

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT WITH AVENU INSIGHTS & ANALYTICS, LLC FOR SALES AND USE TAX CONSULTING SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 13th day of August, 2019 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and AVENU INSIGHTS & ANALYTICS, LLC, a Delaware limited liability company ("Consultant"), whose address is 7625 North Palm Ave., Suite 108, Fresno, CA 93711, and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide Sales and Use Tax Consulting Services ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2024, unless terminated earlier as set forth herein.

2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to

completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Five Hundred Twenty Five Thousand Dollars and 00/100 (\$525,000.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit invoices to City on no less than a quarterly basis describing the Work performed. Consultant's bills shall include a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

5. PROJECT MANAGER

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Doug Jensen to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

6. ADMINISTRATION

This Agreement will be administered by the Finance Department. City's Revenue Manager or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

7. CITY'S RESPONSIBILITIES

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

8. STANDARD OF CARE

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

9. HOLD HARMLESS

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent, reckless, and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant.

10. INDEPENDENT CONTRACTOR

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall

mean only that Consultant shall follow the desires of City with respect to the results of the Services.

11. COOPERATION

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

12. CITY POLICY

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

13. PROGRESS

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

14. INSURANCE

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor

other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

17. OWNERSHIP OF DOCUMENTS

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

17.4 Consultant shall retain ownership (including, without limitation, copyright ownership) and all rights to use and disclose its ideas, concepts, know-how, methods, techniques, processes and skills, and adaptations thereof in conducting its business regardless of whether incorporated in any way in any work product or deliverables provided by Consultant hereunder.

18. CONFIDENTIALITY

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

19. INTELLECTUAL PROPERTY INDEMNITY

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

20. RECORDS

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

21. WITHHOLDINGS

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

22. ERRORS AND OMISSIONS

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

23. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS

City reserves the right to employ other Consultants in connection with the Project.

24. CONFLICTS OF INTEREST

24.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

24.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

25. NOTICES

25.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

25.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Revenue Manager
Finance Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

25.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Doug Jensen
Avenu Insights & Analytics, LLC
7625 North Palm Ave., Suite 108
Fresno, CA 93711

26. CLAIMS

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and

identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

27. TERMINATION

27.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of five (5) business days, or if more than five (5) business days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within five (5) business days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

27.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than fifteen (15) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

28. STANDARD PROVISIONS

28.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

28.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

28.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

28.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

28.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

28.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

28.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

28.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

28.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

28.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

28.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

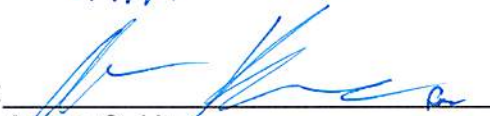
28.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 8/1/19

By: 
Aaron C. Harp
City Attorney

080119
dmg

CITY OF NEWPORT BEACH,
a California municipal corporation

Date: _____

By: _____
Diane B. Dixon
Mayor

**CONSULTANT: AVENU INSIGHTS &
ANALYTICS, LLC**, a Delaware limited
liability company

ATTEST:

Date: _____

BY: AVENU HOLDINGS, LLC, a
Delaware limited liability
company

Date: _____

By: _____
Leilani I. Brown
City Clerk

ITS: _____
Paul Colangelo
Chief Executive Officer

Date: _____

ITS: _____
Michael Melka
Chief Financial Officer

[END OF SIGNATURES]

Attachments: Exhibit A – Scope of Services
 Exhibit B – Schedule of Billing Rates
 Exhibit C – Insurance Requirements
 Exhibit D – Contract Governing Access to
 Confidential Taxpayer Data

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A SCOPE OF SERVICES

As directed by the City, the Consultant will provide the City with auditing services related to Sales and Use Tax. In particular, the selected Consultant shall perform the following services:

