



City of San Leandro

Meeting Date: July 19, 2021

Staff Report

File Number: 21-457

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.I.

TO: City Council

FROM: Fran Robustelli
City Manager

BY: Susan Hsieh
Finance Director

FINANCE REVIEW: Susan Hsieh
Finance Director

TITLE: Staff Report for a City of San Leandro City Council Resolution Approving the City Manager to Execute an Amendment and Novation Agreement with MuniServices for Examination of Sales or Transactions and Use Tax Records

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council authorize the City Manager to execute the Amendment and Novation Agreement with Municipal Resource Consultants/ MuniServices, LLC, and adopt a resolution authorizing Examination of Sales or Transactions and Use Tax Records.

BACKGROUND

California Revenue and Taxation Code Section 7056 authorizes the examination of confidential sales and use tax data by 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. The City is also required to approve any sales tax consulting firms hired by the City to view sales tax collection information. State law also establishes criminal penalties for the unlawful disclosure of sales and use tax information.

In 1992, the City entered into an agreement with Municipal Resource Consultants (MRC) for sales tax consulting services including quarterly reporting, specific advice and transactions examination. In 1998, MRC was acquired and combined with other entities forming what is known today as MuniServices, LLC.

Due to various acquisitions over the years, MuniServices, LLC has operated under various "doing business as" names during its time as the sales tax consultant for the City. MuniServices was recently notified by the California Department of Tax and Fee Administration's (CDTFA) legal department that based on its review of the contract between the City and MuniServices, LLC the contract name must be updated to reflect the full parent company name, MuniServices, LLC.

The CDTFA advised MuniServices that this can be done through a contract novation referencing the existing contract. The purpose of this resolution is to clarify the name for the City's sales tax consultant as authorized by the City per the request of CDTFA.

BUDGET IMPACT

There is no fiscal impact as a result of this action.

ATTACHMENT

- Amendment and Novation Agreement Between Municipal Resource Consultants and MuniServices, LLC
- Resolution

PREPARED BY

Susan Hsieh, Finance Director



City of San Leandro

Meeting Date: July 19, 2021

Resolution - Council

File Number: 21-458 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Fran Robustelli
City Manager

BY: Susan Hsieh
Finance Director

FINANCE REVIEW: Susan Hsieh
Finance Director

TITLE: A Resolution of the City of San Leandro City Council Authorizing the City Manager to Execute an Agreement Amendment and Novation with MuniServices for Examination of Sales or Transactions and Use Tax Records

WHEREAS, pursuant to San Leandro Municipal Code Title 2, Chapter 2-1 Sales and Use Tax, the City of San Leandro (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 City of San Leandro 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 or transactions 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 SAN LEANDRO HEREBY RESOLVES AS FOLLOWS:

Section 1. That the City Manager, City Attorney, Assistant City Manager, Community Development Director, Economic Development Manager, Finance Director, Assistant Finance Director, Financial Services Manager, 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 or transactions 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 or transactions and use taxes by the Department pursuant to that contract, and for purposes related to the following governmental functions of the City:

- (a) Budget Planning and Related Functions
- (b) Economic Development and Related Functions
- (c) Grant and Other Administration

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

Section 3. That MuniServices, LLC. is hereby designated to examine the sales or transactions and use tax records of the Department pertaining to sales or transactions 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:

has an existing contract with the City to examine those sales or transactions and use tax records;

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.

is prohibited by that contract from performing consulting services for a retailer during the term of that contract;

is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

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 or transactions and use taxes by the Department pursuant to the contract between the City and the Department and for those purposes relating to the governmental functions of the City listed in section 2 of this resolution.

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/redistribution of sales or transactions and use taxes that was filed by MuniServices, LLC. on behalf of the City pursuant to the contract between MuniServices, LLC. and the City. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and the 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.
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in, or derived from those sales or transactions and use tax records, after that contract has expired.

Section 5. City Council authorizes the City Manager to consent to an Amendment and Novation Agreement Between Municipal Resources Consultants and Muniservices, LLC on behalf of the City (Attachment A).

Section 6. That this resolution supersedes all prior resolutions of the City Council of the City of San Leandro 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:

Noes:

Absent:

(s) _____
City Clerk

AMENDMENT AND NOVATION AGREEMENT

BETWEEN

MUNICIPAL RESOURCE CONSULTANTS.

