

Agreement No. 2024.08.20.132
Professional Services Agreement

This **Professional Services Agreement** ("Agreement") is dated **Tuesday, August 20, 2024** for reference purposes and is executed by the City of Brea, a California municipal corporation ("City"), and **Avenu Insights & Analytics** a Limited Liability Company ("Consultant").

RECITALS

A. City desires to retain Consultant as an independent contractor to provide the following **Professional Services: Sales, Use and Transaction Tax Audit and Recovery Services for Administrative Services**.

B. Contractor represents that it is duly licensed, fully authorized by law, and has the necessary experience and qualifications, to provide such services.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Scope of Services.

Consultant shall perform the services referenced in the Recitals and more specifically described in the Scope of Services set forth in the attached Exhibit A, and as otherwise required by this Agreement, all to City's satisfaction (collectively, "Services").

2. Compensation

A. City shall pay for the Services satisfactorily performed, in accordance with the Fee Schedule set forth in the attached **Exhibit A**.

B. The **annual all-inclusive amount** ("Contract Amount") includes the compensation as listed in Exhibit A. This includes the annual fee of \$3,750 for Sales/Use Tax Analytic & Reporting and the annual fee of \$9,740 for Property Tax and Reporting Services as well as the 15% contingency fee for sales/use tax revenue received by the City from correction of taxpayer reporting errors detected and documented by the Sales, Use and Transaction Tax Audit and Recovery Services. This amount covers and is inclusive of all labor, materials, and any and all other costs incurred by **Consultant** in performing the Services. **Consultant** shall be deemed to have made all inquiries and site inspections deemed necessary by **Consultant** prior to execution of this Agreement.

C. Unless the Fee Schedule calls for payment of a one-time flat fee, periodic payments for undisputed work shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. **Consultant's** invoices shall indicate the amount of time spent on each task and the applicable rate.

D. Unless the Fee Schedule calls for payment on a different schedule, **Consultant** shall invoice City on a monthly basis.

3. Additional Work.

As presented in Exhibit A, the City may request additional consulting services at any time during

the Term of this Agreement at standard hourly rates ranging from \$90 to \$350 per hour.

4. Term.

A. The term of this Agreement shall commence **Sunday, September 1, 2024** (“Effective Date”). Unless extended or earlier terminated as provided herein, this Agreement shall expire on **Sunday, August 31, 2025**. **City may extend the term of this Agreement by giving written notice to Contractor within 30 days prior to the then-scheduled expiration date for one (1) additional one-year term which will be in the sole discretion of the: City Manager.**

5. Time of Performance.

A. **Consultant shall commence the Services on the above Effective Date, timely complete all performance milestones, if any, and shall complete the Services within the term of this agreement.**

B. Force Majeure. Neither party shall be considered in default of this Agreement for delays in performance caused by a force majeure event. As used in this Agreement, the term “force majeure event” means circumstances beyond the reasonable control of the non-performing party and includes the following: abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; or judicial restraint. **Consultant’s** lack of financial capability, shall not constitute a force majeure event unless directly attributable to any of the foregoing events.

C. Should a force majeure event occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

6. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to the Services, including costs incurred, shall be maintained by **Consultant** and made available for review by City at all reasonable times during the term of this Agreement and for four (4) years from the date of final payment by City.

7. Standard of Care.

Contractor’s Services shall be performed in accordance with the generally accepted professional standards of practice and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently performing similar services under similar conditions in southern California. Contractor shall maintain all professional licenses and certifications required to lawfully perform the Services.

8. Compliance with Law.

A. **Consultant** shall comply with all applicable laws including Cal/OSHA requirements.

B. **Consultant** shall obtain a City of Brea business license.

C. **Consultant** shall comply with all applicable provisions included in the attached Special Provisions Section.

9. Assignment and Subcontracting.

A. **Consultant** shall not assign or transfer this Agreement or any rights or obligations under, or any interest in this Agreement, or subcontract any required performance hereunder, without the prior written consent of City, which may be withheld for any reason. City shall be deemed to have approved **Consultant's** utilization of subcontractors identified in **Consultant's** proposal for the Services.

B. Any attempt to so assign, transfer, or subcontract without City's prior written consent shall be void and shall constitute grounds for City's termination of this Agreement. Authorized subcontracts shall contain a provision making the subcontractor subject to all requirements of this Agreement otherwise applicable to the **Consultant**.

C. If use of a subcontractor is approved, then City may withhold 5% of each monthly payment to **Consultant**. Such retention shall be released upon City's receipt of an unconditional release of all claims signed by any such subcontractor, as to work performed to date.

10. Independent Contractor.

A. **Consultant** is retained as an independent contractor and is not an employee of City. No employee or agent of **Consultant** is or shall become an employee of City.

B. **Consultant** will determine the means, methods, and details by which **Consultant's** personnel will perform the Services. **Consultant** shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Services and compliance with the customary professional standards.

