

RESOLUTION NO. 00-67

**A RESOLUTION OF THE RIDGECREST CITY COUNCIL
APPROVING A CONTRACT WITH MBIA MUNISERVICES
FOR SALES TAX AND PROPERTY TAX AUDITING SERVICES**

WHEREAS, The City Council of the City of Ridgecrest desires to enhance its revenue without impacting the businesses and the residents of the City of Ridgecrest;

WHEREAS, There is a potential to recover misallocated sales and property taxes through the use of a qualified professional firm;

WHEREAS, MBIA Muniservices has the professional and technical resources to provide such services to recover such misallocated sales and property taxes;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Ridgecrest authorizes the City Administrator to sign the attached Contract for Sales Tax and Property Tax Auditing Services between the City of Ridgecrest and MBIA Muniservices.

APPROVED AND ADOPTED this 21st day of June, 2000, by the following vote:

AYES: Vice Mayor Carter, Council Members Holloway, Morgan, Rollins

NOES:

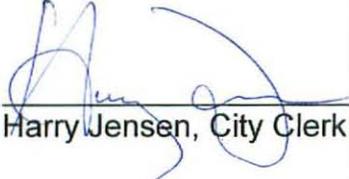
ABSTAIN:

ABSENT: Mayor Darnell



Ron Carter, Vice Mayor

ATTEST:



Harry Jensen, City Clerk

PROPOSAL FOR
SALES/USE TAX AUDIT AND INFORMATION SERVICES AND
PROPERTY TAX (INCLUDING RDA TAX INCREMENT)
AUDIT SERVICES
FOR
THE CITY OF RIDGECREST

by

MBIA MuniServices Company (MMC)

June 14, 2000

CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Ridgecrest, California, as of _____ 2000 by and between the City of Ridgecrest a municipal corporation (hereafter referred to as "City") and MBIA MuniServices Company (hereafter referred to as "Consultant" or "MMC "), who agree as follows:

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

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

3. Facilities and Equipment. Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4. General Provisions. The general provisions set forth in Exhibit "D" are part of this Agreement. In the event of any 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.

EXECUTED as of the day and year first above stated.

CITY OF RIDGECREST

A Municipal Corporation

By: K.C. Kelly

Title: CITY ADMINISTRATOR

Date: JULY 14, 2000

MBIA MUNISERVICES COMPANY

By: Douglas J. Jensen
Doug Jensen

Title: Director of Client Services

Date: June 14, 2000

ATTEST:

[Signature]

CITY CLERK

ATTEST TO FORM:

[Signature]

CITY ATTORNEY

I. APPROACH TO SALES/ USE TAX AUDIT

MBIA MuniServices Company (MMC) proposes to provide sales/use tax allocation audit, services for the City of Ridgecrest (City) as described in this proposal.

1. Scope

MMC's proposed sales/use tax allocation audit service for City includes five distinctly different types of audits:

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

The nature of each audit is further described as follows:

1.1 Taxable Nexus Field Audits

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

1.2 Permitization Audits

Wholesalers, contractors, processors, manufacturers and other non-retail businesses will frequently not have a sales or use tax permit properly registered to the City area 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. MMC's field audits facilitate the identification and correction of improperly registered permits for companies not having point-of-sale operations in City.

1.3 Deficiency Assessment Audits

When the 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 undercollections. In many cases, the local allocation portion of the deficiency assessment is distributed in error to the state pool, city

pools or other jurisdictions. Accordingly, MMC has developed proprietary criteria and techniques to detect and correct SBE deficiency assessment misallocations and thus expand the benefits produced by MMC's allocation audit service.

1.4 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 citywide 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.

MMC'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. In this regard, MMC will prepare the documentation to facilitate the election, including assistance in preparing and filing the tax returns.

1.5 Quarterly Distribution Report Audits

Every three months, the City receives a Quarterly Distribution Report (QDR) from the SBE with the local allocation amount broken down by permit number, grouped according to business code, for each account that has identified the City of Ridgecrest as the point-of-sale/use for the quarter ending three months prior to receipt of the QDR.

Data from the current and previous 28 QDRs is processed on MMC's Sales Tax Analysis and Reporting Service (STARS) Query System in order to facilitate an ongoing sales/use tax allocation audit program. In the absence of such a program, there is no way of identifying misallocations that occur between field audits.

