services for City, including but not limited to all costs of equipment provided by Consultant, all fees, fines, licenses, bonds or taxes required of or imposed against Consultant, salaries of Consultant employees and all other of Consultant's costs of doing business. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein.

The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on services rendered in accordance with Exhibit A. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- Documents to substantiate the reallocations by the County of Santa Clara related to the property tax audit findings;
- Documents to substantiate the corrections by the State Board of Equalization related to the sales tax audit findings;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

2.4 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.5 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, Consultant shall cease performing services as specified in the notice of termination. Consultant shall be obligated to maintain documentation sufficient to establish that Consultant's right to compensation arose from services that have an established Date of Knowledge, as defined in Exhibit A, prior to the effective date of termination. Because the services performed by Consultant prior to termination may result in City's receipt of revenue after termination which are subject to Consultant's fee in accordance with the Exhibits attached hereto, City shall remain obligated after termination

to provide to Consultant such information as is necessary for Consultant to calculate the compensation due as a result of this receipt of revenue by City and City shall remain obligated to pay Consultant's invoices therefore in accordance with the terms of this Agreement.

- 2.6 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Consultant shall procure and maintain for the duration of this Agreement insurance policies against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his or her agents, representatives, employees or subcontractors, as set forth in Exhibit C, attached hereto, which is incorporated herein by reference.

- 4.1 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.2 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Exhibit C. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action, including but not limited to those for personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, arising from any acts or omissions of Consultant or his or her employees, subcontractors, or agents in performing services under this Agreement. The foregoing obligation of Consultant shall not apply when the injury, loss of life, damage to property, or violation of law arises solely from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers. For purposes of Section 2782 of the Civil Code, the parties hereto recognize and agree that this Agreement is not a construction contract. For purposes of Section 2782.8 of the Civil Code, the parties hereto recognize and agree that this Agreement is not for design professional services.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System

(PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement a valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

8.6.1 Immediate cancellation of the Agreement;

8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. Reasonable attorney's fees of the City Attorney's Office, private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the

state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

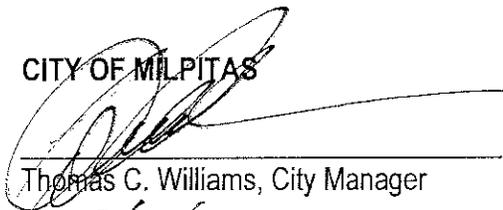
Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant

agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

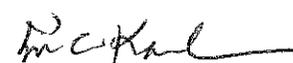
- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Emma Karlen, Assistant City Manager/Director of Financial Services, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
Doug Jensen, SVP Client Services
7625 N. Palm Ave., Ste. 108
Fresno, CA 93711
- Any written notice to City shall be sent to:
Emma Karlen, Assistant City Manager/Director of Financial Services
455 East Calaveras Boulevard
Milpitas, California 95035
- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.
- 10.14 Counterparts.** This Agreement may be executed in counterparts and each counterpart will have the same force and effect as an original

CITY OF MILPITAS

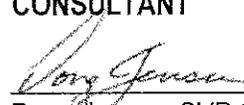

Thomas C. Williams, City Manager

8/14/15
Date

APPROVED AS TO CONTENT:


Emma Karlen, Assistant City Manager

CONSULTANT


Doug Jensen, SVP Client Services

8/17/15
Date

75-3078675
Taxpayer Identification Number

EXHIBIT A
SCOPE OF SERVICES
PROPERTY TAX SERVICES

MUNISERVICES, LLC (CONSULTANT) shall provide to the (City of Milpitas/RDA) (CITY), CONSULTANT's Property Tax Compliance Services which consists of Discovery, Audit and Recovery Services.

Objectives and Methods

CONSULTANT's Property Tax Audit service is designed to assist CITY in recovering the revenue to which it is entitled from its Property Tax and RDA Tax Increment. 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.

Because there are time limitations on the CITY's ability to recover misallocated revenue, prompt correction of these errors and omissions is essential to maximizing revenue potential.