AND

MUNISERVICES, LLC

THIS AMENDMENT AND NOVATION AGREEMENT (the "Novation") is between Municipal Resource Consultants (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 City of San Leandro, an instrumentality of the State of California, 835 East 14th Street, San Leandro, CA 94577 ("Remaining Party"), (together, the "Parties") is entered into this 19th day of July 2021 (the "Novation Effective Date").

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

The parties intend that this Amendment to that certain Agreement between Municipal Resource Consultants and The City of City of San Leandro, of the state of California, entered into on September 8, 1992 (the "Agreement") as amended, (attached hereto as Exhibit A) for Sales or Transactions and Use Tax 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

MUNICIPAL RESOURCE CONSULTANTS

By _____

Name: _____

Title: _____

REMAINING PARTY

CITY OF CITY OF SAN LEANDRO

By: _____

Name: _____

Title: _____

Attest:

By: _____

EXHIBIT A

STANDARD
CONTRACTUAL SERVICES AGREEMENT

THIS AGREEMENT is made at San Leandro, California, as of September 8, 1992, by and between the CITY OF SAN LEANDRO, a municipal corporation ("City"), and Municipal Resource Consultants ("Contractor"), who agree as follows:

1. **SERVICES**. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in Exhibit A. Contractor shall provide said services at the time, place and in the manner specified in Exhibit A.

2. **PAYMENT**. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth in Exhibit B. The payments specified in Exhibit B shall be the only payments to be made to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all billings for said services to City in the manner specified in Exhibit B; or, if no manner be specified in Exhibit B, then according to the usual and customary procedures and practices which Contractor uses for billing clients similar to City.

3. **FACILITIES AND EQUIPMENT**. Except as set forth in Exhibit C, Contractor shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement. City shall furnish to Contractor only the facilities and equipment listed in Exhibit C according to the terms and conditions set forth in Exhibit C.

4. **GENERAL PROVISIONS**. The general provisions set forth in Exhibit D are part of this Agreement. In the event of any

Agreement
9/26/88 Rev., 12/22/88 Rev.
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inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control insofar as it is inconsistent with the general provisions.

5. **EXHIBITS.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

6. **CONTRACT ADMINISTRATION.** This Agreement shall be administered by John Jermanis, Finance Director ("Administrator"). All correspondence shall be directed to or through the Administrator or his or her designee.

1. **NOTICES.** Any written notice to Contractor shall be sent to:


John T. Austin
Municipal Resource Consultants
32107 Lindero Canyon Road
Westlake Village, CA 91361

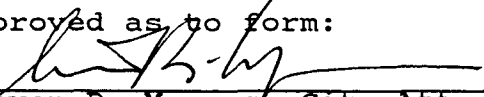
Any written notice to City shall be sent to:

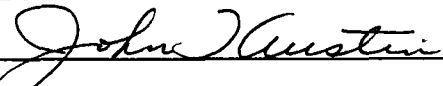
John Jermanis
Finance Director
835 East 14th Street
San Leandro, CA 94577

Executed as of the day first above stated:

Attest: 
Alice Calvert, City Clerk

CITY OF SAN LEANDRO, a
municipal corporation

MIKE OLIVER, City Manager

Approved as to form:

Steven R. Meyers, City Attorney

MUNICIPAL RESOURCE CONSULTANTS

By: _____
Title: President

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EXHIBIT A

SCOPE OF SERVICES

Municipal Resource Consultants (MRC) shall provide revenue enhancement, maintenance and management services to the City of San Leandro (City).

I. REVENUE RECOVERY AUDITS

A. OBJECTIVES

The objective of MRC's revenue recovery audit is to assist the City in recovering all of the revenue to which it is entitled from sales/use tax.

MRC's revenue recovery audits result in the detection and correction of errors and omissions causing deficiencies and thereby produce new revenue that would not otherwise have been captured by the City.

Upon written approval of the City Manager, MRC shall provide revenue recovery audit services for one or more additional sources:

- Business license tax
- Franchise fees
- Property tax (including RDA tax increment)
- Property transfer taxes
- Transient occupancy tax
- Utility users tax

B. PROCEDURES

MRC's procedures for the revenue recovery are summarized as follows:

- Meet with designated City staff to review service objectives and scope, MRC workplan schedule, public relations and logistical matters. MRC will also establish an appropriate liaison with the

City's coordinator and define logical checkpoints for reviewing the project's progress.