MMC's QDR audits have the same objective as MMC's taxable nexus field audits and deficiency assessment audits; to detect and correct taxpayer reporting errors and thereby generate new, previously unrealized sales/use tax revenue for the City. However, MMC's QDR audits focus on those accounts where MMC observes a decline in the City's sales/use tax revenue to either nothing or substantially less than what has been reported on an historical trend basis. In most cases, the accounts showing zero balances have either relocated or simply reported late, in which case the payments will not be reflected until the next QDR. Therefore, six months elapse before the QDRs indicate whether a zero balance account can be attributed to a late payment or some other problem.

Although most zero balances and substantial declines occur for valid reasons, MMC's QDR audits are resulting in the detection and correction of numerous

accounts that were reporting properly until they changed their sales/use tax reporting procedures and created misallocations. Reporting procedures are often changed due to a merger or acquisition, turnover of tax administration personnel, computerization of the sales/use tax compliance function, or other reasons we encounter. The local amount of California sales tax is typically misallocated because it is reported on either a consolidated, destination or use tax basis.

Considering that:

- there is a three-month lag time in reporting the quarterly sales/use tax distribution results
- there is a six-month lag time in reporting late-paying businesses that all appear as zero balance accounts on the previous QDR
- considerable time is required to input and analyze QDR data and contact the taxpayer in order to ascertain the cause of each potential misallocation
- cities and counties may only recover misallocated revenue for the three quarters prior to the SBE being notified of the reporting error it is obvious that the QDR audits must be conducted in a highly efficient and timely manner or the eligibility window closes and the opportunity for the City to recover misallocated revenue is forfeited.

2. **Detection and Documentation of Misallocations**

MMC's procedures for detecting and documenting misallocations are summarized as follows:

- Procure a computer tape of sales/use tax permit records from the State Board of Equalization (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.
- Develop and maintain a comprehensive, computerized inventory of businesses with taxable sales that are located within the City by:
 - Preparing 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, and the City's revenue payment files;
 - Cleaning, standardizing and integrating, in address-order, each entity's business name, address and payment file information, to eliminate redundancies, using MMC's proprietary software; and

- Physically canvassing every commercial/industrial area within the City's unincorporated area.
- Develop a target list of potential point-of-sale/use reporting errors/omissions based on:
 - An electronic comparison of MMC's comprehensive inventory against the SBE's quarterly distributions for the City; and
 - An analysis of each potentially misallocated account based on proprietary guidelines established by MMC, formulated through expert knowledge of taxable nexus criteria, corporate mergers and acquisitions, sales tax versus use tax, business marketing organization and methods, commercial/ industrial sales tax reporting practices, and other conditions contributing to reporting errors.
- Meet with designated City official(s) to review service objectives and scope, MMC workplan schedule, public relations and logistical matters. MMC will also establish an appropriate liaison with the City's coordinator and define logical checkpoints for reviewing the project's progress.
- Contact personnel in sales, operations and/or tax accounting at each target business to determine whether a point-of-sale/use reporting error exists. (This is accomplished with the highest regard to discretion and professional conduct. MMC'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 of Ridgecrest.
- MMC will also provide suggested language for letters to be sent to the taxpayers and/or SBE from the City (or MMC 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 audit focus on the following:
 - Those 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.
 - Those 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.
 - Those accounts receiving deficiency assessments to ensure that the City receives its local allocation.
- ❑ Identify opportunities for the City to recover the local allocation on purchase transactions subject to use tax. MMC will also prepare the necessary documentation to facilitate recovery, including assistance in preparing and filing the returns.

3. **Detection Timing Considerations**

As previously indicated, there are time limitations on the City's ability to recover sales/use tax revenue to which it is entitled but has not been receiving.

The SBE will only 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/use located in the City unincorporated area for more than three quarters, the City forfeits the right to recover a portion of its misallocated sales/use tax with every elapsed quarter that a reporting error remains undetected.

For example, if the City notifies the SBE of a reporting error during the second calendar quarter (January 1 to March 31) of 2000, the City may recover revenue that was misallocated in the third and fourth calendar quarters of 1998 and the first calendar quarter of 1999. If the SBE is not notified of the reporting error until the third calendar quarter (March 1 to June 30) of 2000, the City forfeits the right to recover its revenue that was misallocated in the third quarter 1999.

