

1 services; provided, however, that access to City documents, records and the like, if
2 needed by Consultant, shall be available only during City's normal business hours and
3 provided that milestones for performance, if any, are met.

4 C. Consultant has requested to receive regular payments. City shall
5 pay Consultant in due course of payments following receipt from Consultant and approval
6 by City of invoices showing the services or task performed, the time expended (if billing is
7 hourly), and the name of the Project. Consultant shall certify on the invoices that
8 Consultant has performed the services in full conformance with this Agreement and is
9 entitled to receive payment. Each invoice shall be accompanied by a progress report
10 indicating the progress to date of services performed and covered by the invoice,
11 including a brief statement of any Project problems and potential causes of delay in
12 performance, and listing those services that are projected for performance by Consultant
13 during the next invoice cycle. Where billing is done and payment is made on an hourly
14 basis, the parties acknowledge that this arrangement is either customary practice for
15 Consultant's profession, industry or business, or is necessary to satisfy audit and legal
16 requirements which may arise due to the fact that City is a municipality.

17 D. Consultant represents that Consultant has obtained all necessary
18 information on conditions and circumstances that may affect its performance and has
19 conducted site visits, if necessary.

20 E. CAUTION: Consultant shall not begin work until this Agreement has
21 been signed by both parties and until Consultant's evidence of insurance has been
22 delivered to and approved by City.

23 2. TERM. The term of this Agreement shall commence at midnight on
24 October 1, 2007, and shall terminate at 11:59 p.m. on September 30, 2010, unless
25 sooner terminated as provided in this Agreement, or unless the services or the Project is
26 completed sooner.

27 3. COORDINATION AND ORGANIZATION.

28 A. Consultant shall coordinate its performance with City's

1 representative, if any, named in Exhibit "B", attached to this Agreement and incorporated
2 by this reference. Consultant shall advise and inform City's representative of the work in
3 progress on the Project in sufficient detail so as to assist City's representative in making
4 presentations and in holding meetings on the Project. City shall furnish to Consultant
5 information or materials, if any, described in Exhibit "C", attached to this Agreement and
6 incorporated by this reference, and shall perform any other tasks described in the Exhibit.

7 B. The parties acknowledge that a substantial inducement to City for
8 entering this Agreement was and is the reputation and skill of Consultant's key employee
9 Doug Jensen. City shall have the right to approve any person proposed by Consultant to
10 replace that key employee.

11 4. INDEPENDENT CONTRACTOR. In performing its services,
12 Consultant is and shall act as an independent contractor and not an employee,
13 representative or agent of City. Consultant shall have control of Consultant's work and
14 the manner in which it is performed. Consultant shall be free to contract for similar
15 services to be performed for others during this Agreement; provided, however, that
16 Consultant acts in accordance with Section 9 and Section 11 of this Agreement.
17 Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from
18 Consultant's compensation; (b) City will not secure workers' compensation or pay
19 unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide
20 and Consultant is not entitled to any of the usual and customary rights, benefits or
21 privileges of City employees. Consultant expressly warrants that neither Consultant nor
22 any of Consultant's employees or agents shall represent themselves to be employees or
23 agents of City.

24 5. INSURANCE.

25 A. As a condition precedent to the effectiveness of this Agreement,
26 Consultant shall procure and maintain, at Consultant's expense for the duration of this
27 Agreement, from insurance companies that are admitted to write insurance in California
28 and have ratings of or equivalent to A:V by A.M. Best Company or from authorized non-

1 admitted insurance companies subject to Section 1763 of the California Insurance Code
2 and that have ratings of or equivalent to A:VIII by A.M. Best Company, the following
3 insurance:

4 (a) Commercial general liability insurance (equivalent in scope to
5 ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than
6 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This
7 coverage shall include but not be limited to broad form contractual liability,
8 cross liability, independent contractors liability, and products and
9 completed operations liability. City, its boards and commissions, and their
10 officials, employees and agents shall be named as additional insureds by
11 endorsement (on City's endorsement form or on an endorsement
12 equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26 11 85), and
13 this insurance shall contain no special limitations on the scope of
14 protection given to City, its boards and commissions, and their officials,
15 employees and agents. This policy shall be endorsed to state that the
16 insurer waives its right of subrogation against City, its boards and
17 commissions, and their officials, employees and agents.