C. **Consultant's** personnel shall not wear or display any City uniform, badge, identification number, or other information identifying such individual as an employee of City. **Consultant's** personnel shall not use any City e-mail address or City telephone number in the performance of the Services. **Consultant** shall acquire and maintain at its sole cost and expense such vehicles, equipment and supplies as **Consultant's** personnel require to perform the Services. **Consultant** shall perform the Services off of City premises at locations of **Consultant's** choice, except as otherwise may from time to time be necessary in order for **Consultant's** personnel to receive projects from City, review plans on file at City, pick up or deliver any work product, or as may be necessary to inspect or visit City locations. City may make a computer available to **Consultant** from time to time for **Consultant's** personnel to obtain information about or to check on the status of projects pertaining to the Services.

D. **Consultant** shall be responsible for and pay all wages, salaries, benefits and other amounts due to **Consultant's** personnel in connection with the Services. **Consultant** shall be responsible for all reports and obligations respecting such additional personnel, including Social Security taxes, other retirement or pension benefits, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance. **Consultant** and its officers, employees, agents, and subcontractors shall not become entitled to, and hereby waive any claims to, any wages, salaries, compensation, benefit or any incident of employment by City, including eligibility to enroll in, or reinstate to membership in, the California Public Employees Retirement System ("PERS") or any other retirement program, as an employee of City, and entitlement to any contribution to be paid by City for employer

contributions or employee contributions for PERS benefits or any other retirement benefits.

11. CalPERS Compliance.

The parties acknowledge that City is a local agency member of CalPERS, and as such has certain pension reporting and contribution obligations to CalPERS on behalf of qualifying employees. **Consultant** agrees that, in providing its employees and any other personnel to City to perform the Services, **Consultant** shall assure compliance with the Public Employees' Retirement Law (Government Code Section 20000 et seq.), the regulations of CalPERS, and the Public Employees' Pension Reform Act of 2013 (Government Code Section 7522 et seq.). Without limitation to the foregoing, **Consultant** shall assure compliance with regard to personnel who have active or inactive membership in CalPERS and to those who are retired annuitants and in performing this Agreement shall not assign or utilize any of its personnel in a manner that will cause City to be in violation of the applicable retirement laws and regulations.

12. Insurance.

Unless otherwise permitted or waived in writing by City's Risk Manager **Consultant** shall not commence work until it has secured all insurance required under this section and provided evidence thereof that is acceptable to City. In addition, **Consultant** shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

A. Commercial General Liability

i. **Consultant** shall take out and maintain, in amounts not less than specified herein,

Commercial General Liability Insurance, in a form and with insurance companies acceptable to City.

ii. Coverage for Commercial General Liability insurance shall be at least as broad as the following:

a. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

iii. Commercial General Liability Insurance must include coverage for the following:

- a. Bodily Injury and Property Damage
- b. Personal Injury/Advertising Injury
- c. Premises/Operations Liability
- d. Products/Completed Operations Liability
- e. Aggregate Limits that Apply per Project
- f. Contractual Liability with respect to this Agreement
- g. Broad Form Property Damage
- h. Independent **Consultant's** Coverage

iv. The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to this Agreement.

v. The policy shall be endorsed to name City, its elected and appointed officials, officers, employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials, as additional insureds using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsement forms providing the exact same coverage.

- vi. The general liability coverage may utilize deductibles or provide coverage excess of a self-insured retention, only if approved by City's Risk Manager in writing, and further provided that such deductibles shall not apply to coverage of the additional insureds

B. Automobile Liability

Automobile Liability is not required for this Agreement. Automobile Liability Insurance is required for this Agreement as follows: i. Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to City. ii. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto). iii. The policy shall be endorsed to name City, its officials, officers, employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials, as additional insureds. iv. Subject to City's written approval, the automobile liability coverage may utilize deductibles or provide coverage excess of a self-insured retention, provided that such deductibles shall not apply to coverage of the additional insureds.

C. Workers' Compensation/Employer's Liability

Workers' Compensation and Employer's Liability Insurance is required for this Agreement as follows: i. Contractor certifies that Contractor is aware of the provisions of Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she/it will comply with such provisions before commencing work under this Agreement. ii. Contractor shall maintain full compensation insurance for its employees in accordance with the Workers' Compensation and Insurance Act (Labor Code Section 3200 et seq.) and Employer's Liability Coverage in amounts indicated herein. Contractor shall require all subcontractors to obtain and maintain workers' compensation coverage of the same type and limits as specified in this section.

D. Professional Liability (Errors and Omissions)

Contractor shall maintain professional liability or errors and omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to City and with the limits required herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy coverage form specifically designed to protect against the negligent acts, errors or omissions of Contractor in the performance of professional services. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

\$2,000,000 per claim and aggregate (errors and omissions)

Retroactive Date is not required for this Agreement.

E. Cyber Liability

Contractor shall maintain cyber liability insurance providing protection against claims, losses, and liabilities arising from: (i) errors and omissions in connection with maintaining security of City Data (as defined below); (ii) data breach including theft, destruction, and/or unauthorized use or disclosure of City Data; (iii) identity theft including bank charges assessed; and (iv) violation of privacy rights due to a breach of City Data.

