

# Agenda Report

JANUARY 8, 2001

TO: City Council  
THROUGH: Finance Committee

FROM: Cynthia J. Kurtz, City Manager

SUBJECT: AMENDMENT TO THE CONTRACT BETWEEN THE CITY OF PASADENA AND MBIA, MUNISERVICES AND AUTHORIZATION TO AMEND THE CITY'S UTILITY USER TAX ORDINANCE

## **RECOMMENDATION**

It is recommended that the City Council:

1. Approve an amendment to the contract between the City of Pasadena and MBIA MuniServices (formerly Municipal Resource Consultants) and
2. Direct the City Attorney to update the City's Utility User Tax Ordinance to reflect current technological advances.

## **BACKGROUND**

In 1996, the City entered into a contract with Municipal Resource Consultants (MRC) to perform various tax audits for the City. These audits included, sales tax, transient occupancy tax, property tax, business licenses and utility user tax. In 1999, MRC was purchased by MBIA, a municipal bond insurer and the MRC was renamed MBIA, MuniServices (MMC). In addition to audit services the City receives legal and protective services relating to the Utility Users Tax (UUT).

In fiscal year 2000, City UUT revenues totaled \$23.4 million, or approximately 18% of the City's total revenue. Since 1996, MMC has generated approximately \$1.4 million in accumulative additional UUT revenue for the City through its compliance audit work. In addition, MMC, through its legal and protective services, has fought against legislation that threatened the City's tax base. For example, two years ago, MMC worked at the state and national levels to ensure that the Internet Tax Freedom Act did not preclude the City from continuing to tax voice telecommunications that traveled over the Internet, as opposed to traveling over a more traditional voice line. Due to the complexity of utility tax issues, the City staff cannot provide such needed expertise (i.e., lawyers, auditors and accountants specializing in utility taxation).

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AGENDA ITEM NO. 5.C.(1)

The contract between the City and MMC has been on a contingency fee basis. Under this structure, the City pays MMC 25% of the total "additional new" revenue received by the City for a period of three years following the correction made by MMC, along with 25% of the total retroactive recovery (if applicable).

MMC now proposes, and City staff now recommends, to fund the same level of services through a fixed fee of \$56,000 per year, equal to one-half of one percent (0.5%) of the City's average annual UUT revenues collected in fiscal years 1998 and 1999.

## **DISCUSSION**

Under the new arrangement, the City will pay a fixed fee for services rendered at a cost lower than our past experience. Under the amended contract, MMC will continue to:

1. Identify utility businesses operating in the City that are not collecting the UUT (e.g., there are over 600 licensed telephone companies in California).
2. Provide utilities with accurate geocoding boundaries of City based on street address and ZIP Plus Four. This Program will satisfy the requirement under proposed federal legislation of cities to provide wireless companies such geocoding information.
3. Assist the City Attorney's Office in updating the City's UUT ordinance to reflect changes in technology and regulations and to eliminate ordinance ambiguity that can produce litigation.
4. Place the City's UUT Ordinance, Regulations and Administrative Rulings on MMC's Website for easy access to tax-collecting utilities.
5. Assist the City staff in addressing complex tax application and exemption issues that arise from time to time as new products and technologies are introduced.
6. Establishes a Client Executive Committee that serves as a representative vehicle for meeting with industry representatives to assure consistent tax application interpretations among the 160 public agencies with UUT ordinances.

There are several important benefits to a fixed fee approach over the standard contingency fee formula, including:

1. Money owed to MMC (approximately \$190,000) for prior compliance work would be forgiven.
2. Money owed to MMC for prior compliance work for reporting periods after January 1, 2000 would be forgiven in exchange for a two year commitment to the fixed fee program. It is estimated that the City would owe MMC approximately \$175,000 in contingency fees for past corrections over the next two years, even if no further compliance activities are performed. Under the fixed fee program, the City would pay \$56,000 per year. Therefore, a significant portion of the program would be self-funded by monies owed under the former contingency fee approach.
3. Almost all auditing work would be included in the fixed fee, with the exception of auditing work that is city-specific (such as CATV and utility franchise reviews). Since MMC will be addressing a number of major compliance issues in the coming months (e.g., wireless airtime, gas and electric tax application issues, major wired telecom tax application and exemption issues), it is likely that some of these activities will produce significant additional revenues for your City, resulting in substantial performance-based fees under the current contingency fee agreement.

Under the fixed fee approach, this additional revenue would not generate any additional costs to the City.

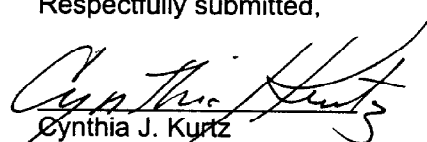
4. The new fixed fee approach provides the City with comparable services for a fixed rate that effectively "caps" the City's potential liability at a lower rate than the City has historically paid MMC for its UUT compliance work, and at a significantly lower rate than the potential for future billings. The City will also have regular, predictable invoices that do not fluctuate greatly in amount or frequency.
5. Through a fixed fee contract, MMC will be guaranteed a predictable payment, regardless of the City's decision to collect back taxes, penalties, interest and will not be subject to delays in payment resulting from the City's need to verify the incremental revenues actually generated by MMC.

Regarding changes to the City's UUT Ordinance, since the City's UUT Ordinance was last amended, there have been numerous technological changes as well as industry changes that potentially threaten the City's ability to impose its utility user tax in selective areas or against certain providers. For example, it is recommended that the City expand its definition section to include new terms such as, "non-utility service suppliers" in order to make it clear both the traditional monopoly utility and all new alternative providers, brokers and marketers have a tax collection obligation under the City's ordinance and "video service supplier" to replace a more limited definition of "cable television supplier. In addition, the definition of energy charges would be expanded to reflect a new unbundled utility bill. These kinds of changes will not increase the City's revenues or add additional areas of taxation, however, will add further clarity and ensure that those past areas in which the tax was imposed will continue. If authorized by the City Council, staff will bring back a modified Ordinance that clarifies definitions and better protects the City's revenue base. There will be no changes to any of the UUT rates and none of the changes will violate the requirements of Proposition 218.

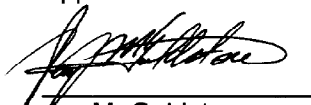
#### **FISCAL IMPACT**

The annual cost of this contract would be \$56,000. This is substantial lower than the amount currently paid by the City (\$170,000 to \$190,000) and funds are available in the General Fund operating budget.

Respectfully submitted,

  
Cynthia J. Kurtz  
City Manager

Approved:

  
Jay M. Goldstone  
Director of Finance

Concurrence:

  
Bill McCarley, Acting General Mgr.  
Water and Power