- Represent the City for the purpose of examining records pertaining to sales/use tax, in order to identify and confirm errors/omissions that are resulting in deficient payment to the City.
- 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) and prevent recurring deficiencies in current and future years.
- Prepare and forward to the appropriate parties "date of knowledge" requests for corrective action and revenue recovery.
- Meet with designated City official(s) as necessary to review and discuss our findings and recommendations.
- Provide additional assistance as necessary to support the City in recovering and preventing tax deficiencies.

C. TIMING CONSIDERATIONS

As previously indicated, there are time limitations on the City's ability to recover revenue it has been deprived of.

The shortest time limitation is imposed by the SBE, which will allow the City to recover misallocated sales/use tax for up to three quarters prior to the SBE being notified of the reporting error for a given account. Consequently, if a misallocating account has had its point-of-sale located in the City for more than

three quarters, the City forfeits the right to recover a portion of its misallocated sales tax with every elapsed quarter that a reporting error remains undetected.

MRC shall commence the enhancement audits within 10 working days following authorization with the objective of delivering the audit reports documenting the errors/omissions detected within 90 to 120 working days thereafter.

II. INFORMATION & CONSULTING SERVICES

MRC's audit, information and consulting services are designed to assist San Leandro in developing and implementing strategies and solutions for revenue enhancement, maintenance and management. The ultimate goal is to enable the City to achieve fiscal stability through self-reliance.

A. STARS (SALES TAX ANALYSIS & REPORTING SYSTEM) REPORTS

Quarterly, MRC will provide the City with an updated set of bound STARS reports (sample enclosed). The scope of MRC's STARS reports includes, but is not limited to, the following:

- Cleaning up, standardizing and automating data from the City's sales/use tax distribution reports provided by SBE for eight (8) previous quarters, current quarter and each further quarter service. This is done to provide two benchmark years in the initial report to the City. Amounts for the most recent quarter are included in each STARS report, but are not used for benchmark purposes as many accounts are incomplete due to late-paying businesses.

MRC clients use STARS reports to gain a better understanding of where their sales tax comes from, what trends, good or bad, are occurring to their sales tax base, and to identify those businesses on which the jurisdiction is most dependent for its sales tax revenue.

- Receiving and processing sales tax distribution reports quarterly.
- Reorganizing and refining the computerized sales tax data for the City utilizing MRC's STARS.
- Analyzing the City's major sales tax producers.

All major producers and business categories are monitored and analyzed quarterly based on reports to include the following:

- Management Summary, Sales Tax Digest, Charts.

MRC's STARS reports include a confidential Management Summary, a non-confidential Sales Tax Digest, and twelve color charts that portray graphically the City's sales tax performance and composition.

- Analysis Section. The Analysis Section of MRC's STARS reports compares the sales tax performance for the latest complete quarter/report benchmark year to previous quarters and years. This section, which is an exclusive MRC report, was instituted to replace cumbersome manual comparisons between quarters and years.

The Analysis Section includes the following:

- (1) historical performance of the top 100

accounts for up to four years, (2) a computerized analysis of the changes that occurred by economic category and by business sector with the specific businesses that made the major contribution to the change delineated; and (3) an analysis by magnitude of change indicating which key businesses grew or declined, measured in absolute dollars and percentages.

Quarterly aberrations due to SBE audits, fund transfers and other causes are also identified and analyzed for budget planning and revenue forecasting purposes.

- Major (and Top 100) Sales Tax Producers.

Sales tax performance of the top 100 sales tax accounts is shown in order of sales tax produced with the results for the last five quarters prominently displayed. The proportion of City sales tax produces is also shown by each account.

- Sales Tax Accounts by Business Code. This report shown the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produces. Five quarters of sales tax data are shown for each account. The City may select the cut-off level of this report (i.e., all accounts or just accounts that produce over a certain amount per year). Misclassified sales tax accounts are corrected to make the report a true reflection of the sources of the City's

sales tax income.

