

Agenda Report

TO: CITY COUNCIL

DATE: October 26, 2009

THROUGH: FINANCE COMMITTEE

FROM: CITY MANAGER

SUBJECT: AUTHORIZATION TO ENTER INTO A CONTRACT WITH
MUNISERVICES FOR REVENUE AUDIT, REVENUE INFORMATION
AND CONSULTING SERVICES

RECOMMENDATION:

It is recommended that the City Council:

- 1) Authorize the City Manager to enter into a contract with Muniservices, LLC for revenue audit, information reporting and consulting services; and
- 2) Exempt the proposed contract from the competitive bidding process pursuant to the City Charter Section 1002 (f), contracts for professional or unique services.

BACKGROUND:

In today's business world, most cities and special purpose governments are hard pressed to afford dedicated staff with the specialized knowledge, expertise, experience and time to audit and monitor the sales/use tax, property tax, utility users tax, and other taxes that produce much of their revenues. The overwhelming workload of dedicated professionals in the County and State tax accounting and collection offices, combined with complex tax rules, overlapping tax rates and jurisdictions, can lead to inadvertent errors. These errors, though small in the context of billions of dollars handled by the State Comptroller's office, can have dramatic impact on the revenues desperately needed by local governments. All mid and large sized cities in California utilize tax revenue audit consultants to find and solve problems that result in identifying missing revenues. These companies provide added

assurance that local government officials are getting all the revenue they are due. Since 1996, the City of Pasadena has been in contract with Muniservices to perform a variety of tax audits and revenue enhancement programs. Since inception of the contract, the City has realized millions of additional revenues as a result of Muniservices sales and use tax audit, property tax audit, transient occupancy tax audit, business license tax audit and utility users tax audit programs.

There are currently two companies that provide a full range of revenue audit and revenue enhancement programs including business license system and software for municipalities. They are Muniservices LLC, and Hinderliter, de Llamas and Associates. Finance staff requested and received proposals from both Muniservices and Hinderliter de Llamas and Associates. After careful review of the scope of services and the associated cost, it is staff's recommendation to enter into contract with Muniservices.

The proposed services by Muniservices will include the following:

- Annual sales and use tax audits
- Annual and quarterly sales and use tax analysis and reporting services
- Annual property tax audit and reporting for the City and Pasadena Community Development Commission
- Annual and on an as needed basis, utility users tax and franchise fee audit services
- Annual transient occupancy tax audit
- Ongoing business license tax audit
- Ongoing business license management service
- As required, documentary transfer tax audit
- As required, policy, legislative and regulatory analysis and support.

Over the past several years, Muniservices worked closely with Finance staff to design and implement several procedures and system applications to implement the City's major revenue information reporting systems and perform the audits as requested by the City or required by ordinance. Revenue audits are done continuously and some periodically in accordance with industry best practices and fiduciary responsibilities.

Proposed fees:

The proposed fee schedule is attached as "Exhibit A" to this report. A portion of the services will have an annual fixed fee. These services include the sales tax reporting service, the property tax information link service, the business license system annual support and maintenance fee, transient occupancy tax audit service, and a minimum fee for the utility users tax compliance program. The annual amount of the fixed fees is estimated at \$60,000. Muniservices will be paid on a contingency basis for all other revenue audit programs in accordance with the attached fee schedule for the following audits:

- Sales and Use Tax
- Property Tax
- Documentary Transfer Tax
- Utility Users Tax and Franchise Fees
- Local Business Tax

Muniservices proposes to lower the fees that the City is currently paying for the sales and use tax audit from 25% to 20%, and for the property tax audit from 25% with three years go forward participation, to 25% without any go forward participation. Because of the contingency nature of the contract, it is hard to estimate the annual fees the City will pay on this contract. In the past four years, the City has paid on average annual fees of \$375,000 for all the above services.

FISCAL IMPACT:

Sufficient funds have been appropriated for this contract in the FY 2010 Adopted Operating Budget, Non Departmental Citywide account.

Respectfully submitted;



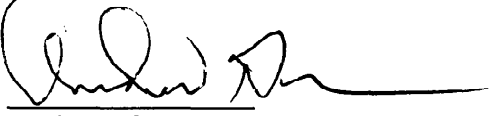
Michael J. Beck
City Manager

Prepared by:



Vic Erganian
Deputy Director of Finance/City Treasurer

Approved by:



Andrew Green
Director of Finance

PROPOSED FEES
EXHIBIT A

MuniServices proposes to lower the fees that the City is currently paying for the following services:

- Sales and Use Tax (SUTA) Audit: From 25% to 20%.
- Property Tax (PTX) audit: From 25% with 3 years go forward participation to 25% without any go forward participation.