18 (b) Workers' Compensation insurance as required by the California
19 Labor Code and employer's liability insurance in an amount not less than
20 \$1,000,000. This policy shall be endorsed to state that the insurer waives
21 its right of subrogation against City, its boards and commissions, and their
22 officials, employees and agents.

23 (c) Professional liability or errors and omissions insurance in an
24 amount not less than \$1,000,000 per claim.

25 (d) Commercial automobile liability insurance (equivalent in scope
26 to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an
27 amount not less than \$500,000 combined single limit per accident.
28

1 B. Any self-insurance program, self-insured retention, or deductible must
2 be separately approved in writing by City's Risk Manager or designee and shall protect
3 City, its officials, employees and agents in the same manner and to the same extent as
4 they would have been protected had the policy or policies not contained retention or
5 deductible provisions.

6 C. Each insurance policy shall be endorsed to state that coverage shall not
7 be reduced, non-renewed or canceled except after thirty (30) days prior written notice to
8 City, shall be primary and not contributing to any other insurance or self-insurance
9 maintained by City, and shall be endorsed to state that coverage maintained by City shall
10 be excess to and shall not contribute to insurance or self-insurance maintained by
11 Consultant. Consultant shall notify City in writing within five (5) days after any insurance
12 has been voided by the insurer or cancelled by the insured.

13 D. If this coverage is written on a "claims made" basis, it must provide for
14 an extended reporting period of not less than one hundred eighty (180) days,
15 commencing on the date this Agreement expires or is terminated, unless Consultant
16 guarantees that Consultant will provide to City evidence of uninterrupted, continuing
17 coverage for a period of not less than three (3) years, commencing on the date this
18 Agreement expires or is terminated.

19 E. Consultant shall require that all subconsultants or contractors that
20 Consultant uses in the performance of these services maintain insurance in compliance
21 with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

22 F. Prior to the start of performance, Consultant shall deliver to City
23 certificates of insurance and the endorsements for approval as to sufficiency and form. In
24 addition, Consultant shall, within thirty (30) days prior to expiration of the insurance,
25 furnish to City certificates of insurance and endorsements evidencing renewal of the
26 insurance. City reserves the right to require complete certified copies of all policies of
27 Consultant and Consultant's subconsultants and contractors, at any time. Consultant
28

1 shall make available to City's Risk Manager or designee all books, records and other
2 information relating to this insurance, during normal business hours.

3 G. Any modification or waiver of these insurance requirements shall only
4 be made with the approval of City's Risk Manager or designee. Not more frequently than
5 once a year, City's Risk Manager or designee may require that Consultant, Consultant's
6 subconsultants and contractors change the amount, scope or types of coverages
7 required in this Section if, in his or her sole opinion, the amount, scope or types of
8 coverages are not adequate.

9 H. The procuring or existence of insurance shall not be construed or
10 deemed as a limitation on liability relating to Consultant's performance or as full
11 performance of or compliance with the indemnification provisions of this Agreement.

12 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
13 contemplates the personal services of Consultant and Consultant's employees, and the
14 parties acknowledge that a substantial inducement to City for entering this Agreement
15 was and is the professional reputation and competence of Consultant and Consultant's
16 employees. Consultant shall not assign its rights or delegate its duties under this
17 Agreement, or any interest in this Agreement, or any portion of it, without the prior
18 approval of City, except that Consultant may with the prior approval of the City Manager
19 of City, assign any moneys due or to become due Consultant under this Agreement. Any
20 attempted assignment or delegation shall be void, and any assignee or delegate shall
21 acquire no right or interest by reason of an attempted assignment or delegation.
22 Furthermore, Consultant shall not subcontract any portion of its performance without the
23 prior approval of the City Manager or designee, or substitute an approved subconsultant
24 or contractor without approval prior to the substitution. Nothing stated in this Section
25 shall prevent Consultant from employing as many employees as Consultant deems
26 necessary for performance of this Agreement.