The following steps are taken in conducting CONSULTANT's Property Tax Audit:

- o Contact CITY's designated staff to review service objectives, scope, workplan schedule, public relations and logistical matters. CONSULTANT will also establish an appropriate liaison with the CITY's coordinator and logical checkpoints for progress reviews.
- o Represent the CITY for purposes of examining records pertaining to property tax and RDA successor agency tax increment to identify and confirm any errors/omissions that are resulting in deficient payment of tax revenues to the CITY.
- o 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").
- o Meet with designated CITY official(s) as necessary to review our findings and recommendations.
- o 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 is the Date of Knowledge.
- o Provide additional assistance as necessary to support the CITY in recovering and preventing tax allocation errors/omissions.

From the Date of Knowledge, 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").

Specifically, CONSULTANT shall:

- o Establish a comprehensive inventory of every parcel located within the CITY and within the RDA project(s), including the database elements needed to facilitate a comparison analysis with County secured and unsecured taxable values.

- o Conduct an audit of the CITY local secured and unsecured valuations, on a parcel-by-parcel basis to determine tax rate area (TRA) miscoding errors and omissions.

Timing and Reporting

CONSULTANT shall commence the revenue enhancement audits and annual report services within 10 working days of authorization (unless instructed otherwise by the CITY) with the objective of delivering the initial audit reports within 90 to 120 working days. Thereafter, CONSULTANT shall provide the CITY with audit progress reports to include, but not be limited to, the following:

- o Actual revenue produced for the CITY by CONSULTANT's service on an annual and cumulative basis.
- o Projected revenue forthcoming to the CITY as a result of CONSULTANT's audit service, specified according to source, timing and one-time payment versus ongoing.
- o Listing of all errors/omissions detected for the CITY including, for each, the account number, correction status, payment amount received by the CITY, period to which payment is related and payment type (e.g. reallocation, deficiency assessment, etc.).
- o Status of the work including copies of reports provided by the County addressing each reporting error/omission individually, the Incorrect Parcel Number, Correct Parcel Number, Assessee, Correct TRA assignment, Business ID, Address, Secured and Unsecured Valuation, Exemptions, Net Total Valuation of misallocated assessments.

SALES AND USE TAX AUDIT (SUTA)

Objectives and Methods

CONSULTANT's Sales and/or Transactions and Use Tax Audit service is designed to maximize the CITY's income - and minimize the cost of lost revenue - by detecting and documenting misallocations of local district tax/transactions and use tax, Bradley-Burns sales tax and local use tax activity within the statute of limitations on recoverability.

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

- Identify and correct the sales/use tax reporting errors of businesses that, based on the nexus of their activities, are not properly registered with the CITY.
- 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.
- Detect, document and correct sales/use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for the CITY.
- Ensure through comprehensive audit measures that the revenue information used for ongoing economic analysis includes all sales/use tax generators.
- 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/use tax allocation audit services for the CITY includes five distinct types of audits:

Taxable Nexus Field Audits

CONSULTANT's initial and periodic taxable nexus field audits include a physical canvassing and evaluation of sales/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/use tax revenue. The result is new or 'found' revenue for the CITY.

Permitization Audits

Wholesalers, contractors, processors, manufacturers and other non-retail businesses will frequently not have a sales or use 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/use tax from the State Board of Equalization (SBE) 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 State Board of Equalization audits taxpayers for sales/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 SBE 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 SBE, 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 SBE, 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. 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 SBE 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/use tax revenue for the CITY. CONSULTANT's QDR audits focus on those accounts where CONSULTANT observes a substantial decline in the sales/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 revenue for three quarters prior to the SBE being notified of the reporting error. 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.

SUTA Detection and Documentation

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

- Review applicable provisions of the CITY's municipal code and ordinance adopted by the CITY.
- Procure a computer tape of sales/use tax permit records from the State Board of Equalization (SBE).