- Sales Tax Trend Report. Data is summarized by economic category and by business sector making up each category. Sales tax trends are shown by quarter and by successive benchmark years. Percent of sales tax is also shown to indicate trends in sales tax composition as well as performance. Growth and decline comparisons are indicated by various categories for forecasting and analysis.
- Sales Tax by Account/Sub-Number. The SBE does not provide the specific sales tax amounts generated by each individual location of a firm with multiple locations in the same city. Such a breakdown is needed if the City is to track sales tax by specific geo-areas, such as shopping centers, redevelopment areas, business districts, industrial parks, etc. STARS allocates sales tax by location and even customized difficult allocations such as auto dealers with showrooms, leasing, used cars, and body repair shops. This report shown the amounts allocated to each individual location for a firm with multiple locations in the City.
- Geo-Coding. Tracks sales tax performance within designated areas of the City (e.g., key shopping centers, redevelopment project areas, downtown business districts, etc.) 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.
- Special Business Tax Report. MRC's STARS service includes a report that is specifically designed to facilitate the City's business license tax administration by replacing the manual yellow registration control cards.

These cards come in no particular order and are cumbersome to use. MRC produces a printed report each quarter that lists all changes to the City's sales tax records by the type of change (i.e., new firms, closed firms, new addresses, new owners, etc.). Under each type of change are the accounts in clean address order.

By correcting, cleaning up and standardizing addresses, business names and business classifications on all of the City's sales tax generators, MRC is able to provide the City's business licenses staff with another valuable audit tool. MRC will also provide the City with a copy of the cleaned up sales tax files on floppy disk or nine-track tape if the City wishes to add the data to its database.

III. CERTIFICATION OF CONFIDENTIALITY

Section 7056 of the State of California Revenue and Taxation Code specifically limits the disclosure of confidential taxpayer information contained in the records of the State Board of Equalization. This section specifies the conditions under which a City may authorize persons other than City officers and employees to examine State Sales and Use Tax records.

- A. MRC 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.
- B. MRC 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.
- C. MRC is prohibited from performing consulting services for a retailer during the term of this Agreement.
- D. MRC is prohibited from retaining the information contained in, or derived from, those sales and use tax records, after this Agreement has expired.

Information obtained by examination of State Board of Equalization 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.

The resolution shall designate MRC as a person authorized to examine sales and use tax records and certify that this Agreement meets the requirements set forth above and in Section 7056(b)(1) of the Revenue and Taxation Code (see

Exhibit C).

MRC hereby certifies that any and all information utilized in the conduct of work performed is to be utilized only for those purposes authorized by the City and by the Bradley-Burns Uniform Local Sales and Use Tax Law.

EXHIBIT B
PAYMENT SCHEDULE

The City shall pay contractor an amount based on a percentage of the new revenue produced for the City. MRC's fee for providing the enhancement audit service is 25% of the new sales/use tax revenue realized by the City as a result of MRC detecting and correcting the related point-of-sale/use distribution error. Said 25% applies to each correction for fund transfers (i.e., retroactive adjustments for eligible amounts improperly distributed in prior quarters) and the first six consecutive reporting quarters following completion of the audit by MRC and confirmation of corrections by the State Board of Equalization.

Sales/use tax audit invoices are submitted quarterly after the city has received the revenue from the correction and quarterly distribution report verifying it. Each invoice is to include the business name, permit number, local allocation amount received by the City and amount due MRC. Invoices are due and payable upon receipt.

MRC shall provide the Sales Tax Inquiry System and STARS reports for \$1,250 per quarter, payable only after the City has received the Sales Tax Inquiry System, STARS report(s) and sufficient funds to cover the charges from the City's share of new tax revenue produced from MRC's audit service.

The total sum stated above shall be the total which City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement.

9/26/88 Rev; 1/10/90 Rev.
2/6/90 Rev.; 5/15/92 Rev.

Exhibit B
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City shall make no payment for any extra, further or additional service pursuant to this Agreement unless such extra service and the price therefor is agreed to in writing executed by the City Manager or other designated official of City authorized to obligate City thereto prior to the time such extra service is rendered.

The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Contractor for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to date.

The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a fully executed Purchase Order from the Finance Department of the City of San Leandro.

EXHIBIT C

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

EXHIBIT D

GENERAL PROVISIONS

1. INDEPENDENT CONTRACTOR. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement.

2. LICENSES; PERMITS; ETC. Contractor represents and warrants to City that he has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Contractor to practice his profession. Contractor represents and warrants to City that Contractor shall, at his sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Contractor to practice his profession.