27 7. CONFLICT OF INTEREST. Consultant, by executing this
28 Agreement, certifies that, at the time Consultant executes this Agreement and for its

1 duration, Consultant does not and will not perform services for any other client which
2 would create a conflict, whether monetary or otherwise, as between the interests of City
3 and the interests of that other client. And, Consultant shall obtain similar certifications
4 from Consultant's employees, subconsultants and contractors.

5 8. MATERIALS. Consultant shall furnish all labor and supervision,
6 supplies, materials, tools, machinery, equipment, appliances, transportation and services
7 necessary to or used in the performance of Consultant's obligations under this
8 Agreement, except as stated in Exhibit "C".

9 9. OWNERSHIP OF DATA. All materials, information and data
10 created, prepared, developed or assembled by Consultant or furnished to Consultant in
11 connection with this Agreement, including but not limited to documents, estimates,
12 calculations, studies, maps, graphs, charts, computer disks, computer source
13 documentation, computer files, samples, models, reports, summaries, drawings, designs,
14 notes, plans, information, material, memorandum, processes, methods and media
15 ("Data") shall be the exclusive property of City. Data shall be given to City, and City shall
16 have the unrestricted right to use and disclose the Data in any manner and for any
17 purpose without payment of further compensation to Consultant. Copies of Data may be
18 retained by Consultant but Consultant warrants that Data shall not be made available to
19 any person or entity for use without the prior approval of City. This warranty shall survive
20 termination of this Agreement for five (5) years. Notwithstanding the foregoing, "Data"
21 shall not include materials, information, documents, processes, methods, computer files
22 or media, including but not limited to software, business processes or methods, and
23 report formats that are created, prepared, developed or assembled by Consultant for use
24 in its business generally and not for exclusive use in connection with this Agreement.

25 10. TERMINATION. Either party shall have the right to terminate this
26 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
27 prior notice to the other party. In the event of termination under this Section, City shall
28 pay Consultant for services satisfactorily performed and costs incurred up to the effective

1 date of termination for which Consultant has not been previously paid. The procedures
2 for payment in Section 1.B. with regard to invoices shall apply. On the effective date of
3 termination, Consultant shall deliver to City all Data developed or accumulated in the
4 performance of this Agreement, whether in draft or final form, or in process. And,
5 Consultant acknowledges and agrees that City's obligation to make final payment is
6 conditioned on Consultant's delivery of the Data to City.

7 11. CONFIDENTIALITY. Consultant shall keep all Data confidential and
8 shall not disclose the Data or use the Data directly or indirectly, other than in the course
9 of performing its services, during the term of this Agreement and for five (5) years
10 following expiration or termination of this Agreement. In addition, Consultant shall keep
11 confidential all information, whether written, oral or visual, obtained by any means
12 whatsoever in the course of performing its services in connection with this Agreement for
13 the same period of time. Consultant shall not disclose any or all of the Data to any third
14 party, or use it for Consultant's own benefit or the benefit of others except for the purpose
15 of this Agreement.

16 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for
17 a breach of confidentiality with respect to Data that: (a) Consultant demonstrates
18 Consultant knew prior to the time City disclosed it; or (b) is or becomes publicly available
19 without breach of this Agreement by Consultant; or (c) a third party who has a right to
20 disclose does so to Consultant without restrictions on further disclosure; or (d) must be
21 disclosed pursuant to subpoena or court order.

22 13. ADDITIONAL COSTS AND REDESIGN.

23 A. Any costs incurred by City due to Consultant's failure to meet the
24 standards required by the scope of work or Consultant's failure to perform fully the tasks
25 described in the scope of work which, in either case, causes City to request that
26 Consultant perform again all or part of the Scope of Work shall be at the sole cost of
27 Consultant and City shall not pay any additional compensation to Consultant for its re-
28 performance.

1 B. If the Project involves construction and the scope of work requires
2 Consultant to prepare plans and specifications with an estimate of the cost of
3 construction, then Consultant may be required to modify the plans and specifications, any
4 construction documents relating to the plans and specifications, and Consultant's
5 estimate, at no cost to City, when the lowest bid for construction received by City
6 exceeds by more than ten percent (10%) Consultant's estimate. This modification shall
7 be submitted in a timely fashion to allow City to receive new bids within four (4) months
8 after the date on which the original plans and specifications were submitted by
9 Consultant.