- Analyze sales tax distribution reports provided by the SBE for five or more of the most recent consecutive quarters.
- Clean-up, standardize and computerize data from CITY's quarterly sales tax distribution reports provided by SBE for previous quarters, current quarter and each future quarter service is provided.
- 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, and the CITY's revenue payment files.
- 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.
- Physically canvas commercial/industrial area within the CITY's borders.
- Develop a target list of potential point of sale/use reporting errors/omissions based on:
 - An electronic comparison of CONSULTANT's comprehensive inventory against the SBE's quarterly distributions for the CITY, and
 - An analysis of each potentially misallocated account based on proprietary guidelines established by CONSULTANT.
- Meet with designated CITY official(s) to review service objectives and scope, CONSULTANT workplan schedule, public relations and logistical matters.
- 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.)
- Provide to the CITY and SBE 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/use tax revenue which should be forthcoming to the CITY.
- CONSULTANT may also provide suggested language for letters to be sent to the taxpayers and/or SBE from the CITY (or from CONSULTANT on behalf of the CITY) urging cooperation in promptly correcting the distribution error.
- Respond to negative findings by SBE with timely reconfirmation documentation in order to preserve the CITY's original dates of knowledge.
- Receive and process registration control record information monthly.
- Receive and process sales tax distribution reports quarterly.
- Coordinate with the taxpayer and State Board of Equalization to make the necessary corrections and collect eligible back quarters amounts.
- Monitor and analyze the quarterly distribution reports with an audit focus on the following:
 - 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.

- 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.
- Those accounts receiving deficiency assessments to ensure that the CITY receives its local allocation
- Identify opportunities for the CITY to recover local allocation on purchase transactions subject to use tax. CONSULTANT will prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

For each misallocated account detected, CONSULTANT will coordinate with the business and SBE to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/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 State Board of Equalization 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.

Timing

CONSULTANT shall commence auditing the sales/use tax and preparing the sales tax Query System within 10 working days of receipt of a fully executed contract and Confidentiality Resolution designating CONSULTANT as the authorized CITY CONSULTANT to examine sales and use tax records.

Confidentiality Provisions

CONSULTANT is authorized by this Agreement to examine sales and use tax records of the State Board of Equalization provided to CITY pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.

CONSULTANT is required to disclose information contained in, or derived from, those 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 sales and use tax records, after this Agreement has expired.

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

Objectives and Methods

CONSULTANT's STARS Reports provides a summary that features a general analysis regarding statewide trends that may affect the CITY's sales tax plus a specific analysis of the CITY's sales tax composition, changes and performance. Report graphically illustrates the data and analysis presented in the Summary. STARS Reports include the Quarterly Management Summary and specialized reports that provide analysis of the CITY's sales tax economic base and performance for the latest complete quarter and benchmark year.

Timing & Reports

CONSULTANT shall:

- Provide the CITY with quarterly updated STARS Reports.
- Install the STARS Query System on a CITY designated PC
- Update quarterly the CITY's sales tax registration and allocation data from the State Board of Equalization (SBE) from CONSULTANT's proprietary STARS Query System on IBM compatible PCs with Microsoft Access export capacity. (note: STARS is provided in encrypted formats)
- Train authorized CITY staff in the use of the STARS Query System.

Quarterly Stars Digest

CONSULTANT will provide the CITY with quarterly updated bound STARS Reports including accounts from which the CITY receives sales tax revenue. The primary reports included in the STARS Reports are:

- **Allocation Summary** - Reconciles SBE advances, cleanup payments and pool allocations with budget projections to assist the CITY with revenue forecasting and receipt monitoring.
- **Cash Analysis** - Quarterly aberrations due to SBE audits, fund transfers, and other causes are also identified and analyzed for budget planning and revenue forecasting purposes.
- **Top 100 Five-Year** - Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- **Top 100 Detail** - Sales tax performance of the CITY's top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of CITY sales tax produced is also shown by each account.
- **Economic Category Performance** - An analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.
- **Significant Change Analysis** - A report reflecting magnitude of change, indicating which key businesses grew or declined, measured in absolute dollars and percentages.
- **Business Code Classification** - This report shows the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- **Historical Economic Composition** - Data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by each category and segment is also shown to indicate trends in sales tax composition as well as performance.

- **Geo-Area Reports** - Tracks sales tax performance within designated areas of the CITY (e.g., key shopping centers, business parks, and downtown /business districts.). Charts and printed reports are included for each geo-area.
- **Cross-Reference Reports** - These reports allow the user to look up any account shown in the STARS Reports by name, address or account number.