3. TIME. Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Contractor's obligations pursuant to this Agreement.

4. INSURANCE REQUIREMENTS. Contractor shall procure and maintain for the duration of the contract "occurrence coverage" insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)
2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

- (b) Minimum Limits of Insurance. Contractor shall maintain limits no less than:
1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- (c) 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 shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- (d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverages.
 - a. The City, its officers, officials, employees, volunteers and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor, premises owned, occupied or used by the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.
 - b. The Contractor'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

10/18/88 Rev.; 4/20/89 Rev.
1/10/90 Rev.; 4/16/90
1/21/92 Rev.

Exhibit D
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excess of the Contractor's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

~~3. Professional Liability.~~

~~Contractor shall carry professional liability insurance in an amount deemed by the City to adequately protect the Contractor against liability caused by negligent acts, errors or omissions on the part of the Contractor in the course of performance of the services specified in this Agreement.~~

4. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- (f) Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

10/18/88 Rev.; 4/20/89 Rev.
1/10/90 Rev.; 4/16/90
1/21/92 Rev.

Exhibit D
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- (g) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- (h) The Risk Manager of the City may approve a variation in those insurance requirements upon a determination that the coverages, scope, limits and forms of such insurance are either not commercially available or that the City's interests are otherwise fully protected.

5. CONTRACTOR NOT AGENT. Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

6. ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

7. PERSONNEL. Contractor 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 removal of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

8. STANDARD OF PERFORMANCE. Contractor 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 Contractor is engaged in the geographical area in which Contractor practices his profession. All instruments of service of whatsoever nature which Contractor delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Contractor's profession.

9. HOLD HARMLESS AND RESPONSIBILITY OF CONTRACTORS. Contractor shall take all responsibility for the work, shall bear all losses and damages directly or indirectly resulting to him, to any subcontractor, to the City, to City officers and employees, or to parties designated by the City, on account of the negligent performance or character of the work, of the Contractor or of any subcontractor. Contractor shall indemnify, defend and hold harmless the City, its officers, officials, directors, employees, volunteers and agents from and against any or all loss, liability, expense, claim, costs (including costs of defense), suits, and damages of every kind, nature and description directly or indirectly arising from the negligent performance or character of the work. This paragraph shall not be construed to exempt the City, its employees and officers from its own fraud, willful injury or violation of law whether willful or negligent. For purposes of Section 2782 of the Civil Code the parties hereto recognize and agree that this agreement is not a construction contract. By execution of this agreement Contractor acknowledges

10/18/88 Rev.; 4/20/89 Rev.
1/10/90 Rev.; 4/16/90
1/21/92 Rev.

Exhibit D
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and agrees that he has read and understands the provisions hereof and that this paragraph is a material element of consideration.

Approval of the insurance contracts does not relieve the Contractor or subcontractors from liability under this paragraph.

10. GOVERNMENTAL REGULATIONS. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

11. DOCUMENTS. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda or other written documents or materials prepared by Contractor pursuant to this Agreement shall become the property of City upon completion of the work to be performed hereunder or upon termination of the Agreement.

10/18/88 Rev.; 4/20/89 Rev.
1/10/90 Rev.; 4/16/90
1/21/92 Rev.

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Chapter 2

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ARTICLE 1. PURPOSE

Section 2-2-100: PURPOSE. This Chapter is enacted for the purpose of regulation and raising revenue for general municipal purposes, except that where a license shall be required for the conduct of business by the State for regulatory purposes or where no license may be required by law for regulatory purposes, the purpose shall be solely that of raising revenue.

(Legislative History:)

ARTICLE 2. DEFINITIONS

Section 2-2-200: DEFINITIONS. Unless the provision or context otherwise require, the following definitions contained in this Article shall govern the construction of this Chapter.

Section 2-2-205: AMUSEMENT DEVICE. (Repealed)

Section 2-2-210: AVERAGE NUMBER OF EMPLOYEES. Average number of employees shall mean and include the average number of persons engaged or to be engaged within this City in the applicant's business for the license period, whether as owner, partner, spouse or employee. As specifically provided in Article 5 of this Chapter, when the average number of employees is used as a business license unit fee measure, the appropriate number will be ascertained as follows:

- (a) If application is for an original license, the applicant shall estimate the average number of full-time employees anticipated to work, the number of hours constituting a day's work and the number of business days in the business year for a period of one year based on the formula noted in subsection (b) below:
- (b) If application is for a renewal, the following formula shall be applied to compute the average number of employees:

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2. carried on by or on behalf of a civic, religious, cultural, benevolent or similar nonprofit organization with a minimum of forty percent of the gross receipts of such activity to be received by such organization.
3. a neighborhood carnival, exhibit, celebration or festival sponsored by an organized group of residents in the vicinity, provided that no mechanical rides are a part of such activity.
4. a booth for charitable, welfare or patriotic purposes.

