



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>15 May 2019</i> <i>Robt M. Penn</i>		GENERAL MANAGER ACTION REQ'D: N/A		
DATE: 5/10/2019		BOARD INITIATED ITEM: No		
Originator/Prepared by: Hal Keiner Dept: Performance & Audit	General Counsel	Controller/Treasurer	District Secretary	BARC
Signature/Date: <i>Hal Keiner</i> 5/13/19	<i>[Signature]</i> 5/13/19 []	<i>[Signature]</i> 5/13/19 []	[]	<i>[Signature]</i> 5/13/19 []

Award of Agreement No. 6M5147 to Avenu Insights & Analytics, LLC

PURPOSE:

To obtain Board authorization for the General Manager to execute Agreement No. 6M5147 with Avenu Insights & Analytics, LLC (also known as MuniServices, LLC) to provide sales and use tax (sales tax) revenue collection services for claims open at end of Avenu's previous Agreement No. 6M5059.

DISCUSSION:

Many California jurisdictions do not receive all sales tax revenues to which they are entitled due to both taxpayer reporting errors and processing errors. Errors occur for many reasons, including businesses failing to correctly report their collections to the California Department of Tax and Fee Administration (CDTFA) or businesses misallocating tax collections among the many cities, counties, and special districts in which they operate. When businesses fail to correctly report their collections to the CDTFA, the CDTFA may distribute the tax it has collected in error to other jurisdictions.

Under prior District Agreement No. 6M6059, Avenu Insights & Analytics, LLC (Avenu) performed services to detect instances of misallocation and under reporting and to submit claims to the CDTFA for correction. This Agreement has since expired, and some of these claims are still outstanding.

This Agreement is to provide sales tax revenue collection services only on claims that were open when Avenu's previous Agreement No. 6M5059 expired on Feb 24, 2019. This Agreement is for a period of five (5) years. The Internal Audit division of the Performance

and Audit department has determined that these services are necessary and are not duplicative of any duties performed by BART employees. No competition was conducted and Avenu is the only firm that can perform this work because Avenu originally identified and submitted these open claims to the CDTFA under its previous Agreement No. 6M5059.

The Office of Civil Rights determined that the District's Small Business Program, Non-Discrimination Program for Subcontracting, and Disadvantaged Business Enterprise Program would not apply to this Agreement since this Agreement is a revenue-generating agreement.

The Office of General Counsel will approve the Agreement as to form.

FISCAL IMPACT:

The subject EDD proposes a five (5) year contract at a total estimated cost of \$200,000. Funds will be budgeted in the Performance and Audit operating budget (Dept 1302386 - Audit, Account 681358 - Sales Tax Collection Commission) as follows:

Proposed Funding	
FY20	\$150,000
FY21	\$20,000
FY22	\$10,000
FY23	\$10,000
FY24	\$10,000
Total	\$200,000

Funding for services in this Fiscal Year are included in the Department's existing operating budget. Funding for subsequent years will be included in the proposed annual operating budget, which is subject to Board approval.

This action is not anticipated to have any Fiscal Impact on unprogrammed District reserves in the current Fiscal Year as the payments to Avenu are contingent upon the amount of revenue it collects for BART. Avenu will perform this service on a 20 percent contingency fee basis. No fee payment will be made to Avenu until the associated revenue has been received by BART.

It is estimated that Avenu's collection services on open claims will result in additional sales tax revenue of approximately \$1,000,000 over the five-year duration of the Agreement. The "net" additional revenue to BART will be approximately \$800,000 (\$1 million in collected sales tax revenue less \$200,000 in fees paid to Avenu).

ALTERNATIVES:

1. To not execute this Agreement and discontinue Avenu's sales tax revenue collection services on open claims. This would possibly result in BART forgoing additional net revenue currently estimated at \$800,000.

RECOMMENDATION:

It is recommended that the Board adopt the following motions.

MOTION:

1. The General Manager is authorized to execute Agreement No. 6M5147 with Avenu Insights and Analytics and to provide sales tax revenue collection services for a five-year period based upon a contingency fee of 20% determined by the amount of tax revenue recovered on open claims for the District, pursuant to the notice to be issued by the General Manager.
2. The Board of Directors approves the attached Resolution No. ____ pursuant to Revenue and Taxation Code Section 7056 authorizing Avenu Insights and Analytics to examine the tax records of the California Department of Tax and Fee Administration on behalf of the District for the purpose of detecting and documenting the misallocations of sales tax revenue.

**BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

Resolution No. _____

In the Matter of Authorizing
Consultant Avenu Insights & Analytics, LLC (also known as MuniServices, LLC)
to Examine Sales and Use Tax Records
at the California Department of Tax and Fee Administration on
behalf of the District

WHEREAS, pursuant to California law, the Board of Directors of the San Francisco Bay Area Rapid Transit District (District) entered into a contract with the California Department of Tax and Fee Administration (formerly State Board of Equalization) (CDTFA) to perform all functions incident to the administration and collection of the Transactions and Use Tax Ordinances and the local sales and use taxes; and

WHEREAS, the District deems it necessary for authorized representatives of the District to examine confidential sales and transactions and use tax records of the CDTFA pertaining to sales and transactions and use taxes collected by the CDTFA for the District; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of CDTFA records and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from sales or transactions and use tax records of the CDTFA; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code requires that any person designated by the District shall have an existing contract to examine the District's sales and transactions and use tax records:

NOW, THEREFORE IT IS RESOLVED AND ORDERED AS FOLLOWS:

Section 1. That the General Manager, or other officer or employee of District designated in writing by the General Manager to the CDTFA is hereby appointed to represent District with authority to examine all of the sales and transactions and use tax records of the CDTFA pertaining to sales and transactions and use taxes collected for District by the CDTFA pursuant to the contract between City and the CDTFA. The information obtained by examination of CDTFA records shall be used for purposes related to the collection of District's sales and transactions and use taxes by the CDTFA pursuant to the contract.

Section 2. That the General Manager or other officer or employee of District designated in writing by the General Manager to the CDTFA, is also hereby appointed to represent District with the authority to examine those sales and transactions and use tax records of the CDTFA for purposes related to the following governmental functions of the District:

- a) tracking and economic development
- b) forecasting and budget related functions
- c) detection of misallocations and deficiencies

The information obtained by examination of CDTFA records shall be used only for those governmental functions of the District listed above.

Section 3. That Avenu Insights & Analytics, LLC (also known as MuniServices, LLC) is hereby designated and authorized to examine all of the sales and transactions and use tax records of the CDTFA pertaining to all sales and use taxes collected for District and any transaction and use taxes collected for District under the following Transactions and Use Tax Ordinances and any future Transactions and Use Tax Ordinances that may be enacted in the District:

Bay Area Rapid Transit District (BART) (effective date April 1, 1970)

The person or entity designated by this section meets all of the following conditions:

- a) has an existing contract with the District to examine sales and transactions and use tax records;
- b) is required by that contract to disclose information contained in, or derived from those sales and transactions and use tax records only to an officer or employee authorized under Section 1 (or Section 2) of this resolution to examine the information;
- c) is prohibited by that contract from performing consulting services for a retailer during the term of that contract;
- d) is prohibited by that contract from retaining the information contained in or derived from those sales and transactions and use tax records after that contract has expired.

BE IT FURTHER RESOLVED that the information obtained by examination of CDTFA records shall be used only for purposes related to the collection of [name of jurisdiction]'s sales and transactions and use taxes by the CDTFA pursuant to the contracts between District and the California Department of Tax and Fee Administration and for purposes relating to the governmental functions of [name of jurisdiction] listed in Section 2 of this resolution.