Stars Query System

CONSULTANT shall install the STARS Query System (a software program) on a CITY designated, IBM-compatible PC. Each quarter, CONSULTANT shall provide the CITY with updated information from SBE on CD-ROM. The data shall be provided in an encrypted format allowing the CITY to export sales tax information from the Query System in an Access-compatible format.

The Query System enables CITY staff to analyze the contribution of sales/use tax revenue from each taxpayer in the CITY on an individual, grouped or sorted-order basis by business name, business type, permit number, size ranking, street address, development, shopping center or other geographic area. Reports may be generated by any year (i.e., calendar, fiscal, benchmark) or for any particular quarter for all periods stored in the historical database.

The initial STARS Reports and Sales Tax Query System shall be delivered and installed within 45 working days following receipt of a fully executed contract, confidentiality resolution and the SBE sales tax registration and payment data. Subsequent quarterly Query System updates and STARS reports will be delivered to the CITY within 30 days following receipt of the quarterly distribution reports from the SBE.

Quarterly Sales Tax Review Meetings & Consulting

The Quarterly Sales Tax Review Meetings allow staff to meet with their CONSULTANT's Client Services Manager/Project Manager on an individualized basis to provide consulting services – the capstone of STARS value. CONSULTANT will meet with staff as frequently as desired to discuss forecasts and consulting reports that explain the revenue received from the SBE, which includes cash receipts analysis, regional comparison report, quarterly changes report, per capita charts, historical trend analysis, top 100 businesses, legislative and regulatory updates, and related other topics.

License Agreement

The STARS Query System is licensed software provided by CONSULTANT. The terms and conditions of the STARS Query System End-User Notice and License Agreement are provided below. By installing and using the STARS Query System, the CITY agrees to be bound by the terms of the License Agreement.

Upcoming Improvements to STARS

MuniServices is nearing completion of a brand new STARS service. The New STARS, which will not only move the service online, add more robust features and replace the current books and inquiry system, but will enhance the service through optional services like GIS mapping and premium predictive analytics tools.

CONSULTANT proposes to provide the CITY with all its sales and use tax data through our new online STARS program and report portal with the new system allowing for exportation of sales tax to Microsoft

Excel or Adobe PDF formats. The Excel exports are true exports allowing the CITY to interact with the data and charts after export. The PDF exports include tables of content with hyperlinks to each section. The new system allows CITY staff to interact with sales tax data from the location level to citywide level; some up to 20+ years of history; on a cash or economic basis; by quarter or year; by classification grouping from NAICS to economic category; and, by geographic area. By interacting with the data across any combination of these parameters, the CITY will be able to quickly identify the information it needs for policy and performance analyses. Even though the new system delivers an impressive and powerful tool to the CITY, we will continue to offer a client relations team to conduct research and analysis for CITY staff.

The New STARS portal is will be accessible via the web and we will update the information available via the web-portal within 15 working days after we receive the data from the SBE.

Added Features in the New STARS platform include but are not limited to the following:

- Create and maintain subsets of the information based on geographic features
Once development and testing have been completed, MuniServices will release software capable of reporting and tracking sales tax information on a cash or economic basis, with historical geographic-based information and with enhanced reporting, charting and analysis tools. Additionally, MuniServices software and reports will contain NAICS codes, new economy business codes and enhanced economic development reports.
- Ability to define and print reports
CITY staff will be able to interact with your data to refine a document for export to PDF files. They will also be able to request new documents and receive the benefit of other clients' design requests. When CITY staff decides to export to PDF, they will have the opportunity to control the amount of information flowing to the PDF. The PDF will include a table of contents hyperlinked to each section in the PDF report.
- Ability to export all data to a spreadsheet
CITY staff will be able to interact with your data to refine a document for export to Excel files. The export to Excel is a true export, in that, the exported data and charts maintain the user's ability to customize the charts after export. Each section of the report will export to its own tab in the Excel file, with tab names to match the contents. As a result, the CITY will be able to tailor content to other documents or presentations in important ways image exports would not allow.
- Delivery Path – Approved CITY Staff
CITY staff will be able to interact with your data on each page of our new web-based analytical platform. The virtue of the new platform is the ability to instantly update content and tools. Examples of what authorized CITY staff will find on the site include:
 - Responsive charts and tables showing current and historical performance you can reconfigure and export as PDF or Excel spreadsheets. You can then use the content in presentations or reports.
 - Detailed business research to the location level and across economic classifications and owner's information.