Provided that City takes all the services stated in the above scope at the same time and for so long as the City maintains at least all of these services, MuniServices' proposed compensation for each service would be as follows:

1. Sales And Use Tax

MuniServices' compensation for the Sales and Use Tax Audit Service is reduced from 25% to 20% contingency fee. The fee applies to the sales and use tax revenue Received by the City as a result of MuniServices' effort in detecting, documenting and correcting the tax reporting errors and omissions. This fee applies to revenue received for six quarters beginning with the quarter in which the Date of Correction falls and all eligible prior quarters back to and including the three quarters to the Date of Knowledge quarter for Bradley-Burns sales tax revenues and all eligible prior quarters back to and including all corrected quarters prior to the Date of Knowledge quarter for district tax revenues. For QDR Misallocations detected and corrected, MuniServices' compensation shall only include the quarters in which the misallocation actually occurred.

2. Sales Tax Analysis And Reporting Services (STARS)

MuniServices' compensation for Sales and Use Tax Information Services (STARS) shall be \$8,000 annual fixed fee, to be paid in quarterly installments of \$2,000. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics. The initial Consumer Price Index used for the first CPI adjustment will be the CPI-WU for the month in which the agreement is fully signed.

3. Property Tax (Including RDA Tax Increment) (PIX/RDA)

MuniServices' compensation for the PTX/RDA Audit services shall be 25% contingency fee. This fee applies to all reallocations for the fiscal year during which the Date of Correction falls and all eligible prior period revenues corrected.

4. PropertyLINK

MuniServices' compensation for PropetyLink shall be kept the same at current fee that the City is paying at \$7,337.72 annual fixed fee, to be paid in quarterly installments of \$1,834.43. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPU-WU) as reported by the Bureau of Labor Statistics.

5. Documentary Transfer Tax (DTT)

MuniServices' compensation for DTT is 25% contingency fee. The fee is applied on the amount recovered or reallocated, which includes but is not limited to, amounts recovered, refunded, or credited or any other consideration given to the City as a result of the MuniServices' Documentary Transfer Tax service. MuniServices shall invoice City for the fee at least quarterly, based on recoveries actually received by City.

6. Utility User tax and Franchise Fees

MuniServices' compensation for the UUT Compliance Program shall be the greater of : i) one-half percent (0.5%) of the total UUT revenues received by the City (excluding UUT revenues derived from sewer, water, trash or CATV) based on the prior fiscal year, or ii) ten thousand dollars (\$10,000) (Minimum Fee"). In no case shall the City's annual fixed fee exceed eighty-five thousand dollars (\$85,000) ("Maximum Fee"). The Minimum Fee and Maximum Fee shall be increased at the rate of two percent (2%) each year. Said annual fixed fee shall be paid in four equal quarterly payments with due dates of: March 31, June 30, September 30, and December 31.

For City-specific reviews: With respect to a City-specific audit, such as Cable TV Audit, MuniServices shall be entitled compensation on rates and terms to be agreed upon following the City's request for such service.

7. Local Tax Compliance (LTC)

MuniServices' compensation for providing Local Tax Compliance Services (Discovery and Audit Services) shall be a contingency fee of 40% of the additional revenue received by City from the services. The 40% shall apply to the current tax year, all eligible prior period revenues, and any applicable penalties, interest, and late charges.

8. BizLINK

MuniServices' compensation for BizLink shall be kept the same at the current fee that the City is paying at \$29,285.28 annual fixed fee, to be paid in quarterly installments of \$7,321.32. The Annual Fee shall be adjusted at the beginning of each calendar year by the percentage change in the Consumer Price Index – West Urban (CPI-WU) as reported by the Bureau of Labor Statistics.

9. Transient Occupancy Tax (TOT)

Phase 1, Discovery and Analysis: City shall pay MuniServices a fixed fee of \$300 per lodging property with ten or fewer guest accommodations and \$600 per lodging

property with more than ten guest accommodations. This fee applies to all lodging properties located in the City limits, including lodging properties located via discovery.