MMC's experience indicates that the City is at risk of losing, on average, \$5,000 to \$10,000 in misallocated sales/use tax for every quarter (\$20,000 - 40,000 each year) that an ongoing, effective audit detection program is not in place. Given this situation, it behooves the City to have its sales/use tax thoroughly audited every quarter, before the revenue becomes unrecoverable.

MMC proposes to maximize the City's income, and minimize the City's cost of lost revenue, by providing a thorough and timely sales/use tax allocation audit service which has proven its effectiveness by consistently producing substantial results. As discussed under Personnel, the size, experience and specialized expertise of MMC's staff enable MMC to provide sales/use tax allocation audits for City more thoroughly, rapidly and effectively than any other firm.

MMC's comprehensive taxable nexus field audit is to be completed within 90 working days following receipt of an executed contract.

4. CORRECTION OF MISALLOCATIONS

For each misallocated account detected, MMC 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. This task is complex and time-consuming.

5. OUT-OF-STATE, BUSINESS-TO-BUSINESS ACCOUNTS

The preponderance of reporting errors involve out-of-state headquartered distributors, contractors, processors, and manufacturers engaged in business-to-business sales in California. In terms of dollars, these companies account for more than 90% of all misallocated sales/use tax revenue.

For these companies, there is considerable confusion due to the complexities posed by California's unique point-of-sale/use regulations. The reporting problems are further compounded when the regulations are applied to multiple California locations with each having a product/customer mix of business-to-business sales where some of the transactions are subject to sales tax, some are subject to use tax, and some are exempt. Unlike over-the-counter retail consumer outlets, where all sales are taxable, business-to-business taxpayers sell to Original Equipment Manufacturers (OEMs), resellers and exempt customers as well as end users, and some of the products require installation affixing them to real property.

For convenience and expediency, it is common for taxpayers located outside of California to erroneously report by customer destination and characterize sales transactions as being subject to use tax or contractor-installed classifications.

In order to correct these complex reporting errors, MMC 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 State Board of Equalization personnel at Sacramento and the in-state/out-of-state district offices.

As needed, MMC will also 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.

6. POLICY, REGULATORY AND LEGAL ISSUES

In working to correct detected misallocations, MMC discovered that SBE local tax staff had developed unpublished, internal policies, designed solely for its own "administrative convenience," that override existing regulations and cause local sales/use tax to be allocated in error. On behalf of its clients, MMC has invested considerable resources to permanently correct and prevent these misallocations by working to change the underlying policies that are causing them. With the support of MMC's clients, the League of California Cities, California Manufacturers Association, and California Chamber of Commerce, MMC has succeeded in securing adoption of "clarifying" amendments to Regulations 1802, 1802 (b)(5), and 1806 to facilitate the correction and prevention of misallocations.

MMC also provided the technical research and analysis and worked with the cities of Los Angeles, Long Beach, San Diego, and San Jose, along with MMC's other California clients, in securing passage of SB 110. This legislation, which was approved by the Governor on October 5, 1997, allows manufacturers and other large non-retailers (including the City) to voluntarily obtain a use tax direct payment permit to directly report and self-assess use tax on their purchases of equipment and goods from out-of-state vendors. This legislation may benefit the City as it has significant a business-to-business economic sector. In recent years, MMC has also given special emphasis to the following issues as part of its program for correcting misallocations through policy, regulatory, and legislative support.

AB 1313/ SB 676. MMC assisted its clients by quantifying the revenue impact of AB 1313, which proposed to exempt all manufacturers from California's sales and use tax. MMC assisted its clients to mount a letter writing campaign and MMC provided testimony before the Assembly Revenue and Taxation Committee which resulted in the bill's sponsors instead creating an income tax credit for the non-local portion of the sales and use tax, thus preserving for California cities and counties the \$800 million to \$1 billion they receive annually from manufacturing-related sales/use tax.

Aerospace Decision. MMC assisted its impacted clients by preventing the unwarranted processing of Aerospace case refunds by the SBE. MMC's work reduced its clients refund liability by over \$200 million.

Bradley-Burns Bill of Rights. To further facilitate correction of misallocations, MMC worked with the City of Long Beach (sponsor) and MMC's other clients to support SB 1909, the Bradley-Burns Bill of Rights, which would have secured in state law dispute resolution procedures for cities and counties before the SBE,

and other rights related to the administration and oversight of local sales/use tax revenue. Although SB 1909 had near unanimous legislative approval, it was vetoed by the Governor. Through MMC's administrative efforts, the dispute resolution and appeals process was unanimously adopted by SBE Board Members in 1996.