- Feedback loop with our platform management team to design and incorporate new tools for the CITY.
- Interactive mapping tool you can use to visualize and configure information from a single business on up to streets, geographic areas,
- Predictive analytics guiding scenario planning and much, much more.

We look forward to demonstrating our proprietary platform to all interested CITY staff.

STARS END-USER NOTICE and LICENSE AGREEMENT

The STARS Query System is licensed software provided by CONSULTANT. The terms and conditions of the STARS Query System End-User Notice and License Agreement are provided below. By installing and using the STARS Query System, the CITY agrees to be bound by the terms of the License Agreement.

Notice to end-user: Installation or use of the STARS Query System software and associated Data (together "Software") on a computer system constitutes user's ("Your" et. al) acceptance of these terms. If You do not agree to the terms of this license, discontinue this installation and promptly delete the Software from the computer system, destroy any copies you made of the Software or any installation diskettes of the Software, and dispose of all written materials in Your possession regarding the Software. This License is effective until terminated. You may terminate it at any time by destroying the Software and all copies of it. It will also terminate if You fail to comply with any term or condition of this License. You agree upon termination to destroy the Software together with all copies of the Software.

License Grant: MuniServices, LLC grants to You a license to install and use one copy of the Software on a single computer. Your license to use the Software is conditioned upon Your compliance with the terms of this Agreement. A License is required for each installation of the Software. You may make one (1) copy of the Software for archival purposes only.

Copyright: The Software is protected by copyright laws and international treaty provisions. You acknowledge that no title to the intellectual property in the Software is transferred to You. You further acknowledge that title and full ownership rights to the Software will remain the exclusive property of MuniServices, LLC and You do not acquire any rights to the Software except as expressly set forth in this license. The Software in source code form remains a confidential trade secret of MuniServices, LLC and decompiling, disassembling, or otherwise reverse engineering the Software in any way is prohibited as a violation of those copyrights.

Prohibited Uses: You may not (a) use, copy, modify, alter, or transfer the Software or documentation except as expressly provided in this License; (b) translate, disassemble, decompile, reverse program or otherwise reverse engineer the Software; (c) sublicense or lease the Software or its documentation; or (d) use a single installation of the Software in a multi-user or multiple computer environment or in a rental, time sharing or computer service business. Without prejudice to any other rights, MuniServices, LLC may terminate this License if You fail to comply with its terms and conditions. In such event, You must destroy all copies of the Software.

Limited Warranty: MuniServices, LLC warrants that the Software will perform substantially in accordance with the accompanying written materials upon installation for a period of thirty (30) days from the date of purchase.

End-User Remedies: If the Software does not conform to the "Limited Warranty" section above, MuniServices, LLC's entire liability and Your sole and exclusive remedy shall be, at MuniServices, LLC's option, either to (a) correct the error, or (b) help You work around the error. The Limited Warranty is void if

failure of the Software has resulted from accident, abuse, or misapplication. Any replacement software will be warranted for the remainder of the original Limited Warranty period.

No other warranties: MuniServices, LLC does not warrant that the software is error free, except for the express limited warranty in the "limited warranty" section. MUNISERVICES, LLC 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 You. This warranty gives You specific legal rights and you may also have other rights which vary from jurisdiction to jurisdiction.

No Liability for Consequential Damages: In no event shall MuniServices, LLC or its licensors, suppliers, or licensees be liable to You for any consequential, special, incidental, or indirect damages of any kind arising out of the performance or use of the software, even if MuniServices, LLC has been advised of the possibility of such damages.

Governing Law: This Agreement is governed by the laws of the State of California, U.S.A. without regard to its conflict of laws principals.