Phase 2, Compliance Review: For those properties where the City elects, within 90 days after the completion of MuniServices' analysis report, a full Compliance Review to be completed per Phase 2, City shall pay MuniServices an additional fixed fee of \$900 per lodging property reviewed plus out of pocket expenses. Should the City not approve the list of lodging providers to be subject to a Compliance Review of lodging and tax records within 90 days after the completion of MuniServices' analysis report, MuniServices' fee shall be \$1,100 per lodging property reviewed plus out of pocket expenses.

Compensation for Optional TOT Seminar Service: The Seminar Service may be provided for a fixed fee of three thousand dollars (\$3,000) plus out of pocket expenses.

10. Geobased Revenue Information Program (GRIP)

MuniServices will continue providing the GRIP service to the City at no charge provided that the City maintains all of the above services. MuniServices would normally charge \$20,000 annually for this service with annual adjustment based on change in CPI-WU.

11. Additional Consulting

City may request that MuniServices provide additional consulting services at any time during term of the Agreement. If MuniServices and City agree on the scope of the additional consulting services requested, then MuniServices shall provide the additional consulting services on a Time and Material basis. Depending on the personnel assigned to perform the work, MuniServices' standard hourly rates range from \$75 per hour to \$300 per hour. These additional consulting services will be invoiced at least monthly based on actual time and expenses incurred.

**Disclosure Pursuant to the
City of Pasadena Taxpayer Protection Amendment
Pasadena City Charter, Article XVII**

Contractor/Organization hereby discloses its trustees, directors, partners, officers, and those with more than 10% equity, participation, or revenue interest in Contractor/Organization, as follows:

(If printing, please print legibly. Use additional sheets as necessary.)

1. Contractor/Organization Name: MuniServices, LLC

2. Type of Entity:
 non-government nonprofit 501(c)(3), (4), or (6)

3. Name(s) of trustees, directors, partners, officers of Contractor/Organization:

Marc Herman, President
Kevin Cerutti, VP Finance
Randy Dryden, COO
Doug Jensen, VP Client Services

4. Names of those with more than a 10% equity, participation or revenue interest in Contractor/Organization:

Portfolio Recovery Associates, Inc. - 100%

Prepared by: Kevin Cerutti

Title: VP Finance

Phone: 559-271-6800

Date: October 7, 2009

Living Wage Compliance Certification

This contract is subject to the City of Pasadena's Living Wage Ordinance, Pasadena Municipal Code Chapter 4.11. The Ordinance requires that contractors providing labor or services to the City under contracts in excess of \$25,000:

- ◆ Pay no less than ten dollars and fourteen cents (\$10.14) per hour plus medical benefits of no less than one dollar and seventy-four cents (\$1.74) per hour, or eleven dollars and eighty-eight cents (\$11.88) per hour without medical benefits to all employees who spend any of their time providing labor or delivering services to the City of Pasadena. Additionally, in January 2010 and each January thereafter the Living Wage rate shall be adjusted by the change in the Consumer Price Index, for the Los Angeles-Riverside-Orange County area, for the most recently available 12 month period. Accordingly, current City contractors will be required to adjust wage rates no later than July 1st, to remain in compliance.
- ◆ Notify employees who spend any of their time providing labor or delivering services to the City of Pasadena who make less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit (EITC) under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and making available to such employees forms required to secure advance EITC payments.

The selected contractor will be required to evidence compliance with the Living Wage Ordinance by submitting payroll records as requested by the City. Each record shall include the full name of each employee performing labor or providing services under the contract; job classification; rate of pay and benefit rate.

I, Kevin Cerutti, VP Finance
(Name, Title)


(Signature)

do hereby certify and declare under penalty of perjury that if awarded the contract for which this bid/proposal is made MuniServices, LLC will comply with the
(Name of Company)

requirements of the Pasadena Living Wage Ordinance, Pasadena Municipal Code Chapter 4.11 and the rules and regulations promulgated thereunder. I understand that failure to comply with the provisions of the Pasadena Living Wage Ordinance may result in termination of the contract as well as other penalties as stated in Pasadena Municipal Code Chapter 4.11.

On August 4, 2008, the Pasadena City Council amended the Living Wage Ordinance such that the provisions of the Living Wage Ordinance may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in clear and unambiguous terms. If this provision applies, you must provide a copy of the collective bargaining agreement to the City.

Please return this form with your bid/proposal. Questions concerning the Living Wage Ordinance should be directed to the Department of Finance – Purchasing Division 626.744.6755.