Regulation 1802(b)(5). When the SBE proposed a regulatory amendment to sanction its unpublished administrative policy, which was causing the local sales tax from transactions involving out-of-state sellers that ship from in-state locations to be allocated in error, MMC quantified the adverse impact on its clients and helped develop cogent arguments against the proposal which were presented to the elected SBE members, who unanimously agreed with MMC's arguments and adopted a clarifying amendment to the regulation.

Regulation 1806. When the SBE's unpublished administrative policies precluded the City of Martinez and Contra Costa City from receiving their sales/use tax allocation from a \$1.5 billion construction project at a refinery located in both the City and City unincorporated area, MMC's assistance was sought. The City's previous consultant spent two years unsuccessfully to resolve the issue. MMC brought together a coalition of cities, the California Manufacturers Association, major oil companies, and the California Chamber of Commerce to address this issue. The coalition requested the elected SBE members to revisit the administrative policies for allocating sales/use tax from construction projects. Due to MMC's efforts, the SBE voted to change its administrative policy to permit correct allocation of sales/use tax on major construction projects, which enabled the City of Martinez to recover over \$1 million of its sales/use tax revenue, and Contra Costa City to recover a similar amount. In addition, the SBE Members adopted a clarifying amendment to the regulation which also permits (but does not require) allocation of local sales/use tax to the jobsite for all major construction projects in California.

While MMC's clients are greatly encouraged by the success and progress that has been made (as illustrated in the examples above) there are many more issues which need to be resolved that have significant ramifications for the City.

MMC's policy, regulatory and legislative technical support services are provided for the City in conjunction with MMC's Sales and Use Tax Audit service.

7. STATUTORY PERIODS AUDITED

MMC's proposed Sales and Use Tax audits shall encompass all statutory periods for which the City is eligible to recover sales/use tax revenue distributed in error.

8. DELIVERABLES

MMC shall provide to the City quarterly updated status reports to include, but not be limited to, status of work in progress, including the following:

- ❑ Copies of reports provided to the SBE addressing each point-of sales/use reporting error individually, including the business name, address, telephone no., California sales tax permit number, individuals contacted, date(s) of contact, nature of business, reason for error and recommended corrective procedure; and
- ❑ Copies of misallocation reconfirmation documentation, in response to negative findings by the SBE, in order to preserve original date of knowledge.
 - Projected sales/use tax revenue forthcoming to the City as a result of MMC's allocation audits, delineated according to source, timing and one-time versus ongoing.
 - Actual sales/use tax produced for the City by MMC's allocation audit service.
 - Listing and status of problems encountered during the month as well as the status of
 - Outstanding issues impeding correction of misallocated accounts. For each problem/issue identified, MMC is also to specify the implemented/recommended action for resolution.
 - Alphabetical listing of all misallocated accounts detected for the City by MMC including, for each, the permit number, correction status, payment amount received by the City, quarter to which payment is related and payment source (e.g., fund transfer, deficiency assessment, etc.). MMC shall also provide this information on electronic format for use by the City on MMC's proprietary account tracking software.

2. STARS REPORTS

MMC on a quarterly basis shall provide the City with an updated bound STARS report. The scope of MMC's STARS report includes, but is not limited to:

- Cleaning up, standardizing, and automating data from the City's sales/use tax distribution reports provided by SBE for eight (8) previous quarters, current quarter, and each future quarter of 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 reports, but are not used for benchmark purposes as many accounts are incomplete due to late-paying businesses

MMC clients use STARS reports to gain a better understanding of where their sales tax comes from, determine what trends, good or bad, are occurring to their sales tax base, and 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 using MMC's STARS
- Analyzing the City's major sales tax producers

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

- o Management Summary, Sales Tax Digest, Charts - MMC's STARS reports include a confidential Management Summary, a non-confidential Sales Tax Digest, and color charts that portray graphically the City's sales tax performance and composition.
- o Analysis Section - The Analysis Section of MMC'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 MMC report, replaces cumbersome manual comparisons between quarters and years.

The Analysis Section includes the following: (1) historical performance of the top 100 accounts for up to 4 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.