F. Minimum Policy Limits Required

i. A.M. Best's Rating

Each policy of insurance required herein shall be from a company or companies having a current A.M. Best's rating of no less than A:VII and admitted and authorized to transact the business of insurance in the State of California.

ii. The following insurance limits are required for this Agreement:

a. Commercial General Liability

\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage

b. Automobile Liability

Automobile Liability is not required for this Agreement. \$2,000,000 per occurrence (any auto) for bodily injury and property damage

c. Worker's Compensation and Employers Liability

**In the amount required by California law for Workers' Compensation Limit.
\$1,000,000 per occurrence for Employer's Liability**

d. Professional Liability

\$2,000,000 per claim and aggregate (errors and omissions)

e. Cyber Liability

\$2,000,000 per occurrence

ii. Defense costs shall be payable in addition to the limits.

iii. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

G. Proof of Insurance

Within five days of execution of this Agreement, but prior to commencement of the Services, **Consultant** shall file with City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required original endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the

insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

H. Policy Provisions Required

i. The required policies of insurance shall require that the City be provided at least 30 days prior written notice of cancellation of any policy required by this Agreement, except that the policies shall provide at least 10 days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, **Consultant** shall deliver renewal certificate(s) including the required endorsement(s) to City at least 10 days prior to the effective date of cancellation or expiration.

ii. The Commercial General Liability Policy and Automobile Liability Policy shall each contain a provision stating that **Consultant's** policy is primary insurance and that any insurance, self-insurance or other coverage maintained by City or any additional insureds shall not be called upon to contribute to any loss.

iii. The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. If a "claims-made" professional liability policy is provided, it shall include an extended reporting period of not less than three years.

iv. All required insurance coverages, except for the professional and cyber liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of City, its elected and appointed officials, officers, employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials ("City Parties"), or shall specifically require **Consultant** or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. **Consultant** hereby waives its own right of recovery against the City Parties, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

v. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve **Consultant** from liability in excess of such coverage, nor shall it limit **Consultant's** indemnification obligations to City or preclude City from taking such other actions available to City under other provisions of this Agreement or law.

I. Additional Insurance Provisions

i. The foregoing requirements as to the types and limits of insurance coverage to be maintained by **Consultant**, and any approval of such insurance by City, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by **Consultant** pursuant to this Agreement, including the provisions concerning indemnification.

ii. If at any time during the term of this Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by **Consultant** or City will withhold amounts sufficient to pay premium from **Consultant** payments. In the alternative, City may terminate this Agreement for cause.

iii. City may require **Consultant** to provide for inspection by City, complete copies of all insurance policies in effect for the duration of the Agreement.

iv. No City official, officer, employee, agent or volunteer shall be personally responsible for any liability arising under or by virtue of this Agreement.

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

J. Subcontractor Insurance Requirements

Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to City that it has secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name City, its elected and appointed officials, officers, employees, agents, servants, designated volunteers and agents serving as independent contractors in the role of City officials as additional insureds, using ISO form CG 20 38 04 13 or an endorsement providing the same coverage. If requested by **Consultant**, City may approve different scopes or minimum limits of insurance for particular subcontractors.

13. Indemnification.

A. Other than in the performance of professional services, and to the fullest extent permitted by law, Contractor shall defend (with counsel reasonably approved by City), indemnify and hold City, its elected and appointed officials, officers, attorneys, agents, employees, servants, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") free and harmless with respect to any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages, liens, stop notices and/or injury of any kind, in law or equity, to property or persons, including bodily injury, wrongful death, personal injury and property damage, and destruction, or unauthorized access to, disclosure, use, and/or theft of electronic data (collectively, "Claims") in any manner and to the extent arising out of, pertaining to, or incidental to any act, error, omission, or willful misconduct of Contractor, its owners, officials, officers, employees, subcontractors, contractors or agents (and/or any entity or individual for whom Contractor shall bear legal liability) in connection with the performance of the Services including the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses actually incurred in connection with such defense. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Contractor, or by City or any of the other Indemnitees. Contractor shall have no liability hereunder for claims and liabilities arising out of the sole, active negligence of any of the Indemnitees.

B. Professional Services. To the fullest extent permitted by law, Contractor shall, at its sole cost and expense, protect, defend, hold harmless and indemnify the Indemnitees, from and against any and all Claims, whether actual, alleged or threatened, to the extent arising out of, pertaining to, or relating to, in whole or in part, the negligence, recklessness or willful misconduct of Contractor, and/or its officers, agents, employees, subcontractors, contractors or their officers, agents, servants or employees (and/or any entity or individual for whom Contractor shall bear legal liability) in the performance of professional services under this Agreement. Contractor shall defend the Indemnitees in any action or actions filed in connection with any Claims with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and

experts' costs, actually incurred in connection with such defense.

C. Contractor's obligations under this Section shall survive the expiration or termination of this Agreement.

14. Laws and Venue.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard for change of venue laws. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in the Superior Court of the County of Orange, or in the U.S. District Court, Central District,, State of California. **Consultant** must comply with the claim procedures set forth in the Government Claims act (Government Code Section 810 et seq.) prior to filing any lawsuit against City.