10 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
11 amended, nor any provision or breach waived, except in writing signed by the parties
12 which expressly refers to this Agreement.

13 15. LAW. This Agreement shall be governed by and construed pursuant
14 to the laws of the State of California (except those provisions of California law pertaining
15 to conflicts of laws). Consultant shall comply with all laws, ordinances, rules and
16 regulations of and obtain all permits, licenses and certificates required by all federal, state
17 and local governmental authorities.

18 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
19 constitutes the entire understanding between the parties and supersedes all other
20 agreements, oral or written, with respect to the subject matter in this Agreement.

21 17. INDEMNITY. Consultant shall, with respect to services performed in
22 connection with this Agreement, indemnify and hold harmless City, its Boards,
23 Commissions, and their officials, employees and agents (collectively in this Section,
24 "City") from and against any and all liability, claims, allegations, demands, damage, loss,
25 causes of action, proceedings, penalties, costs and expenses (including attorney's fees,
26 court costs, and expert and witness fees) (collectively "Claims" or individually "Claim")
27 arising, directly or indirectly, in whole or in part, out of any negligent act or omission of
28 Consultant, its officers, employees, agents, sub-consultants or anyone under

1 Consultant's control (collectively "Indemnitor"), breach of this Agreement by Indemnitor,
2 misrepresentation or willful misconduct by Indemnitor, and Claims by any employee of
3 Indemnitor relating in any way to worker's compensation. Independent of the duty to
4 indemnify and as a free-standing duty on the part of Consultant, Consultant shall defend
5 City and shall continue this defense until the Claim is resolved, whether by settlement,
6 judgment or otherwise. No finding or judgment of negligence, fault, breach or the like on
7 the part of Indemnitor shall be required for the duty to defend to arise. Consultant shall
8 notify City of any Claim within ten (10) days. Likewise, City shall notify Consultant of any
9 Claim, shall tender the defense of the Claim to Consultant, and shall assist Consultant,
10 as may be reasonably requested, in the defense.

11 18. AMBIGUITY. In the event of any conflict or ambiguity between this
12 Agreement and any Exhibit, the provisions of this Agreement shall govern.

13 19. COSTS. If there is any legal proceeding between the parties to
14 enforce or interpret this Agreement or to protect or establish any rights or remedies under
15 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

16 20. NONDISCRIMINATION.

17 A. In connection with performance of this Agreement and subject to
18 applicable rules and regulations, Consultant shall not discriminate against any employee
19 or applicant for employment because of race, religion, national origin, color, age, sex,
20 sexual orientation, AIDS, HIV status, handicap or disability. Consultant shall ensure that
21 applicants are employed, and that employees are treated during their employment,
22 without regard to these bases. These actions shall include, but not be limited to, the
23 following: employment, upgrading, demotion or transfer; recruitment or recruitment
24 advertising; layoff or termination; rates of pay or other forms of compensation; and
25 selection for training, including apprenticeship.

26 B. It is the policy of City to encourage the participation of Disadvantaged,
27 Minority and Women-Owned Business Enterprises in City's procurement process, and
28 Consultant agrees to use its best efforts to carry out this policy in its use of

1 subconsultants and contractors to the fullest extent consistent with the efficient
2 performance of this Agreement. Consultant may rely on written representations by
3 subconsultants and contractors regarding their status. City's policy is attached as Exhibit
4 "D" to this Agreement. Consultant shall report to City in May and in December or, in the
5 case of short-term agreements, prior to invoicing for final payment, the names of all
6 subconsultants and contractors hired by Consultant for this Project and information on
7 whether or not they are a Disadvantaged, Minority or Women-Owned Business
8 Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

9 21. NOTICES. Any notice or approval required by this Agreement shall
10 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
11 postage prepaid, addressed to Consultant at the address first stated above, and to City at
12 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a
13 copy to the City Engineer at the same address. Notice of change of address shall be
14 given in the same manner as stated for other notices. Notice shall be deemed given on
15 the date deposited in the mail or on the date personal delivery is made, whichever occurs
16 first.