II. Approach to Sales Tax Information**SALES TAX ANALYSIS & REPORTING SERVICE (STARS)**

MMC's Sales Tax Analysis and Reporting Service (STARS) consists of the STARS Query System, STARS Report, and related consulting.

1. STARS QUERY SYSTEM

MMC shall install and update quarterly, the City's sales tax registration and allocation data on IBM compatible PCs designated by the City. MMC shall also train authorized City staff in the use of the STARS Query System.

The STARS Query System enables City staff to analyze the contribution of sales tax revenue from each taxpayer in the City, on an individual, grouped, or sorted basis by business name, business type, permit number, size ranking, street address, development, shopping center, or other geographic area (also by social security number or federal employer identification number, when available).

All sales tax data processed by MMC is located on the STARS Query System. MMC's Query System is user-friendly, and enables extensive search capability by name and address, and if searching by address a street name only needs to be entered. The System will fill in the direction and proper abbreviation for the street type.

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

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

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

- o Major (and Top 100) Sales Tax Producers - Sales tax performance of the top 100 sales tax accounts is shown in order of sales tax produced with the results for the most recent five quarters prominently displayed. The proportion of City sales tax produced is also shown by each account.
- o Sales Tax Accounts by Business Code - This report shows the various business codes assigned by the SBE and the accounts assigned those codes in order of sales tax produced. Five quarters of sales tax data are shown for each account. The City may select the cut-off level of this report (that is, all accounts or just accounts that produce over a certain amount per year). Misclassified sales tax accounts are corrected to make the report a true reflection of the sources of the City's sales tax income.
- o Sales Tax Trend Report - Data are summarized by economic category and by business sector making up each category. Sales tax trends are shown by quarter and by successive benchmark years. Percent of sales tax is also shown to indicate trends in sales tax composition as well as performance. Growth and decline comparisons are indicated by various categories for forecasting and analysis.
- o Sales Tax by Account/Sub-Number - The SBE does not provide specific sales tax amounts generated by individual location of a firm with multiple locations in the same City or City unincorporated area. Such a breakdown is needed if the City is to track sales tax by specific geo-areas, such as shopping centers, business districts, and industrial parks. STARS tracks sales tax by location and even customizes difficult allocations such as auto dealers with showrooms, leasing, used cars, and body repair shops. This report shows the amounts allocated to each individual location for a firm with multiple locations in the City area.
- o Geo-Coding - Tracks sales tax performance within designated areas of the City (for example, key shopping centers, and downtown business districts). Charts and printed reports are included for each geo-area.
- o Cross Reference Reports - These reports allow the user to look up any account shown in the STARS reports by name, address or account number.
- o Corollary Information Services - In addition to the STARS report, MMC provides as a part of the information service, a quarterly

updated sales tax forecast for the current and subsequent fiscal year, and on an as needed basis regional per capita analysis, and other valuable economic analysis on a regional and citywide basis plus current issues of interest.

2. COROLLARY CONSULTING

In conjunction with the STARS Query System and STARS reports described above, MMC shall provide corollary consulting as follows:

- Prepare and analyze a list of the City's major sales tax generators to assist the City in developing a public relations program to prevent the loss of these important businesses
- Profile for Economic Development personnel, the most economically desirable and undesirable types of developments or business uses and the reasons why
- Assist in defining specific geographic areas for which the City would have an interest in knowing the sales tax produced
- Serve as a resource to assist the City on an "as-needed" basis by providing legal and technical support on sales/use tax issues and questions regarding proposed legislation, estimated revenue on proposed projects, revenue-sharing negotiations, retail sales leakage, budget projections, and any other areas

3. DELIVERABLES TIMING

MMC shall commence preparing the STARS Query System and STARS Digest within 10 working days following receipt of:

- Contract approval and resolution designating MMC as the authorized City Consultant to examine sales and use tax records; and,
- State Board of Equalization quarterly distribution reports for most recent nine (9) consecutive quarters

The initial STARS Query System shall be delivered and installed on IBM compatible PCs designated by the City, together with the STARS Digest, within 45 working days following receipt of the above. The quarterly updated Query System and STARS Digests will be delivered to the City within 30 working days following receipt of the Quarterly Distribution Reports.