15. Termination.

A. City may terminate any portion or all of the Services or this Agreement with or without cause by giving 10 days' prior, written notice to **Consultant**. In such event, City shall be immediately given title to and possession of all Work Product (as defined below) and original field notes, drawings and specifications, written reports and all other documents produced or developed pursuant to this Agreement. Provided **Consultant** is not then in breach, City shall pay **Consultant** for any portion of the Services satisfactorily completed prior to termination. If termination occurs prior to completion of any specific task for which a payment request has not been received, the charge for Services performed shall be the reasonable value of such Services, based on an amount agreed to by the parties. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. **Consultant** shall not be entitled to payment for unperformed Services, and shall not be entitled to damages or compensation resulting from such termination.

B. **Consultant** may terminate this Agreement only for cause and by serving written notice of termination to City, provided **Consultant** has first served City with a written notice of default and demand to cure, and City has failed to cure such default within 30 days of receipt of such notice.

16. Ownership of Work Product.

All draft and final reports, documents, and other written material, and any and all images, reports, writings, ideas, concepts, designs including website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Contractor in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made, provided that any such use shall be at City's sole risk. Contractor shall not obtain or attempt to obtain copyright protection as to any of the Work Product. Contractor agrees that the compensation set forth in Section 2 of this Agreement includes conveyance to City of ownership of all Work Product, including intellectual property rights, as provided in this Section 16. "Work Product" shall not include intellectual property, or any thing or idea protected by intellectual property rights, lawfully owned or possessed by [contractor] prior to the effective date of this Agreement.

A. Contractor hereby assigns to City all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights, that are not otherwise vested

in City pursuant to subsection A above.

B. Contractor warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment or Contractor's default, City shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. Contractor shall defend, indemnify and hold City, and the other Indemnitees harmless from any and all losses, claims or liabilities in any way related to a claim that City's use of any of the Work Product violates federal, state or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights and/or interests in products, ideas or inventions. Contractor shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Work Product produced under this Agreement. In the event the use of any of the Work Product or other deliverables hereunder by City is held to constitute an infringement and the use of any of the same is enjoined, Contractor, at its expense, shall: (a) secure for City the right to continue using the Work Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for City; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement; or (c) provide the City with a full and complete refund of all sums paid under this Agreement. Contractor's obligations under this Section shall survive the expiration or termination of this Agreement.

17. Data Security.

A. As used in this Agreement, "City Data" means any and all information and data provided or made accessible, directly or indirectly, to Contractor by City, or otherwise acquired from City, in connection with Contractor's performance of the Services. As between the Contractor and the City, any and all City Data is solely owned by City. Contractor is granted a limited, non-exclusive, and revocable license to use City Data solely as necessary to perform the Services. At no time shall Contractor use City Data for its own purposes, or sell, disclose or disseminate City Data, except as required by law or to provide the Services. At all times herein, Contractor shall protect and maintain the security of City Data using methods providing not less than the level of security Contractor uses for its own confidential data, and that otherwise comply with recognized industry data security standards applicable to similar kinds of governmental data and information.

B. To the extent any City Data consists of personal information as defined in California Consumer Privacy Act (Civil Code Section 1798.100 et seq.), Contractor shall comply with that statute and with Civil Code Section 1798.80. et seq., including providing the required notifications in the event of any unauthorized access or disclosure of personal information stored, maintained, accessed, used or transmitted by Contractor in connection with this Agreement. Notwithstanding the foregoing, Contractor shall within 24 hours notify the City Representative by telephone and in writing of any unauthorized access of City Data. Thereafter, Contractor shall render any assistance to City and law enforcement as necessary to ascertain the nature and extent of such unauthorized access.

C. Contractor shall not store City Data using cloud-based storage without City's prior, written consent, unless the use of such storage is clearly described in the Scope of Services. Where permitted herein, any and all cloud-based storage shall be on servers and other hardware located within the continental United States, and shall be in compliance with ISO/IEC 27001 - 27018, as applicable, unless otherwise agreed to in writing by the City Representative. Cloud storage using

Amazon Web Service or Microsoft Azure shall be deemed to satisfy the requirements of this subsection C.

18. 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 California Department of Tax and Fee Administration (CDTFA). This section specifies the conditions under which a CLIENT may authorize persons other than CLIENT officers and employees to examine State Sales, Transaction and Use Tax records.

CONSULTANT qualifies under Section 7056 of the Revenue and Taxation Code to review (Bradley-Burns) confidential taxpayer information and documentation before the California Department of Tax and Fee Administration (formerly State Board of Equalization)

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

19. Party Representatives.

City hereby designates **Kristin Griffith**, or such person's designee, as the City Representative for this Agreement.

Consultant hereby designates **Taylor Bullion**, or such person's designee, as **Consultant's** Representative for this Agreement, unless and until written notice of a new representative acceptable to City is provided to City.

The foregoing representatives shall be authorized to provide consent where required herein, and to make other administrative decisions that will be binding on their respective party, except as otherwise specifically required herein.

20. Notices.

Any notices, invoices, or other documents related to this Agreement shall be deemed received on: (a) the day of delivery, if delivered by hand during the receiving party's regular business hours or by e-mail before or during the receiving party's regular business hours; (b) the business day after delivery, if delivered by e-mail after the receiving party's regular business hours; or (c) on the second business day following deposit in the United States mail, certified mail with return receipt requested and postage prepaid, to the addresses listed below, or to such other addresses as the parties may, from time to time, designate in writing.