1. Review the applicable provisions of the City's municipal code and ordinances as appropriate;
2. Evaluate the revenue generating elements of the City's economic base, such as land parcels, major buildings and various users as it relates to sales and use tax;
3. Verify California Department of Tax and Fee Administration (CDTFA) quarterly sales and use tax allocations to the City. Identify errors and/or omissions resulting in deficit payments to the City;
4. Include physical canvassing and evaluation of sales and use tax generating businesses located in the City to detect misallocations. Field audits shall focus on those businesses located in the City from which the City has not been receiving sales and use tax revenue or appear to be under-reporting revenues;
5. Facilitate the identification and correction of improperly registered permits for companies including, but not limited to, wholesalers, contractors, processors, manufacturers, and other non-retail businesses having potential point-of-sale use tax operations in the City;
6. Provide to City a list of identified errors and/or omissions and obtain City approval prior to submission to CDTFA (i.e. work authorization or similar), quarterly at minimum;
7. Prepare and submit a CDTFA-549L, Claimed Incorrect Distribution of Local Tax (or succeeding form) forms and AB990 submittals and all other requests for corrective action and revenue recovery to the appropriate parties and provide copy to the City immediately after submission. For each error/omission identified and confirmed, Consultant shall prepare documentation to the City and CDTFA to substantiate and facilitate recovery of revenue due from prior periods (plus applicable interest and penalties) and prevent deficiencies in current and future years;
8. Prepare all information necessary to correct any identified allocation errors;
9. Monitor City's business and sales tax programs and revenues and identify opportunities to maximize revenues;
10. As requested periodically by the City, Consultant will review specific City purchases to identify opportunities for the City to capture the current local allocation on purchases subject to use tax and the local district tax where applicable. In this regard, Consultant shall prepare the documentation to facilitate the City's election of such taxes, including related guidance in preparing and filing the City tax returns;
11. Track and report misallocations corrected because of Consultant's efforts and remitted to the City by the CDTFA. Provide a detailed listing of all errors/omissions detected by the Consultant. Information shall include:
 - a. Company Name
 - b. Account Number
 - c. Case Number

EXHIBIT A SCOPE OF SERVICES

- d. Work Authorization Number
 - e. Error Type
 - f. Correction Status
 - g. Total number of billable quarters to the City for the account
 - h. Current number of quarters billed to the City
 - i. Payment amount received by the City
 - j. Invoiced amount by the Consultant
 - k. Total invoice amount
 - l. The reporting period for which the payment is related
 - m. Any additional information deemed necessary by the Consultant or City
12. Provide an aging report with the quarterly invoice, or upon City's request, that includes all active and non-active accounts for which the Consultant has received payment report;
13. Provide on-going communication to the City concerning revenue recovery work in progress. This requirement will include, but is not limited to:
- a. Providing a quarterly reports of all inquiries filed on behalf of the City and the status of outstanding past inquiries filed with the CDTFA;
 - b. Providing copies of decision letters from CDTFA upon request;
 - c. Notifying the City of all oral communications with the CDTFA regarding the City;
 - d. Providing a copy of written communication with the CDTFA (e.g. correspondence and email) with the CDTFA regarding the City; and
14. Prepare petition letters and any supporting information for submittal, and include the tracking of petitions in the quarterly aging reports. Petitions shall include appeals of negative and positive fund transfers as well as appeals of CDTFA-549 allocations;
15. Provide current and historical sales tax data on sales tax remittances including, but not limited to, the following data types: fiscal year and calendar quarter of remittance, fiscal year and calendar quarter of revenue earned, high level economic sector and more detailed subsector identifiers, top sales generators and the revenue generated by each, analysis of sales tax by business category, including comparisons to statewide and other comparable averages, major business analysis, including analysis of reporting and accounting aberrations that could distort revenue patterns, address, geocoding or other neighborhood designation, geographic performance and trends for areas specified by the City, and name of owner or permit holder;
16. Prepare at a minimum, quarterly analysis of sales tax revenues, projections and adjustments on the City's sales and use tax trends in relation to the surrounding market region, by individual business type and geographic areas specified by the City. Consultant shall provide sales and use tax revenue forecasting;
17. Provide sales and use tax analysis reports benchmarked to previous years. Analysis should include information on the top revenue producers, indication of revenue changes by business and economic category, identification of major businesses that influence change in the City's tax revenue, and analysis of key businesses that grew or declined during the reporting period;