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

COMPENSATION

A. SALES/USE TAX INFORMATION SERVICE

MMC shall provide the Sales Tax Query System and STARS reports for \$750 per quarter or \$3,000 for the full year, including expenses, payable only after the City has received the Sales Tax Query System, STARS report(s).

B. SALES/USE TAX MISALLOCATION AUDIT SERVICE

MMC's fee for providing the misallocation audit service is 25% of the new sales/use tax revenue realized by the City as a result of MMC detecting and documenting the related point-of-sale/use distribution error. Said 25% applies to the additional revenue realized by the City during the first six consecutive quarters following completion of the audit by MMC and confirmation of corrections by the State Board of Equalization. MMC will also pursue recovery of revenue for eligible prior period, if any. For retroactive adjustments, MMC's 25% shall apply to the amount of the adjustment.

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

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

For the correction of scheduled misallocations of use tax and sales tax recovered as a result of MMC, through the BCP service, detecting and documenting taxpayer reporting errors/omissions (which may be of a one-time or ongoing nature), MMC's compensation shall be 25% of the sales/use tax revenue produced for the City as a result of MMC's service. Said 25% applies to the first six consecutive quarters following detection of the misallocations by MMC and confirmation/ processing of the corrections by SBE and fund transfers, if any, for retroactive recoveries of amounts improperly distributed in eligible prior quarters.

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

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 or city may authorize persons other than officers and employees to examine State Sales and Use Tax records.

- A. MMC 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. MMC 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. MMC is prohibited from performing consulting services for a retailer during the term of this Agreement.
- D. MMC 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 MMC 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.

MMC hereby certifies that any and all information examined 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.

EXECUTED as of this day 6-21-2000

CITY OF RIDGECREST

By: J.C. Nunez

Title: Finance Director

Date: 6-21-2000

III. APPROACH TO PROPERTY TAX AUDIT (INCLUDING RDA INCREMENT)

1. BACKGROUND

It is common for Cities/RDAs to be deprived of property tax revenue to which they are entitled. This is largely due to County administrative and procedural errors and omissions related to the assessment and assignment and/or coding of properties within City/RDA boundaries and the allocation of tax increment revenues.

Administrative and procedural errors and omissions are virtually assured given the non-standard, complex nature of state and locally-assessed property taxes with regard to applicability, tax rates, exceptions, exemptions, and procedural inconsistencies. Human fallibility, fragmented responsibilities, reduced staffing and staff turnover further compound the problem.

Because there are time limitations on the City's/RDA's ability to recover tax increment revenue that has been understated or incorrectly allocated, it is incumbent upon the City/RDA to detect these property tax deficiencies as quickly as possible, before they become non-recoverable.

2. OBJECTIVES

The objective of MMC's property tax audits is to assist the City/RDA in realizing all of the tax revenue to which each is entitled from the taxable valuations within its jurisdictions. MMC's property tax audits result in the detection and documentation of errors and omissions causing deficiencies and thereby recover tax revenue that would not otherwise have been realized by the City/RDA.

3. SCOPE OF SERVICES

The scope of services includes, but is not limited to, MMC providing the services summarized as follows:

- Meet with designated City/RDA staff to review audit service objectives and scope, procedures, county/public agency relations and logistical matters; we will also establish an appropriate liaison with City/RDA management and staff and logical checkpoints for measuring progress;
- Establish a comprehensive, valid inventory of every parcel located within City and RDA boundaries and the database elements needed to facilitate a comparative analysis with Kern County's local secured and unsecured taxable values and the State Board of Equalization assessed taxable valuations;
- Represent the City/RDA for the purpose of examining records pertaining to taxable valuations and tax increment revenues to identify and confirm errors/omissions that are resulting in non-payment and/or deficient payment of these revenues.

- For each error/omission identified and confirmed, prepare documentation to substantiate and facilitate recovery of tax increment revenue due from prior periods (plus applicable interest and penalties, where appropriate) and prevent recurring deficiencies in current and future years;
- Prepare and forward to the County Assessor and County Auditor-Controller "date of knowledge" requests for corrective action of the noted errors and tax increment revenue recovery;
- Provide assistance to the RDA in analyzing certain declines in Unitary revenue in the Project Area:
- Meet with designated City/RDA staff to review and discuss our audit findings and recommendations; and
- Provide additional assistance as necessary to support City/RDA in recovering and preventing future revenue deficiencies.