17 22. COPYRIGHTS AND PATENT RIGHTS.

18 A. Consultant shall place the following copyright protection on all Data:
19 © City of Long Beach, California ____, inserting the appropriate year.

20 B. City reserves the exclusive right to seek and obtain a patent or
21 copyright registration on any Data or other result (to the extent the result is not an item
22 excluded from the definition of "Data" in Section 9 hereof) arising from Consultant's
23 performance of this Agreement. By executing this Agreement, Consultant assigns any
24 ownership interest Consultant may have in the Data to City.

25 C. Consultant warrants that the Data does not violate or infringe any
26 patent, copyright, trade secret or other proprietary right of any other party. Consultant
27 agrees to and shall protect, defend, indemnify and hold City, its officials and employees
28 harmless from any and all claims, demands, damages, loss, liability, causes of action,

1 costs or expenses (including reasonable attorney's fees) whether or not reduced to
2 judgment, arising from any breach or alleged breach of this warranty.

3 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants
4 that Consultant has not employed or retained any entity or person to solicit or obtain this
5 Agreement and that Consultant has not paid or agreed to pay any entity or person any
6 fee, commission or other monies based on or from the award of this Agreement. If
7 Consultant breaches this warranty, City shall have the right to terminate this Agreement
8 immediately notwithstanding the provisions of Section 10 or, in its discretion, to deduct
9 from payments due under this Agreement or otherwise recover the full amount of the fee,
10 commission or other monies.

11 24. WAIVER. The acceptance of any services or the payment of any
12 money by City shall not operate as a waiver of any provision of this Agreement or of any
13 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
14 Agreement shall not constitute a waiver of any other or subsequent breach of this
15 Agreement.

16 25. CONTINUATION. Termination or expiration of this Agreement shall
17 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
18 17, 19, 22 and 28 prior to termination or expiration of this Agreement.

19 26. TAX REPORTING. As required by federal and state law, City is
20 obligated to and will report the payment of compensation to Consultant on Form 1099-
21 Misc. Consultant shall be solely responsible for payment of all federal and state taxes
22 resulting from payments under this Agreement. Consultant's Employer Identification
23 Number is [REDACTED] If Consultant has a Social Security Number rather than an
24 Employer Identification Number, then Consultant shall submit that Social Security
25 Number in writing to City's Accounts Payable, Department of Financial Management.
26 Consultant acknowledges and agrees that City has no obligation to pay Consultant until
27 Consultant provides one of these numbers.

28 27. ADVERTISING. Consultant shall not use the name of City, its

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 officials or employees in any advertising or solicitation for business or as a reference,
2 without the prior approval of the City Manager or designee.

3 28. AUDIT. City shall have the right at all reasonable times during the
4 term of this Agreement and for a period of five (5) years after termination or expiration of
5 this Agreement to examine, audit, inspect, review, extract information from and copy all
6 books, records, accounts and other documents of Consultant relating to this Agreement.

7 29. THIRD PARTY BENEFICIARY. This Agreement is not intended or
8 designed to or entered for the purpose of creating any benefit or right for any person or
9 entity of any kind that is not a party to this Agreement.

10 IN WITNESS WHEREOF, the parties have caused this document to be duly
11 executed with all formalities required by law as of the date first stated above.

MUNISERVICES, LLC, a Delaware limited
liability company

12
13
14 October 17, _____, 2007

By _____

Marc Herman, President & CEO
(Type or Print Name)

15
16
17 October 17, _____, 2007

By _____

Kevin Cerutti, CFO
(Type or Print Name)

"Consultant"

CITY OF LONG BEACH, a municipal
corporation

18
19
20
21
22 10/31 _____, 2007

By _____

City Manager

"City"

23
24
25 This Agreement is approved as to form on _____ 10/22,
26 2007.