EXHIBIT A SCOPE OF SERVICES

18. Provide local sales and use tax revenue and cash flow forecasting reports. Provide reports by geographical area (for example by shopping centers or areas and business districts). The Consultant should have the ability to tailor reports to the City's needs;
19. Provide City with specialized charts and data tables, presentation data and presenters for public meetings and events, if requested, and provide the City with business specific revenue estimates and economic development consulting. Consultant shall provide a quarterly summary of economic news that is one quarter more current than the most current sales tax data available for the City's use in making projections;
20. Meet with designated City staff as necessary to support the City in recovering and preventing tax misallocations. Provide support, including negotiations, for the development of a point-of sale attraction and retention strategy;
21. Coordinate corrective action with taxpayers and the CDTFA. Represent the City before State officials, boards, commissions and committees for the purpose of correcting local sales tax distribution errors. This includes representing the City before the CDTFA related to incorrect allocations of tax;
22. Attend quarterly meetings to discuss analytical reports for local sales and use. Provide charts and graphs to illustrate the data. Assign a staff member such that the City has a consistent point of contact in these discussions;
23. Provide on-going analysis, reports, legislative support and unlimited access to Consultant's team members for sales and use tax related questions, as well as training and support for City staff;
24. Conduct technical research and analysis to support the City in securing adoption of clarifying administrative rules, resolutions, ordinance revisions, regulatory amendments, and legislation to facilitate correction and prevention of these errors and/or omissions;
25. Assist in defining specific geographic areas for which the City would have an interest in knowing the Sales and Use Tax produced;
26. Remain attentive to any future proposed changes to regulatory language in national, state and CDTFA's laws and regulations related to the allocation of local sales tax revenues. This could include attending legislative hearings and explaining the potential effect of proposed legislation on the City;
27. Provide policy, regulatory, and legislative technical support services to the City in conjunction with the Sales and Use Tax program with the intent of preventing and/or correcting misallocations and/or deficiencies;
28. Have the ability to provide data of all Newport Beach local sales and use tax permits in a format compatible with the City's computer operating system. The City will have access to local tax and pool data. At a minimum, the database will include the names, addresses, seller's permit numbers, social security numbers or federal employer identification numbers where available, the period and tax allocation for each business, start and closeout dates;

EXHIBIT A
SCOPE OF SERVICES

29. Provide the data in a proprietary software system maintained by the Consultant or through a non-proprietary system. Perform monthly updates of sales tax permit registration information. In either case, the data shall be provided in a format allowing the City to export data into an Excel compatible format, allowing for integration of various databases;
30. Provide City staff with training on the use of the system. Update the data in the system each calendar quarter as soon as possible following receipt from the CDTFA. Consultant shall provide geographical data mapping capability in its proprietary system or else provide City staff with address data in a format which would allow staff to export and map data; and
31. Provide the City's Business License staff with a quarterly file, in Excel format, consisting of the registration information, permit number, business name, ownership, mailing and business addresses, date return was received from CDTFA, permit open date, permit closed date, the preceding 40 quarters of quarterly tax return amounts, and any other information deemed necessary by City staff.
32. Agree to and sign the "Contract Governing Access to Confidential Taxpayer Data" attached hereto as Exhibit D.

EXHIBIT B

SCHEDULE OF BILLING RATES

EXHIBIT B

SCHEDULE OF BILLING RATES

Sales Tax Audit, Analysis, Reports and Forecasting services

Compensation for the Sales and Use Tax Audit (SUTA) service for the 1% Bradley-Burns Sales Tax is through a tiered pricing structure:

- ▶ 8% contingency fee applies to the first \$2 million in sales and use tax revenue recovered throughout the term of the Agreement, including any extensions or options to renew; and
- ▶ 5% for recoveries in excess of the first \$2 million.

This contingency fee applies to revenue received for four (4) consecutive quarters after the Date of Correction, no more than three (3) quarters inclusive of, and between, the Date of Knowledge and Date of Correction quarter, and no more than three (3) quarters prior to the Date of Knowledge quarter. Total quarters billed will not exceed ten (10) quarters.

The Date of Knowledge is the quarter during which Avenu/MuniServices notifies the California Department of Tax and Fee Administration (CDTFA) of the existence of a misallocation. The Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the CDTFA distributes the local tax properly to City based on the taxpayer's reporting, together with any prior period reallocations. For Quarterly Distribution Report (QDR) Misallocations detected and corrected, Avenu/MuniServices compensation will only include the quarters in which the misallocation actually occurred. If any petition submitted by Avenu/MuniServices is denied for any reason, Avenu/MuniServices is not eligible for any compensation.