(c) Christmas Tree Sales. Christmas tree sales shall mean the selling of Christmas trees at retail, excluding such sales by a licensee from his permanently established licensed place of business within the City.

(d) Coin-operated Device. Coin-operated device shall mean laundry machine, video game machine, pinball machine, juke box, vending machine or other similar coin-operated electrical or mechanical device.

(e) Commercial Advertising. Commercial advertising shall mean the distribution of commercial advertising material, excluding distribution of such material advertising a permanently established licensed business within the City by the owner or employees of such business.

(f) Contractors. Any person who is licensed as a contractor by the State of California and who undertakes or offers to undertake or submits a bid to construct, alter, repair, improve, move, wreck or demolish any building, highway, excavation or other structure, project, development or improvement, or to do any part thereof. The term contractor includes subcontractor and specialty contractor.

(g) Dance Hall. Dance hall shall mean any establishment where dancing is permitted with or without charge, whether or not in conjunction with any other business.

(h) Fortune-telling. Any person engaged in the business of telling fortunes, forecasting futures or furnishing any information not otherwise obtainable by the ordinary process of knowledge.

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Dentist	Podiatrist
Engineer (Chemical, Civil, Electrical, etc.)	Psychologist
Geologist	Public Accountant
	Veterinarian

(q) Recreation and Entertainment. Any person engaged in the business of providing entertainment, recreation or amusement services.

(r) Non-Residential Property Rental. Any person engaged in the business of renting or letting a building or structure of any kind, including warehouses, mini-storage, industrial, commercial, and office buildings to a tenant for purposes other than dwelling, sleeping or lodging.

(s) Residential Property Rental. Any person engaged in the business of conducting or operating an apartment house, duplex, hotel/motel, mobile home park, rooming or boarding house having two or more residential units, excluding for purposes hereof the unit, if any, occupied by the taxpayer. Notwithstanding the foregoing to the contrary, the rental of single family houses shall not constitute the business of rental of residential property for purposes of this Chapter.

(t) Retailing. Any person providing services, repairs, or carrying on the business consisting mainly of selling at retail any goods.

(u) Services. Any person providing services, repairs, or improvements to or on real and personal property; renting or leasing personal property to businesses or persons; providing services to persons such as, but not limited to:

Ambulance	Laundries
Appraiser	Locksmith
Assayer	Messenger
Bail Bond Broker	Mortician
Barber and Beauty Shops	Notary Public
Bookkeeping Service	Outdoor Advertising
Claims Adjuster	Photographer
Cleaning and Dyeing	Photographic Studios
Collection Agency	Physio-Therapist
Commercial Artist	Public Stenographer
Consultant	Real Estate Broker/Agent

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when gross receipts are used as a business license unit fee measure, the appropriate number will be ascertained as follows:

(a) If an application is for an original license, the applicant shall estimate the gross receipts directly attributable to the business activities to be conducted within the City to be received during the license period, which estimate shall be used in determining the appropriate fee to be levied.

(b) If application is for a renewal, the applicant shall report the gross receipts directly attributable to the business activities conducted within the City received during the previous license period, which figure shall be used in determining the appropriate fee to be levied.

Section 2-2-255: PERSON. Person shall mean any individual, agent, association, group, partnership, representative, firm, corporation or any agent or representative thereof.

Section 2-2-260: SPACE. Space shall mean each location in a mobile home park that is rented or intended to be rented.

Section 2-2-265: SQUARE FEET. Square feet shall mean all of the space within the exterior walls of the building regardless of use, that is rented or intended to be rented.

Section 2-2-270: UNIT. Unit shall mean each residential dwelling that is rented or intended to be rented.

(Legislative History: Ordinance No. 86-02, 1/20/86)

Section 2-2-300: LICENSE REQUIRED. No person shall commence or carry on any business in this City without first having obtained a license in accordance with the provisions of this Chapter.

Section 2-2-305: SEPARATE LOCATIONS. A separate license must be obtained for each and every branch establishment or place of business in which any portion of a business is carried on or conducted.