City

City of Brea

Consultant

Avenu Insights & Analytics, LLC

1 Civic Center Circle
Brea, CA 92821
United States
Faith Madrazo
faithm@CityofBrea.net
(714) 671-4486

7625 N. Palm Ave., Ste.108
Fresno, CA 93711
USA
Mary Delarosa
Mary.DeLaRosa@avenuinsights.com
(559) 287-6660

21. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than City and **Consultant**.

22. Conflicts of Interest.

A. **Consultant** covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services. **Consultant** certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of City.

B. **Consultant** further covenants that, in the performance of this Agreement, no subcontractor or person having any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services shall be employed. **Consultant** has provided City with a list of all City-approved subcontractors and the key personnel for such subcontractors that are retained or to be retained by **Consultant** in connection with the performance of the Services, to assist City in affirming compliance with this Section.

C. **Consultant** maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for **Consultant**, to solicit or secure this Agreement. Further, **Consultant** warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for **Consultant**, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. If required, **Consultant** further agrees to file, or shall cause its employees or subcontractors to file, a Statement of Economic Interest with the City Clerk as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to terminate this Agreement without liability. No director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

23. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

24. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of the parties.

25. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specified in writing, and any such waiver shall be limited to that set of circumstances and not to any future circumstances unless another written waiver is executed.

26. Time of Essence.

Time is of the essence in each and every provision of this Agreement.

27. City's Right to Employ Other Consultant's.

City reserves its right to employ other **Consultant's** to provide the Services or similar services.

28. Exhibits.

The attached **Exhibit A is** are incorporated herein by reference. In the event of any conflict or inconsistency between the provisions of this Agreement and any Exhibit, the provisions of this Agreement shall govern.

29. Entire Agreement.

This Agreement represents the entire understanding of the parties as to the Services, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both parties. This is an integrated agreement.

[SIGNATURES ON FOLLOWING PAGE]

TO EXECUTE THIS AGREEMENT, the Parties have caused their authorized representatives to sign below. Digital Signatures are acceptable if they conform to all requirements of California Government Code Section 16.5.

Avenu Insights & Analytics, LLC

By: paul.colangelo
Paul Colangelo
Chief Executive Officer
paul.colangelo@avenuinsights.com

By: _____

Date Signed: 08/14/2024

Date Signed: _____

[Corporation: pursuant to California Corporations Code Section 313, both signature lines must be executed unless the signatory holds at least one of the offices designated on each line. Limited liability company: Pursuant to California Corporations Code Section 17703.01(d), both signature lines must be executed unless the articles of incorporation state that the firm is managed by only one manager.]

City of Brea

Attest (if over \$50,000)

By: _____
Bill Gallardo
City Manager
BillGA@CityofBrea.net

By: _____
Lillian Harris-Neal
City Clerk
LillianHN@CityofBrea.net

Date Signed: _____

Date Signed: _____

SPECIAL PROVISIONS
No Special Provisions required for this Agreement.

Labor Code Requirements.

A. Contractor acknowledges that this contract is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the Labor Code relating to public works, and Contractor agrees to be bound by all provisions thereof as though set forth in full herein.

B. This is a public work and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Labor Code Section 1771. Pursuant to Labor Code Section 1773, City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

C. Copies may be obtained at cost at the City Clerk's office. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Labor Code Sections 1775, 1776, 1777.5, 1777.6, and 1813. Pursuant to Labor Code Section 1775 of the Labor Code, Contractor shall forfeit to City, as a penalty, not more than \$200 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by Contractor or by any subcontractor, in violation of the provisions of this Agreement.

D. In accordance with Labor Code Sections 1725.5 and 1771.1, and except for projects involving construction, alteration, demolition, installation, or repair work of \$25,000 or less, or maintenance work of \$15,000 or less, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Public Contract Code Section 4104, or engage in the performance of any public work contract unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes, only, pursuant to Labor Code Section 1771.1(a)].

E. Pursuant to Labor Code Section 1776, Contractor shall maintain and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker employed by Contractor performing services covered by this Agreement. Contractor and its subcontractors shall furnish electronic certified payroll records to the Labor Commissioner in accordance with Labor Code Section 1771.4. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor is responsible for compliance with Section 1776 by itself and all of its subcontractors. This project is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

F. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing the Services, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding the Services, Contractor and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

G. Contractor agrees to comply with the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to City, forfeit \$25 for each worker employed in the execution of the contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code.

H. Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of Labor Code Section 1861, by executing this Agreement, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

EXHIBIT A
SCOPE OF SERVICES AND FEE SCHEDULE
(Consultant's proposal attached)

Per City of Brea Statement of Work and Cost Proposal

EXHIBIT A – SCOPE OF WORK

1. SALES, USE AND TRANSACTION TAX AUDIT AND RECOVERY SERVICES

CONSULTANT's Sales/Use Tax Sales Use and Transaction Tax Audit and Recovery Services is designed to assist CITY in enhancing its sales/use tax revenues by detecting, documenting, and correcting sales/use tax errors thereby producing previously unrealized revenue for CITY. Some of the more common types of errors detected and corrected are as follows:

1. Sales misreported as "use tax" transactions that are distributed to the countywide pools rather than to "point of sale" for the City.
2. "Point of sale" transactions mis-reported to administrative offices or other locations outside the City rather than to the location within the City where principal negotiations or orders are initiated.
3. E-commerce orders allocated to billing or switching equipment sites rather than the location of human intervention.
4. Misallocations occurring because sales from multiple retail outlets, order desks, or offices are credited to a single location outside the incorporated area rather than to sub outlets located within the City boundaries.
5. Individual "use tax" transactions exceeding \$500,000 that are reported to the countywide pools rather than "point-of-use;"
6. Erroneous reporting of sales associated with construction materials and fixtures to countywide pools due to misclassified as an installed sale rather than "over-the-counter" sale.
7. Failure to designate in-state warehouses as "point of sale" for orders placed or negotiated outside of California.
8. Misallocations that occur due to zip code, boundary or other jurisdictional inconsistencies or because of failure of new addresses to be picked up in the CDTFA registration rolls; and
9. Misallocations by companies that self-impose "use tax" for materials taken out of inventory and misreport the usage as taking place at locations other than the City.

Objectives and Methodology

CONSULTANT captures the obvious sales tax errors and the more complicated ones that involve different interpretations of tax liability.

Taxable Nexus Field Audit.

We target City-based businesses that may not be properly reporting local sales and use tax to the City. We do this via physical canvassing of the City's borders in addition to the commercial and industrial areas. We evaluate taxes paid by businesses for their products, will-call operations and other sales-related activities. Without this labor-intensive undertaking, misallocations may remain undetected even when electronic data mining is applied.

Tax Area Code (TAC)/Permit Audits.

We identify and correct improperly registered permits of companies with point-of-sale or use operations. We also look for businesses with an incorrect tax area code due to jurisdictional/boundary confusion. Wholesalers, contractors, manufacturers and other non-retail businesses frequently do not hold a permit registered to the City because their operations do not include a point-of-sale qualifying activity. However, these companies often generate tax from the CDTFA audit deficiency assessments, new or changed operations, or the self-accrual of use tax on purchases through direct payment permits.

Deficiency Assessment Audit.

With a CDTFA audit, taxpayers often receive a substantial deficiency assessment due to underpayments and/or under collections. Our proprietary criteria and techniques detect and correct what are often misallocations to the state or County pool. Accordingly, we have developed proprietary criteria and techniques to detect and correct CDTFA deficiency assessment misallocations and thus expand the benefits produced by our allocation audit service.

Quarterly Distribution Report (QDR) Audit. We conduct QDR audits when we see a substantial change in historical allocation because of declining or missing payments, negative fund transfers, and audit adjustments in the sales and use tax allocation. QDR audits have the same objective as the other audits: to detect, document and assist in correcting errors and thereby generate new, previously unrealized Sales, Transaction and Use Tax revenue for the City. To make sure the City gets the maximum amount of misallocated revenue, we include the current economic period based on the calendar quarter and the three prior tax return periods. MuniServices LLC reviews 100% of taxpayers reporting local tax to the City each quarter in addition to a comprehensive review of the Citywide pool to ensure all possible allocation errors and aberrations are identified and submitted for correction.

Accounts Payable Audit Reviews.

In order to identify opportunities for the City to recover the local allocation on purchase transactions subject to tax, and facilitate the recovery of such funds, MuniServices LLC may perform an accounts payable audit that identifies the opportunity to facilitate the issuance of a direct payment permit (use tax) to the City.. They also provide the foundation necessary for the City to get a direct payment permit (use tax) and recover funds. Cities also receive our technical assistance in preparing and filing the required tax returns as needed, which is essential because the CDTFA has specific procedures and timing for filing claims.

Sales, Use and Transaction Tax Audit Process:

In providing the Sales, Use and Transaction Tax Audit and Recovery Services, CONSULTANT shall:

- **Data Acquisition** – Data from multiple sources is acquired and loaded into CONSULTANT/MuniServices' data warehouse for analysis and mining.

- **Data Review and Analysis** – CONSULTANT/MuniServices thoroughly reviews payment and registration data for possible registration and/or local tax reporting errors.
- **Taxpayer Investigation** – CONSULTANT/MuniServices verifies taxpayer information including address verification and business activity. If a misallocation is confirmed, CONSULTANT/MuniServices will gather applicable documentation which includes email communication with taxpayer and copies of tax returns, questionnaires, contracts, and invoices.
- **Petition Preparation and Submission** – CONSULTANT/MuniServices carefully documents verified misallocation errors into petitions and prepares for submission to CDTFA.
- **Correction Case Review and Follow-Up** – New incoming CDTFA decision letters are reviewed for confirmation of correction of the misallocated sales or use tax. Additionally, case backlog is reviewed to determine those requiring follow-ups with taxpayers and/or CDTFA.
- **CITY Audit Reports** – CONSULTANT/MuniServices provides a Quarterly Audit Update Report, a report containing details on all now petitions filled with the CDTFA on their behalf. Additionally, CONSULTANT/MuniServices also provides an Open Account Status Report, which is a report containing all cases that remain uncorrected which reflect status and estimated revenue.