Consultant will invoice the City for the fees only after completion of the audit, submittal of petitions to CDTFA, receipt by the City of the decision letter granting the petition, and receipt of Revenues by the City. The fee constitutes the full reimbursement to Consultant and covers all direct and indirect costs incurred by the Consultant under this Agreement. This includes all salaries of Consultant's employees, travel expenses, and service contracting costs.

Avenu/MuniServices shall be entitled to full payment of all compensation as provided herein even if any one or more of City, its personnel, agents, or representatives, or any third party or parties provide(s) information to Avenu/MuniServices that assists or is used by Avenu/MuniServices in the identification, detection, and correction of point-of-sale distribution errors or the reporting and/or misallocation of revenue.

Should the City identify, document, and notify the CDTFA in writing of a point-of-sale distribution error, reporting error or misallocation as those terms are used herein, the City agrees to notify Avenu/MuniServices of the City's discovery no later than ten (10) days after the Date of Knowledge as defined in Title 18 of the California Code of Regulations, Regulation 1807 ("Date of Knowledge.") If the City fails to so notify Avenu/MuniServices as provided above and Avenu/MuniServices later detects, documents, and reports the misallocation or reporting error to the CDTFA, or if Avenu/MuniServices has established a Date of Knowledge with the CDTFA prior to notification to the Board by the City, then Avenu/MuniServices is entitled to full compensation for the affected account as provided herein.

Completion of Services

Because the services performed by Avenu/MuniServices result in corrections of misallocations and other revenue after cessation of services performed by Avenu/MuniServices for the City, the City agrees that with regards to misallocations identified to the CDTFA whose Date of Knowledge occurred during Avenu/MuniServices performance of services for the City or for other revenue resulting from Avenu/MuniServices actions taken during the term of the Agreement, that the City's obligation to pay Avenu/MuniServices in accordance with the compensation language of the

EXHIBIT B SCHEDULE OF BILLING RATES

Agreement will survive expiration or termination of the Agreement for any reason. Additionally, notwithstanding any other provision of the Agreement, if the Agreement is terminated or expires, Avenu/MuniServices will continue to pursue corrections of accounts identified during the term of the Agreement that have not been corrected by the CDTFA as of the effective date of termination or expiration. The period after termination during which Avenu/MuniServices is pursuing correction of accounts identified before termination is referred to as the "completion period." The City will compensate Avenu/MuniServices in accordance with the compensation language of the Agreement for corrected misallocations that result from Avenu/MuniServices efforts during the completion period. The City will also take all necessary steps to allow Avenu/MuniServices to continue to receive the required information from the CDTFA during this completion period.

Sales & Use Tax Analytics (Clearview), Reporting & Forecasting

Clearview is available for an annual fixed fee of \$6,000 paid \$1,500 quarterly, which includes the latest edition of the Clearview software as shown to the City in the demo during the Request for Proposal (RFP) process, accessible via web portal. The Annual Fee will be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index that pertains to City's particular geographic area as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI 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. When new editions of the Clearview software become available there may be the option to purchase additional services, new Clearview services, which involve an additional fee will be available at a mutually agreed upon additional price.

Additional Consulting Services

The City may request that Avenu/MuniServices provide additional consulting services at any time during term of the Agreement. If Avenu/MuniServices and the City agree, in writing, on the scope of the additional consulting services requested, then Avenu/MuniServices shall provide the additional consulting services on a Time and Materials basis. Depending on the personnel assigned to perform the work, Avenu/MuniServices' standard hourly rates range from \$75 per hour to \$325 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred. The following are sample hourly rates based on the job classification (these rates are subject to change):

Avenu/MuniServices Hourly Rate Schedule	
Position	Hourly Rate
Legal	\$325
Principal	\$200
Project Manager/Director	\$175
Client Services Executive	\$150
Senior Analyst	\$125
Information Technology	\$175
Analyst	\$100
Administrative	\$75

EXHIBIT C

INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
 - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement.
 - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
 - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this

Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.