Section 2-2-310: DISPLAY. Every license issued pursuant to the provisions of this Chapter shall at all times be displayed in a conspicuous place on the licensed premises or vehicle. If the licensee does not maintain a place of business within the City of

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(b) Duty of Licensee. Each applicant for renewal of license shall submit to the Finance Director the appropriate license fee no later than January 31, of the calendar year for which renewal of the license is requested. Failure of the Finance Director to mail the license renewal form shall not relieve the licensee from responsibility for requesting renewal or submitting the appropriate license fee.
(Legislative History:)

ARTICLE 4. PROCEDURE

Section 2-2-400: APPLICATIONS. All license applications shall be submitted to the Finance Director. Each applicant shall provide such information as the Finance Director shall require to ascertain the nature of the proposed business and the appropriate license fee to be levied. Such form shall contain a declaration, under penalty of perjury, to be signed by the applicant that the information provided is true.

Section 2-2-405: FEE. The Finance Director shall determine from the information provided on the application and from such other information as is available, the appropriate license fee to be levied in accordance with the provisions of Article 5 of this Chapter.

Section 2-2-410: (Reserved)

Section 2-2-415: ISSUANCE. Upon a determination that all statements in the application are true, that the proposed business will comply with applicable laws and that the appropriate license fee has been levied and paid, the Finance Director shall issue the license.

Section 2-2-420: REJECTION. Whenever the Finance Director has reasonable cause to believe that any statement contained in an application is not true or that a proposed business will not comply with any applicable laws or whenever an applicant fails or refuses to pay an appropriate license fee, the Finance Director shall give written notice to the applicant that the application has been rejected and shall state the reason for such rejection.

Section 2-2-425: (Reserved)

Section 2-2-430: (Reserved)

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action or determination. The City Manager shall give written notice to the licensee of the determination within ten days of receipt of the petition.

Section 2-2-450: APPEAL. Within ten days after mailing the notice regarding the City Manager's upholding of the action or determination of the Finance Director, an applicant or licensee may appeal to the City Council in writing. The City Council shall set a hearing date and notify licensee not less than five days prior to the hearing. At the hearing, the licensee shall show cause why the action or determination of the Finance Director should not be approved. The findings of the City Council shall be final and conclusive in the matter.

Section 2-2-455: NOTICE. Any notice herein required shall be deemed as having been served when the notice is posted in the United States Mail in a sealed envelope, postage prepaid and addressed to the person's business address as shown on the records of the Finance Director.

(Legislative History:)

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Section 2-2-515: PARTIAL YEAR. In the event that a license is issued for a business commenced after June 30, of any year, the fee levied in accordance with Section 2-2-500 shall be reduced by one-half.

Section 2-2-520: TRANSFER. For each transfer of ownership of a licensed business or transfer of a licensed business to a new location, an applicant shall pay the base fee for said license, or the appropriate fee provided by Section 2-2-500, whichever is less.

Section 2-2-525: DUPLICATE LICENSE. For each duplicate license issued to replace one lost, a licensee shall pay an amount established by the City Council by resolution.

Section 2-2-530: DUE DATES. All fees provided for herein shall be payable before the first day of the period for which the license is issued, and shall be delinquent 30 calendar days thereafter, except that all daily, weekly and monthly fees provided for shall be payable in advance and shall be delinquent upon commencing business.

Section 2-2-535: PENALTY. Before issuing any license to any person who has failed to pay the fee prior to delinquency, the Finance Director shall assess against and receive from said person a penalty in the amount of 50% of the business license fee or \$50, whichever is greater. Any business found to be without a City business license shall be assessed the appropriate annual business license fee plus a penalty of 50% of the business license fee or \$50, whichever is greater. This same penalty shall apply to every year in which a business has operated without a business license under the same ownership, even if business was previously in a different location. Any licensed business that fails to pay the appropriate business license fee prior to delinquency for two consecutive calendar years, shall be assessed a penalty of 100% of the business license fee or \$100, whichever is greater.

Section 2-2-536: LICENSE A DEBT. The amount of any license fee and penalty imposed by the provisions of this chapter shall be deemed a debt to the city; and any person carrying on any business without first having procured a license from the city to do so shall be liable to action in the name of the city, in any court of competent jurisdiction, for the amount of license and

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- (c) The lien created attaches upon recordation of a certified copy of the confirmed report in the office of the County Recorder and shall continue until the charges and fees are fully paid.