ROBERT E. SHANNON, City Attorney

27
28 By Kow a Conway
Deputy

EXHIBIT “A”

Scope of Work

MUNISERVICES, LLC
Scope of Services

A. SALES AND USE TAX AUDIT (SUTA)

OBJECTIVES AND METHODS

MuniServices's Sales and Use Tax Audit Service is designed to maximize the City's income—and minimize the cost of lost revenue—by detecting and documenting misallocations of Local District Tax (also known as Transactions & Use Tax), Bradley-Burns sales tax and local use tax activity within the statute of limitations on recoverability.

In performing the sales and use tax audit program MuniServices shall:

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

MuniServices's proposed sales/use tax allocation audit services for the City includes five distinct types of audits:

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

TAXABLE NEXUS FIELD AUDITS

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

PERMITIZATION AUDITS

Wholesalers, contractors, processors, manufacturers and other non-retail businesses will frequently not have a sales tax permit properly registered to the City in which they are located because their business operations do not include a point-of-sale qualifying activity. However, these companies will often generate local sales/use tax from the State Board of Equalization (SBE) audit deficiency assessments, occasional sales (i.e., mergers and acquisitions), and self-accrual of use tax on purchases. MuniServices's field audits facilitate the identification and correction of improperly registered permits for companies having point-of-sale operations in the City.

DEFICIENCY ASSESSMENT AUDITS

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

ACCOUNTS PAYABLE AUDITS

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

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

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

QUARTERLY DISTRIBUTION REPORT AUDITS

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

MuniServices's QDR audits detect and correct taxpayer-reporting errors and thereby generate new, previously unrealized sales/use tax revenue for the City. MuniServices's QDR audits focus on those accounts where MuniServices observes a substantial decline in the sales/use tax revenue allocation for a particular business entity in a given quarter. In most cases, accounts showing zero balances have either relocated or simply reported late, in which case the payments will not be reflected until the next

quarter's QDR. Therefore, six months must lapse before the QDRs indicate whether a zero balance account can be attributed to a late payment or a misallocation.

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

SUTA DETECTION AND DOCUMENTATION

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

- Review applicable provisions of the City's municipal code and ordinance adopted by the City to determine applicability.
- Procure a computer tape of sales/use tax permit records from the SBE.
- Analyze sales tax distribution reports provided by the SBE for five or more of the most recent consecutive quarters.
- Clean-up, standardize and computerize data from City's quarterly sales tax distribution reports provided by SBE for previous quarters, current quarter and each future quarter service is provided.
- Prepare an aggregated list of business entities on electronic media; this list is derived from multiple private and public sources (hard copy and electronic), including specialized business listings and directories, the City's sales and use tax payment files, and an electronic copy of the City's Business License Tax registry, updated no less than twice per year.
- Clean, standardize and integrate, in address-order, each entity's business name, address and payment file information, to eliminate redundancies, using MuniServices's proprietary software.
- Physically canvas commercial/industrial area within the City's borders.
- Develop a target list of potential point of sale/use reporting errors/omissions based on:
 - 1) An electronic comparison of MuniServices's comprehensive inventory against the SBE's quarterly distributions for the City, and
 - 2) An analysis of each potentially misallocated account based on proprietary guidelines established by MuniServices.
- Meet with designated City official(s) to review service objectives and scope, MuniServices workplan schedule, public relations and logistical matters.

- Contact personnel in sales, operations and/or tax accounting at each target business to determine whether a point-of-sale/use reporting error exists. (Note: this is accomplished with the highest regard to discretion and professional conduct. MuniServices's allocation audits are predicated on a non-controversial, constructive public relations approach which emphasizes the importance of each business to the City and the mutual benefits of correcting reporting errors.)
- Provide to the City and SBE reports addressing each taxpayer reporting error individually, including the business name, address, telephone number, California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason(s) for error, recommended corrective procedure and, if available, estimated sales/use tax revenue which should be forthcoming to the City.
- MuniServices may also provide suggested language for letters to be sent to the taxpayers and/or SBE from the City (or from MuniServices on behalf of the City) urging cooperation in promptly correcting the distribution error.
- Respond to negative findings by SBE with timely reconfirmation documentation in order to preserve the City's original dates of knowledge.
- Receive and process registration control record information monthly.
- Receive and process sales tax distribution reports quarterly.
- Coordinate with the taxpayer and SBE to make the necessary corrections and collect eligible back quarters amounts.
- Monitor and analyze the quarterly distribution reports with an audit focus on the following:
 - 1) Accounts with previously reported point-of-sale/use distribution errors to ensure that the corrections are made for current quarters and all eligible back quarters.
 - 2) Major accounts comprising 90% or more of the City's total sales tax revenue to identify any irregularities or unusual deviations from the normal pattern (e.g. negative fund transfers, significant decreases, unusual increases, etc.) and ensure that the City is not receiving less revenue than it is entitled to.
 - 3) Those accounts receiving deficiency assessments to ensure that the City receives its local allocation
- Identify opportunities for the City to recover local allocation on purchase transactions subject to use tax. Prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