4. TIMING

MMC is prepared to commence the property tax service within 10 working days following authorization. Each quarter, MMC shall provide the City/RDA with a report summarizing audit progress to date and, as applicable, the actual and projected amounts of tax revenue recovery for the RDA.

MMC shall deliver the initial set of the property tax audit reports within 90 to 120 working days following authorization. The City/RDA and MMC will mutually agree on the frequency and type of periodically updated property tax audit reports to be provided thereafter.

5. COMPENSATION

MMC's compensation for providing the property tax audit service is 25% of the additional tax increment revenue realized by the City/RDA as a result of MMC detecting and documenting the error(s)/omission(s) causing the property tax/tax increment deficiencies. Said 25% applies to the additional revenue realized by the City/RDA during the first 3 years following correction. MMC will also pursue recovery of revenue for eligible prior periods, if any. For retroactive adjustments MMC's 25% shall apply to the amount of the adjustment.

Under this arrangement, the City/RDA agrees to notify MMC within 10 days following receipt by the City/RDA of payments resulting from MMC's audit service. Upon being notified of receipt of payment, MMC will then invoice the City/RDA for 25% of the amount(s) of tax increment revenue received. Earned compensation is due and payable upon receipt of billings.

If said property tax deficiencies are detected and documented during the term of this Agreement, but not collected by the City/RDA until after this Agreement has expired, City/RDA shall nevertheless pay Consultant 25% of the detected and collected deficiencies, including interest and penalties.

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

EXECUTED as of this day 6-21-2000

CITY OF RIDGECREST

MBIA MuniServices Company

By: J. C. Wmgachis

By: Douglas T. Jensen
Doug Jensen

Title: Finance Director

Title: Director of Client Services

Date: 6-21-2000

Date: June 14, 2000

GENERAL PROVISIONS

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

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

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

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

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

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

GENERAL PROVISIONS

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

6. Insurance.

- a. Public Liability. During the term of this Agreement, Consultant shall maintain in full force and effect a policy of public liability insurance with minimum coverages as follows: \$1,000,000 for injury to one person in any one occurrence; \$1,000,000 aggregate; and, \$50,000.00 for property damage. Consultant shall cause the City, its officials and employees to be named on all liability policies described above as insured as respects: (1) activities performed for the City by or on behalf of the named insured, (2) products and completed operations of the Named Insured, and (3) premises owned, leased or used by the Named Insured.
- b. Worker's Compensation. During the term of this Agreement, Consultant shall fully comply with the terms of the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Consultant may have for worker's compensation.

7. Consultant Not Agent. Except as City may specify in writing, Consultant shall have no authority, express or implied to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

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

GENERAL PROVISIONS

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9. Personnel. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice from City of the desire of City for the removal of such person or persons.

10. Standard of Performance. Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices his/her profession. All products of whatsoever nature which Consultant delivers to City pursuant to this Agreement shall be prepared in a substantial, first class and workmanlike manner and conform to the standards of quality normally observed by a person practicing in Consultant's profession.

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

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

13. Termination. This Agreement may terminate on ten (10) days written notice by either party, or within such time as both parties may find necessary to conclude the work currently under way and to summarize Consultant's findings for City. In the event of termination under this Section, City shall pay Consultant for services performed up to the effective date of termination for which Consultant has not been previously paid. Because the services performed by Consultant prior to termination may result in City's receipt of revenue after termination and because this receipt of revenue entitles Consultant to payment from the City even after termination, City agrees to provide to Consultant after termination of this Agreement such information as is necessary to enable Consultant to calculate the compensation due to Consultant as a result of this receipt of revenue by the City, and Consultant shall maintain the confidentiality of this information.

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

GENERAL PROVISIONS

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

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

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

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

GENERAL PROVISIONS

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- d. Information and Reports: Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the City and shall set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of noncompliance by Consultant with the nondiscrimination provisions of this Agreement, the City shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - (1) Withholding of payments to Consultant under the contract until Consultant complies;
 - (2) Cancellation, termination, or suspension of the Agreement, in whole or in part.

- f. Incorporation of Provisions: Consultant shall include the provisions of paragraphs "a" through "e" in every subcontract, including Regulations, order, or instructions issued pursuant thereto. Consultant shall take such action with respect to any Regulations, order or instructions issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request City to enter such litigation to protect the interests of the City.