Section 2-2-540: NO BILL REQUIRED. Notwithstanding Section 2-2-335 herein to the contrary, neither the Finance Director or any other City Official is required to send or give any notice of bill to any person subject to the provisions of this Chapter, and failure to send such notice or bill shall not affect the validity of any license fee or penalty levied pursuant to the provisions of this Chapter.

Section 2-2-545: REGULATIONS NOT WAIVED. The payment of a license fee required by this Chapter, the acceptance of said fee by the City, or the issuance of the license to any person shall not be construed to entitle the holder thereof to carry on any business which is in violation of any law or ordinance.

Section 2-2-550: NO WAIVER. If the Finance Director shall make a mistake in levying or collecting the correct amount of the license fee, such mistake or failure shall not relieve the licensee of the obligation to pay the correct fee to the City.

Section 2-2-555: LICENSE A DEBT. The amount of the license fee imposed by this Chapter shall be deemed to be a debt to the City. Any person carrying on or conducting a business without first having obtained a license shall be liable to an action in the name of the City in any court of competent jurisdiction for the recovery of the fee.

Section 2-2-560: EVIDENCE OF LIABILITY. In any action brought under or arising out of any of the provisions of this Chapter, the fact that the person engaged in any business for which a license is required, or that such person exhibited a sign indicating such business, shall be conclusive evidence of the liability of such person to pay for a license for such business.

ARTICLE 6. VEHICLE STICKERS
(Repealed in its entirety.)

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 92 - 259

RESOLUTION DESIGNATING CITY OFFICERS
AND INDEPENDENT CONTRACTOR AS AUTHORIZED
REPRESENTATIVES OF THE CITY TO EXAMINE SALES AND
USE TAX RECORDS OF THE STATE BOARD OF EQUALIZATION

The agreement between the City of San Leandro and the State Board of Equalization entitled "Agreement for State Administration of Local Sales and Use Taxes" provides that when requested by resolution of the City Council, the State Board of Equalization shall permit the duly authorized officers of the City of San Leandro to examine the sales and use tax records of the Board pertaining to sales and use taxes collected for the City of San Leandro.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

The City Council does hereby designate the City Manager, City Attorney and Finance Director or their designated representatives as duly authorized officers to examine such records as specified above.

The City Council also removes the firm of Hinderliter, de Llamas and Associates and authorizes the firm of Municipal Resource Consultants as independent contractor for the City to receive and review sales and use tax transactions for the City. With respect to this authorization, the City Council further certifies the following:

- A. Municipal Resource Consultants has an existing contract with the City of San Leandro to receive and analyze sales and use tax records; and
- B. Municipal Resource Consultants is required by the contract 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 this resolution to examine the information; and

- C. Municipal Resource Consultants is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- D. Municipal Resource Consultants is prohibited by that contract from retaining the information contained in, or derived from those sales tax records, after that contract has expired.
- E. Information obtained by examination of Board or records shall be used only for purposes related to the collection of local sales and use taxes by the Board pursuant to the contract and for municipal revenue forecasting.

Introduced by Council Member Polvorosa and passed and adopted this 8th day of September 1992, by the following called vote:

Members of the Council:

Ayes: Council Members Corbett, Faria, Kerr, Myers, Perry, Polvorosa;
Mayor Karp (7)

Noes: None (0)

Absent: None (0)

Attest: *Alice Calvert*
Alice Calvert, City Clerk

I hereby certify that this is a true and correct copy of Resolution No. 92-259 adopted this 8th day of Sept., 19 92 by the City Council of the City of San Leandro
Alice Calvert
Alice Calvert, City Clerk of the City of San Leandro

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 92 - 258

RESOLUTION APPROVING CONTRACTUAL SERVICES
AGREEMENT WITH MUNICIPAL RESOURCE CONSULTANTS
RELATED TO SALES TAX ANALYSIS AND RECOVERY SERVICES

Recitals

An agreement between the City of San Leandro and Municipal Resource Consultants, a copy of which is attached, has been presented to this Council.

The City Council is familiar with the contents thereof.

The City Manager has recommended the approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution thereof by the City manager is hereby authorized.

Introduced by Council Member Polvorosa and passed and adopted this 8th day of September 1992, by the following called vote:

Members of the Council:

AYES:	Council Members Corbett, Faria, Kerr, Myers, Perry, Polvorosa; Mayor Karp	(7)
NOES:	None	(0)
ABSENT:	None	(0)

Attest:



Alice Calvert, City Clerk