SUTA DETECTION TIMING CONSIDERATIONS

For each misallocated account detected, MuniServices will coordinate with the business and SBE to make the necessary corrections plus retroactive adjustments for eligible amounts of sales/use tax improperly distributed in prior quarters. MuniServices coordinates and communicates between typically four parties; sales/operations personnel at the taxpayer's local operation, tax personnel at the company's corporate headquarters, and SBE personnel and the in-state/out-of-state district offices. Correction of the account is considered to have been made once the payments on identified taxpayer accounts are being properly allocated by the taxpayer to the City in the period in which the payment was made.

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

TIMING

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

CONFIDENTIALITY PROVISIONS

MuniServices is authorized by this Agreement to examine district tax, sales tax and use tax records of the SBE provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law and California Revenue & Taxation Code applicable to transactions and use taxes.

MuniServices 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.

MuniServices is prohibited from performing consulting services for a retailer during the term of this Agreement.

MuniServices is prohibited from retaining the information contained in, or derived from, those sales and use tax records, after this Agreement has expired.

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

B. SALES/USE TAX ANALYSIS & REPORTING SERVICE (STARS)

OBJECTIVES AND METHODS

MuniServices's STARS Digest provides a general analysis regarding statewide trends that may affect the City's sales tax plus a specific analysis of the City's sales tax

composition, changes and performance. The STARS Digest also includes the Quarterly Management Summary and specialized reports that analyze the City's sales tax economic base and performance for the latest complete quarter and benchmark year.

TIMING & REPORTS

MuniServices shall:

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

QUARTERLY STARS DIGEST

MuniServices will provide the City with quarterly updated bound STARS Digests including accounts from which the City receives sales tax revenue. The primary reports included in the STARS Digest are:

- **Allocation Summary** - Reconciles SBE advances, cleanup payments and pool allocations with budget projections to assist the City with revenue forecasting and receipt monitoring.
- **Cash Analysis** - Quarterly aberrations due to SBE audits, fund transfers, and other causes are also identified and analyzed for budget planning and revenue forecasting purposes.
- **Top 100 Five-Year** - Historical performance of the top 100 accounts comparing current benchmark year ranking and sales tax produced with that of prior years.
- **Top 100 Detail** – Sales tax performance of the City's top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of City sales tax produced is also shown by each account.
- **Economic Category Performance** – An analysis of the changes that occurred by economic category and segment with the specific businesses responsible for the significant changes delineated.

- **Significant Change Analysis** – A report reflecting magnitude of change, indicating which key businesses grew or declined, measured in absolute dollars and percentages.
- **Business Code Classification** - This report shows the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each significant account.
- **Historical Economic Composition** - Data are summarized by economic category and segment by quarters and benchmark years. Percentage of total sales tax generated by category and segment is also shown to indicate trends in sales tax composition and performance.
- **Geo-Area Reports** - Tracks sales tax performance within designated areas of the City (e.g., key shopping centers, business parks, and downtown /business districts,). Charts and printed reports are included for each geo-area.
- **Cross-Reference Reports** - Allow the user to look up any account shown in the STARS Digest by name, address or account number.

STARS QUERY SYSTEM

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

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

The initial STARS Digest and Sales Tax Query System shall be delivered and installed within 45 working days following execution of Purchase Order, confidentiality resolution and the SBE sales tax registration and payment data. Subsequent quarterly

Query System updates and STARS reports will be delivered to the City within 30 days following receipt of the quarterly distribution reports from the SBE.

LICENSE AGREEMENT

The STARS Query System is licensed software provided by MuniServices. The terms and conditions of the STARS Query System License Agreement are provided to City upon installation. By installing and using the STARS Query System, City agrees to be bound by the terms of the License Agreement.

MUNISERVICES, LLC

Fee Schedule

A. SUTA COMPENSATION

MuniServices' compensation for the Sales and Use Tax Audit Service is a 20% contingency fee. This fee applies to revenue received for all eligible quarters prior to the quarter in which the Date of Correction falls, back to and including the three quarters prior to the Date of Knowledge quarter, and for six quarters beginning with the quarter in which the Date of Correction falls. As used herein, the Date of Knowledge is the quarter during which MuniServices notifies the SBE of the existence of a misallocation. As used herein, the Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the SBE distributes the local tax properly to City based on the taxpayer's reporting. For ADR Misallocations detected and corrected, MuniServices' compensation shall only include the quarters in which the misallocation actually occurred.

B. STARS COMPENSATION

The STARS Digest and Query System are available for an annual fixed fee of \$9,000 per year, paid \$2,250 quarterly. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-WU for the month in which the agreement is fully signed with the first adjustment to occur at the beginning of the Calendar year following the first full calendar year of service. For instance, if the agreement is signed in April, year 1, the adjustment would not occur until January of year 2. The adjustments thereafter will be based on the CPI-WU from December of the prior calendar year. Each Annual Fee adjustment shall not be less than two percent (2%) or greater than ten percent (10%).

C. ADDITIONAL CONSULTING

City may request that MuniServices provide additional consulting services at any time during term of the Agreement to which this addendum is attached. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, MuniServices's standard hourly rates range from \$75 per hour to \$300 per hour. Additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

Examples of Additional Consulting relative to sales and use tax issues, interests, and questions are items, including but not limited to, economic studies, certain economic development strategies, legal support beyond the sales tax appeals process, extraordinary requests that we must purchase data or employ expertise beyond what is listed in the statement of qualifications, and special requests beyond the scope that will take more than 4 hours to accomplish.

Examples of items that do not require the "additional consulting" clause would be providing the City with customized sales tax reports, geo areas, special presentations to chamber of commerce, city council, economic development committees, department head meetings, etc. Anything listed in the scope of services also do not apply.

It is not possible to come up with every scenario that may or may not require compensation for additional consulting. If a situation arises that additional consulting compensation is required, prior mutual and written consent will be in place prior to MuniServices doing the work and before any invoice is received by the City.

D. COMPLETION OF SERVICES

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

E. CITY RESPONSIBILITIES

MuniServices's services performed hereunder may result in corrections of misallocations after cessation of services by MuniServices for City. Therefore, City agrees that with regards to misallocations identified to the SBE whose Date of Knowledge occurred during MuniServices's performance of services for City, that City's obligation to pay MuniServices in accordance with the above compensation language shall survive expiration or termination of this Purchase Order for any reason. In the event that City identifies, documents, and notifies the SSE of a reporting error or misallocation as those terms are used herein, City agrees to notify MuniServices of

City's discovery no later than ten (10) days after the Date of Knowledge. If City fails to so notify MuniServices and MuniServices later detects, documents, and reports the misallocation or reporting error to the SBE, or if MuniServices has established a Date of Knowledge with the SBE prior to notification to the Board by City, then MuniServices is entitled to compensation for the affected account in accordance with this *Scope of Services and Fee Schedule*.

EXHIBIT “B”

City’s Representative: Larry Triesch

EXHIBIT “C”

Materials/Information Furnished: None

CITY OF LONG BEACH POLICY FOR DISADVANTAGED, MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES

It is the policy of the City of Long Beach to utilize Disadvantaged, Minority-Owned and Women-Owned Business Enterprises in all aspects of contracting, including construction, the purchase of materials and services, including professional services, leases and the granting of concessions.

EXHIBIT "D"