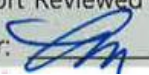


Agenda Report Reviewed by:
City Manager: 

CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM

Meeting Date: August 3, 2021
To: Honorable Mayor and City Councilmembers
From: Ana Kwong – Administrative Services Director
Subject: Amendment and Novation Agreement and Authorization to Examine Sales and Use Tax Records from the California Department of Tax and Fee Administration

Recommendation Approve the amendment and novation agreement with Avenue Insight and MuniServices, LLC and adopt Resolution, authorizing Examination of Sales and Use Tax Records

Funding: Currently Budgeted: _____ Yes _____ No XX N/A
Net General Fund Cost:
If Cost to Other Fund(s),
Fund:

Account Code/Costs authorized in City Approved Budget (if applicable) AK (verified by Administrative Services Department)

INTRODUCTION/PURPOSE

This item is to request that the City Council Approve the amendment and novation agreement with Avenue Insight and MuniServices, LLC and adopt Resolution, authorizing Examination of Sales and Use Tax Records.

BACKGROUND:

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

DISCUSSION:

In 1998, the City Council authorized Municipal Resource Consultant (MRC), as a representative of the City, to examine confidential sales and use tax records. In 1998, the City Council adopted Resolution 4949. This Resolution designated MBIA Muniservices Company (now operating under the branding name of Avenu Insights and Analytics (Avenu)). However, since then, the sales tax consultant name has changed, Avenu, examines and monitor Sebastopol's sales tax records to ensure the tax is appropriately allocated to Sebastopol.

Although, Avenu is the official branding name of the company, it still operates under MuniServices, LLC for sales tax examination purposes for many agencies. With the attached Amendment and Novation Agreement, the Assuming Party (MuniServices, LLC) becomes entitled to all rights, title, and interest of the Assigning Party (Avenu Insights & Analytics, LLC). This document will be forwarded to the CDTFA.

This adopting resolution further formalizes the Administrative Services Director the ability to work with the CDTFA. The resolution also authorizes the City Manager to designate in writing to the State Board any other officer or employee of the City that may need to examine sales and use tax records.

GOALS:

No specific stated goals for this item.

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, if staff receives public comment from interested parties following the publication and distribution of this staff report such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of this item.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to schedule meeting date.

FISCAL IMPACT:

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

RECOMMENDATION:

Staff is recommending that the City Council Approve the amendment and novation agreement with Avenue Insight and MuniServices, LLC and adopt Resolution, authorizing Examination of Sales and Use Tax Records.

Attachment(s):

Amendment and Novation Agreement
Resolution

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 Sebastopol, an instrumentality of the State of California, 7120 Bodega Avenue P.O. Box 1776, Sebastopol, CA 95473 ("Remaining Party"), (together, the "Parties") is entered into this ____ day of _____ 2021 (the "Novation Effective Date").

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

The parties intend that this Amendment to that certain Agreement between Municipal Resource Consultants. and The City of Sebastopol, of the state of California, entered into on May 5, 1998 (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 SEBASTOPOL

By:_____

Name:_____

Title:_____

Attest:

By:_____

EXHIBIT A

1998 Contract



MUNICIPAL RESOURCE CONSULTANTS
A partnership of John T. Austin, Inc. & Allen W. Charkow, Inc.

32107 W. Lindero Canyon Road
 Suite 233
 Westlake Village, CA 91361
 (818) 991-5220
 Fax: (818) 991-5365

Tustin
 (714) 258-3000

Madera
 (209) 432-6039

San Ramon
 (510) 838-1115

Sacramento
 (916) 939-7700

April 7, 1998

Mr. Ron Puccinelli
 Finance Director
 City of Sebastopol
 P.O. Box 1776
 Sebastopol, CA 95473

Re: Proposal/Agreement for Revenue Enhancement & Information Services

Dear Mr. Puccinelli

Enclosed you will find a proposal/agreement for Municipal Resource Consultants (MRC) to provide revenue enhancement and information services to the City of Sebastopol.

MRC proposes to provide these services on a self-funded basis so as to not create an expenditure impact on the City's budget. Under this plan, the services are entirely funded by the new revenue generated by MRC's services.

In this regard, enclosed please find the following:

- Executive Summary
- Consultant Services Agreement
- Brochure describing MRC's Progressive Revenue Services
- MRC Insights newsletter describing the collection and distribution of local sales/use tax and typical taxpayer reporting errors that cause misallocations

If you have any questions or would like to discuss how the services could be further tailored to the City's needs, please call me at (415) 381-0492.

Sincerely,

Fran Mancina

FM:kg
 Enclosures

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EXECUTIVE SUMMARY

Municipal Resource Consultants (MRC) agrees to provide revenue enhancement and information services to the City of Sebastopol (City). MRC's services are to be provided on an entirely self-funded basis without creating an expenditure impact on the City's budget.

1. FIRM QUALIFICATIONS (Exhibit A)

MRC specializes in providing ongoing revenue audit, information and related consulting services to more than 160 California cities, including 10 of the 11 largest municipalities in the state. MRC is the only firm in America providing revenue audit and information services that encompass every municipal tax source.

MRC pioneered the concept of revenue enhancement auditing for California municipalities when the firm began providing sales tax services in 1978. Since then, MRC has established a track record of consistently impressive results by producing more than \$430 million of new revenue for our client cities. MRC's staff of 120 consultants serves California cities from six in-state locations.

2. PROGRESSIVE REVENUE SERVICES

Sales/Use Tax Audit and Information Service (Exhibit B) MRC's Sales/Use Tax Audit service is designed to assist the City realize all of the revenue to which it is entitled, but may not be receiving, from sales and use tax. This service results in the detection, documentation and correction of errors and omissions causing deficiencies and thereby produces new revenue that would not otherwise have been realized by the City. MRC shall commence this service within 10 working days following receipt of the executed agreement and adopted resolution. This service includes the provision of MRC's Sales Tax Analysis and Reporting Service (STARS). MRC shall update the STARS database quarterly. MRC's quarterly updated STARS Query System enables authorized City staff to monitor and analyze the contribution of sales tax revenue from each business 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 user-defined geographic areas. The quarterly updated STARS Digests reflect MRC's monitoring and analysis of the City's sales tax revenue and generators, to identify revenue performance, trends, gains, declines, projections, issues and opportunities.

Business Inventory Management Service (BIMS) (Exhibit C) BIMS establishes and maintains a current, comprehensive and valid inventory of all the City's businesses. BIMS includes: MRC's proprietary software; continuous development of the business inventory using MRC's geobased data integration technology; ongoing software/data maintenance, training and support as described in Exhibit "A." MRC shall install the software on a City computer and train staff within 60 working days of receipt of the amended agreement approved by the City. Quarterly MRC shall update the City's business inventory database and annually provide the Franchise Tax Board (FTB) with corrected, standardized, enhanced and properly formatted (according to FTB requirements) business license tax information. **MRC's Business Information Management Service is eligible for State reimbursement.**

3. LEVERAGED EFFICIENCIES

MRC has developed a unique package of revenue audit and information services that progressively build on each other to capitalize on the common tasks accomplished, data developed and results produced. MRC calls this "leveraged efficiencies."

MRC's Progressive Revenue Services capitalize on these leveraged efficiencies to maximize client revenues, cost savings and return on investment. MRC is thus able to provide the City with a comprehensive package of extremely valuable, unique services that are entirely self-funding.

4. SELF-FUNDING COMPENSATION

MRC has structured its BIMS and Sales and Use Tax Audit and Information Services to be entirely self-funding for the City, as follows:

Sales and Use Tax Audit and Information Service - shall be provided on a self-funded basis, whereby MRC's compensation is entirely predicated and dependent upon the results produced for the City. MRC's fee for providing the misallocation 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 the first six consecutive reporting quarters following completion of the audit by MRC and processing/confirmation of corrections by the State Board of Equalization. MRC will also pursue retroactive recoveries for the City for eligible prior periods. If MRC is successful in securing retroactive recovery for prior periods the 25% compensation would apply to the fund transfers (i.e., retroactive adjustments for eligible amounts improperly distributed in prior quarters) actually received by the City of corrections by the State Board of Equalization. MRC's STARS shall be provided for the initial and quarterly updated STARS Query System and bound reports for \$500 per quarter or \$2,000 for the full year including expenses, payable only after the City has received the STARS Query System, the STARS Digest(s), and has realized sufficient new revenue from MRC's audit to cover the cost of STARS.

Business Inventory Management Service (BIMS) - is entirely eligible for SB 90 reimbursement and MRC's compensation is not payable until the City has received the service and the State has reimbursed the City for BIMS. In the event the State does not fully reimburse the City for BIMS, the amount not reimbursed by the State is not due to MRC until the City has received full reimbursement from the State. The Business Inventory Management Service shall be provided for an annual fee of \$7,500.

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Sebastopol, California, as of _____ 1998 by and between the City of Sebastopol, a municipal corporation (hereafter referred to as "City") and Municipal Resource Consultants (hereafter referred to as "Consultant" or "MRC"), who agree as follows:

1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in Exhibits "A", "B" and "C" (the "Exhibits".) Consultant shall provide said services at the time, place, and in the manner specified in the Exhibits. Consultant shall not be compensated for services outside the scope of the Exhibits.

2. Payment. City shall pay Consultant for services rendered pursuant to this Agreement at the times and in the manner set forth in the Exhibits. The payments specified in the Exhibits shall be the only payments to be made to Consultant for services rendered pursuant to this Agreement, unless the City approves additional compensation for additional service. Consultant shall submit all billings for services rendered pursuant to this Agreement to City in the manner specified in the Exhibits.

3. Facilities and Equipment. Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement, with the exception of the computer equipment specified in the Exhibits.

4. Exhibits. All Exhibits referred to herein are attached hereto and are by this reference incorporated herein.

EXECUTED as of the day and year first above stated.

CITY OF SEBASTOPOL

By: *Parish*

Title: *City Manager*

Date: *5/14/98*

MUNICIPAL RESOURCE CONSULTANTS

PARTNER: JOHN T. AUSTIN, INC.

By: *John T. Austin*
John T. Austin

Title: Senior Operating Officer

Date: April 7, 1998

QUALIFICATIONS AND STAFFING

1. MRC QUALIFICATIONS

Municipal Resource Consultants (MRC) specializes in providing innovative revenue enhancement services to over 160 California cities, including 10 of the 11 largest cities in the state. MRC is the only firm in America providing revenue audit and information services that encompass every municipal tax source, including:

- | | |
|---|--|
| <input type="checkbox"/> Business License Tax | <input type="checkbox"/> Sales/Use Tax |
| <input type="checkbox"/> Documentary Transfer Tax | <input type="checkbox"/> Transient Occupancy Tax |
| <input type="checkbox"/> Franchise Fees | <input type="checkbox"/> Utility Users Tax |
| <input type="checkbox"/> Property Tax | |

MRC pioneered the creation of sales tax audit services for California municipalities in 1978. Since then, MRC has established a track record of consistently impressive results by producing more than \$430 million of new revenue for its clients.

On behalf of its client cities, MRC's findings and recommendations have been validated and accepted by third party fiduciaries (including the State Board of Equalization, county assessors, and major utility companies) throughout California, in addition to thousands of corporate tax departments throughout the United States.

MRC's revenue enhancement services are complemented by business license information systems, geobased management information programs, and consulting in areas such as revenue forecasting, economic development and redevelopment, fiscal and economic impact assessments, tax modeling, stakeholder consensus building, and strategic planning.

MRC has a staff of 120 consultants serving California cities from five in-state locations. MRC's quarterly-updated database contains geobased revenue information on more than 70 percent of the businesses located in California cities.

2. PROJECT MANAGEMENT STAFF

To provide the proposed services, MRC shall employ a project team approach. Biographical profiles are included under Appendix I.

SALES/USE TAX AUDIT AND INFORMATION SERVICES

Municipal Resource Consultants (MRC) hereby agrees to provide the City of Sebastopol (City) with sales tax information and audit services. MRC's services consist of a Sales Tax Query System, Sales Tax Analysis Reports, corollary consulting and audit services set forth as follows:

1. SALES TAX QUERY SYSTEM

MRC will install and update quarterly the City's sales tax registration and allocation data on IBM compatible PCs designated by the City. We will also train authorized City staff in the use of the Query System and an easy-to-follow user manual, also furnished by MRC.

The Query System will enable 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.

All sales tax data processed by MRC is located on the Query System. History for each account can be called up by account number and even by business tax identification number(s), if the latter are added to the Query System. MRC has made the Query System extremely user-friendly, even incorporating different types of name and address searches. For example, the address search only needs the street name and will fill in the direction and proper abbreviation for the street type.

Also, in looking up a particular type of business segment, a listing of business codes is shown on a "pop up" menu to help the user identify which code to select. The Query System can also be used to geo-code specific areas such as City Council districts, shopping centers, redevelopment areas, etc. MRC's Query System will even generate the geo-coded addresses, thus eliminating the need to manually place a code by each firm in a geo-area. The System will also eliminate a geo-area in a global command rather than having to eliminate geo-coded accounts one-by-one when removing a geo-area.

Because the Sales Tax Query System contains confidential information, access is limited to authorized personnel by making the System password - protected.

2. 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 future 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 sales 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.

- o 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.

- o 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 produced is also shown by each account.
- o Sales Tax Accounts by Business Code. 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 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.
- o 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.

- o 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 customizes difficult allocations such as auto dealers with showrooms, leasing, used cars, and body repair shops. This report shows the amounts allocated to each individual location for a firm with multiple locations in the City.
- o 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.
- o Cross Reference Reports. These reports allow the user to look up any account shown in the STARS reports by name, address, or account number.
- o 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.

3. COROLLARY CONSULTING

In conjunction with the Sales Tax Query System and STARS reports described above, the GRIP sales tax module includes the following:

- Preparing and analyzing a list of the City's major sales/use tax generators to assist the City in developing a public relations program to prevent the loss of these important businesses.
- Profiling for Economic Development/Community Redevelopment personnel the most economically desirable/undesirable types of developments/business uses and the reasons why.
- Assisting in defining specific geographic areas for which the City would have an interest in knowing the sales/use tax produced (e.g., within Redevelopment Agency project areas).

4. MISALLOCATION AUDITS

- Conduct an initial and ongoing sales tax audit service to detect and correct point-of-sales distribution errors and thereby generate new sales tax income which would not otherwise have been realized by the City.
- Provide to the City and State Board of equalization reports addressing each point of sales 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 tax income which should be forthcoming to the City.
- Coordinate with the taxpayer and State Board of Equalization to make the necessary corrections plus retroactive adjustments for eligible amounts improperly distributed in prior quarters.
- On a quarterly basis, monitor and analyze STARS reports with audit focus on the following:
 - Those accounts with previously reported point of sale distribution errors to ensure that the corrections are made for current quarters plus retroactive adjustments for eligible amounts improperly distributed in prior quarters
 - Those major accounts comprising approximately ninety percent (90%) of the City's total sales tax revenue to identify significant aberrations (e.g., negative fund transfers, significant decreases, etc.) and ensure that the City is not getting less than it is entitled to

5. TIMING

MRC shall commence auditing the sales/use tax and preparing the Sales Tax Query System and STARS reports within 10 working days of receipt of the following:

- City Council contract approval and resolution designating MRC as the authorized City Consultant to examine sales and use tax records (see Attachment B-1); and
- State Board of Equalization quarterly distribution reports for most recent nine (9) consecutive quarters.

The initial Sales Tax Query System shall be delivered and installed on IBM compatible PCs designated by City, together with the STARS reports, within 45 working days following receipt of the above. The quarterly updated Query System and STARS reports will be delivered to the City within 30 working days following receipt of the quarterly distribution reports. MRC shall audit provide progress reports as appropriate.

MRC will provide corollary consulting to the City in conjunction with delivery of the Query System and STARS reports following completion of the enhancement audits.

6. FEES

MRC's fee for performing the enhancement audit service shall be based on a percentage of the new revenue produced for the City. MRC's fee for providing the optional information and consulting services shall not exceed a flat amount to be mutually agreed upon in advance between the City and MRC.

A. SALES/USE TAX INFORMATION SERVICE

MRC shall provide the Sales Tax Query System and STARS reports for \$500 per quarter or \$2,000 for the full year, including expenses, payable only after the City has received the Sales Tax Query System, STARS report(s) and has realized sufficient new revenue from MRC's audit to cover the cost of STARS.

B. SALES/USE TAX MISALLOCATION AUDIT SERVICE

MRC's fee for providing the misallocation 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 the first six consecutive reporting quarters following completion of the audit by MRC and processing/confirmation of corrections by the State Board of Equalization. MRC will also pursue retroactive recoveries for the City for eligible prior periods. If MRC is successful in securing retroactive recovery for prior periods the 25% compensation would apply to the fund transfers (i.e., retroactive adjustments for eligible amounts improperly distributed in prior quarters) actually received by the City of corrections by the State Board of Equalization.

For QDR audit misallocations, MRC is typically compensated for only one or two quarters upon correction of the account. For misallocations stemming from SBE policies or interpretations, MRC's participation is typically prospective only as these corrections must be implemented through regulatory clarification/change, legislation or legal action.

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.

C. EXPENSES

All expenses incurred by MRC in providing the audit service and sales tax information service are absorbed by MRC. These expenses include items such as employee salaries and benefits, insurance, airfare, auto rentals, meals, lodging, keypunching, computer processing, clerical, communications (e.g., meetings, telephone, mail, etc.) photocopying, overhead and miscellaneous out-of-pockets for consumable supplies and research materials such as maps, directories, etc.

7. 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.

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.

Attachment B-1

**A RESOLUTION OF THE CITY OF SEBASTOPOL CITY COUNCIL
DESIGNATING A CITY CONSULTANT AS THE AUTHORIZED CITY
REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS.**

WHEREAS, pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Sebastopol has adopted a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City of Sebastopol, by resolution, may designate any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Sebastopol has entered into an agreement for sales tax audit and information services with the firm of MUNICIPAL RESOURCE CONSULTANTS, a partnership of JOHN T. AUSTIN, INC. and ALLEN W. CHARKOW, INC. to designate MUNICIPAL RESOURCE CONSULTANTS as the authorized Consultant to examine such sales tax records maintained by the Board on behalf of the City of Sebastopol; and

WHEREAS, all legal prerequisites prior to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SEBASTOPOL CITY COUNCIL, as follows, to wit:

Section 1: In all respects as set forth above, the City of Sebastopol City Council hereby certifies to the State Board of Equalization that MUNICIPAL RESOURCE CONSULTANTS is the designated representative of the City of Sebastopol to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected by the Board on behalf of the City of Sebastopol.

RESOLUTION NO. _____

Section 2: Pursuant to California Revenue and Taxation Section 7056 (b), the Sebastopol City Council hereby certifies that MUNICIPAL RESOURCE CONSULTANTS, a partnership of JOHN T. AUSTIN, INC. and ALLEN W. CHARKOW, INC. (hereinafter referred to as "Consultant") meets all of the following conditions:

a. CONSULTANT has an existing contract with the CITY to examine sales tax records;

b. CONSULTANT is required by that contract to disclose information contained in, or derived from, those sales tax records only to an officer or employee of the CITY who is authorized by resolution to examine the information;

c. CONSULTANT is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and

d. CONSULTANT is prohibited by the contract from retaining the information contained in, or derived from, those sales tax records after the contracts have expired.

Section 3: The City shall certify to the adoption of this Resolution.

APPROVED and ADOPTED this ____ day of _____, 1998.

RESOLUTION NO. 4949

**A RESOLUTION OF THE CITY OF SEBASTOPOL CITY COUNCIL
DESIGNATING A CITY CONSULTANT AS THE AUTHORIZED CITY
REPRESENTATIVE TO EXAMINE SALES AND USE TAX RECORDS.**

WHEREAS, pursuant to California Revenue and Taxation Code Section 7200, et seq., the City of Sebastopol has adopted a sales and use tax ordinance which imposes a tax and provides a measure therefore that can be administered and collected by the State Board of Equalization along the same and existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Sales and Use Taxes; and

WHEREAS, pursuant to California Revenue and Taxation Code Section 7056, the City of Sebastopol, by resolution, may designate any officer, employee or any other person to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected for the City; and

WHEREAS, the City of Sebastopol has entered into an agreement for sales tax audit and information services with the firm of MUNICIPAL RESOURCE CONSULTANTS, a partnership of JOHN T. AUSTIN, INC. And ALLEN W. CHARKOW, INC. To designate MUNICIPAL RESOURCE CONSULTANTS as the authorized Consultant to examine such sales tax records maintained by the Board on behalf of the City of Sebastopol; and

WHEREAS, all legal prerequisites prior to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SEBASTOPOL CITY COUNCIL, as follows, to wit:

Section 1: In all respects as set forth above, the City of Sebastopol City Council hereby certifies to the State Board of Equalization that MUNICIPAL RESOURCE CONSULTANTS is a designated representative of the City of Sebastopol to examine all of the sales and use tax records of the Board pertaining to sales and use taxes collected by the Board on behalf of the City of Sebastopol.

Section 2: Pursuant to California Revenue and Taxation Section 7056(b), the Sebastopol City Council hereby certifies that MUNICIPAL RESOURCE CONSULTANTS, a partnership of JOHN T. AUSTIN, INC. And ALLEN W. CHARKOW, INC. (Hereinafter referred to as "Consultant") meets all of the following conditions:

- a. CONSULTANT has an existing contract with the CITY to examine sales tax

records;

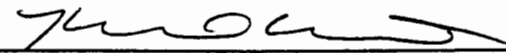
b. CONSULTANT is required by that contract to disclose information contained in, or derived from, those sales tax records only to the City Manager, City Finance Director, or any officer or employee of the CITY who is authorized by resolution to examine the information ;


c. CONSULTANT is prohibited by the contract from performing consulting services for a retailer during the term of the contract; and

d. CONSULTANT is prohibited by the contract from retaining the information contained in, or derived from, those sales tax records after the contracts have expired.

Section 3: The City shall certify to the adoption of this resolution.

IN COUNCIL DULY ADOPTED this 5th day of May, 1998.

Approved: 
Mayor

Attest: 

AYES: 4 Councilmembers Foley, Magnie, Roventini and Mayor Austin

NOES: 0

ABSENT: 1 Councilmember Crump

CERTIFICATION
I HEREBY CERTIFY THAT THE
ABOVE IS A TRUE AND CORRECT
COPY OF RESOLUTION 4949
ADOPTED BY THE SEBASTOPOL
CITY COUNCIL ON MAY 5, 1998
Anna Fiori
CITY CLERK/DEPUTY CITY CLERK

BUSINESS INVENTORY MANAGEMENT SERVICE

Municipal Resource Consultants (MRC) proposes to provide to the City of Sebastopol (City) a Business Inventory Management Service (BIMS). The objectives, scope, procedures, system requirements, custom specifications, software license, timing, support and compensation are set forth as follows:

1. BACKGROUND

In 1984 the state legislature enacted Revenue and Taxation Code Section 19556¹ requiring most California cities to furnish the state Franchise Tax Board (FTB) specific business tax information each year.

The FTB utilizes the cities' business community data to monitor compliance with the State Income Tax, and Bank and Corporation Tax. This program has proven to be successful in allowing the FTB to increase state revenue, but it has become apparent to the FTB that there is a strong correlation between the quality and frequency of the data received and the amount of the revenue that could be raised for the State. Furthermore, research has shown that cities throughout California experience changes in their business base at an average rate exceeding 20% per year - due to business openings, closings, expansions, consolidations, relocation, mergers, acquisitions and other events. Given this situation, a valid listing of a city's businesses typically does not exist.

As a result, much of the data received by the FTB is not of the desired quality, frequently in the wrong format, missing important data (e.g. SIC codes), not standardized as to address and name, includes closed businesses not purged from city files, missing many new businesses and it is received only once a year.

¹ Revenue and Taxation Code Section 19556 requires any California city which maintains or has access to a computerized recordkeeping system, and which assesses a business tax, to annually furnish the Franchise Tax Board specified business tax information on all businesses subject to the tax in the preceding fiscal year. The Government Code further specifies that access to the business tax information is to be kept confidential and shall be disclosed only to the FTB.

MRC's Business Inventory Management Service creates and maintains a comprehensive and valid inventory of current businesses operating within the City's boundaries. The inventory is created by combining MRC's geobased data integration technology, which extracts relevant business data from a large variety of data sources (including the City's existing business license records). Coupled with this, information derived from MRC's Business License Tax Compliance Service field inspectors, in canvassing the City, capture those firms that elude electronic data sources. The combined data is corrected, standardized and enhanced (e.g. business name, address, SIC code) and formatted according to FTB requirements. Each month the data is updated and delivered to the FTB and the City. The business inventory provided to the City is placed on a personal computer designated by the City and is accessible through MRC's proprietary compliance software.

2. OBJECTIVES

MRC's BIMS is designed to assist the City achieve the following objectives:

- Build and Maintain an Accurate Business Inventory
- Produce State-Mandated Business Tax Information that Qualifies for State Reimbursement

3. SCOPE OF SERVICE

MRC shall provide the City with a Business Inventory Management Service which includes:

- Creation and maintenance of a comprehensive and valid inventory of the City's businesses that is continuously updated
- Quarterly reports to the City of the business inventory
- Production of business inventory data on appropriate media and in appropriate format provided to meet the mandate reporting deadline of March 31 each year
- License to use MRC's proprietary business inventory management software
- Ongoing software upgrades, training and support

4. PROCEDURES

MRC responsibilities:

- Review the City's business license forms for opportunities to simplify taxpayer reporting, capture economic development data (number of employees, building space, etc.) and FTB-mandated information, and increase processing efficiency
- Secure from the City on electronic media a current listing of all businesses registered with the City, and convert the data to a BIMS-readable format
- Develop and maintain a computerized inventory of businesses operating in the City by:
 - o Preparing an aggregated list of business entities on electronic media; this list is derived from multiple private and public hard copy and electronic sources, including specialized business listings and directories, and the City's business tax and other confidential revenue payment files
 - o Cleaning and standardizing, in address-order, each entity's business name, address, and payment file information to eliminate redundancies
- Provide monthly data cleaning, standardization and multiple source integration using MRC's proprietary software for compliance and enforcement
- Install the BIMS software, provide ongoing software upgrades, training and support

City staff responsibilities:

- Establish a record for each registered business to include FTB-mandated information;
- Each month provide MRC with a current listing of all businesses registered with the City on electronic media;

5. SYSTEM REQUIREMENTS

The BIMS software component requires the following hardware:

- o Any 486 based IBM or compatible PC with 16 MB RAM
- o Hard disk with a minimum free space of 250 MB (May vary depending)
- o 3.5" floppy disk (1.44 MB)
- o 14" SVGA monitor, 15" or 17" recommended
- o Parallel (Centronics compatible) printer interface
- o Any Centronics-compatible parallel printer
- o Modem (min. 14.4 baud rate 28.8 preferred) and dedicated telephone line
- o Double speed CD ROM, Quad speed preferred
- o Mouse

Software required includes:

- o MS or PC DOS version 5.0 or later
- o Communications software for the modem
- o Word processing software with mail merge capability, i.e., WordPerfect, Microsoft Word, etc. for optional business license administration service

Should the City desire, MRC will assist in evaluating and procuring the necessary hardware and/or software.

6. SOFTWARE LICENSE, TIMING AND SUPPORT

BIMS includes the attached software license and maintenance agreement (see Attachment C-1).

Within 60 working days of contract authorization and receipt of necessary information, MRC shall:

- Install BIMS software on City hardware.
- Provide staff with up to 32 hours of training with easy-to-use operating manuals

MRC shall also provide ongoing software and documentation upgrades, data updates, and up to 12 hours of annual support onsite or remotely by telephone and/or modem on an as-needed basis.

7. COMPENSATION

Pursuant to Government Code Section 17561, MRC's fees for BIMS are eligible for reimbursement by the State. To make BIMS entirely self-funding for the City, MRC's compensation is payable only after MRC has installed the BIMS software on City computer system, has trained City personnel on the use of the software, has produced the business license inventory in the appropriate format and on appropriate media and delivered same to the FTB to meet the State reporting mandate, and the City has been paid on its estimated claim for State reimbursement for BIMS. MRC's fee for BIMS is due within ten days thereafter. In the event that the State Controller's office should make incremental payments to the City for its SB 90 claim, the amount due MRC from each payment shall be in proportion to the cost of BIMS as it relates to the total amount of the City's business license mandate claim. If the State does not fully reimburse the City for BIMS, the amount not reimbursed is not due MRC until the State has reimbursed it to the City.

The annual Business Inventory Management Service is provided for a fee of \$7,500.

MRC shall assist the City and/or the City's consultant in preparing the necessary claim for state reimbursement by providing the substantiating documentation, rationale, and cost breakdown to support the SB 90 claim and represent same with the FTB and the State Controller's Office.

In addition, to qualify for deferred payment of the BIMS fee, the City must:

- Submit to the appropriate State agency an estimated claim for BIMS reimbursement by the deadline for submitting estimated claims for compliance with State mandates each year (November 30 of the fiscal year in which the expense is incurred, or other deadline as may be established by the State); and
- Submit to the appropriate State agency a claim for actual expenses incurred for BIMS by the deadline for submitting claims for reimbursement of State mandated local programs (November 30 following the fiscal year in which the expense is incurred, or other deadline as may be established by the State).

LICENSING AGREEMENT

for

BUSINESS INVENTORY MANAGEMENT SERVICE (BIMS)

This Agreement is made at Sebastopol, California, as of _____ 1998, by and between the City of Sebastopol, a municipal corporation (hereafter referred to as "City") and Municipal Resource Consultants (hereafter referred to as "MRC"), who agree as follows:

1. License. Subject to the terms and conditions set forth in this Agreement, MRC shall provide to the City a license to use MRC's software, database, and other property (hereafter referred to as "Property") as further described in Exhibit "C". MRC shall provide said Property at the time, place, and in the manner specified in Exhibit "C". MRC shall not be compensated for property outside the scope of Exhibit "C".
2. Restrictions. Said Property shall only be used by the City. The City shall not sublet, duplicate, or modify said Property. Said Property may only be used for the purposes described in Exhibit "C". Said Property shall be returned to MRC at the time the license expires. MRC may terminate the license, at its sole option, if City violates any of the stated restrictions. The Property remains the sole and exclusive property of MRC.

The license granted hereunder shall not imply ownership by City of said Property, rights of City to sell said Property, or rights to use said Property for the benefits of others. This license is transferable only with MRC's written consent.

3. Payment. City shall pay MRC for license rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "C". The payments specified in Exhibit "B" shall be the only payments to be made to MRC for license rendered pursuant to this agreement, unless the City approves additional compensation for additional property. MRC shall submit all billings for license rendered pursuant to this Agreement to City in the manner specified in Exhibit "C".

4. Attachments and Exhibits. All Attachments and Exhibits referred to herein are appended hereto and are by this reference incorporated herein.
5. Proprietary Information. As used herein, the term "proprietary information" means any information which relates to internal controls, computer, or data processing programs; data that has been modified by MRC proprietary techniques resulting in standardized, specifically correlated, or integrated information; electronic data processing applications, routines, subroutines, techniques, or systems; or business affairs and methods of operation or proposed methods of operation of MRC, except such information which is not obtained through this Agreement or which is in the public domain at the time of its disclosure to the other party. City shall hold in confidence using levels of effort consistent with its own policies applicable to its confidential information and shall not disclose to any other party any MRC proprietary information (as such term is herein defined) which may be disclosed to City by MRC in connection with this Agreement or otherwise learned or obtained by City in connection with this Agreement. The parties further agree not to take any other action inconsistent with the confidential nature of MRC proprietary information. The obligations imposed by this Paragraph shall survive any expiration or termination of this Agreement.
6. Waiver. No waiver of any breach or failure or delay in exercising any right, power, or remedy shall constitute a waiver of same or of any provision hereof and no waiver shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement of such waiver is sought.
7. Severability. The provisions of this Agreement are severable, and the unenforceability of any provision of this Agreement shall not affect the enforceability of this Agreement or any other provision hereof. In addition, in the event that any provision of this Agreement is determined by a court to be unenforceable as drafted, the parties acknowledge that it is their intention that such provision be construed in a manner designed to effectuate the purposes of such provision to the fullest extent enforceable under applicable law.
8. Taxes. City shall be responsible for the payment of any applicable taxes in connection with the Agreement, except for any tax based on MRC's net income.
9. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction hereof.

10. Remedies Cumulative. All remedies in this Agreement are cumulative and in addition to and not in lieu of, any other remedies a party may have at law or in equity.
11. Entire Agreement. This Agreement and the Exhibits hereto, which is hereby incorporated herein by reference, shall constitute the entire agreement between City and MRC with respect to its subject matter, shall supersede all prior agreements and understandings, if any, between the parties respecting the subject matter hereof and may be modified only by written agreement of the parties.

EXECUTED as of the day and year first above stated.

CITY OF SEBASTOPOL

By: *Paula*

Title: *City Manager*

Date: *5/14/98*

MUNICIPAL RESOURCE CONSULTANTS
PARTNER: JOHN T. AUSTIN, INC.

By: *John T. Austin*
John T. Austin

Title: Senior Operating Officer

Date: April 7, 1998

GENERAL PROVISIONS

1. Independent Contractor. At all times during the term of this Contract, Municipal Resource Consultants (Consultant) shall be an Independent Contractor and shall not be an employee of the City of Sebastopol (City). City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement; however, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement.

2. Liability. City shall not be called upon to assume any liability for direct payment of any salaries, wages, or other compensation to any Consultant personnel or subcontractor performing services hereunder for City, or any liability other than provided for in this Agreement.

City shall not be liable for compensation or indemnity to any Consultant employee or subcontractor for injury or sickness arising out of his/her employment, or for any negligent actions of the Consultant or its employees.

All persons employed in the performance of such services and functions shall be employees of Consultant, and as such shall not, for any purposes, be considered employees of City and therefore shall have no right to any City service, civil service, or other City status.

3. Subcontracts. Any subcontracts entered into by Consultant for services to be rendered towards the completion of Consultant's portion of this Agreement shall be for Consultant's benefit alone, and as such shall be its responsibility with no liability resting on the City. Consultant agrees to provide a list of all subcontractors to be used in connection with services to be rendered toward the completion of its portion of this Agreement to the City within ten (10) working days of execution of this Agreement.

4. Licenses, Permits, Etc. Consultant represents and warrants to City that he has all licenses, permits, qualifications and approvals of whatsoever nature which are legally required for Consultant to practice his profession. Consultant represents and warrants to City that Consultant shall, at his sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice his profession.

GENERAL PROVISIONS
PAGE 2

5. Time. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

6. Insurance.

a. Public Liability. During the term of this Agreement, Consultant shall maintain in full force and effect a policy of public liability insurance with minimum coverages as follows: \$1,000,000 for injury to one person in any one occurrence; \$1,000,000 aggregate; and, \$50,000.00 for property damage. Consultant shall cause the City, its officials and employees to be named on all liability policies described above as insured as respects: (1) activities performed for the City by or on behalf of the named insured, (2) products and completed operations of the Named Insured, and (3) premises owned, leased or used by the Named Insured.

b. Worker's Compensation. During the term of this Agreement, Consultant shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Consultant may have for worker's compensation.

7. 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.

8. Assignment Prohibited. No party to this Agreement may assign any right or obligation pursuant to this agreement. Any attempt of purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

GENERAL PROVISIONS

PAGE 3

9. 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 removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice from City of the desire of City for the removal of such person or persons.

10. 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 his/her profession. All products of whatsoever nature which Consultant 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 Consultant's profession.

11. Reports, Charts or Other Products. All reports, charts and other products resulting from the performance of this agreement are the property of the City.

12. City Representative. The City Manager or his/her designee is the representative of the City and will administer this Agreement for the City.

13. Termination. This Agreement may terminate on ten (10) days written notice by either party, or within such time as both parties may find necessary to conclude the work currently under way and to summarize Consultant's findings for City.

14. Indemnity and Hold Harmless. Consultant shall assume the defense of, and indemnify and save harmless, the City, its officers, employees, and agents, and each and every one of them, from and against all actions, damages, claims, losses or expenses of every type and description including attorney's fees to which they may be subjected or put, by reason of, or resulting from, the performance of the work, which is caused in whole or in part by any negligent act or omission of the Consultant, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not it is caused in part by a party indemnified hereunder.

GENERAL PROVISIONS
PAGE 4

15. Waiver of Breach No waiver of the breach of any of the covenants, agreements, restrictions or conditions of this Agreement by any party hereto shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No delay or omission of any party hereto in exercising any right, power or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, nor shall the acceptance of any payments made in a manner or at a time other than as herein provided be construed as a waiver of or variation in any of the terms of this Agreement

16. Whole and Entire Agreement This instrument contains the whole and entire agreement of the parties hereto and correctly sets forth the rights, duties and obligations of each to the others as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

17. Equal Employment Opportunity: During the performance of this Agreement, Consultant, for itself, its assignees and successors in interest, agrees as follows:

- a. Compliance With Regulations: Consultant shall comply with the Executive Order 11246 entitled "Equal Employment Opportunity": as labor regulations (41 C.F.R. Part 60), hereinafter referred to as the "Regulations."
- b. Nondiscrimination: Consultant, with regard to the work performed by it after award and prior to completion of the work pursuant to this Agreement, shall not discriminate on the ground of race, color, religion, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.
- c. Solicitation for Subcontractor, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Consultant for work to be performed under any subcontract, including procurements of materials or equipment, such potential subcontractor or supplier shall be notified by Consultant of Consultant's obligation under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origins.

GENERAL PROVISIONS
PAGE 5

- d. Information and Reports: Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the City and shall set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of noncompliance by Consultant with the nondiscrimination provisions of this Agreement, the City shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to Consultant under the contract until Consultant complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.
- f. Incorporation of Provisions: Consultant shall include the provisions of paragraphs "a" through "e" in every subcontract, including Regulations, order, or instructions issued pursuant thereto. Consultant shall take such action with respect to any Regulations, order or instructions issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request City to enter such litigation to protect the interests of the City.

GENERAL PROVISIONS
PAGE 6

18. Legal Interpretations. For purposes of this Agreement the City Attorney's opinion concerning the interpretation of local ordinances and the legal rights, duties and obligations of the City regarding collection of taxes under State and local law shall be controlling.

19. City's Determination Final. Whenever the City Council or a City Officer is empowered under State or local ordinance to make a determination as to whether or not a tax assessed against a taxpayer is due for purposes of this agreement that determination shall be final and binding on the parties hereto.

20. Confidentiality. Consultant agrees that it shall keep all information it receives concerning City taxpayers confidential and that it shall not use this information for any purpose other than as expressly provided in this Agreement or otherwise expressly consented to by City.

21. Notices. Any notice to be given from one party to the other pursuant to this Agreement shall be deposited with the United States Postal Service postage prepaid and addressed as follows:

To City: City Manager
 City of Sebastopol
 P.O. Box 1776
 Sebastopol, CA 95473

To Consultant: John Austin
 MUNICIPAL RESOURCE CONSULTANTS
 32107 W. Lindero Canyon Road
 Suite 233
 Westlake Village, CA 91361

Nothing in this Paragraph shall be construed to prevent the giving of notice by personal service.

BIOGRAPHICAL PROFILES

PROJECT MANAGEMENT STAFF

To provide the proposed services, MRC shall employ a project team approach consisting of full time, permanent employees. The project management team consists of the following personnel:

JOHN AUSTIN AND ALLEN CHARKOW (PROJECT CO-DIRECTORS)

As founders of MRC and project co-directors, John and Allen are responsible for the overall quality control and timeliness of the project. They are also responsible for making MRC's resources available to the project and assisting in the technical direction, management, and liaison activities.

John is responsible for the overall design and provision of MRC's revenue enhancement services and client relations. In this capacity, he interfaces with third-party intermediaries (such as the state, counties, and public utility companies) and corporate taxpayers on behalf of client cities. John has been an economic development and tax consultant to California municipalities for more than 20 years, principally focused on the enhancement of sales, use, and property tax revenue. He received a BS Degree in Business Economics and Marketing from the University of Southern California.

Allen has overall responsibility for the design and provision of the firm's data processing and geobased information systems for auditing, monitoring, and analyzing revenue sources. Allen pioneered computerized information systems for revenue auditing and analysis on behalf of California cities. Allen was in municipal finance for more than 17 years, 15 of which were in the capacity of Director and Assistant City Manager. He received a BA in Business Management from Fresno State and an MBA from the University of Santa Clara.

John has over 6 years of experience with MRC and has overall responsibility for MRC's client liaison consulting services and the 14 individuals who provide them. He has extensive experience and proven expertise facilitating stakeholder consensus building to assist MRC's clients develop and implement strategies to preserve and enhance their revenue bases. He has over 20 years of experience in city and county government, including senior management responsibility for organization-wide administration, finance, redevelopment, and community/economic development. He also has extensive experience conducting a wide variety of management training and organizational development programs. He is a frequent guest speaker at many seminars and conferences for municipal officials. He holds a B.S. degree from California State University, Long Beach and has served on several committees for the League of California Cities, the California and National Societies of Finance Officers, and International City/County Management Association.

HUNTER AUSTIN - SALES TAX AUDIT

Hunter has day-to-day responsibility for the technical direction and coordination of the sales tax audit, including the methodology and procedures utilized in detecting, documenting and correcting sales tax distribution errors. In this capacity, his duties encompass creation and implementation of the workplan, including scheduling, coordinating and monitoring the activities of other project team members.

For the past eight years, Hunter has been managing MRC's field audit operations for the detection of sales tax distribution and development of the substantiating documentation for MRC's reports for submission to the State Board of Equalization. During that same period, he has also been responsible for the coordination and interface between MRC's field audit and corrections staff. Previously, Hunter worked as an MRC detection auditor. Prior to joining MRC, Hunter had 13 years of experience as a commercial-industrial leasing broker and public relations agent.

ERIC FINCH - INFORMATION SYSTEMS MANAGER

Eric Finch has overall responsibility for MRC's Information Systems. In this capacity he: provides focus, direction and coordination of I.S. resources; enforces project management and timelines; pursues long-range technology planning and development; and is responsible for development, network, data, and technical services. Prior to joining MRC, Eric held the position of Senior Analyst/Programmer for the City of Fresno, where he was responsible for client server development and systems for administrative services functions. Eric has also worked extensively in computer integration services to local and federal government agencies in the field of networking, computer operations, information center services, and workflow and system reengineering. Eric has 14 years experience in the field of information systems and management. He holds a B.S. degree in Business from CSU Fresno, and is in progress toward an MBA in MIS.

LOUIS SALAS - DATA PROCESSING

Louis is responsible for the ongoing development, maintenance, and enhancement of MRC's computer software systems for multi-revenue audits and management information systems. Prior to his association with MRC, Louis had 5 years of experience as a programmer and systems analyst. Louis received an Associate of Science Degree in Math/Science from Porterville College, Associate of Computer Science Certificate from Westland College, and a B.S. Degree in Computer Science from California State University Fresno.

SCOTT ECKMAN - DATA PREPARATION MANAGER

Scott supervises the standardization and cleaning-up of addresses which are non-standard to MRC's automated detection processes. Scott is an expert in the utilization of address and parcel data with respect to tax discovery applications. He will be responsible for applying these techniques to each data source utilized to facilitate integration in MRC's proposed City Tax Discovery and Collection Program. Scott is a graduate of California State University-Fresno in computerized mapping.

JIM TILKES - DATA PROCESSING AND PROGRAMMING SERVICES

Jim is responsible for the design and development of computer software systems for MRC's tax audits and geobased information systems. Jim's work for MRC does not involve dealing with the State Board of Equalization. Prior to joining MRC three years ago, Jim was with the City of Fresno for more than 20 years, serving in the capacities of Data Base Administrator, Program Development Supervisor, Systems Analyst and Programmer. Prior to that, Jim was a Computer Programming Specialist in the U.S. Air Force for four years. Jim received an AA Degree in Data Processing from Fresno Community College and a BS Degree in Business Quantitative Analysis from Fresno State University. Jim taught Computer Programming and Systems Analysis at California State University Fresno and the Electronic Computer Programming Institute. Jim is a co-developer of QDAMS - Quickdraw Automated Mapping System.

ALBIN C. KOCH - LEGAL ANALYSIS

Mr. Koch serves as general counsel to Municipal Resource Consultants and conducts an individual practice in Glendale, CA focusing on California sales and property tax and multi-state franchise and income taxation and federal and state taxation of financial institutions, exempt organizations, and real estate. He is a member of the CEB Tax Advisory Committee and past member of the Executive Committee of the State Bar Taxation Section, and Past Chair of its State and Local Tax and State Tax Legislation Coordinating Committees. He is a past member of the California Franchise Tax Board Advisory Committee, a member of the Tax Management Advisory Board (Estates, Gifts and Trusts) and was formerly Chair of the L.A. County Bar Tax Section and the ABA Tax Section Committee on Banking and Savings Institutions. Mr. Koch was a partner of Morrison & Foerster and served as Vice President and Assistant General Tax Counsel of Bank of America. He is a graduate of Yale University and the Harvard Law School.

RESOLUTION NO. _____

A Resolution of the City Council of the City of Sebastopol Authorizing Examination of Sales or Transactions and Use Tax Records

WHEREAS, pursuant to Sebastopol Municipal Code Chapter 3.04, the City of Sebastopol (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 Sebastopol 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 SEBASTOPOL HEREBY RESOLVES AS FOLLOWS:

Section 1. That the City Manager/City Attorney, Assistant City Manager/City Clerk, Administrative Services Director, or other officer or employee of the City designated in writing by the City Manager/City Attorney 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.

Section 3. 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 the MuniServices, LLC. and City. The person or entity designated by this section meets all of the following conditions, which are also included in the contract between the City and the MuniServices, LLC.:

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