Use Tax Audit & Recovery Opportunities

Our Use Tax Audit Services are designed to not only capture use tax revenue through the review of past purchase activity by the businesses in the City, but also to assist in establishing new processes and procedures designed to prevent the pooling of these revenues and increase the direct allocation to the City. The use tax audits identify taxpayers purchasing tangible personal property directly from out-of-state retailers where the transactions are subject to use tax (rather than sales tax). The use tax is often collected by the vendor who in turn remits it to the CDTFA, with the local allocation typically distributed statewide or Citywide through the pools. These audits include proprietary techniques used to identify purchases made by businesses located in the City from out-of-state vendors that are in excess of \$500,000. Additional use tax audits can focus on the practice of “Use Tax Accrual” in certain conditions where the purchaser may elect to self-accrue the use tax and remit it directly to the CDTFA, in which case the local portion will come back to the City in the same manner as sales tax. This can involve both purchases made by the City itself or working directly with businesses and construction contractors to establish the practice of self-accrual and direct remittance of the use tax to the CDTFA.

Business Cooperation Program (BCP)

MuniServices LLC pioneered the BCP program, which can generate significant revenues. Our BCP consulting services encourage construction contractors and major vendors to obtain a direct pay permit or job site registration to encourage them to report the applicable local use tax so that the local use payments can be directly allocated to the City instead of the Citywide pool. There are many complexities associated with determining which contractors are eligible to register a job site, in addition to reviewing purchasing contracts for major fixtures, machinery and

equipment from overseas manufacturers in order to provide proper instructions to the purchasers. We are actively working with multiple CITYs on major construction projects to maximize the use tax revenue associated with their purchases of materials, fixtures and machinery and equipment involving sports arenas to include the Sacramento Golden One Arena, hotels, airport expansions (Sacramento International Airport), energy/solar projects in addition to other major commercial and industrial projects (major online distribution warehouses). We are the only firm with experience and verifiable results working with local jurisdictions to maximize use tax revenues on major construction projects such as large commercial and industrial projects, sports arenas, airports, ports, solar arrays –tracking and managing these use tax issues from pre-construction through project completion.

Deliverables

Progress Reports

CONSULTANT will provide periodic progress reports to CITY in the form of status updates. CONSULTANT's progress reports will identify errors detected, documented and corrected.

CITY Assistance

CITY shall assist CONSULTANT by providing information and assistance necessary to perform the Sales, Use and Transaction Tax Audit and Recovery Services to include, without limitation, the following:

- Providing CONSULTANT historical sales/use tax information including but not limited to confidentiality reports previously received from the Comptroller for past periods, if available.
- Issuing necessary documentation to the Comptroller to allow CONSULTANT to access and receive detailed confidentiality reports on an on-going monthly basis.
- Providing a letter of introduction identifying CONSULTANT as an authorized agent of the CITY to perform the Sales, Use and Transaction Tax Audit and Recovery Services and to receive and examine taxpayer records necessary to assure sales/use tax compliance.
- Pursuing in good faith corrective action on errors detected by CONSULTANT.
- Issuing necessary documentation to the Comptroller to correct errors validated by CONSULTANT.

The parties agree that the CITY and/or the Comptroller retain exclusive authority and responsibility to administer, interpret and enforce the CITY's sales/use tax, recognizing that CONSULTANT's role is limited to employing its unique expertise and proprietary tools for: i) detecting and documenting errors by taxpayers in the application, calculation, collection, and/or remittance of sales/use taxes and, ii) providing CITY with technical assistance, without assuming or being delegated the authority or responsibility of CITY to administer, interpret, and enforce its sales/use taxes.

2. CLEARVIEW, SALES/USE TAX ANALYSIS & REPORTING SERVICE

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

Consolidated Economic Reports

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

Geo Area Reports (Economic)

1. Review trends/growth/declines within specified geo-areas.
2. Export a 3-year history of each geo-area directly to excel.

Cash Trends and Distribution Summaries

1. Review the fiscal year-to-date totals for cash.
2. Compare cash performance to other jurisdictions as a quick way of benchmarking performance.
3. Review cash distributions from the State (including pool amounts, where applicable).
4. Locate potential one-time payments

GIS Maps

1. Visualize your geo-areas and summarize by category and segment.
2. Compare the performance of one geo-area to another.

Accuracy. The CLEARVIEW reports rely on information provided by applicable governmental authorities and third parties. CONSULTANT has no obligation to verify, remove redundancies, or otherwise clean or standardize the information provided by state authorities or any third parties.

Timing. CONSULTANT's obligation to provide the CLEARVIEW Service is conditioned on the CITY's delivery of required, signed documentation to CONSULTANT to access the proper data from the applicable governmental authorities.

CITY Assistance

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

3. Property Tax Information and Reporting Service

The data management software provides secured and unsecured property tax data. Additionally, our dedicated team provides essential reports for the City and Successor Agency. The property tax services offer pre-defined reports and customized requests to help City staff manage property tax related policymaking and economic development. Reports to be produced by CONSULTANT and delivered in PDF format by email include:

1. Top (1 - 100) Property Owners
2. Top (1 - 100) Property Taxpayers
3. Top (1 - 100) Property Tax Detail
4. Top (1 - 100) Taxable Value Changes
5. Historical Growth of Taxable Value
6. Multiple Owned Parcel
7. Taxable Value Summary Tax Rate Area, Land Use and Tax Type
8. Estimated City Share Revenue TRA
9. Tax Revenue Summary TRA
10. Taxable Value by Land Use
11. Taxable Value Change Summary by TRA
12. Tax Increment Revenue Summary

In addition to pre-defined reports, the CONSULTANT can provide the City with a variety of additional reports that can be customized for the City.

Information and Data

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

Assessment Appeals

The Assessment Appeal Reports analyze historical success rates; pending appeals and the potential impact they may have on the City and each Successor Agency area and are prepared bi-annually. Assessment Appeals Reports will contain the following information:

1. Top 20 Property Tax Generators – Listing of top property tax generators combined by owner
2. Current Pending Appeals for Top 20 Property Tax Assessors – Lists appeals filed and pending by top property tax generators

3. Assessment Appeal History and Success Rate – Lists historical disposition of appeals with success rates and financial impact
4. Pending Appeals Total Impact Projections – Calculates potential impact of pending appeals based on historical rates
5. Resolved Appeals Detail for Top 20 Property Tax Assessors – Lists appeals filed and resolved by top property tax generators
6. Current Pending Appeals for Non - Top 20 Property Tax Assessors – Lists appeals filed and pending by top property tax generators
7. Resolved Appeals Detail for Non - Top 20 Property Tax Assessors – Lists appeals filed and resolved by top property tax generators

Forecast

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

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

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

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

The Additional ACFR reports that are available for an **additional fee** include:

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

EXHIBIT B - COMPENSATION

1. SALES, USE AND TRANSACTION TAX AUDIT AND RECOVERY SERVICES

In exchange for CONSULTANT performing the work indicated above, the CITY will pay CONSULTANT as follows:

The CITY shall pay CONSULTANT a 15% contingency fee. The fee applies to the sales/use tax revenue received by the CITY from correction of taxpayer reporting errors detected and documented by the Sales, Use and Transaction Tax Audit and Recovery Services. The Contingency Fee applies to both: (a) past compliance (as applicable) – sales/use tax revenues received by the CITY from prior periods; and (b) prospective compliance (as applicable) -- incremental increase in sales/use tax revenues received for the first six consecutive reporting quarters following correction of the errors and confirmation of receipt of revenue by the CITY.

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

All expenses incurred by CONSULTANT in providing the Sales, Use and Transaction Tax Audit and Recovery Services are the sole and exclusive responsibility of CONSULTANT, except those expenses that receive prior written approval by CITY.

2. CLEARVIEW, SALES/USE TAX ANALYTICS & REPORTING

Base Package Annual fee

CITY shall pay CONSULTANT an annual fee of \$3,750.00 (“annual fee”) payable in four equal quarterly payments of \$937.50. CONSULTANT will invoice the CITY on a quarterly. Invoices are due and payable within thirty (30) days of receipt. If this Agreement is terminated for any reason, the CITY remains obligated to pay CONSULTANT the quarterly payments of the annual fee for the quarters before the effective date of termination.

Completion of Service

Notwithstanding anything else in this Agreement to the contrary, the CITY will pay CONSULTANT per the terms of this Agreement for services begun before termination or expiration of the Agreement even if the monies are received after termination or expiration. CONSULTANT will provide CITY with a list of taxpayer accounts submitted but not yet corrected as of the expiration or termination within a reasonable time after the expiration or termination (“completion list”). CONSULTANT is allowed to continue working those taxpayer accounts on the completion list for a reasonable time to obtain a correct.

3. Property Tax Information and Reporting Service

Property Tax Reporting (PropertyLink) and Basic ACFR is an annual fee of \$7,500 to be paid in quarterly installments of \$1,875. The CITY selects Property Tax Reporting _____initials.

Information services also include the property tax forecast and assessment appeals.

Direct and Overlapping (D&O) Debt report fee of \$700. The CITY selects the D&O Debt report _____initials.

Principal Employers (PE) report fee of \$1,300. The CITY selects PE report _____initials.

Demographics and Economic (D&E) Statistics report fee of \$240. The CITY selects D&E Statistics report _____initials.

Additional Consulting

CITY may request that CONSULTANT provide additional consulting services at any time during the term of this Agreement. If the CITY and CLIENT agree on the scope of the additional consulting services requested, then CITY shall provide the additional consulting on a Time and Materials basis. Depending on the personnel assigned to perform the work, standard hourly rates range from ninety dollars (\$90) per hour to three-hundred fifty dollars (\$350) per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.






CA - City of Brea - SUTA Agreement No. 2024.08.20.132

Final Audit Report

2024-08-15

| | |
|-----------------|--|
| Created: | 2024-08-15 |
| By: | Kia Austin (kia.austin@avenuinsights.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAa0aW8L4BPBiYVYuCo_i_wid86ei-U8jp |

"CA - City of Brea - SUTA Agreement No. 2024.08.20.132" History

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