4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers, employees and any person or entity owning or otherwise in legal control of the property upon which Consultant performs the Project and/or Services contemplated by this Agreement shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

5. Additional Agreements Between the Parties. The parties hereby agree to the following:

- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- E. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.
- F. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

- G. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- H. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

EXHIBIT D

CONTRACT GOVERNING ACCESS TO CONFIDENTIAL TAXPAYER DATA

CONTRACT GOVERNING ACCESS TO CONFIDENTIAL TAXPAYER DATA

The City of Newport Beach ("City") has retained Avenu Insights and Analytics, LLC ("Avenu/MuniServices") to provide sales and use tax analysis, identify errors and omissions which may have resulted in deficient payments to the City, detect misallocations and prepare documentation to the California Department of Tax and Fee Administration ("CDTFA") to recover revenue.

In order to provide such services, it is necessary for Avenu/MuniServices staff to have access to confidential sales and use tax records of the CDTFA pertaining to its administration and collection of sales and use taxes.

Section 7056(b) of the California Revenue & Taxation Code ("RTC") provides that access to such confidential data by any person other than an employee or officer of a city is conditioned upon there being an existing Resolution by the City designating the person to examine the records, data and other information and certifying that the individual meets the conditions specified in RTC Section 7056(b)(1), including the requirement of RTC Section 7056(b)(1)(A), that there be an existing contract with the City to examine the sales and use tax records that meets all requirements of RTC Section 7056(b)(1), subdivisions (A) through (D).

The City and Avenu/MuniServices wish to enter into a Contract complying with the legal requirements described in RTC Section 7056.

Therefore, Avenu/MuniServices and the City do hereby further agree as follows:

1. In connection with the sales and use tax analysis and other functions described above, Avenu/MuniServices (acting through its partners, associates and employees, whose identities shall be set out in a list maintained by the Finance Department) is hereby authorized to examine all confidential records and data of the CDTFA, pertaining to the ascertainment of the sales and use taxes collected or to be collected by the CDTFA.
2. Avenu/MuniServices, and its partners, associates and employees, will disclose any information contained in, or derived from, those sales and use tax records only to officers or employees of the City who are authorized by resolution to examine the information.
3. Avenu/MuniServices will ensure that each of its partners, associates and employees who will have access to confidential sales and use tax records has done each of the following prior to, and as a condition of, access to such records:
 - a. Read this Contract;
 - b. Signed the list of Avenu/MuniServices personnel who will be provided with access to confidential sales and use tax records and information pursuant to this Contract;

- c. Acknowledged through such signature on the Finance Director's list that he or she is bound by this Contract and by the legal requirements of RTC Section 7056 with respect to the confidentiality of sales and use tax records; and
 - d. Agreed through such signature not to provide consulting services to any retailer during the term of this Contract.
4. Avenu/MuniServices will return or (at the City's request) ensure the destruction of all sales and use tax documents disclosed pursuant to this Contract, as well as all other documents containing information derived from those sales and use tax documents, prior to the termination of this Contract.
5. This Contract shall terminate ninety (90) days after the termination of the Avenu/MuniServices' services to the City. Avenu/MuniServices and its personnel who have been provided with confidential sales and use tax records and information pursuant to this Contract shall not retain in their files or in any other document the confidential state sales and use tax information to which they have received access after this Contract.

[SIGNATURES ON NEXT PAGE]

In witness whereof, Avenu Insights and Analytics, LLC have executed this Contract as of this ____ day of ____ 2019.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 8/1/19

By: 
Aaron C. Harp
City Attorney

08.01.19
dmz

**CITY OF NEWPORT BEACH,
A California municipal corporation**

Date: _____

By: _____
Grace K. Leung
City Manager

**CONSULTANT: AVENU INSIGHTS &
ANALYTICS, LLC, a Delaware limited
liability company**

ATTEST:

Date: _____

**BY: AVENU HOLDINGS, LLC, a
Delaware limited liability
company**

Date: _____

By: _____
Leilani I. Brown
City Clerk

ITS: _____
Paul Colangelo
Chief Executive Officer

Date: _____

ITS: _____
Michael Melka
Chief Financial Officer

[END OF SIGNATURES]