U.S. Government Restricted Rights: Use, duplication or disclosure of the Software by any agency, department or other entity of the U.S. Government is restricted in accordance with FAR 12.212 for civilian agencies and DFARS 227.7202 for military agencies. The Software is a commercial product. Use of the Software by the U.S. Government is further restricted by the terms of this License.

EXHIBIT B

COMPENSATION SCHEDULE

PROPERTY TAX SERVICES (PTX)

CITY shall pay CONSULTANT a 25% contingency fee. This fee applies to all reallocations for the fiscal year during which the Date of Correction falls and all eligible prior period revenues corrected. The fee also applies to Corrected Allocations for three (3) subsequent Roll Years from the Date of Knowledge. CONSULTANT shall invoice CITY at least annually based on recoveries actually received by CITY.

- **CITY Assistance**

Because CONSULTANT's Property Tax Service may result in collection of deficiencies after termination of the Agreement, CITY's obligation to collect fees and notify CONSULTANT, and CONSULTANT's right to continue to receive payment, shall survive termination of this Agreement for any reason.

SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

The STARS Reports and Query System are available for \$6,166 per year, paid \$1,541.50 quarterly. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The adjustments thereafter are based on the CPI-WU from the last month of the prior calendar year. Each annual CPI adjustment shall not be less than four percent (4%) or greater than ten percent (10%). The adjustment in the STARS Annual Fee shall be effective as of July 1 of each year.

SALES AND USE TAX AUDIT (SUTA)

CONSULTANT's compensation for the Sales and Use Tax Audit Service shall be a 25% contingency fee. This fee applies to six quarters after the Date of Correction and all eligible prior quarters back to and including the three quarters prior to the Date of Knowledge quarter. As used herein, the Date of Knowledge is the quarter during which CONSULTANT notifies the State Board of Equalization 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 SBE 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 in which the misallocation actually occurred.

- **CITY Responsibilities**

In the event that CITY identifies, documents, and notifies the State Board of Equalization of a reporting error or misallocation as those terms are used herein, CITY agrees to notify CONSULTANT of CITY's discovery no later than ten (10) days after the Date of Knowledge. If CITY fails to so notify CONSULTANT and CONSULTANT later detects, documents, and reports the misallocation or reporting error to the State Board of Equalization, or if CONSULTANT has established a Date of Knowledge with the State Board of Equalization prior to notification to the

Board by CITY, then CONSULTANT shall be entitled to compensation for the affected account in accordance with this Agreement.

- **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 SBE 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 SBE 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 SBE during this completion period.

EXHIBIT C

INSURANCE REQUIREMENTS - CONSULTANTS

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

Consultant must procure insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under the contract and the results of that work by the consultant, his agents, representatives, employees or subconsultants and provide documentation of same prior to commencement of work. The insurance must be maintained for the duration of the contract.

Minimum Scope of Insurance: (Check Mark Indicates Required)

Coverage must be *at least as broad as*:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability.
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (X) Professional Liability or Errors & Omissions Liability insurance appropriate to the consultant's profession.

Minimum Limits of Insurance:

Consultant must maintain limits no less than:

General Liability: (Including operations, products and completed operations, as applicable.)	\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.
Automobile Liability:	\$1,000,000 per accident for bodily injury and property damage.
Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee

Professional Liability or \$1,000,000 each occurrence
Errors & Omissions \$1,000,000 policy aggregate
Liability:

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or the consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Milpitas, its officers, officials, employees, and volunteers** are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Consultant's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Consultant's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City. If Consultant's insurer refuses to provide this endorsement, Consultant shall be responsible for providing written notice to the City that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

Acceptability of Insurers:

Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A-VII. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A-X. Exception may be made for the State Compensation Fund when not specifically rated.

Verification of Coverage:

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

Subconsultants:

Consultants must include all sub-consultants as insureds under its policies or furnish separate certificates and endorsements for each sub-consultant. All coverage for sub-consultants are subject to all of the requirements included in these specifications.

Absence of Insurance:

If the Consultant allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Consultant shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Consultant's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement

