

COPY

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

RESOLUTION NO. 92 - 258

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

Recitals

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

The City Council is familiar with the contents thereof.

The City Manager has recommended the approval of said agreement.

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

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

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

Members of the Council:

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

Attest: *Alice Calvert*
Alice Calvert, City Clerk

MEMORANDUM FOR THE CITY CLERK: This resolution was passed on 9/8/92.

STANDARD
CONTRACTUAL SERVICES AGREEMENT

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

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

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

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

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

Agreement
9/26/88 Rev., 12/22/88 Rev.
2/27/89 Rev., 1/10/90 Rev.
2/6/90 Rev.

inconsistency between said general provisions and any other terms or conditions of this Agreement, the other term or condition shall control insofar as it is inconsistent with the general provisions.

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

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

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

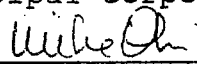
John T. Austin
Municipal Resource Consultants
32107 Lindero Canyon Road
Westlake Village, CA 91361

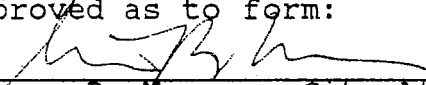
Any written notice to City shall be sent to:

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

Executed as of the day first above stated:

Attest: 
Alice Calvert, City Clerk

CITY OF SAN LEANDRO, a
municipal corporation

MIKE OLIVER, City Manager

Approved as to form:

Steven R. Meyers, City Attorney


MUNICIPAL RESOURCE CONSULTANTS

By: _____
Title: President

EXHIBIT A

SCOPE OF SERVICES

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

I. REVENUE RECOVERY AUDITS

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A. OBJECTIVES

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

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

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

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

B. PROCEDURES

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

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

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

- Represent the City for the purpose of examining records pertaining to sales/use tax, in order to identify and confirm errors/omissions that are resulting in deficient payment to the City.
- For each error/omission identified and confirmed, prepare documentation to substantiate and facilitate recovery of revenue due from prior periods (plus applicable interest and penalties) and prevent recurring deficiencies in current and future years.
- Prepare and forward to the appropriate parties "date of knowledge" requests for corrective action and revenue recovery.
- Meet with designated City official(s) as necessary to review and discuss our findings and recommendations.
- Provide additional assistance as necessary to support the City in recovering and preventing tax deficiencies.

C. TIMING CONSIDERATIONS

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

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

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

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

II. INFORMATION & CONSULTING SERVICES

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

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

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

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

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

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

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

- Management Summary, Sales Tax Digest, Charts.

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

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

The Analysis Section includes the following:

- (1) historical performance of the top 100

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

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

- Major (and Top 100) Sales Tax Producers.

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

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

sales tax income.

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

each geo-area.

- Cross Reference Reports. These reports allow the user to look up any account shown in the STARS reports by name, address, or account number.

- Special Business Tax Report. MRC's STARS service includes a report that is specifically designed to facilitate the City's business license tax administration by replacing the manual yellow registration control cards.

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

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

III. CERTIFICATION OF CONFIDENTIALITY

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

- A. MRC is authorized by this Agreement to examine sales and use tax records of the State Board of Equalization provided to City pursuant to contract under the Bradley-Burns Uniform Sales and Use Tax Law.
- B. MRC is required to disclose information contained in, or derived from, those sales and use tax records only to an officer or employee of the City who is authorized by resolution to examine the information.
- C. MRC is prohibited from performing consulting services for a retailer during the term of this Agreement.
- D. MRC is prohibited from retaining the information contained in, or derived from, those sales and use tax records, after this Agreement has expired.

Information obtained by examination of State Board of Equalization records shall be used only for purposes related to collection of local sales and use tax or for other governmental functions of the City as set forth by resolution adopted pursuant to Section 7056(b) of the Revenue and Taxation Code.

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

Exhibit C).

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

EXHIBIT B
PAYMENT SCHEDULE

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

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

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

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

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

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

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

EXHIBIT C

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

EXHIBIT D

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

2. Workers' Compensation and Employers Liability Coverage.

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

~~3. Professional Liability.~~

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

4. All Coverages.

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

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

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

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

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

7. PERSONNEL. Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

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

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

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

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

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

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

10/18/88 Rev.; 4/20/89 Rev.

1/10/90 Rev.; 4/16/90

1/21/92 Rev.

Exhibit D
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